

FOREWORD TO THE HBLR SUMMER ISSUE ON BENEFIT CORPORATIONS

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“A new idea is first condemned as ridiculous and then dismissed as trivial, until finally, it becomes what everybody knows.”

—Henry James

In early 2009, in response to demand from a growing group of institutional and venture investors, companies, and entrepreneurs for an updated corporate legal framework, the nonprofit B Lab worked with Bill Clark, partner at the law firm Drinker Biddle & Reath, to draft a new model corporate statute that would remove obstacles that companies and their investors face in using business as a force for good. The resulting model benefit corporation statute expanded the concept of fiduciary duty to include the pursuit of public benefit in addition to shareholder value. A small community of pioneering companies, called Certified B Corporations, cheered this innovation because they wanted to bake their mission into their corporate DNA as they scaled their businesses. These companies, along with many investors, began to advocate for a state to adopt the statute in order to provide them with a clear legal framework that allowed them to consider the interests of constituencies other than their shareholders when making decisions, including in the transformative scenarios governed by the *Revlon* doctrine.

By early 2010, with support from both sides of the aisle, Maryland became the first state to pass benefit corporation legislation. On the effective date of the Maryland statute, twelve companies registered as Maryland benefit corporations; two of them arrived at 6am in a race to become the nation's first benefit corporation. Vermont joined Maryland in enacting a benefit corporation statute one month later. Despite these early successes, some dismissed the idea as trivial and predicted that, while a number of small companies would reincorporate as benefit corporations, no serious company with ambitions to scale would embrace this new corporate form.

Four years later, 26 U.S. states and the District of Columbia have passed benefit corporation statutes. There have been 25 bi-partisan, unanimous legislative votes. The legislation has been signed by ten Republican and fifteen Democrat governors. Delaware, home to more than half of all U.S. corporations and over two-thirds of the Fortune 500, enacted benefit corporation legislation in 2013 with leadership from Governor Jack Markell and some of the most credible figures in U.S. corporate law, including Delaware Supreme Court Chief Justice Leo Strine, the Delaware Secretary of

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State, and the current and past Chairs of the Delaware State Bar Association's Council of the Section of Corporation Law. There are already more than 1,000 registered benefit corporations in the U.S., and many more on the way. They include companies with mainstream venture capital backing such as Farmigo, backed by Benchmark Capital, and Cotopaxi, backed by NEA. Benefit corporations also exist as subsidiaries of major multinational corporations, such as Plum Organics, owned by Campbell Soup Company, and New Chapter, owned by Procter & Gamble. Other registered benefit corporations are high-profile family-owned businesses such as Patagonia and Method.

By both meeting and inspiring market demand for a new corporate legal structure, the benefit corporation has achieved considerable success in just five years. But benefit corporations are far from having reached broad market acceptance. We still need to remove cultural and legal impediments for investors in both the private and public markets to invest in benefit corporations, to create clarity and provide tools for directors about how to balance the interests of stakeholders and shareholders, to provide investors and companies with the tools to measure, benchmark, improve, and report on their social impact, and to amend benefit corporation statutes to address the evolving needs of the market. We need business leaders and investors to take the first cohort of benefit corporations public, making the decision that the opportunity to take advantage of a legal structure that supports long term value creation for all is worth the risk of being first.

Thus, this issue of the *Harvard Business Law Review* comes at a critical moment. Along with a symposium hosted by the *Harvard Business Law Review* in March 2014, this issue represents the continuation of a series of important conversations among institutional investors, legal and business scholars, entrepreneurs, and policymakers about the evolving market for benefit corporations.

The authors who contributed to this issue offer us key insights into why we need benefit corporation statutes, the key differentiating features between traditional corporations and benefit corporations, the differences between various states' statutes, ideas for improving these statutes, and key questions that will come up as benefit corporations scale, access the capital markets, and engage in mergers, acquisitions, and sales.

These authors raise many important questions. In our view, they also help to identify areas where policymakers should consider amending benefit corporation and related statutes. These statutes must conform with the evolving views of institutional investors and regulators such as the SEC and the European Commission, which are increasingly calling for the use of credible, comprehensive, transparent, and independent third-party standards for reporting on non-financial impact. They should also enable companies and their investors more easily to adopt benefit corporation status and to participate in M&A transactions.

But on the whole, these articles demonstrate that benefit corporation statutes address the needs of businesses and investors who require clarity about their fiduciary duties when considering the interests of constituencies other than shareholders. Benefit corporation statutes do so by allowing companies to adopt a clear social purpose; by creating an explicit duty to pursue that purpose with accompanying accountability, even when the purpose may conflict with financial value maximization; and by requiring transparency in order to allow both shareholders and other stakeholders to track a company's actions in pursuit of its purpose. The benefit corporation model thereby allows businesses to create value for society and shareholders simultaneously. Perhaps most exciting, it re-establishes trust in the private sector as a reliable, long-term partner in building a society that pursues a shared and durable prosperity for all.

