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How Benefit Corporations Are Redefining the Purpose of Business Corporations

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HOW BENEFIT CORPORATIONS ARE REDEFINING THE PURPOSE OF BUSINESS CORPORATIONS

William H. Clark, Jr.[†] and Elizabeth K. Babson[††]

I. INTRODUCTION 818
II. MARKET DEMAND BY CONSUMERS, INVESTORS, AND SOCIAL ENTREPRENEURS 819
A. *Consumers* 819
B. *Investors* 822
C. *Entrepreneurs* 823
III. EXISTING CORPORATION LAW DOES NOT ACCOMMODATE FOR-PROFIT MISSION-DRIVEN COMPANIES 825
A. *Background* 825
B. *Effect of Constituency Statutes* 828
1. *Constituency States* 829
2. *Non-Constituency States* 833
C. *Levels of Scrutiny of Director Decisions* 834
IV. BENEFIT CORPORATIONS 838
A. *Corporate Purpose: General Public Benefit* 839
B. *Transparency: Third-Party Standard and Overall Performance* 842

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William Mitchell Law Review, Vol. 38, Iss. 2 [2012], Art. 8

1. *Importance of Third-Party Standards* 845
a. *Choice of Third-Party Standard* 845
b. *Verification of Third-Party Standard* 846
c. *Independence* 847
C. *Scope of Director Liability* 848
V. CONCLUSION 851

I. INTRODUCTION

Within the last two years, legislation authorizing the incorporation of a new form of business corporation known as a "benefit corporation" has been signed into law in California,[1] Hawaii,[2] Maryland,[3] New Jersey,[4] New York,[5] Vermont,[6] and Virginia.[7] Similar legislation has been introduced in five other states,[8] and legislation is also expected to be introduced within the next year in additional states as well.

The distinctive features of a benefit corporation are: (1) it has a corporate purpose to create a material positive impact on society and the environment; (2) the duties of its directors are expanded

1. CAL. CORP. CODE §§ 14600–14631 (West 2011). The California legislation was signed into law on October 9, 2011 and will become effective on January 1, 2012.

2. S.B. 1462, 26th Leg., Reg. Sess. (Haw. 2011). The Hawaii legislation was signed into law on July 8, 2011 (at the time of publication, an effective date was not yet identifiable). The Hawaii legislation refers to the new form of corporation as a "sustainable business corporation" instead of as a "benefit corporation," but the provisions of the legislation are substantively similar to the legislation enacted in the other states.

3. MD. CODE ANN., CORPS. & ASS'NS § 5-6C-01 (West 2011). The Maryland legislation was signed into law on April 13, 2010 and became effective on October 1, 2010.

4. N.J. STAT. ANN. §§ 14A:18-1 to -11 (West 2011). The New Jersey legislation passed on January 10, 2011 and became effective when it was signed into law on March 1, 2011.

5. N.Y. BUS. CORP. LAW §§ 1701–1709 (Consol. 2011). The New York legislation was signed into law on December 12, 2011 and will become effective on February 10, 2012.

6. VT. STAT. ANN. tit. 11A, § 21.02 (2011). The Vermont legislation was signed into law on May 19, 2010 and became effective on July 1, 2011.

7. VA. CODE ANN. § 13.1-782 (2011). The Virginia legislation was signed into law on March 26, 2011 and became effective on July 1, 2011.

8. 805 ILL. COMP. STAT. 180 / 1-26 (2010); S.B. 5, 68th Gen. Assemb., Reg. Sess. (Colo. 2011); S.B. 360, 96th Leg., Reg. Sess. (Mich. 2011); S.B. 26, Gen. Assemb., Sess. 2011 (N.C. 2011); H.B. 1616, 195th Gen. Assemb., Reg. Sess. (Pa. 2011); H.B. 1578, 195th Gen. Assemb., Reg. Sess. (Pa. 2011); S.B. 433 195th Gen. Assemb., Reg. Sess. (Pa. 2011).

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to require consideration of interests in addition to the financial interest of its shareholders; and (3) it is required to report each year on its overall social and environmental performance using a comprehensive, credible, independent, and transparent third-party standard.[9]

It should be noted at the outset that the topic of the issue of the Law Review in which this article appears—business organizations lacking a "business purpose"—does not strictly apply to benefit corporations, which are the subject of this article. Benefit corporations are business organizations, but they are not lacking a business purpose. Instead, they have a business purpose that has been redefined. Like other business corporations, a benefit corporation is intended to make a profit for its shareholders, but the way in which that profit is to be made is through the conduct of business in a socially and environmentally responsible way. Before discussing in detail how benefit corporations are redefining the business purpose of business corporations, this article first describes the forces that have led to the development of the benefit corporation form and the traditional legal framework of business corporations against which the benefit corporation form has been developed.

II. MARKET DEMAND BY CONSUMERS, INVESTORS, AND SOCIAL ENTREPRENEURS

For-profit social entrepreneurship, social investing, and the sustainable business movement have reached critical mass and are now at an inflection point. Accelerating consumer and investor demand has resulted in the formation of a substantial marketplace for companies that are using the power of business to solve social problems.

A. *Consumers*

A significant and growing population of consumers already aligns its purchases with its values, and many more have become conscious of the issue. Approximately 68 million U.S. consumers have stated a preference for making purchasing decisions based

9. *Benefit Corporation—Legal Provisions and FAQs*, BCORPORATION.NET, 1, http://www.bcorporation.net/resources/bcorp/documents/Benefit%20Corporation%20-%20Legal%20Provisions%20and%20FAQ.pdf (last visited Oct. 27, 2011) [hereinafter *Benefit Corporation*].

upon their sense of social and environmental responsibility.[10] Some consumers use their purchasing power to punish companies for negative corporate behavior,[11] and many other consumers use their purchasing power to reward companies that positively address a social or environmental issue. Current surveys have shown that forty-nine percent of Americans have boycotted companies whose behavior they perceive is not in the best interest of society.[12] Meanwhile, recent research has also indicated that where price and quality are equal, eighty-seven percent of consumers would switch from their current brand to a brand that is socially responsible.[13] These consumer behaviors apply not just to purchases related to popular consumer products, but also to many other industries, including telecommunications, banking, and professional services (e.g., law firms).[14]

As consumer demand for socially responsible products and companies is increasing, consumer trust in corporations is decreasing. Marketers use the terms "green," "responsible," "sustainable," "charitable," and words like them on a daily basis to describe their products or their companies. However, the more these terms are used, the less meaning they have because there are no standards to back up the claims.[15] This problem, often referred

10. *Benefits of Becoming a Sustainable Business*, ECO-OFFICIENCY, http://www.eco-officiency.com/benefits_becoming_sustainable_business.html (last visited Oct. 27, 2011).

11. *See, e.g.*, LAWRENCE B. GLICKMAN, BUYING POWER: A HISTORY OF CONSUMER ACTIVISM IN AMERICA (2009) (tracing the history of boycotts in the United States from the American Revolution through the 1970s); Steven E. Levingston, *Whole Foods Boycott: The Long View*, WASH. POST SHORT STACK BLOG (Sept. 2, 2009, 5:30 AM), http://voices.washingtonpost.com/shortstack/2009/09/whole_foods _boycott_the_long_v.html?hpid=news-col-blog (introducing guest blogger Lawrence Glickman, who argues consumer boycotts have been used throughout American history but have not always been successful).

12. Sheila M. J. Bonini et al., *The Trust Gap Between Consumers and Corporations*, MCKINSEY Q., no. 2, 2007 at 7, 10.

13. CONE LLC, 2007 CONE CAUSE EVOLUTION AND ENVIRONMENTAL SURVEY 8 (2007), *available at* http://www.coneinc.com/files/2007ConeSurveyReport.pdf.

14. CONE LLC, 2010 CONE CAUSE EVOLUTION STUDY 10 (2010), *available at* http://www.coneinc.com/files/2010-Cone-Cause-Evolution-Study.pdf.

15. For example, Exxon Mobile was named "Green Company of the Year" by Forbes Magazine in 2009 for its focus on natural gas (as opposed to coal). Christopher Helman, *ExxonMobil: Green Company of the Year*, FORBES (Aug. 24, 2009), *available at* http://www.forbes.com/forbes/2009/0824/Energy-oil-exxonmobil-green-company-of-year.html. However, the Forbes article failed to assess its performance on other environmental issues, such as its lobbying against climate change or even the negative effects of natural gas on the environment. Josh Harkinson, *Exxon Mobil: "Green Company of the Year?"*, MOTHER JONES, Aug. 27,

to as "greenwashing," is misleading for consumers and frustrating for businesses that try to distinguish themselves based on their social and environmental business practices. Consumers are less likely to trust the company's claims versus consumer reports or third-party certifications.[16] As a result, various certifications, such as "Organic," "Fair Trade," "Energy Star," "Green seal," "LEED," and "Forest Stewardship Council," have emerged to provide insight on particular aspects of a certain company's social or environmental performance.[17] Although there has been a proliferation of narrow product or practice-specific standards like those mentioned, there are fewer standards that provide a comprehensive understanding of a company's performance as a whole. The lack of comprehensive and transparent standards is making it difficult for a consumer to tell the difference between a "good company" and just good marketing.

This general public preference for supporting "good companies" is not limited to purchases. Consumers not only prefer to purchase from, but also to work for, companies who are committed to social and environmental issues. More than two-thirds of employees (sixty-nine percent) consider the social and environmental track record of the company in deciding where to work.[18] This preference is especially strong among Masters in Business Administration ("MBA") graduates, who overwhelmingly (eighty-eight percent) have said that they would be comfortable taking a pay cut to work for a company that has ethical business practices versus one that does not.[19]

2009, http://motherjones.com/blue-marble/2009/08/exxonmobil-green-company-year-0. In the United Kingdom, Exxon advertisements claiming to be "eco-friendly" for its natural gas projects were banned as misleading in 2008. John Plunkett, *ExxonMobil to Contest Ban on Ad for Liquefied Natural Gas*, THE GUARDIAN, Sept. 3, 2008, http://www.guardian.co.uk/media/2008/sep/03/asa.advertising.

16. *See* BBMG, CONSCIOUS CONSUMER REPORT: REDEFINING VALUE IN A NEW ECONOMY 16 (2009).

17. For a description of these and other symbols, see *Guide to Green Symbols*, EASY WAYS TO GO GREEN (Apr. 27, 2008), http://www.easywaystogogreen.com/green-guides/guide-to-green-symbols/.

18. CONE LLC, 2010 CONE CAUSE EVOLUTION STUDY 8 (2010), *available at* http://www.coneinc.com/files/2010-Cone-Cause-Evolution-Study.pdf.

19. *New MBAs Would Sacrifice Pay for Ethics*, HARV. BUS. REV. (May 17, 2011), http://web.hbr.org/email/archive/dailystat.php?date=051711. The average pay cut the MBA students would accept to work for a responsible business is about $8,000. *Id.*

B. Investors

The socially responsible investing ("SRI") movement has grown over the past thirty years to represent nearly ten percent of U.S. assets under management, or roughly $2.3 trillion.[20] SRI has evolved in both the public and private markets, becoming an institutionalized sector of the professional asset management market and giving rise to a distinct venture capital and private equity industry of funds and individual investors seeking value-aligned investment opportunities.

Some SRI investors use screens to avoid "sin" (e.g., tobacco, alcohol, gaming) and weapons stocks or to reward social or environmental "best in class" companies in each industry sector in their portfolio. Other SRI investors engage corporations to change their behaviors through shareholder resolutions or other forms of activism; and still others increasingly being called impact investors, seek to create more direct social impact through targeted direct equity and debt investments in businesses such as community banks, microfinance institutions, clean- or green-tech businesses, or social venture funds investing globally across developed and emerging markets.[21]

A November 2010 report by J.P. Morgan titled "Impact Investments: An Emerging Asset Class" estimates the size of this market opportunity to be between $400 billion and $1 trillion.[22] This estimate only included investment opportunities in emerging markets across five sectors: housing, rural water delivery, maternal health, primary education, and financial services.[23] J.P. Morgan estimates the ten-year profit potential from these opportunities

20. SOC. INV. FORUM, 2010 REPORT ON SOCIALLY RESPONSIBLE INVESTING TRENDS IN THE UNITED STATES 10 (2010), *available at* http://ussif.org/resources/research/documents/2010TrendsES.pdf; *see also Socially Responsible Investing Facts*, US SIF, http://ussif.org/resources/sriguide/srifacts.cfm (last visited Oct. 27, 2011).

21. *See Socially Responsible Investing Facts*, *supra* note 20 (highlighting screening, shareholder advocacy, and community investing as typical investor approaches).

22. J.P. MORGAN GLOBAL RESEARCH, IMPACT INVESTMENTS: AN EMERGING ASSET CLASS 6 (2010), *available at* http://www.jpmorgan.com/cm/BlobServer/impact_investments_nov2010.pdf?blobcol=urldata&blobtable=MungoBlobs&blobkey=id&blobwhere=1158611333228&blobheader=application%2Fpdf; *see also* Nicholas Timmons, *Impact investment 'a burgeoning asset class'*, FT.COM (Nov. 28, 2010, 6:02 PM), http://www.ft.com/intl/cms/s/0/e875dda6-fae6-11df-b576-00144feab49a.html#axzz1g181ezBS (summarizing the J.P. Morgan report).

23. J.P. MORGAN GLOBAL RESEARCH, *supra* note 22, at 6.

alone ranged between $183 billion and $667 billion.[24] Coming at it from the demand side of the equation and focused only on individual U.S. investors, a June 2010 "Money for Good" report from Hope Consulting estimates a demand for impact investments among U.S. high net worth individuals at $120 billion.[25]

Like consumers, investors lack the comprehensive tools to understand the complete picture of a company's performance across the full range of social and environmental measures. Likewise, businesses may have a hard time attracting investors by distinguishing themselves among the sea of companies that claim to be "socially responsible." Furthermore, the current trend, particularly in the public capital markets and among policy makers and large public corporations serious about sustainability, is to encourage integrated sustainability reporting using credible third-party standards. According to Institutional Shareholder Services ("ISS"), the largest shareholder proxy organization in the world, this trend is also true for institutional investors who "appear to be increasingly incorporating social and environmental considerations into their proxy voting decisions, as demonstrated by voting trends and institutional investor initiatives."[26]

C. *Entrepreneurs*

For-profit social entrepreneurs have gained increasing prominence on the business landscape. Probably the highest profile example of this has been the awarding of the Nobel Peace Prize to Muhammad Yunus for his pioneering work in microfinance, but there are many other examples.[27] Although there is no reliable data on "social enterprise" company revenues, an aggregation of businesses belonging to membership associations generally identified with the sustainable business movement reveals a marketplace of over 30,000 social entrepreneurs with over $40

24. *Id.*

25. HOPE CONSULTING, MONEY FOR GOOD 10 (May 2010), *available at* http://www.hopeconsulting.us/pdf/Money%20for%20Good_Final.pdf.

26. CAROLYN MATHIASEN & ERIK MELL, INSTITUTIONAL SHAREHOLDER SERVICES, CORPORATE SOCIAL ISSUES: A 2011 PROXY SEASON PREVIEW (2011), *available at* http://www.issgovernance.com/docs/2011ESGPreview.

27. Muhammad Yunus is known as a "banker to the poor" and won the Nobel Prize in 2006 for his work with the Grameen Bank in Bangladesh. See *Muhammad Yunus Biography*, NOBELPRIZE.ORG (2006), http://www.nobelprize.org/nobel_prizes/peace/laureates/2006/yunus-bio.html, for a biography of Muhammad Yunus and information regarding his work.

billion in revenues.[28]

The pipeline of future for-profit social entrepreneurs is filling rapidly as most top business schools offer a program in Social Entrepreneurship.[29] The membership of Net Impact, a network of business school students and young professionals using business as a tool for social change, is over 20,000 people in 280 chapters globally.[30] There are numerous additional companies that do not self-identify as "socially responsible," but nevertheless behave that way, and there are other sectors of the economy such as health care, education, housing, food, agriculture, and consumer products with concentrations of high-impact businesses.

The current marketplace, however, continues to be fragmented and confusing. As noted above, entrepreneurs that are "sustainable," "green," or "socially responsible" may find that it is hard to distinguish themselves from other companies that make similar claims, but do not actually behave as they advertise. Furthermore, the current legal framework is structured to ensure profit maximization, not social responsibility.[31] Because of this, entrepreneurs with a mission-driven business may be reluctant to accept outside capital from investors who may not share their long-term vision for social and environmental responsibility.

28. Stacy Perman, *Making a Profit and a Difference*, BUSINESSWEEK, Apr. 3, 2009, http://www.businessweek.com/smallbiz/content/mar2009/sb20090330_541747.htm. A partial listing of these associations includes: Green America, Social Venture Network, Investors Circle, Business Alliance for Local Living Economies, Transfair USA, Social Investment Forum, National Cooperative Business Association, and the National Center for Employee Ownership.

29. For example, Duke University's Fuqua School of Business has the Center for the Advancement of Social Entrepreneurship, the University of Pennsylvania's Wharton School of Business touts several social entrepreneurship programs, including the Social Enterprise Fellowship Program, and Northwestern University's Kellogg School of Management provides the Carol and Larry Levy Social Entrepreneurship Lab.

30. *See About Us*, NET IMPACT (last visited Dec. 9, 2011), http://netimpact.org/about; *see also Connect with Members*, NET IMPACT (last visited Dec. 9, 2011), http://netimpact.org/connect.

31. See A.L.I., 1 PRINCIPLES OF CORP. GOVERNANCE § 2.01 (1994), for a discussion of the objective and conduct of a corporation generally (noting that a business corporation should have as its objective the conduct of such activities with a view to enhancing corporate profit and shareholder gain, but that its pursuit of the economic objective must be constrained by social imperatives and *may* be qualified by social needs).

III. EXISTING CORPORATION LAW DOES NOT ACCOMMODATE FOR-PROFIT, MISSION-DRIVEN COMPANIES

A. Background

The notion that a business corporation has as its purpose creating financial gain for its shareholders, was forcefully articulated by the Michigan Supreme Court almost 100 years ago in the following statement in *Dodge v. Ford*:

> A business corporation is organized and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end. The discretion of directors is to be exercised in the choice of means to attain that end, and does not extend to a change in the end itself, to the reduction of profits, or to the nondistribution of profits among stockholders in order to devote them to other purposes.[32]

Dodge v. Ford does not stand alone, and cases in other jurisdictions have reiterated the shareholder maximization duty that "[i]t is the obligation of directors to attempt, within the law, to maximize the long-run interests of the corporation's stockholders."[33] Though still a staple in many law school casebooks, some commentators have suggested that the decision in *Dodge v. Ford* to award the shareholders a special dividend was not based on shareholder wealth maximization principles, but rather a breach of duty of good faith to minority shareholders "by withholding special dividends to perhaps freeze them out."[34] A strict reading of *Dodge v. Ford* and other cases that specify shareholder wealth maximization as a fiduciary duty has been criticized by those who believe that these cases do not represent the current state of modern corporate law.[35] Nevertheless, *Dodge v. Ford*

32. Dodge v. Ford Motor Co., 170 N.W. 668, 684 (Mich. 1919).

33. Katz v. Oak Indus. Inc., 508 A.2d 873, 879 (Del. Ch. 1986); *see also* Long v. Norwood Hills Corp., 380 S.W.2d 451, 475–76 (Mo. Ct. App. 1964); Granada Invs., Inc. v. DWG Corp., 823 F. Supp. 448, 459 (N.D. Ohio 1993).

34. Judd F. Sneirson, *Green is Good: Sustainability, Profitability, and a New Paradigm for Corporate Governance*, 94 IOWA L. REV. 987, 1001–07 (2009) [hereinafter *Green is Good*] (noting that *Dodge v. Ford* has only been cited by Delaware three times, twice as authority for the close corporation issue, and arguing that it should not be taught as a case of precedential value with respect to a duty of shareholder maximization).

35. *Id.* at 1003–04 (describing three other cases that clearly identify a duty of shareholder maximization of value, but dismissing the precedential value of these cases on that point and noting that they are rarely cited for that proposition). *But*

remains good law and many still maintain that its "theory of shareholder wealth maximization has been widely accepted by courts over an extended period of time."[36]

The American Law Institute ("ALI") takes a moderated view on the role of shareholder wealth maximization.[37] Section 2.01 of the ALI's *Principles of Corporate Governance* provides:

> (a) Subject to the provisions of Subsection (b) . . . , a corporation . . . should have as its objective the conduct of business activities with a view to enhancing corporate profit and shareholder gain.
>
> (b) Even if corporate profit and shareholder gain are not thereby enhanced, the corporation, in the conduct of its business:
>
> > (1) Is obliged, to the same extent as a natural person, to act within the boundaries set by law;
> >
> > (2) May take into account ethical considerations that are reasonably regarded as appropriate to the responsible conduct of business; and
> >
> > (3) May devote a reasonable amount of resources to public welfare, humanitarian, educational, and philanthropic purposes.[38]

Although the ALI approach permits the consideration of ethical issues and the devotion of resources to certain non-business purposes, these provisions are qualified by limits for "reasonableness" and "appropriateness."[39] The primary focus is clearly still on corporate profit and shareholder gain.

The case *eBay Domestic Holdings, Inc. v. Newmark*[40] has recently reaffirmed the primacy of wealth maximization. The case involved a dispute between unlikely business partners: Craig Newmark and James Buckmaster, the majority shareholders and directors of the

see STEPHEN M. BAINBRIDGE, CORPORATION LAW AND ECONOMICS §§ 1.4(b), 9.2, 9.3, at 411–13 (2002); Jonathan R. Macey, *A Close Read of an Excellent Commentary on* Dodge v. Ford, 3 VA. L. & BUS. REV. 177, 190 (2008) (stating that the shareholder maximization ideal in *Dodge v. Ford* actually drives the holding and is not mere dicta).

36. BAINBRIDGE, *supra* note 35, § 9.2, at 413 (accepting the theory of shareholder maximization expressed in *Dodge v. Ford*); *see also* Macey, *supra* note 35, at 180 ("[S]hareholder wealth maximization is widely accepted at the level of rhetoric.").

37. A.L.I., 1 PRINCIPLES OF CORP. GOVERNANCE, *supra* note 31, § 2.01.

38. *Id.*

39. *Id.* § 2.01(b).

40. 16 A.3d 1 (Del. Ch. 2010).

online auction site known as craigslist, and eBay, the online auction website.[41] Although a for-profit corporation, craigslist operates its business largely as a community service, allowing users to post classified advertisements free of charge.[42] The company does not sell advertising on its website to third parties, nor does it actively advertise or market its services.[43] The sole revenue stream comes from fees for online job posting in certain cities and apartment listings in New York City.[44] Although very successful, especially in terms of market share (craigslist is the leader for online classifieds), the site has not focused on "monetization," and thus operates at a level that most competitors would not consider to be minimally acceptable.[45] With only thirty-four employees, craigslist is a rather small operation.[46] In contrast, eBay, a large publicly traded company, has a sophisticated business model and operates its business with the goal of maximizing revenues, profits, and market share.[47] eBay has fully monetized its website, charging customers a commission on each sale, and has focused on expansion and market share through acquisitions and by actively advertising its services.[48] Despite the differences between the two companies, eBay made an investment in craigslist and became a minority shareholder of craigslist, and was able to appoint a director to the board.[49]

A dispute arose when it became apparent that eBay had invested in craigslist with an eye toward forming an international partnership and eventually making the company a subsidiary of eBay.[50] Jim and Craig, who were opposed to the monetization of the site and preferred to keep its unique culture and community service roots, responded by taking certain defensive measures, including adopting a rights plan.[51] eBay sued, alleging that Jim and

41. *Id.* at 6.
42. *Id.* at 8.
43. *Id.*
44. *Id.*
45. *Id.*
46. *Id.*
47. *Id.* at 9.
48. *Id.*
49. *Id.* at 11.
50. *Id.* at 14–16.
51. *Id.* at 21. The board also adopted a staggered board and a right of first refusal/dilutive issuance; however, these measures were upheld and are thus not relevant to this discussion. *Id.*

Craig violated their duties as directors and majority stockholders.[52] The court reviewed the decision to adopt the plan under *Unocal*'s intermediary standard, as described below, which requires that a defensive mechanism be in response to a properly and reasonably perceived threat to corporate policy and effectiveness, and that the mechanism constitute a proper response to that threat.[53]

Jim and Craig articulated the following threat: after Jim and Craig die and their shares are distributed to their heirs, eBay's acquisition of control "would fundamentally alter craigslist's values, culture and business model, including departing from [craigslist's] public-service mission in favor of increased monetization."[54] The court noted that the adoption of the rights plan was not reasonably related to the promotion of stockholder value, and admonished Jim and Craig for failing to prove that craigslist's culture translates into increased profitability for stockholders.[55] Like *Dodge v. Ford*, the *eBay* court provides a clear statement on the requirements with respect to shareholder wealth maximization: "Directors of a for-profit Delaware corporation cannot deploy a [policy] . . . to defend a business strategy that openly eschews stockholder wealth maximization—at least not consistently with the directors' fiduciary duties under Delaware law."[56] The court explained that "[h]aving chosen a for-profit corporate form, the craigslist directors are bound by the fiduciary duties and standards that accompany that form . . . [including] acting to promote the value of the corporation for the benefit of its stockholders."[57] This case, discussed in further detail below, reiterates the long-standing formulation of director duties and shows that current law views shareholder wealth maximization as a duty that directors are prohibited from abandoning.[58]

B. *Effect of Constituency Statutes*

Looking beyond case law, statutory law also informs the landscape of director duties with respect to shareholder wealth maximization. Many states have adopted statutes that explicitly

52. *Id.* at 25.
53. *Id.* at 31.
54. *Id.* at 32.
55. *Id.* at 34.
56. *Id.* at 35.
57. *Id.* at 34.
58. *Id.*

allow directors to consider the interests of constituencies other than shareholders (called a "constituency statute"). Constituency statutes may appear to change the paradigm of shareholder primacy; however, when viewed in context, this is not the case. Constituency statutes were developed mainly as a defensive mechanism for companies that are the subject of a hostile takeover, adopted to provide protection to a target company's board by giving them the discretion to reject a hostile takeover based on its consideration of constituencies other than shareholders.[59] With the increase of mission-driven and triple-bottom-line corporations, these constituency statutes are now being analyzed outside the context of a hostile takeover.[60] However, as described below, even in states that have constituency statutes, the regime of shareholder primacy is still pervasive and the legal framework is not sufficient to meet the needs of new mission-driven and triple-bottom-line businesses.

1. Constituency States

The directors of companies incorporated in constituency statute states are expressly permitted by statute to consider persons other than shareholders in the discharge of their fiduciary duties.[61] Constituency statutes generally provide that, in fulfilling their fiduciary duties, directors may consider the effects of a decision not only on shareholders, but also on a list of other "constituency"

59. Eric W. Orts, *Beyond Shareholders: Interpreting Corporate Constituency Statutes*, 61 GEO. WASH. L. REV. 14, 24 (1992). Many constituency provisions in state corporate statutes were enacted in response to takeover activity in the 1980s as a way to protect local businesses. *Id.* at 23–26. It is worth noting that these constituency statutes are permissive, i.e., they provide that the directors *may* consider the interests of stakeholders other than shareholders but are not required to do so. *See id.* at 26–31 (discussing varieties of state constituency statutes).

60. *See, e.g.*, *Green is Good*, *supra* note 34, at 997 ("[T]hese internal sources of corporate law generally leave such matters to the discretion of corporate boards and officers. Boards and officers may strive for shareholder-wealth maximization or not, so long as they act according to external sources of corporate law, namely, corporate statutes and decisional law."); Judd F. Sneirson, *Race to the Left: A Legislator's Guide to Greening a Corporate Code*, 88 OR. L. REV. 491, 501 (2009) [hereinafter *Race to the Left*] ("[T]he law [in Oregon] only expressly permits corporate decision makers to consider the interests of nonshareholder constituencies like employees, customers, suppliers, and communities when evaluating the merits of a proposal to acquire the company.").

61. *See* Orts, *supra* note 59, at 26–31.

groups.[62] These permissible constituency groups vary state-by-state, but usually include employees, creditors, suppliers, consumers, and the community at large.[63] Thirty-three states now have some version of a constituency statute.[64] Conspicuously absent from the list of states adopting constituency statutes is Delaware, where more than 900,000 business entities have their legal home, including more than fifty percent of all U.S. publicly-traded companies and

62. *See id.* at 26. These statutes provide an excuse for directors to reject hostile takeover situations. *See id.* at 23–26. These constituency statutes are permissive and do not require directors to consider the interests of stakeholders other than shareholders. *See id.* at 26–31 (discussing varieties of state constituency statutes).

63. *See, e.g.*, 805 ILL. COMP. STAT. 5 / 8.85 (2010) (stating directors "may . . . consider the effects of any action . . . upon employees, suppliers and customers of the corporation or its subsidiaries, communities in which offices or other establishments of the corporation or its subsidiaries are located, and all other pertinent factors"); N.Y. BUS. CORP. LAW § 717(b)(2)(i)–(v) (Consol. 2011) ("[Directors] shall be entitled to consider . . . the effects that the corporation's actions may have in the short-term or in the long-term upon any of the following: (i) the prospects for potential growth, development, productivity and profitability of the corporation; (ii) the corporation's current employees; (iii) the corporation's retired employees and other beneficiaries receiving or entitled to receive retirement, welfare or similar benefits from or pursuant to any plan sponsored, or agreement entered into, by the corporation; (iv) the corporation's customers and creditors; and (v) the ability of the corporation to provide, as a going concern, goods, services, employment opportunities and employment benefits and otherwise to contribute to the communities in which it does business."); 15 PA. CONS. STAT. ANN. § 1715(a)(1) (West 2011) ("[Directors may consider] [t]he effects of any action upon any or all groups affected by such action, including shareholders, employees, suppliers, customers and creditors of the corporation, and upon communities in which offices or other establishments of the corporation are located.").

64. ARIZ. REV. STAT. ANN. § 10-2702 (2010); CONN. GEN. STAT. § 33-756(d) (2011); FLA. STAT. § 607.0830(3) (2011); GA. CODE ANN. § 14-2-202(b)(5) (2011); HAW. REV. STAT. § 414-221(a)–(b) (2010); IDAHO CODE ANN. § 30-1602 (2010); 805 ILL. COMP. STAT. 5 / 8.85 (2010); IND. CODE § 23-1-35-1(d) (2011); IOWA CODE § 490.1108A (2011); KY. REV. STAT. ANN. § 271B.12-210(4) (LexisNexis 2011); LA. REV. STAT. ANN. § 12:92(G) (2011); ME. REV. STAT. ANN. tit. 13-C, § 832 (2010); MD. CODE ANN., CORPS. & ASS'NS § 2-104(b)(9) (West 2011); MASS. GEN. LAWS ch. 156B, § 65 (2010); MINN. STAT. § 302A.251(5) (2010); MISS. CODE ANN. § 79-4-8.30 (2011); MO. REV. STAT. § 351.347(1) (2010); NEB. REV. STAT. § 21-2432(2) (2010); NEV. REV. STAT. ANN. § 78.138(4) (LexisNexis 2011); N.J. STAT. ANN. § 14A:6-1(2) (West 2011); N.M. STAT. ANN. § 53-11-35(D) (West 2011); N.Y. BUS. CORP. LAW § 717(b) (Consol. 2011); N.D. CENT. CODE § 10-19.1-50(6) (2011); OHIO REV. CODE ANN. § 1701.59(E) (LexisNexis 2011); OR. REV. STAT. § 60.357 (2009); 15 PA. CONS. STAT. ANN. § 1715(a)(1) (West 2011); R.I. GEN. LAWS § 7-5.2-8 (2010); S.D. CODIFIED LAWS § 47-33-4 (2011); TENN. CODE ANN. § 48-103-204 (2011); VT. STAT. ANN. tit. 11A, § 8.30 (2010); VA. CODE ANN. § 13.1-727.1 (2011); WIS. STAT. § 180.0827 (2011); WYO. STAT. ANN. § 17-16-830(e) (2010).

sixty-three percent of the Fortune 500 companies.[65] Most states, including those with constituency statutes, look to Delaware law when interpreting local corporate law.[66]

While it is clear that directors of mission-driven companies incorporated in constituency statute jurisdictions may take into consideration the interests of various constituencies when exercising their business judgment, the lack of case law interpreting constituency statutes, coupled with the context in which many of these statutes were enacted, makes it difficult for directors to know exactly how, when, and to what extent they can consider those interests.[67] For example, neither the constituency statutes themselves nor state case law address questions such as how directors should decide which parties fall within a protected constituency category, what weight the directors should assign to shareholder and non-shareholder interests, and what standards a court should use in reviewing directors' decisions to consider (or not to consider) non-shareholder interests. Based on the limited case law available, courts seem reluctant to wade into these issues and often fall back on shareholder primacy.[68]

Without clear authority explicitly permitting directors to pursue both profit and a company's mission, even directors of

65. *2010 Annual Report*, DEL. DIV. OF CORPS. (Apr. 6, 2011), http://corp.delaware.gov/10CorpAR.pdf.

66. R. Cammon Turner, *Shareholders vs. the World*, 8 BUS. L. TODAY, Jan.–Feb. 1999, at 32, 34, *available at* http://apps.americanbar.org/buslaw/blt/8-3shareholders.html.

67. For example, Jonathan Macey argues that constituency statutes do not change the legal landscape with respect to shareholder primacy. However, Judd F. Sneirson argues the opposite. In a 2008 article, Macey argues that "these [constituency] statutes cannot rationally be construed to permit managers to benefit non-shareholder constituencies at the expense of shareholders. Rather, these statutes are mere tie-breakers, allowing managers to take the interests of non-shareholder constituencies into account when doing so does not harm shareholders in any demonstrable way." Macey, *supra* note 35, at 179. Sneirson, on the other hand, states that constituency statutes "expressly permit decisions that elevate other, nonshareholder considerations . . . over the maximization of shareholder wealth." *Green is Good*, *supra* note 34, at 998.

68. *See, e.g.*, Baron v. Strawbridge & Clothier, 646 F. Supp. 690, 697 (E.D. Pa. 1986) (quoting Enterra Corp. v. SGS Assocs., 600 F. Supp. 678, 686 (E.D. Pa. 1985)) (stating that, while it was proper for directors facing takeover attempts to consider corporation's employees, customers, and community, their fiduciary duty was still "to act in the best interests of the corporation's shareholders"). Also, it is either expressly provided or generally understood that these nonshareholder constituencies do not have standing to sue on the basis that the directors failed to consider their interests, making it less likely that directors will be concerned about them.

mission-driven companies in constituency statute jurisdictions may be hesitant to "consider" their missions for fear of a fiduciary duty breach.[69] In his article analyzing the current effects of *Dodge v. Ford*, Jonathan Macey argues that "if a CEO testifies that he and his board were engaging in certain actions for reasons unrelated to maximizing shareholder value, they would lose a lawsuit challenging those actions, especially if they exhibited indifference to the interests of those shareholders."[70] In *eBay*, Macey's prediction rang eerily true: the *eBay* court admonished the defendants for failing to make "any serious attempt" to link craigslist's purpose of protecting its culture to shareholder profitability—the directors paid the price. The uncertainty surrounding corporate decision making that openly rejects shareholder wealth maximization makes it difficult for the directors of mission-driven companies to feel they are legally protected in considering the interests of constituencies other than the shareholders who have elected them. Furthermore, as Macey points out, management is encouraged to lie, or at least to couch their actions in terms of long-term shareholder maximization.[71] For companies that may wish to advertise and openly rely upon their non-shareholder driven policies, there is clearly a risk associated with this position.

Further, permissive constituency statutes only create the option (and not the requirement) for directors to consider interests of constituencies other than shareholders. Thus, directors have the permission *not* to consider interests other than shareholder maximization of value. Mission-driven executives and investors are often in minority shareholder positions and would prefer that directors and officers be required to consider these expanded interests when making decisions, with a shareholder right of action providing the "teeth" to enforce such consideration. This is particularly true in situations where a company is

69. Directors who have invoked constituency statutes have usually done so when sued for a breach of fiduciary duty in the course of defending against takeover attempts. Constituency statutes are just one of many potential defenses that directors may use, and directors have been more likely to rely on anti-takeover mechanisms that have been proven in court and that do not call into question the directors' fiduciary duties.

70. Macey, *supra* note 35, at 189.

71. *Id.* at 180–81 ("[I]t simply is not possible or practical for courts to discern *ex post* when a company is maximizing value for shareholders and when the officers and directors are only pretending to do so.").

considering strategic alternatives and directors' discretion in making business decisions is more limited by traditional principals requiring shareholder value maximization.[72] Even in cases where the mission-driven decision makers are in the majority, as in *eBay*, duties owed to minority shareholders could thwart the efforts to maintain the long-term, mission-driven goals of the corporation.

2. Non-Constituency States

In non-constituency statute states, including Delaware, consideration of a public mission is even more problematic because under the corporate statutes of those states the directors are not expressly permitted to consider the interests of stakeholders or constituents other than shareholders in the discharge of their duties.[73]

Delaware is the only U.S. state under which a majority of U.S. public companies, and numerous private companies, particularly those with or interested in attracting outside capital, are incorporated, due in significant part to its well-developed body of corporate law and its lack of a constituency statute.[74] Although not statutory, Delaware has addressed the issue of consideration of other constituencies, but only in the context of takeovers, and even then courts still require a connection to shareholder value maximization.[75] *Unocal* articulates that Delaware law permits directors to assess threats to the corporation by considering "the impact on . . . [its] creditors, customers, employees, and perhaps even the community generally," with the apparent proviso that

72. *See, e.g.*, Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., 506 A.2d 173, 182 (Del. 1986) (citing Unocal Corp. v. Mesa Petroleum Co., 493 A.2d 946, 955 (Del. 1985)) (stating that directors, faced with a hostile takeover bid for a corporation, may only consider various non-shareholder constituencies if "there are rationally related benefits accruing to the stockholders.").

73. *See, e.g.*, CAL. CORP. CODE § 309(a) (2010) (stating that director must discharge his or her duties "in good faith, in a manner such director believes to be in the best interests of the corporation and its shareholders and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances"); MICH. COMP. LAWS § 450.1541a (2009) (stating similarly that director must discharge his or her duties "[i]n good faith . . . [w]ith the care an ordinarily prudent person in a like position would exercise under similar circumstances . . . [i]n a manner he or she reasonably believes to be in the best interests of the corporation"); N.C. GEN. STAT. § 55-8-30 (2010) (stating substantially the same as Michigan).

74. *See Race to the Left*, *supra* note 60, at 494.

75. *Unocal*, 493 A.2d at 954.

some benefit, however remote, must accrue to the shareholders.[76] Likewise, in *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, the court states that directors, faced with a hostile takeover bid for a corporation, may only consider various non-shareholder constituencies if "there are rationally related benefits accruing to the stockholders." [77] In *eBay*,[78] as described above, the Delaware court recently reaffirmed its position and made clear that a mission that "seeks *not* to maximize the economic value . . . for the benefit of its stockholders" is an invalid corporate purpose and inconsistent with directors' fiduciary duties.[79]

Without a constituency statute, the interests of other constituencies may be considered at the directors' own risk, and to pass muster would likely need to be tied to the long-term goal of shareholder value maximization. This serves as a considerable limit for companies that wish to operate, advertise, and preserve a non-shareholder driven mission or practice. Consider, for example, a corporation that has a policy of supporting other sustainable businesses and thereby consistently rejects contracts and services from companies offering lower prices. Over time, this practice may never result in the maximization of shareholder value. In a scenario like this one, the laws of non-constituency states provide minimal protection.

C. Levels of Scrutiny of Director Decisions

It is important to note that, as a general matter, the level of scrutiny a court will give to the decisions of a director (in both constituency and non-constituency states) is dependent in part on the context in which the decision is being made. To use Delaware as an example again because of its well-developed body of case law that is sometimes cited by other states in the absence of their own authority, Delaware courts review director decision-making in three broad categories, or scenarios: (1) day-to-day decisions, (2) defensive decisions,[80] and (3) change of control decisions.[81]

76. *Green is Good*, *supra* note 34, at 998 n.52.
77. *Revlon*, 506 A.2d at 182.
78. eBay Domestic Holdings, Inc. v. Newmark, 16 A.3d 1 (Del. Ch. 2010).
79. *Id.* at 33; *see id.* ("Promoting, protecting, or pursuing nonstockholder considerations [with defensive measures] must lead at some point to value for stockholders.").
80. Defensive decisions are those taken by directors in an effort to ward off potential bidders, whether friendly or hostile. 18B AM. JUR. 2D *Corporations* § 1477 (2011).

In the day-to-day context, directors can consider non-shareholder interests as long as they can show a rational connection between that consideration and shareholder value.[82] This is because courts review director decisions in the day-to-day context under the deferential "business judgment rule." In essence, the business judgment rule is a rebuttable presumption by courts that "in making a business decision the directors of a corporation act on an informed basis, in good faith and in the honest belief that the action taken [is] in the best interest of the company."[83] In other words, courts reviewing decisions made in the day-to-day context will not question rational judgments about how seemingly promoting non-shareholder interests (such as a corporation's decision to make charitable contributions or to otherwise support the community in which their operations are located) ultimately promote shareholder value.[84]

Even in the day-to-day context in which directors enjoy most discretion, decisions must show a connection between that consideration and shareholder value. While it is not true that all decisions that reflect consideration of non-shareholder interests lead to a reduction in shareholder value, and some in fact may lead to its increase, it is equally true that some might lead to reduced shareholder value, even over the long term. Moreover, some mission-driven business executives and investors may be comfortable with that result in the pursuit of their social mission, whether that mission was reflected in providing below-market pricing of health insurance to the otherwise uninsured, accepting higher cost of production from overseas factories audited by a third party for their social and environmental standards, or focusing on smaller, less profitable market segments that seek "better" products or need basic services. In this instance, the resolution of litigation

81. *Revlon*, 506 A.2d at 180–83 (noting that a corporation's board's duty changes when it becomes obvious that the company is being bought by a third party). Change of control decisions are those decisions taken by directors once it is clear that a company will be sold. 3A WILLIAM MEADE FLETCER ET AL., FLETCHER CYCLOPEDIA OF THE LAW OF CORPORATIONS § 1041.50 (perm. ed., rev. vol. 2011).

82. *See* Aronson v. Lewis, 473 A.2d 805, 812 (Del. 1984) (citing Kaplan v. Centex Corp., 284 A.2d 119, 124 (Del. Ch. 1971); Robinson v. Pittsburgh Oil Ref. Corp., 126 A. 46 (Del. Ch. 1924)) (stating that director's decisions must be "on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company").

83. *Id.*

84. eBay Domestic Holdings, Inc. v. Newmark, 16 A.3d 1, 33–34 (Del. Ch. 2010).

by a shareholder seeking maximized financial return against the directors of such a mission-driven company, even under this level of scrutiny, would be uncertain at best from the perspective of the mission-driven company and its directors. This uncertainty can have a chilling effect on the pursuit of the social mission.

When defending takeover attempts, directors generally enjoy significantly less deference, as these decisions (including consideration of non-shareholder interests) on their face do not seem designed to maximize shareholder value.[85] When directors act defensively, Delaware courts apply the standards set forth in *Unocal Corp. v. Mesa Petroleum Co.*[86] Under *Unocal*, Delaware courts will give directors the benefit of the business judgment rule only if the directors can first demonstrate that they were responding to a legitimate threat to corporate policy and effectiveness, and, second, that their response was "reasonable in relation to the threat posed."[87] As applied in *eBay*, Chancellor Chandler found that under *Unocal*, a public-service mission was not a legitimate corporate policy, and thus taking defensive measures to protect that mission violates *Unocal*.[88] The court stated: "Directors of a for-profit Delaware corporation cannot deploy a [policy] to defend a business strategy that openly eschews stockholder wealth maximization—at least not consistently with the directors' fiduciary duties under Delaware law."[89] While the facts of *eBay* are unique and a different company's publicly-oriented mission may be considered a legitimate corporate policy, Chancellor Chandler's language suggests that Delaware courts will seek to limit the "purely philanthropic ends" of mission-driven companies and require a connection of any stated purpose to shareholder value, especially when their directors' decisions are reviewed under *Unocal*'s scrutiny.

If defending takeover attempts severely restricts directors' ability to consider non-shareholder interests, a corporate sale can

85. Paramount Commc'ns Inc. v. QVC Network Inc., 637 A.2d 34, 42 (Del. 1994) (subjecting to a higher standard of review for directors' decision to launch defensive measures in response to a threat of control, and in transactions involving the sale of control); s*ee also* Chesapeake Corp. v. Shore, 771 A.2d 293, 330 (Del. Ch. 2000) (concluding that directors are afforded less deference in reviewing a defensive response to a takeover attempt).

86. 493 A.2d 946 (Del. 1985).

87. *Id.* at 949, 955–56.

88. *eBay*, 16 A.3d at 32, 34.

89. *Id.* at 35.

eradicate any such ability in a non-constituency state. A company goes "up for sale" when it initiates an active bidding process to sell itself or to reorganize itself in a way that will clearly break up the company, or when, in response to an active bidder's offer, the company abandons its long-term strategy and seeks an alternative transaction with a preferred party that will clearly break up the company.[90] In any of these circumstances, Delaware and other state case law has made clear that the directors' only duty is to maximize shareholder value by securing the highest bid reasonably available and that "concern for non-stockholder interests is inappropriate when an auction among active bidders is in progress."[91] These duties—the duty to maximize shareholder value and the corollary obligation to disregard all other considerations—are referred to as "*Revlon* duties," and originate from the landmark case *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*[92] While skilled legal counsel can give directors guidance on how to attempt to avoid *Revlon* duties, there remains ambiguity about when *Revlon* duties are triggered. That ambiguity frequently leads to *Revlon*-based lawsuits.

Some commentators have dismissed *Revlon* as an anomaly in Delaware law and belittled its impact with respect to mission-driven and triple-bottom-line businesses.[93]

However, to ignore the impact of director duties in a sale situation is a glaring oversight. This scenario, famously faced by the benevolent ice cream company Ben & Jerry's, resulted in the company being sold to Unilever, the corporate giant that owns

90. *See* Paramount Commc'ns, Inc. v. Time, Inc., 571 A.2d 1140, 1150 (Del. 1990) (outlining two circumstances in which directors must consider maximizing shareholder value above any other consideration).

91. Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., 506 A.2d 173, 182 (Del. 1986); *see also* Plaza Sec. Co. v. Fruehauf Corp., 643 F. Supp. 1535, 1543 (E.D. Mich. 1986) (citing *Revlon*, 506 A.2d at 182) ("In a contest for corporate control, when directors have determined that it is inevitable that the corporation be sold, . . . the directors' cardinal fiduciary obligation to the corporation and its shareholders is to ensure 'maximization of the company's value at a sale for the stockholders' benefit.'").

92. 506 A.2d 173 (Del. 1986). In *Paramount Commc'ns Inc. v. QVC Network Inc.*, the court extended *Revlon* duties to situations where, following a merger, the resulting entity is owned and controlled by a single shareholder. *See* Paramount Commc'ns Inc. v. QVC Network Inc., 637 A.2d 34, 36–41 (Del. 1993).

93. *See, e.g.*, *Race to the Left*, *supra* note 60, at 498 n.29 (relegating discussion of the *Revlon* line of takeover cases to a footnote and stating that "the vast majority of green business decisions involve operational issues, not takeovers, and thus the Revlon line of cases, while interesting, should not apply").

Breyers and Good Humor, in April of 2000.[94] Ben Cohen, one of the founders, stated that he would have preferred for the company to remain independent.[95] Mr. Mollner, founder of a socially responsible investment fund involved in an earlier bid to take the company private, explained: "'The board felt they had no choice but to let all three [bidders] put their best offers on the table yesterday' . . . '[w]e think it's horrible that a company has no choice but to sell to the highest bidder or get sued.'"[96] Although Ben & Jerry's worked out a plan with Unilever to preserve many aspects of its corporate mission,[97] other mission-driven companies may not have the same bargaining power to protect their own businesses.

IV. BENEFIT CORPORATIONS

It is against the paradigm of shareholder primacy that benefit corporation statutes have been drafted. These statutes address not only the need for a new corporate form that changes the paradigm of shareholder primacy, but also respond to the demand from the market place for a corporate form that meets the needs and expectations of increasingly socially and environmentally conscious consumers, investors, and entrepreneurs. The statutes vary in their details from state to state, but share major characteristics. The following discussion refers to "benefit corporation legislation" as a way of referring generally to the common provisions that have been enacted in the states.

There are three major provisions in benefit corporation legislation that are consistent from state to state. These provisions address corporate purpose, accountability, and transparency. A benefit corporation: (1) has the corporate purpose to create a material, positive impact on society and the environment; (2) expands fiduciary duty to require consideration of nonfinancial interests; and (3) reports on its overall social and environmental

94. Constance L. Hays, *Ben & Jerry's to Unilever, With Attitude*, N.Y. TIMES, Apr. 13, 2000, at C1, *available at* http://www.nytimes.com/2000/04/13/business/ben-jerry-s-to-unilever-with-attitude.html?src=pm.

95. *Id.*

96. *Id.*

97. Unilever reportedly agreed to "commit 7.5 percent of Ben & Jerry's profits to a foundation and agreed not to reduce jobs or alter the way the ice cream is made." *Id.* Unilever also agreed to "contribute $5 million to the foundation, create a $5 million fund to help minority-owned businesses and others in poor neighborhoods and distribute $5 million to employees in six months." *Id.*

performance as assessed against a comprehensive, credible, independent, and transparent third-party standard.[98]

A. Corporate Purpose: General Public Benefit

Benefit corporations are *required* to have a purpose of creating "general public benefit" and are *allowed* to identify one or more "specific public benefit" purposes.[99] This differs from general corporations, which are *allowed* to form for any lawful purpose, but have no explicit purpose requirement.[100]

The most recently introduced benefit corporation legislation in California defines general public benefit as a "material positive impact on society and the environment, taken as a whole, as assessed against a third-party standard, from the business and operations of a benefit corporation."[101] This definition takes a holistic approach and is meant to be both comprehensive and flexible. What is meant by general public benefit is significantly informed by two other provisions of the benefit corporation statutes: the redefined duties of directors and the differing treatment of general public benefit and specific public benefit.

First, the statute redefines fiduciary duties. The directors of benefit corporations, in considering the best interests of the corporation,

> [S]hall consider the effects of any action or decision not to act on:
>
> (i) The stockholders of the benefit corporation;
>
> (ii) The employees and workforce of the benefit corporation and the subsidiaries and suppliers of the benefit corporation;
>
> (iii) The interests of customers as beneficiaries of the

98. *Benefit Corporation*, *supra* note 9, at 1.

99. *Id.*; *see also* MD. CODE ANN., CORPS. & ASS'NS § 5-6C-06(a)(1)–(2), (b)(1) (2011).

100. *See, e.g.*, DEL. CODE ANN. tit. 8, § 101(b) (2011) ("A corporation may be incorporated or organized under this chapter to conduct or promote any lawful business or purposes, except as may otherwise be provided by the Constitution or other law of this State.").

101. CAL. CORP. CODE § 14601(c) (West 2011); *see also* MD. CODE ANN., CORPS. & ASS'NS § 5-6C-01(b) (2011). The Vermont statute adopts the same definition, see VT. STAT. ANN. tit. 11A, § 21.03 (2010), while the New Jersey statute defines general public benefit as "a material positive impact on society and the environment by the operations of a benefit corporation through activities that promote some combination of specific public benefits." N.J. STAT. ANN. § 14A:18-1 (West 2011).

> general or specific public benefit purposes of the benefit corporation;
>
> (iv) Community and societal considerations, including those of any community in which offices or facilities of the benefit corporation or the subsidiaries or suppliers of the benefit corporation are located; and
>
> (v) The local and global environment . . . .[102]

The stakeholder consideration mandate is an important distinguishing feature from the basic corporation statutes in "constituency" states discussed in Part III above; under "constituency" statutes, the consideration of non-shareholder interests is permissive, while under the benefit corporation statutes it is mandatory.[103] By making these considerations mandatory, benefit corporations provide a framework for corporate responsibility that is both clear and lasting. That the listed considerations are required helps to ensure that the general public benefit is being pursued and created, thus tying back to the purpose of the corporation. The statute also allows directors to consider "any other pertinent factors . . . that the director determines are appropriate to consider."[104]

Furthermore, the statute explicitly states that "[t]he creation of a general public benefit or specific public benefit . . . is in the best interests of the benefit corporation."[105] This serves to protect against the presumption that the financial interests of the corporation take precedence over the public benefit purposes, which maximizes the benefit corporation's flexibility in corporate

102. MD. CODE ANN., CORPS. & ASS'NS § 5-6C-07(a)(1). The Vermont Statute also requires the directors to consider "the long-term and short-term interests of the benefit corporation, including the possibility that those interests may be best served by the continued independence of the benefit corporation." VT. STAT. ANN. tit. 11A, § 21.09(a)(1)(F). New Jersey has an added clause similar to Vermont. *See* N.J. STAT. ANN. § 14A:18-6(a)(6).

103. MD. CODE ANN., CORPS. & ASS'NS § 5-6C-07(a)(1). Additionally, low-profit limited liability company (L3C) statutes do not address the scope of directors' duties, stating simply that an L3C's operating agreement may not "eliminate or reduce a member's fiduciary duties" (though it may define what is or is not a breach of such duties). *See* 805 ILL. COMP. STAT. 180 / 15-5(6) (2011) (listing requirements for LLC operating agreements).

104. MD. CODE ANN., CORPS. & ASS'NS § 5-6C-07(a)(2). New Jersey and Vermont have similar provisions. N.J. STAT. ANN. § 14A:18-6(b)(2); VT. STAT. ANN. tit. 11A, § 21.09(a)(2).

105. MD. CODE ANN., CORPS. & ASS'NS § 5-6C-06(c). The New Jersey and Vermont statutes include similar provisions. *See* N.J. STAT. ANN. § 14A:18-5(c); VT. STAT. ANN. tit. 11A, § 21.08(c).

Clark and Babson: How Benefit Corporations Are Redefining the Purpose of Business C

decision making.

Second, the separate treatment of general public benefit and specific public benefit also informs what is distinctive about benefit corporations. One of the main purposes of benefit corporation legislation is to create a voluntary new corporate form that has the corporate purpose to create benefits for society and the environment generally, as well as for the shareholders. The entrepreneurs, investors, consumers, and policymakers interested in new corporate form legislation are not interested in, for example, reducing waste while increasing carbon emissions, or reducing both while remaining indifferent to the creation of economic opportunity for low-income individuals or underserved communities. They are interested in creating a new corporate form that gives entrepreneurs and investors the flexibility and protection to pursue all of these or other public benefit purposes. The best way to give them what they need is to create a corporate form with a general public benefit purpose. A company may also designate a specific public benefit, in addition to its general public benefit purpose.[106] This ensures that a benefit corporation can pursue any specific mission, but that the company as a whole is also working toward general public benefit.

The California statute lists seven non-exhaustive possibilities for specific public benefits, which are:

> (1) Providing low-income or underserved individuals or communities with beneficial products or services.
>
> (2) Promoting economic opportunity for individuals or communities beyond the creation of jobs in the ordinary course of business.
>
> (3) Preserving the environment.
>
> (4) Improving human health.
>
> (5) Promoting the arts, sciences, or advancement of knowledge.
>
> (6) Increasing the flow of capital to entities with a public benefit purpose.
>
> (7) The accomplishment of any other particular benefit for society or the environment.[107]

106. *See, e.g.*, VT. STAT. ANN. tit. 11A, § 21.08(b) (providing that a benefit corporation may identify one or more specific public benefits).

107. CAL. CORP. CODE § 14601(e)(1)–(7) (West 2011); *see also, e.g.*, MD. CODE ANN., CORPS. & ASS'NS § 5-6C-01(d) (listing specific public benefits); N.J. STAT. ANN. § 14A:18-1 (listing specific public benefits); VT. STAT. ANN. tit. 11A, § 21.03(6)

The need for general public benefit with an optional specific public benefit is best illustrated by example. Suppose a corporation gives ninety-five percent of its profits to charity. This fact, although commendable, does not provide the whole picture. If the corporation were to use the lowest costs of production (e.g., child labor), source raw materials from non-sustainable sources, dump hazardous waste, etc., it would be operating in a manner contrary to a benefit corporation. On the other hand, a benefit corporation is not required to engage in or promote charitable activities (although it may designate such a specific purpose if it so chooses). If the corporation consciously conducts its operations in a manner that is socially and environmentally responsible, it would qualify as a benefit corporation regardless of whether it also contributes to or promotes charitable causes.

B. Transparency: Third-Party Standard and Overall Performance

In the classic paradigm of shareholder primacy, the performance of the directors can be measured by the financial performance of the corporation as shown by its financial statements. To permit monitoring of the performance of the directors of a benefit corporation, the statutes also require reporting on performance.[108] Unlike in the financial area, where standardized conventions for reporting financial performance have developed, there does not yet exist a standard way to report on social and environmental performance. Thus, the statutes permit benefit corporations to pick the standard that they will use.

A benefit corporation is required to deliver an annual benefit report to the shareholders[109] and to post it on its website so it is available to the public.[110] Some states require filing the report with a department of the state.[111] The report must include a narrative

(listing specific public benefits). The definition of specific public benefit is consistent across states, with only minor variations (i.e., New Jersey's definition contains a slight variation in clause (1) which reads: "providing *low income* individuals or communities with beneficial products or services"). N.J. STAT. ANN. § 14A:18-1 (West 2011) (emphasis added).

108. *See, e.g.*, VT. STAT. ANN. tit. 11A, § 21.14(a)(2) (describing the required reporting on the social and environmental performance of a benefit corporation).

109. *See, e.g.*, MD. CODE ANN., CORPS. & ASS'NS § 5-6C-08(a); N.J. STAT. ANN. § 14A:18-11(c); VT. STAT. ANN. tit. 11A, § 21.14(d).

110. *See, e.g.*, MD. CODE ANN., CORPS. & ASS'NS § 5-6C-08(c)(1).

111. *See, e.g.*, N.J. STAT. § 14A:18-11(d); N.Y. BUS. CORP. LAW §§ 1701–1709 (Consol. 2011).

description of the ways in which the benefit corporation pursued a general public benefit and the extent to which it was created; the ways the benefit corporation pursued any specific benefit (if stated in the company's articles) and the extent to which it was created; and any circumstances that may have hindered creation of either such benefit.[112] In recently passed legislation in California and New York, the narrative description must also include the process and rationale for selecting the third-party standard.[113]

In addition to disclosure requirements about the material shareholders of the benefit corporation and a statement of any connection of the benefit corporation to the third-party standard, the report must also include "[a]n assessment of the societal and environmental performance of the benefit corporation prepared in accordance with a third-party standard applied consistently with the prior year's benefit report or accompanied by an explanation of the reasons for any inconsistent application."[114]

The definition of third-party standard has strengthened significantly since the introduction of the first benefit corporation statute in 2010. Since in many ways the third-party standard is the heart of benefit corporation legislation, and for many observers, the most contentious and misunderstood provision in benefit corporation legislation, presented below is the full definition of third-party standard, and a full description of the reporting requirements for benefit corporations, for which the third-party standard is essential.

Third-party standard is defined in California as "a standard for defining, reporting, and assessing overall corporate social and environmental performance," which is:

> (1) . . . a comprehensive assessment of the impact of the business and the business's operations upon the considerations listed in paragraphs (2) to (5) . . . .
>
> (2) . . . developed by an entity that has no material

112. *See, e.g.*, MD. CODE ANN., CORPS. & ASS'NS §§ 5-6C-08(a)(1)(i)–(iii); N.J. STAT. ANN. §§ 14A:18-11(a)(1)(a)–(c); VT. STAT. ANN. tit. 11A, §§ 21.14(a)(1)(A)–(C). Vermont benefit corporations must additionally suggest specific actions the benefit corporation can take to improve upon the attainment of its identified goals. VT. STAT. ANN. tit. 11A, § 21.14(a)(1)(D).

113. CAL. CORP. CODE § 14630(a)(1)(A) (West 2011); N.Y. BUS. CORP. LAW §§ 1701–1709. Additionally, in Vermont, shareholders must approve or reject the annual benefit report by majority vote. VT. STAT. ANN. tit. 11A § 21.14 (c).

114. MD. CODE ANN., CORPS. & ASS'NS § 5-6C-08(a)(2) (2010); N.J. STAT. ANN. § 14A:18-11(a)(2) (West 2011); VT. STAT. ANN. tit. 11A, § 21.14(a)(2) (2010).

financial relationship with the benefit corporation or any of its subsidiaries and satisfies both of the following requirements:

(A) Not more than one-third of the members of the governing body of the entity are representatives of any of the following:

(i) Associations of businesses operating in a specific industry, the performance of whose members is measured by the standard.

(ii) Business from a specific industry or an association of businesses in that industry.

(iii) Businesses whose performance is assessed against the standard.

(B) The entity is not materially financed by an association or business described in subparagraph (A);

(3) The standard is developed by an entity that does both of the following:

(A) Accesses necessary and appropriate expertise to assess overall corporate social and environmental performance.

(B) Uses a balanced multistakeholder approach, including a public comment period of at least 30 days to develop the standard.

(4) All of the following information regarding the standard is publicly available:

(A) The criteria considered when measuring the overall social and environmental performance of a business.

(B) The relative weightings assigned to the criteria described in subparagraph (A).

(C) The identity of the directors, officers, any material owners and the governing body of the entity that developed and controls revisions to the standard.

(D) The process by which revisions to the standard and changes to the membership of the governing body described in subparagraph (C) are made.

(E) An accounting of the sources of financial support for the entity, with sufficient detail to disclose any relationships that could reasonably be considered to

present a potential conflict of interest.[115]

By assessing and disclosing the benefit corporation's overall social and environmental performance against an independent third-party standard, shareholders and the public are provided an easy way to evaluate the company on these criteria, which for typical companies is otherwise almost impossible to determine. Based upon the research cited in Part II, it is anticipated that this simplified "due diligence" tool will facilitate greater investment in benefit corporations and improve customer loyalty by enabling people to differentiate good deeds from merely good marketing. Over time, this has the potential to create market-driven positive feedback loops rewarding companies that adopt this higher standard of corporate governance and demonstrate higher levels of overall social and environmental performance.

1. *Importance of Third-Party Standards*

The requirement that the annual benefit report assess the overall social and environmental performance of the benefit corporation against a third-party standard is an essential requirement of the benefit corporation legislation. Below is a discussion of important issues relating to the third-party standard requirement.

a. *Choice of Third-Party Standard*

Benefit corporation legislation does not require a benefit corporation to use any particular third-party standard to prepare its benefit report so long as the standard chosen meets the statutory requirements.[116] The definition of third-party standard was developed based on research into the criteria used by international standards organizations (e.g., American National Standards Institute, International Standards Organization, ISEAL) and regulatory bodies (e.g., Federal Trade Commission) to identify high quality standards and certifications.[117]

There are many third party standards organizations that

115. CAL. CORP. CODE § 14600(g).
116. *Benefit Corporation*, *supra* note 9, at 2.
117. *See, e.g.*, *Uniting Education and Industry*, AUTONOMOUS UNDERSEA SYS. INST., http://www.ausi.org/about/ (last visited Oct. 28, 2011) (AUSI is a not-for-profit organization that oversees the creation, promulgation, and use of norms and guidelines for businesses in a range of industries).

> meet the statutory criteria for a third party standard [to be comprehensive, credible, independent, and transparent]. . . . The Global Reporting Initiative (GRI), GreenSeal, Underwriters Laboratories (UL), ISO2600, Green America, and B Lab are a few well-known examples. . . . Both GRI and B Lab offer companies the use of their reporting (GRI) and assessment (B Lab) tools for free . . . . In addition to the examples listed above, more than 100 'raters' of corporate sustainability practices are listed in the free 'Rate the Raters' report published by the research and consulting firm SustainAbility. . . . The management, and ultimately directors and shareholders, of benefit corporations are free to decide for themselves which of these or other standards they feel meet the statutory requirements and their needs.[118]

To guard against "greenwashing," the disclosure requirements of the annual benefit report with respect to the third-party standard require the corporation to explain how and why it chose a particular standard.[119] The robustness of the assessment and the information included in the benefit report will provide further information and the standard to shareholders. Furthermore, benefit corporation legislation provides management, directors, shareholders, and ultimately judges, criteria for what constitutes an acceptable third-party standard.[120] Presumably, armed with the information included in the annual benefit report and the statutory requirements with respect to a third-party standard, market forces will shape the landscape of third-party standards utilized by benefit corporations.

b. Verification of Third-Party Standard

Benefit corporations are not required to have their benefit report certified or audited by a third party. Mandatory verification was purposely omitted from the requirements for an acceptable third-party standard for several reasons.

First, mandatory verification would place a cost burden on benefit corporations to meet the reporting requirements of the statute. While free third-party standards exist that can be used to

118. *Benefit Corporation*, *supra* note 9, at 2.

119. *Id.* at 4.

120. *See, e.g.*, MD. CODE ANN., CORPS. & ASS'NS § 5-6C-08 (West 2010); N.J. STAT. ANN. § 14A:18-11 (West 2011).

generate a benefit report, no third-party standard will perform verification services for free. Requiring a significant annual verification cost would greatly reduce adoption, particularly among the small businesses most interested in new corporate form legislation. Second, ordinary corporations are not required to have audited financial reports and benefit corporations should not be required to have audited benefit reports of their social and environmental performance. Third, directors of benefit corporations are already subject to litigation for fraud if they report false or intentionally misleading information in their benefit report, which serves as a sufficient incentive to provide complete and accurate benefit reports. Finally, verification can and will become a means by which certain benefit corporations voluntarily distinguish themselves on a competitive basis to attract greater confidence in their claims of environmental and social performance.

c. Independence

The definition of "independent" plays a key role in assuring the reliability of the third-party standard, and the assessment of the benefit corporation's social and environmental performance. Independence is vetted based on criteria regarding governance, transparency, and reporting.

First, regarding governance, to ensure a balanced approach to the weighting, evolution, and application of the standard, no industry group, trade association, or individual interests assessed by the third-party standard can represent more than one-third of the controlling interest of the governing body of the standard.[121] Second, regarding transparency, to ensure that potential financial influence is disclosed, an accounting of the sources of financial support for the standard organization, including but not limited to fees, grants, investments, and material in-kind support, with sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest, must be made publicly available.[122] Third, regarding reporting, the benefit corporation is required to include in its annual benefit report a

121. CAL. CORP. CODE § 14601(g)(2) (West 2011).

122. *See, e.g.*, N.J. STAT. ANN. § 14A:18-11(a)(5) (requiring reporting of each shareholder owning more than "5% or more of the outstanding shares of the benefit corporation").

statement of any connection to the third-party standard, or its directors, officers, or material owners from the benefit corporation, or its directors, officers, and material owners, including any financial or governance relationship that might materially affect the credibility of the objective assessment of the third-party standard.[123]

C. *Scope of Director Liability*

Directors of benefit corporations are afforded certain protections under benefit corporation statutes.[124] First, the statutes expressly state that the consideration of all stakeholders shall not constitute a violation of the general standards for directors, which requires good faith, the care of an ordinarily prudent person, and the consideration of the best interests of the corporation.[125] Second, in an effort to restrict potential liability, the most recent benefit corporation legislation in California specifically excludes director, officer, and corporate liability for monetary damages.[126] This decision was driven by twin desires to (1) eliminate such concern in the face of a lack of court precedent by which such

123. *Id.* § 14A:18-11(a)(3)–(5).

124. Some states have incorporated benefit director provisions into their benefit corporation legislation. In other states, the benefit director's duties are shared by the entire board. In those states that have adopted benefit director provisions, a "benefit director" is a director who is specifically designated to oversee benefit issues. *See, e.g.*, N.J. STAT. ANN. § 14A:18-1 ("'Benefit director' means the director designated as the benefit director of a benefit corporation."); VT. STAT. ANN. tit. 11A, § 21.03(a)(2) (2011) ("'Benefit director' means the director designated as the benefit director of a benefit corporation."). This director is responsible for preparing the annual benefit report and making a statement of whether, in the opinion of the benefit director, the benefit corporation acted in accordance with its general public benefit purpose and any specific benefit purpose. *See, e.g.*, N.J. STAT. ANN. § 14A:18-7(c) ("The benefit director shall prepare, and the benefit corporation shall include in the annual benefit report to shareholders . . . a statement whether, in the opinion of the benefit director, the benefit corporation acted in accordance with its general, and any specific, public benefit purpose in all material respects during the period covered by the report . . . ."); VT. STAT. ANN. tit. 11A, § 21.10 (defining the duties of a benefit director more specifically). The benefit director is subject to the same liability as other directors of a benefit corporation, as described in this section.

125. *See, e.g.*, MD. CODE ANN., CORPS. & ASS'NS § 5-6C-07(c) (referencing general standards for director conduct under MD. CODE ANN., CORPS & ASS'NS § 2-405.1); N.J. STAT. ANN. § 14A:18-6(b)(1) (referencing general standard under N.J. STAT. ANN. § 14A:6-1); VT. STAT. ANN. tit. 11A, § 21.09(b) (referencing general standard of care under VT. STAT. ANN. tit. 11A, § 8.30).

126. CAL. CORP. CODE § 14620(e)(3).

liability could be quantified, and (2) to focus courts on the exclusive remedy of awarding injunctive relief wherein the benefit corporation would be required to simply live up to the commitments it voluntarily undertook.[127]

Directors are also protected from lawsuits by beneficiaries of the corporation's public benefit purpose. Benefit corporation legislation clearly provides no right of action for third parties.[128] The statute explicitly does not create a fiduciary duty to anyone who cannot bring a "benefit enforcement proceeding."[129] Benefit enforcement proceedings are defined as actions brought on the grounds of a public benefit purpose, and the statute creates a right of action only for shareholders, directors, investors with a specified percentage interest (usually five to ten percent depending on the state) in the parent company, and other persons as specified in the company's articles of incorporation.[130]

However, notwithstanding the above, a shareholder is expressly given the right to bring a legal action on the basis that the director failed to *pursue* the stated general or specific public

127. The California, New Jersey, and Vermont statutes also make clear that, unless expressly provided in the company's articles of incorporation, the directors are not required to give priority to the interests of any particular person or group referred to in the statute over any other person or group. CAL. CORP. CODE § 14620(d); N.J. STAT. ANN. § 14A:18-6(c); VT. STAT. ANN. tit. 11A, § 21.09(a)(3). The Vermont statute further provides that a director shall not be subject to a different or higher standard of care in a potential change of control situation (e.g., the *Unocal* or *Revlon* situations discussed in Part II above). VT. STAT. ANN. tit. 11A, § 21.09(a)(4). The New Jersey and Vermont statutes also make clear that a director will not be liable for the failure to actually create a general or specific public benefit. N.J. STAT. ANN. § 14A:18-6(d); VT. STAT. ANN. tit. 11A, § 21.09(c).

128. VT. STAT. ANN. tit. 11A, § 21.13(a)–(b).

129. *E.g.*, VT. STAT. ANN. tit. 11A, § 21.09(e) ("A director of a benefit corporation shall have a fiduciary duty only to those persons entitled to bring a benefit enforcement proceeding against the benefit corporation . . . . A director of a benefit corporation shall not have any fiduciary duty to a person who is a beneficiary of the general or specific public benefit purposes of the benefit corporation arising only from the person's status as a beneficiary."); *see also* MD. CODE ANN., CORPS. & ASS'NS § 5-6C-07(b) ("[Directors] do[] not have any duty to a person that is a beneficiary of the public benefit purposes of the benefit corporation."); N.J. STAT. ANN. § 14A:18-10(a)–(b) (stating that duties of directors can only be enforced in "benefit enforcement proceedings" initiated by the corporation, shareholders, directors, certain beneficial owners, or others authorized to so in the articles of incorporation or bylaws).

130. *E.g.*, N.J. STAT. ANN. § 14A:18-10(b) (enumerating who can commence or maintain a benefit enforcement proceeding); VT. STAT. ANN. tit. 11A, § 21.13(b) (listing only specific persons such as a director of a corporation who can commence or maintain a benefit enforcement proceeding).

benefits, failed to *consider* the interests of the various stakeholders set forth in the statute, or failed to *meet* the transparency requirements in the statute.[131] While a shareholder of a benefit corporation could still bring a traditional action for the failure of the directors to adequately consider shareholder financial interests, such a shareholder could also now bring an action for failure to consider other stakeholder interests (e.g., for failure of the directors to adequately consider the impact of a particular action on the workforce of the company). For the reasons stated in Part II,[132] this expanded accountability to shareholders is specifically desired by most of the mission-driven entrepreneurs and investors interested in new corporate form legislation. However, while this grants shareholders an expanded right of action, it is important to note that the consideration standard does not require a particular *outcome* of the directors' decision making, but rather that there is a decision-making *process* that considers all of the enumerated stakeholders.[133] Similarly, the exclusion of any right of action by third parties protects the benefit corporation from unknown, expanded liability that would otherwise operate as a disincentive to becoming a benefit corporation.

Also, although a benefit enforcement proceeding is a viable enforcement option, lawyers advising shareholders of benefit corporations should focus on issues of corporate control, recognizing that the main policing mechanism for the performance of directors is the right of the shareholders to elect the directors. The purpose of the expanded director considerations is to ensure that the corporation can and will pursue general public benefit, providing flexibility in director decision making to ensure that the corporation acts as a good citizen, and not merely a good profit-maker; however, there is a risk of director abuse. Thus, care should be taken to make sure the election process in a benefit corporation remains robust so that the directors cannot abuse the flexibility inherent in the benefit corporation form.

131. *E.g.*, N.J. STAT. ANN. § 14A:18-10(b)(2)(a); VT. STAT. ANN. tit. 11A, § 21.13(b)(1).

132. *See supra* Part II.B–C.

133. *See, e.g.*, VT. STAT. ANN. tit. 11A, § 21.09 (setting forth the standards of conduct for directors of benefit corporations).

V. CONCLUSION

The sustainable business movement, impact investing, and social enterprise sectors are developing rapidly, but are constrained by an outdated legal framework that is not equipped to accommodate for-profit entities whose social benefit purpose is central to their existence. The benefit corporation, which has already been established by statute in seven states and is the subject of legislative initiatives in three others, is the most comprehensive, yet flexible legal entity devised to address the needs of entrepreneurs and investors, and ultimately, the general public.

Benefit corporation legislation differs from other attempts to "green" the corporate code—such as the passage of constituency statutes—because it creates a mandatory requirement for a corporation to pursue general public benefit. Instead of trying to fit mission-driven companies into the traditional corporate framework based on shareholder primacy, benefit corporation legislation tweaks a familiar corporate form to address, in a meaningful way, the specific demands of shareholders and investors who desire transparency and accountability with respect to these businesses. As a result, benefit corporations have also attracted the support of most of the entrepreneurs, investors, citizens, and policymakers interested in new corporate form legislation.