### Codetermination

**Empirics. Equity prices respond well to codetermination.**

Grant M. **Hayden &** Matthew T. **Bodie 21**, Hayden is Professor and Robert G. Storey Distinguished Faculty Fellow, SMU-Dedman School of Law; Bodie is Callis Family Professor, Saint Louis University School of Law, "Codetermination in Theory and Practice," Florida Law Review, vol. 73, 03/2021, pp. 321-359

3. The Battle for Corporate Power

Because American corporate law scholarship has not really taken codetermination seriously, it has not joined the true conflict at the heart of the debate: the struggle between shareholders and employees--between capital and labor--for power. The U.S. system is premised on the idea that total shareholder control will keep labor in check and spur management to get the highest returns possible for equity holders. By labeling employees with all other stakeholders as "fixed" claimants, shareholder primacy can categorize an increase in shareholder returns as an overall increase in efficiency rather than a claim to a large share of the pie. But as corporate profits and share prices have ratcheted upwards, and workers' wages have remained stagnant, the effects of shareholder primacy can be keenly felt. Shareholders run the game, and they use their power to increase their gains.

Codetermination breaks this shareholder vise-grip on corporate control. It empowers employees by giving them a voice and a role within the governance of the firm. As a result, shareholders are likely to see their power within the corporation diminish. But this is a feature, not a bug. There are larger empirical questions about which system works best that can be measured in different ways: equity prices, wages, Tobin's Q, gross domestic product (GDP), environmental harm, or return to creditors. As discussed in Part III, codetermination has scored solidly under these measures, and it has held up even more strongly in the wake of recent crises. But the ideological questions of shareholder and worker power are a critical part of the debate--one that law-and-economics research has largely ignored.

#### Again, not about CP but plan.

**Links to plan.**

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Samuel Hammond, “Elizabeth Warren’s Corporate Catastrophe,” National Review, 08-20-2018, https://www.nationalreview.com/2018/08/elizabeth-warren-accountable-capitalism-act-terrible-idea/

Milton Friedman was simply wrong, descriptively and prescriptively. That does not mean, however, that Warren and Yglesias’s alternative theory of corporate social responsibility — what philosophers call “stakeholders theory” — is a good idea. As the influential business ethicist Kenneth Goodpaster once observed, simply multiplying the number of stakeholders blurs traditional goals in terms of entrepreneurial risk-taking, pushes decision-making towards paralysis because of the dilemmas posed by divided loyalties and, in the final analysis, represents nothing less than the conversion of the modern private corporation into a public institution.

This raises the question of why we have private corporations in the first place. Ever since the late Ronald Coase published his famous theory of the firm, economists have tended to argue for a view grounded in public policy. Namely, shareholder corporations dominate modern economies because they are, as a nexus of contracts, much more efficient at pooling capital and directing resources than any competing organizational form. Thus the normative foundation of corporate law is not any subset of stakeholders, but the welfare of society as a whole.

Business ethicist John Boatright makes the point a bit differently, noting that through bargaining, “any constituency or stakeholder group could conceivably make its interests the objective of the firm and the end of management’s fiduciary duty.” The fact that shareholders tend to bargain hardest for formal control simply stems from their greater exposure to losses as residual claimants.

Enforcing co-determination rules doesn’t change this fact. On the contrary, when scandal struck Volkswagen in 2005, the blame was laid squarely at co-determination’s feet. Members of Volkswagen’s supervisory board, widely seen as an “old-boys network” in its own right, were caught exchanging favors, including access to prostitutes, in exchange for union-member votes. It turns out Coase’s theory drives a hard bargain.

As the Democratic party debates whether or not to embrace “democratic socialism,” Warren, to her credit, claims she’s “a capitalist to my bones.” Yet the fact remains that the Accountable Capitalism Act is in many ways the most radical proposal advanced by a mainstream Democratic lawmaker to date. Not because Germany is a socialist dystopia, but because, unlike universal health care or increased spending on the poor, Warren’s proposal is to fundamentally upend the way the most productive companies in the American economy work from the top down.

Forget “If you like your doctor, you can keep your doctor.” Warren’s plan will have you asking if you can keep your retirement savings. As Yglesias notes in his piece, co-determination could cause average share prices to plummet by as much as 25 percent. But don’t worry, says Yglesias: “Cheaper stock would be offset by higher pay and more rights at work.”

Maybe. Or maybe, after the dust settles, we would find ourselves in a new, lower equilibrium — one with less inequality, perhaps, but even lower productivity, as America’s corporate unicorns are converted into glitter glue.

A wise person once said that a model based on preventing the worst-case scenario risks stopping the best-case scenario from ever coming about. The American system, whatever its flaws, is exceptional in its openness to visionaries. Warren’s plan, based on bad economics and worse business ethics, is nothing short of a plan to hold those with vision to account.

**It causes cooperation, not gridlock.**

**LEP 23**, the Library of Economic Possibility, collection of over 300 authors writing to challenge orthodox economic thinking, "Codetermination," 02/20/2023, https://www.economicpossibility.org/reports/codetermination

Existing evidence does not support the concern that codetermination may lead to decision-making gridlock. In Europe, executives and workers alike report positive experiences, unimpeded decision-making, and improved relations.

One criticism of workplace democracy—which codetermination helps to implement—is that it might introduce the same gridlock that plagues the legislative branches of many democratic governments, that of the United States in particular.

But evidence from abroad would seem to alleviate this concern. The European experience with codetermination suggests that the structural arrangement it implements has aligned the interests of workers and management and built empathy across stakeholders . By improving the communication of information between workers and managers (also known as reducing information asymmetry), codetermination may even boost growth.

Says distributions to shareholders get reinvested, says nothing about quahsing investment

Worker voice solves.

### Antitrust

### Bankruptcy

**Supply and demand for corporate debt are still deep.**

Nicholas **Elfner 1/6**, Co-Head of Research, Breckinridge Capital Advisors, "Q1 2026 Corporate Bond Market Outlook," Corporate Commentary, 01/06/2026, https://www.breckinridge.com/insights/details/q1-2026-corporate-bond-market-outlook/

We expect stable credit fundamentals in 2026. Agency rating actions have continued with positive bias.11 Credit is supported by solid revenue growth and cost discipline, driving margin improvement and steady debt metrics. However, mergers and acquisitions (M&A) and capital expenditures (cap ex) are each rising notably and may strain credit metrics if debt funding is used prodigiously. Idiosyncratic events in sub-prime and private credit are risks.

Our macro-outlook for 2026 is for moderate real economic growth. Growth has been driven by spending from high income households and a boost in productivity from AI related cap ex. The Breckinridge Investment Committee anticipates one additional rate cut in 2026, with the 10-year Treasury yield expected to trade between 4.0 percent and 4.5 percent. Payroll growth slowed down in the fourth quarter of 2025, and the Federal Reserve’s (Fed’s) view is clear that the labor market has softened sufficiently to warrant additional monetary accommodation to stimulate demand.

We see tactical opportunities in short--to-intermediate-term corporates on reasonable credit curves and breakeven spreads.12 We expect more 30-year issuance, which may present opportunities. Relative value should emerge across capital structures in Banks, Insurers, and Utilities as these sectors may see an increase in hybrid capital supply. Above-average yields, steady investor demand, and stable credit fundamentals are counterbalanced by tight spreads, rising new issue supply, cap ex, and M&A, driving a modest overweight to the corporate sector with a defensive posture.

Valuations: Sector Dispersion and Opportunities

IG corporate bond spreads, as measured by the Index, tightened by two basis points (bps) during the year, ending the fourth quarter at an option-adjusted spread (OAS) of 78bps.13 Spreads are rich, in the 2nd percentile over a 20-year lookback. Compressed valuations argue for a defensive stance entering 2026. The yield-to-worst (YTW) for the Index was 4.81 percent on December 31st. An IG YTW in the 66th percentile, since 2005, may support investor demand via domestic and foreign funds flows.14

Long corporates (-4bps) modestly outperformed intermediate corporates (-2bps) on a spread basis, as credit curves flattened slightly. There was dispersion across industries, with tighter spreads in sectors such as Healthcare (-13bps), Banking (-9bps) and Capital Goods (-8bps), partially offset by wider spreads in Finance (+30bps), Technology (+11bps), and Utilities (+2bps) for the full year.

Quality spreads widened slightly during the year, with the A Index (+64bps) 4bps tighter and the BBB Index (+97bps) unchanged on the year. The spread differential of 33bps is tight relative to recent history with a Z-Score15 of negative 1.5 compared to the average over the last five years.16 The spread/yield conundrum reminds us of prior periods (1995-1997 and 2004-2006), with relatively high risk-free rates and tight spreads that lasted for a few years. This relationship can persist until a financial shock and/or a sharply weakening economy prompts a material drop in the fed funds rate and Treasury yields that correspond with a higher credit risk premium.

Technicals: Supply Rising, Demand Still Deep

Entering 2026, we think bond supply may accelerate on rising cap ex and M&A activity. IG gross bond supply was $321 billion in the fourth quarter, and $1.82 trillion in 2025. On a net basis, after redemptions, issuance was $86 billion and $548 billion, respectively.17

We expect to see more supply in longer-maturity corporate bonds this year, which may present opportunities, particularly for yield-oriented buyers. One investment bank is estimating gross and net issuance of $2.25 trillion and $1.0 trillion in 2026, respectively, which would eclipse the previous gross record of $2.1 trillion in 2020.18

We think fund flows can remain healthy while IG supply may accelerate on rising cap ex and M&A activity. Inflows into taxable bond funds and exchange-traded funds (ETFs) were $156 billion in the fourth quarter and $490 billion in 2025.19 Foreign investor net corporate purchases were $83 billion for the three months and $304 billion for the 12 months through October.20

On the supply side, we expect large issuance from the Technology and Utility sectors to be somewhat counterbalanced by less supply from the Banking sector.

Utilities may also materially increase their borrowing in the corporate bond market in 2026. Utility cap ex grew from $104 billion in 2015 to $208 billion in 2025 and may reach $248 billion in 2029.21 Cap ex will bring a wave of new debt issuance.22

In the fourth quarter, U.S. Bank regulators issued a final rule to modify certain regulatory capital standards including changes to the Supplementary Leverage Ratio (SLR) that will likely reduce holding company long-term debt (LTD) issuance needs.23 These regulatory changes could reduce external LTD requirement by over $150 billion and Total Loss Absorbing Capital (TLAC) needs by nearly $100 billion.24 Higher surplus LTD suggests reduced refinancing and U.S. Bank net supply may be sharply lower, potentially down 40 percent in 2026.25 We view lower supply as a supportive technical for Bank bond spreads.

Fundamentals: Stable, With Pockets to Watch

We see stable credit fundamentals for Industrials in 2026. Non-financial credit metrics were stable in the last quarter and indeed over the past few years.26 Credit is supported by solid revenue growth and cost discipline, which are driving margin improvement and steady debt metrics.