Under 300 words

How To Pursue Social Causes Without Risking Shareholder Litigation

A new California statute can potentially eliminate a major driver of shareholder litigation: the allegation that a company's philanthropic or community involvement dilutes profitability, and thus the value of a shareholder's investment.

Benefit Corporation

The statute, which took effect January 1, 2012, allows the creation of a "benefit corporation" structure as an integral part of a for-profit corporation's legal charter. Upon approval by two-thirds of a company's outstanding shareholders, benefit corporations can adopt policies and pursue contributions that have a "material positive impact on society and the environment," according to the statute, without placing primacy on whether such actions fundamentally impact shareholder value.

Until now, the only way for companies to pursue such policies was the adoption of not-for-profit status, which severely restricted their ability to raise venture funding and other capital. Now, a benefit corporation can use its financial resources to support "green" initiatives or social causes in addition to pursuing profitability for shareholders, without profitability being the exclusive fiduciary duty focus for company management.

Proactive Strategy

California is the seventh state to allow benefit corporation formation, and some 100 such entities (mostly privately held) have made the transformation in other jurisdictions. Officers and directors of benefit corporations still have responsibility to shareholders, but now have the freedom to give primacy to social causes rather than just to profitability.

Securing shareholder approval for the benefit corporation entity form is a proactive strategy for socially conscious company management to pursue their broader objectives without incurring the added expense of defending against shareholder breach of fiduciary duty claims. It creates a win-win situation that widens social benefits from corporate advocacy.