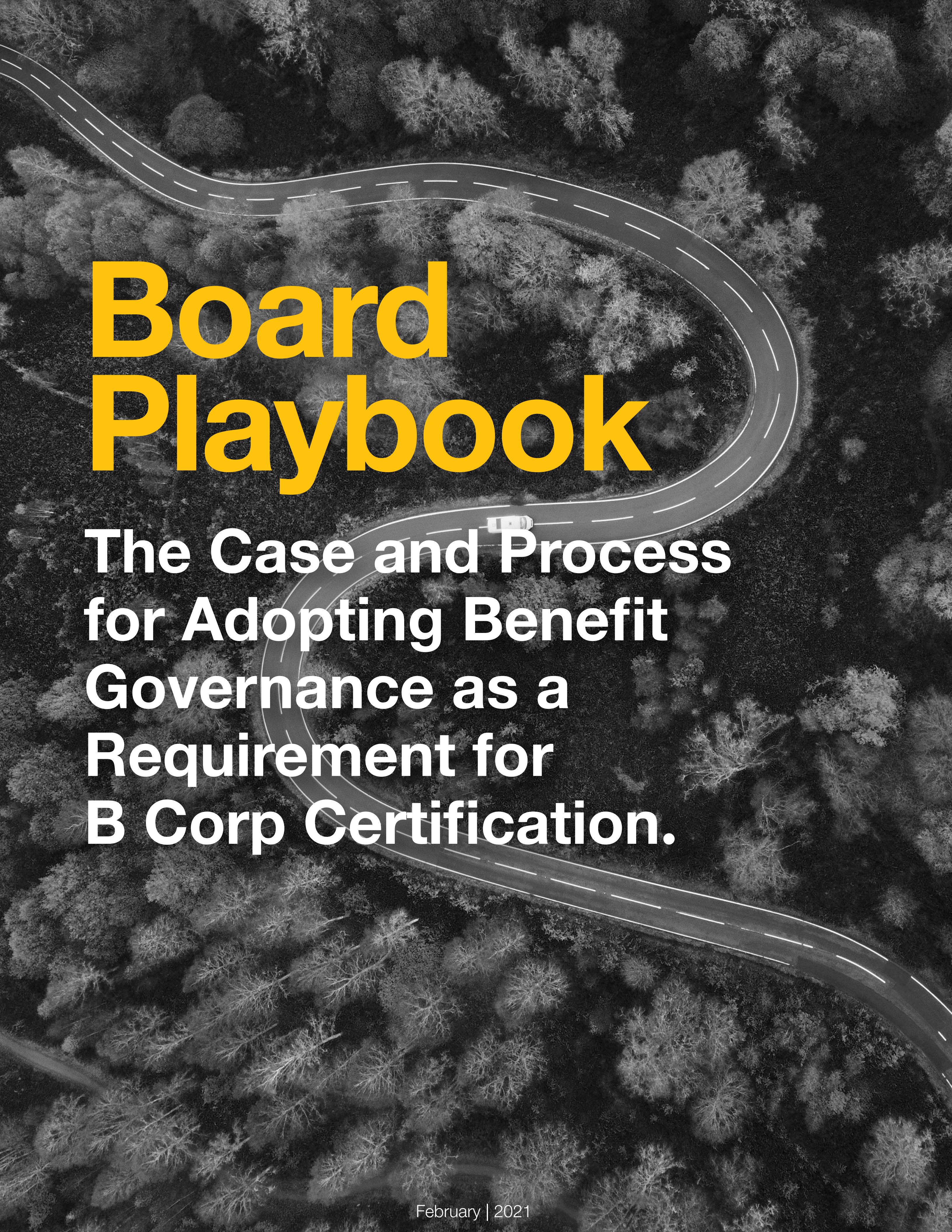

Board Playbook

The Case and Process for Adopting Benefit Governance as a Requirement for B Corp Certification.

February | 2021

“Everything we have seen during the last several months [of a global pandemic] suggests companies will have even more stakeholders than they felt before, with government stepping in, health authorities stepping in, and so on. Whether you want to call them stakeholders or not, they are… Stakeholder capitalism is a fact.”

EMMANUEL FABER, CEO Danone (April, 2020)

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With support from:

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A Look Inside

Letter to CEOs and Directors

Fifty years ago, Milton Friedman published his famous essay in the New York Times stating that the role of the company is to "make as much profit as possible within the rules of the game." Since that time, not only has shareholder primacy, as the principles in the Friedman Doctrine have come to be known, become the singular guiding light for corporations, but these same companies have also eroded the rules of the game to allow companies to privatize profits while socializing their risks and externalities. This bias towards an unfettered version of capitalism has exacerbated inequality, hampered economic freedom for underrepresented groups, and enabled systematic warming of our climate.

There is, however, an alternative. Benefit governance forces executives to consider stakeholders such as the environment, employees, supply chain partners, communities where the business operates, and its customers, rather than maintaining a myopic approach of creating wealth for shareholders. This is better for the world, and better for shareholders also. Traditionally, institutional investors are funded largely by the pensions and retirement plans of working class people, yet these institutional investors have enabled companies to lobby for erosions to environmental, and employee- and community-friendly rights. They are cutting off their noses to spite their face! A stakeholder mentality benefits the world, recognizing that society helps to build businesses, and therefore obligates business to protect society. It is the right (economically and morally), and more balanced way to build a thriving and healthy society.

At Allbirds, we are incorporated as a Public Benefit Corporation (PBC) in Delaware, and have stated that Environmental Conservation is the public benefit named in our charter. As a Certified B Corp, we take a broader set of stakeholders into consideration as we run the business; however, that is done on our own volition and is not a requirement of our PBC designation, albeit, a complimentary one. We have established a robust set of principles and processes internally to manage our commitment to stakeholders.

We recertify as a B Corp every three years. We also report quarterly to our board and leadership team on a range of employee, environmental, social and governance (EESG) topics. We have committed to be carbon neutral as a company since 2019, and do so by measuring, labeling our products with their carbon impact, reducing emissions through innovation and supply chain strategies, and offsetting any carbon equivalent pollution created by our company's operations. Additionally, we've structured our leadership bonuses in such a way as to reward achievement of carbon reduction targets.

Adopting this governance framework has legal tradeoffs. On one hand, it provides broader latitude to executives to act on behalf of public beneficiaries in addition to shareholders. On the other hand, it also creates liabilities for companies and its executives such that investors can hold the company accountable to achieving the public benefits it has chartered in its governance documents. This is flexibility and accountability. Great leaders should have both, but it takes courage and a sense of responsibility for what the executive's role is in the world.

Finally, one might wonder whether benefit governance is necessary, and given the wide latitude the business judgment rule gives executives in Delaware Corporations, it is a reasonable doubt. In considering this question, it is important to remember that company leadership changes. The only way to enshrine this approach into the genetic code of a company is to put it in its legal governance structures. This ensures generations of leaders uphold the obligation, not just to shareholders, but to society more broadly.

JOEY ZWILLINGER
Allbirds, Co-Founder

Introduction

> "Capitalism as we know it, is dead. That new kind of capitalism that is going to emerge is not the Milton Friedman capitalism, that's just about making money. If your orientation is just about making money, I don't think you're going to hang out very long as a CEO or founder. You have to be more than that in today's world."
> **MARC BENIOFF,**
> CEO Salesforce.com

Capitalism is the most powerful economic system created. Yet, in its current form, it is failing to meet the aspirations of billions and the needs of a warming planet. We stand at the crossroads of crisis and also extraordinary opportunity: capitalism is at a tipping point.

Global capital markets are awakening to the mounting pressures to support a new way of doing business. The scale of this opportunity is unprecedented. Certified B Corps are a new model for businesses that are tackling some of our most pressing global challenges and building a new economy led by stakeholder capitalism.

Behind the Certified B Corp movement is our nonprofit: B Lab. Our vision is that one day all companies compete not only to be the best in the world, but the best for the world. We hope to transform the global economy to benefit all people, communities, and the planet. A leader in economic systems change, our global network creates standards, policies, and tools for business, and we certify B Corps who are leading the way. At the time of publishing this guide, our community includes over 3,500 B Corps in 74 countries and 150 industries, and over 100,000 companies that manage their impact with the B Impact Assessment and the SDG Action Manager. B Corps — like Patagonia, Allbirds, Beautycounter, Business Development Bank of Canada, Sundial Brands, Athleta, and Ben & Jerry's, — are companies that are leading the way in building an equitable and inclusive economy that works for everyone.

The purpose of this guide is to help executives, investors, and directors navigate the journeyto adopt Public Benefit Corporation status as a requirement of B Corp Certification.

We hope this guide serves as a resource in preparing for the necessary conversations, demystifying the risks, and presenting examples of how the market has reacted to the idea of expanded fiduciary duty that is an inherent component of stakeholder governance.

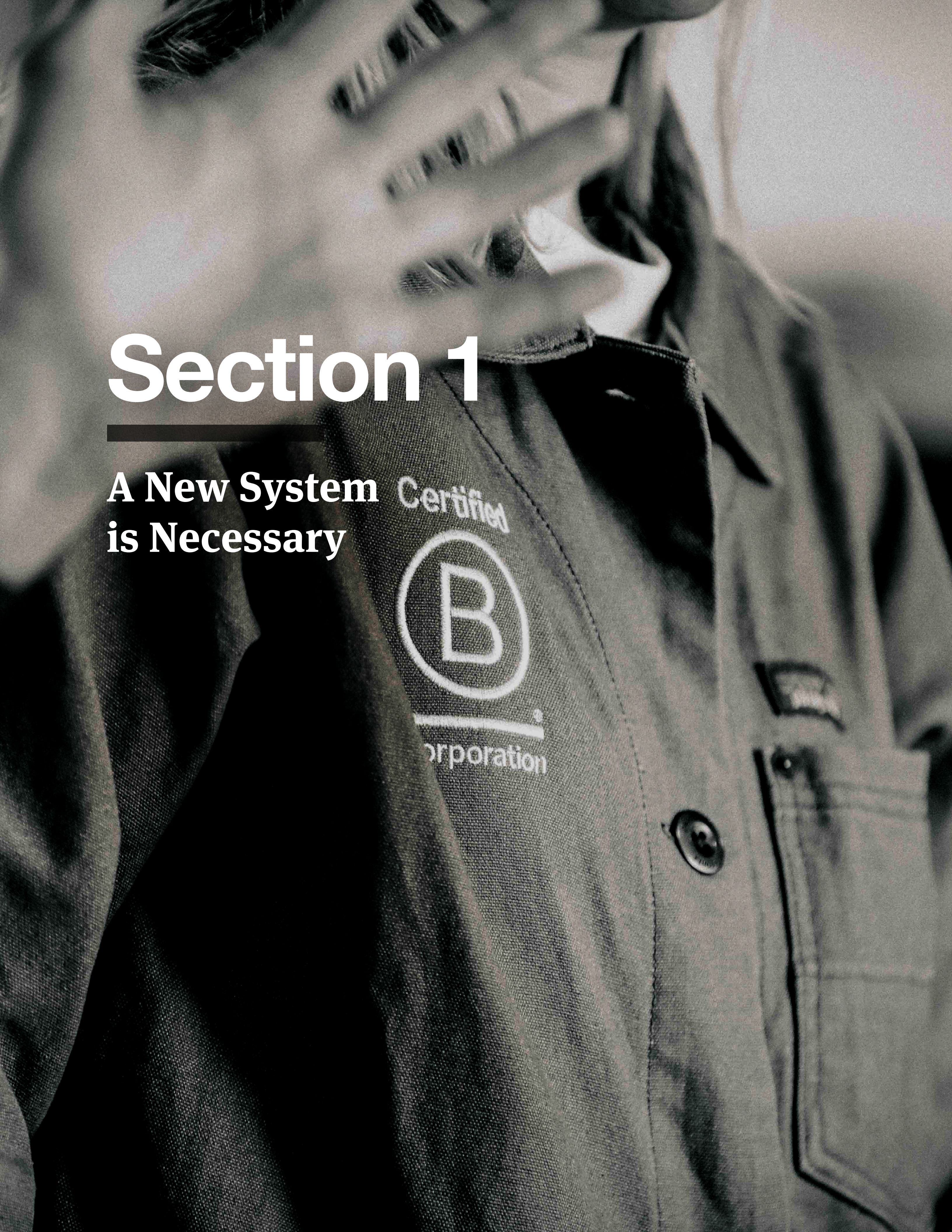
"B Corporation, this movement — some call it 'stakeholder capitalism' or 'compassionate capitalism' — has the potential to change American society. Now is the time for us to live up to those commitments."

NY TIMES | MARCH 2020 link

Certified B Corporations that have adopted benefit governance and paved the way forward:

Section 1

A New System is Necessary



A New System is Necessary

THERE'S A BETTER WAY.

The disconnect between the needs of human shareholders and the behavior of corporate America has led to growing inequality and exclusion, declining dignity for the working and middle classes, and an existential ecological crisis. If more evidence were needed, the twin crises of the COVID-19 pandemic and the reckoning with racial injustice prove that current business models provide neither the resilience nor the fair opportunities we need for a prosperous, just society.

None of this has gone unnoticed by the leaders of business and finance. The chairman of the world's largest asset manager has called for better corporate stewardship of the environment. The Business Roundtable, composed of CEOs of the country's largest corporations, issued a statement in 2019 declaring that statement declaring that the purpose of business is meant to deliver value to all stakeholders, including customers, employees, suppliers, communities, and shareholders. However, not one of the 182 companies from the Business Roundtable have actually changed their legal form. As a result, those companies continue to have fiduciary obligations only to shareholders, despite the high-minded rhetoric since the statement was made public. We can no longer ask leaders to lead in a system with misaligned incentives and a culture with contrary norms. We thus won't see the systems change we seek without shifting culture and the laws that govern the company.

THE BUSINESS ROUNDTABLE

In August 2019, over 180 chief executive officers signed the Business Roundtable (BRT) statement regarding the purpose of a corporation. Signatories to the BRT confirmed their commitment to all their stakeholders by agreeing to focus on (a) delivering value to their customers, (b) investing in their employees, (c) dealing fairly and ethically with their suppliers, (d) supporting the communities in which they work and protecting the environment and (e) generating long-term value for shareholders.

In the last decade, benefit corporation statutes have been enacted in 39 states in the United States. The movement is growing internationally as well: In 2020, the first Canadian benefit corporation law became effective in British Columbia, adding to prior adoption in the United States, Italy, Colombia, Peru, and Ecuador. Benefit corporations have raised more than $3 billion in outside capital.

AMALGAMATED BANK, a publicly listed American company, obtained the approval of its shareholders to adopt benefit governance in the spring of 2020

APPHARVEST, a Delaware benefit corporation who has raised more than $140M announced they would go public by merging with a SPAC in late September 2020. The resulting public company intends to convert to benefit corporation status in their proxy approving the merger sometime in 2021.

AVEEVA SYSTEMS, a $44B market cap cloud computing company traded on the NASDAQ, filed a preliminary proxy in October 2020 asking investors to approve a conversion to PBC status. In January 2021, 99% of the company's shareholders voted in approval of the transition. As part of this change, Veeva will also broaden its certificate of incorporation to include the public benefit purpose, "to help make the industries it serves more productive and create high-quality employment opportunities." Read more about this decision here, interview with Christopher Marquis.

CITY FIRST BANK, a Washington DC incorporated benefit corporation, announced in September 2020 a merger with Broadway Federal, a publicly traded bank.The surviving entity of the merger will become a benefit corporation, which will require a vote of their public shareholders.

DANONE, the multinational consumer packaged goods company and parent company of many B Corp subsidiaries adopted the French version of benefit governance and became the first publicly traded company to do so.

LAUREATE EDUCATION was the first to go public as a benefit corporation and raised $490M from investors in 2017.

LEMONADE, an innovative insurance broker backed by SoftBank, Sequoia and other venture capital funds, completed the most successful IPO of 2020, raising 139% on its first day of trading (after pricing above the underwriters' range).

NATURA, a Brazilian company with benefit governance, issued its shares to the shareholders of Avon in its merger in 2019 which are now traded on the NYSE.

VITAL FARMS followed suit with a IPO earning a market cap of $1.3B at close while receiving a valuation of $136M just two years prior.

“Through greater appreciation of the real motives that drive and excite people, B Corporations provide a significant new opportunity for investors. I think they could make more profits than any other types of companies.”

ROBERT SHILLER, Sterling Professor of Economicsat Yale and 2013 Nobel Laureate

More than 10,000 benefit corporations now exist. These companies are literally changing the purpose of business by leaving shareholder primacy behind. These leaders have now demonstrated that responsible business can be successful business.

WE NEED COLLECTIVE ACTION TO COMPEL THE MARKET TO FOLLOW.

“We may find that the current corporate paradigm limits how much directors can squeeze the square peg of benefiting ‘other stakeholders’ into the round hole of a duty to maximize shareholder value at every turn. We may find that a new paradigm is needed.

...The PBC model can provide a compelling alternative framework for director duties and insulate them from potential liability for certain decisions that may be less directly in the best interests of the corporation and its stockholders.”

Freshfields

Section 2

B Corp Certification vs. Public Benefit Corporation

What is a Public Benefit Corporation?

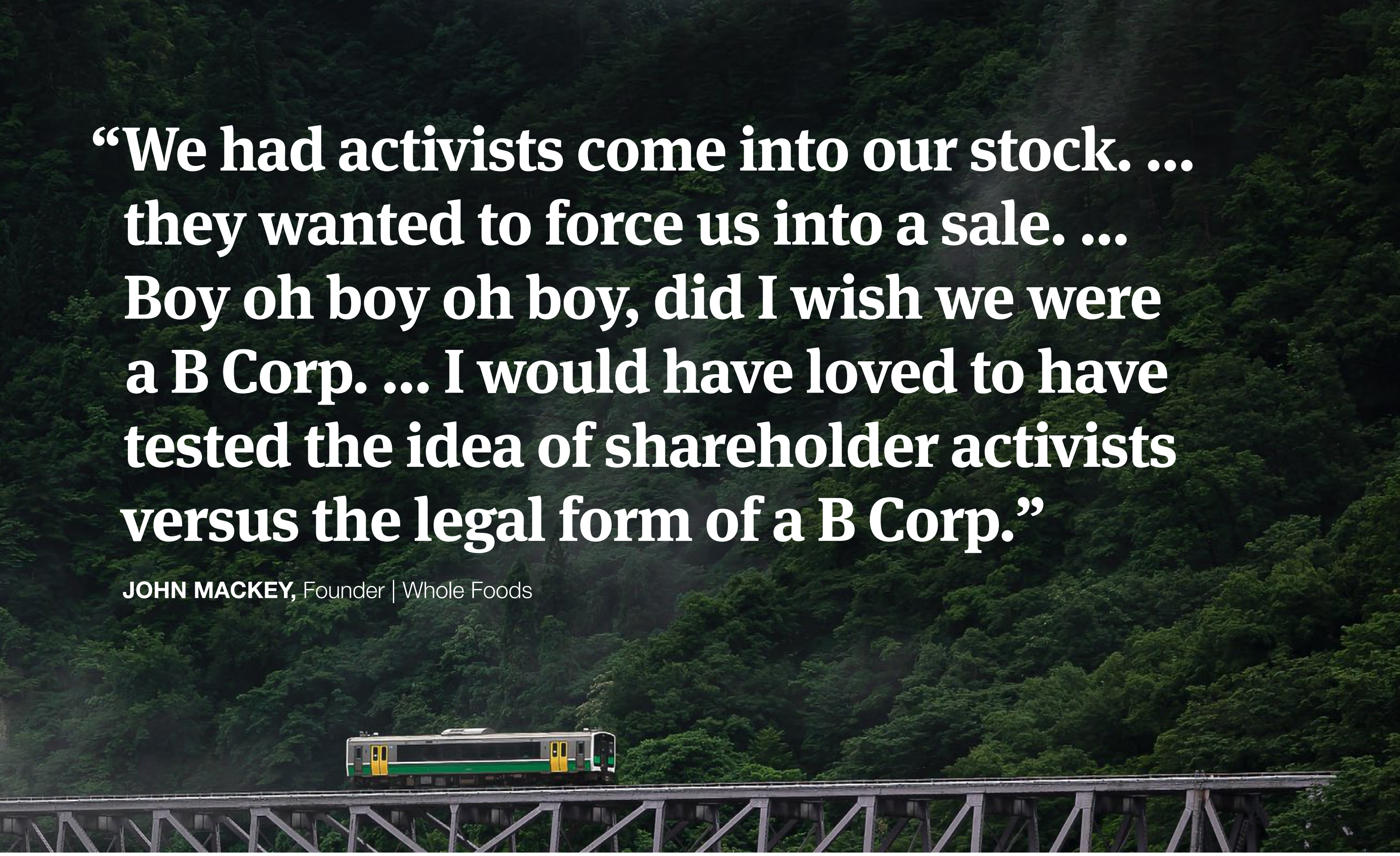
Public Benefit Corporation (PBC) is a traditional for-profit corporation that enjoys all the same protections and permissions of a traditional corporation. However, PBCs are opting into an expanded purpose, realigned fiduciary duties and additional transparency regarding their impact. They represent a profound change in corporate governance. Each company must balance the interests of all its stakeholders in operating its business — it is designed to not focus exclusively on maximizing wealth for shareholders if that imposes costs on others. However, at the same time, it gives directors flexibility to determine how to best achieve that goal and does not create additional legal accountability to non-shareholders.

The intention of this guide is to lay out the process and demystify the risks of PBCs. Adopting the structure also earns points in the B Impact Assessment. And in many states, including Delaware and California, using the structure is the only way to meet the legal requirement for B Corp Certification. See the navigation tool here to see the requirement for your company. While many benefit corporations use the B Impact Assessment to create a free benefit report, benefit corporations do not need to reach a particular score, nor have their performance verified or audited by B Lab, or anyone else.

Certified B Corporation vs. Benefit Corporation

Certified B Corporation	Benefit Corporation
A certification conferred by the nonprofit B Lab.	A corporate status that has a higher level of transparency, accountability, and purpose.
A company that (1) meets the standards of verified social and environmental performances though the B Impact Assessment, (2) satisfies transpacery requirements, and (3) makes a legal commitment to consider all stakeholders.	Required to consider its impact on all stakeholders, not just shareholders.
Any for-profit company in any country can pursue certifications (LLCs included).	Available in 39 states in the United States, Puerto Rico, Italy, Colombia, Canada, Ecuador and Peru.
	The path for most United States corporations to meet the legal requirement for B Corp Certification.

Benefit corporation is the commonly accepted term for companies that have adopted a legal status that requires them to focus on a broader purpose to create general public benefit, consider the impact of their decisions on a wider group of stakeholders beyond just shareholders and to be transparent about that impact. The exact requirements and naming conventions of benefit corporation statutes differ by jurisdiction. In this guide, we focus on the Delaware Public Benefit Corporation as it is the most commonly used statute by later stage companies with large numbers of investors.



"We had activists come into our stock. … they wanted to force us into a sale. … Boy oh boy oh boy, did I wish we were a B Corp. … I would have loved to have tested the idea of shareholder activists versus the legal form of a B Corp."

JOHN MACKEY, Founder | Whole Foods

"We are calling for the universal adoption of the PBC for large corporations. We do so to save our capitalist system and corporations from the devastating consequences of their current approaches, and for the sake of our children, our societies, and the natural world."

LEO STRINE
Former Chief Justice of the Delaware Supreme Court

Stakeholders are the people, the environment, and groups or things that influence or are materially impacted by a business and its operations. A multi-stakeholder approach to strategic management views the long-term success of a company as a function of its relationships with its stakeholders, including employees, consumers, governments, investors, suppliers, its ecological footprint, and communities. In this view, the ultimate purpose of the firm is to create and deliver welfare or value to all of its stakeholders, including but not limited to its shareholders, and the achievement of this purpose depends on the cooperation and support of these stakeholders, who also provide critical resources to the business.

The various benefit corporation statutes that have been passed into law across the country and world define stakeholders differently. In some regions, the statute provides a list of stakeholders the company should consider (employees, customers, society, local community, the environment), but also gives the company flexibility to add in any additional specific stakeholder groups. In Delaware, the statute defines stakeholders as "those materially affected by the corporation's conduct." Thus, for each company, the specific list of stakeholders will be different depending on its business model and operations.

Key Elements of a Public Benefit Corporation

Purpose

Beyond maximizing share value to explicitly operate in a responsible and sustainable manner.

Transparency

The statute requires transparency with respect to the expanded purpose in the form of a report submitted to your shareholders every two years.

When is Public Benefit Corporation right for your business?

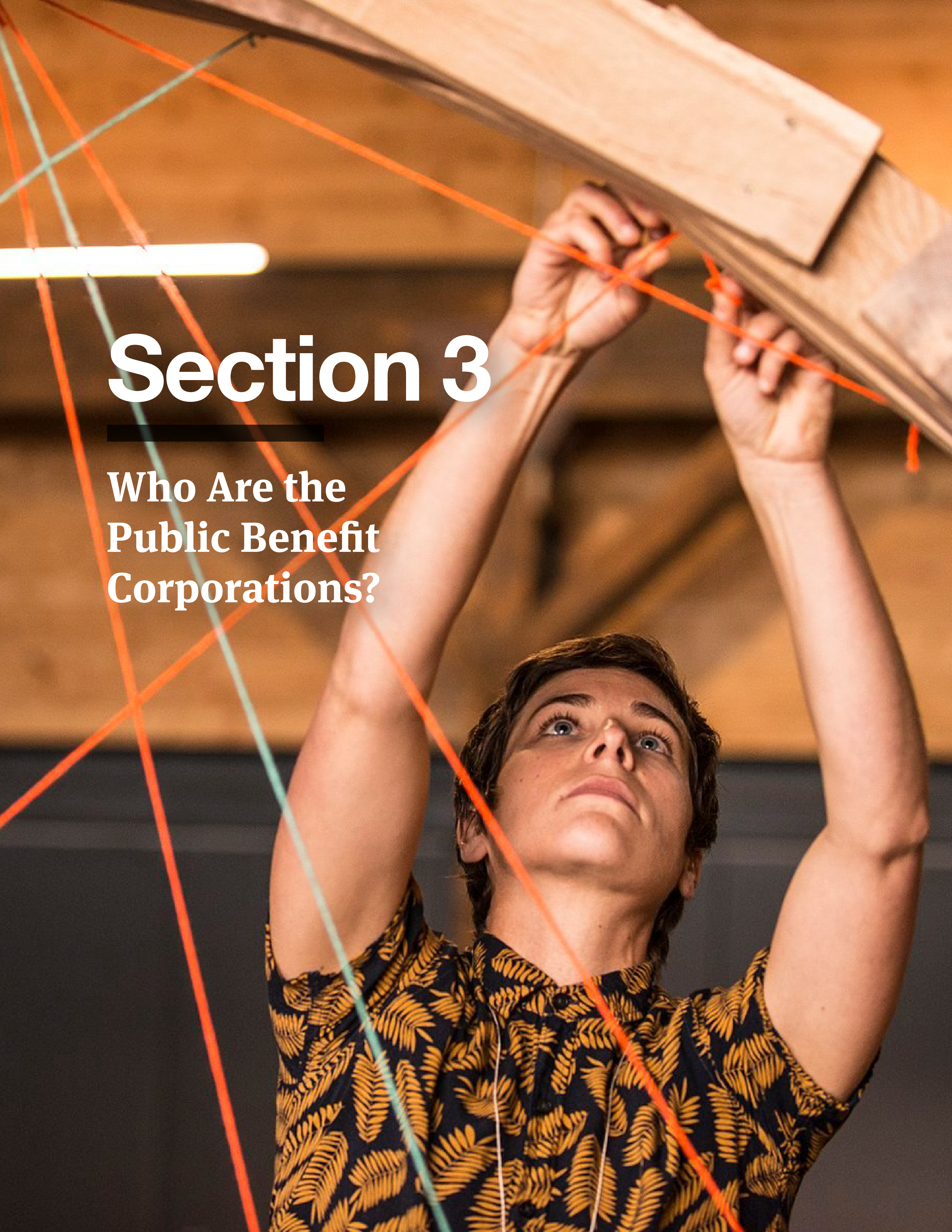
When you want to change the world but not let the world change your business. Businesses that become benefit corporations range from startups, to fast growing unicorns with complex cap tables, to public companies. The resounding feedback: don't wait.

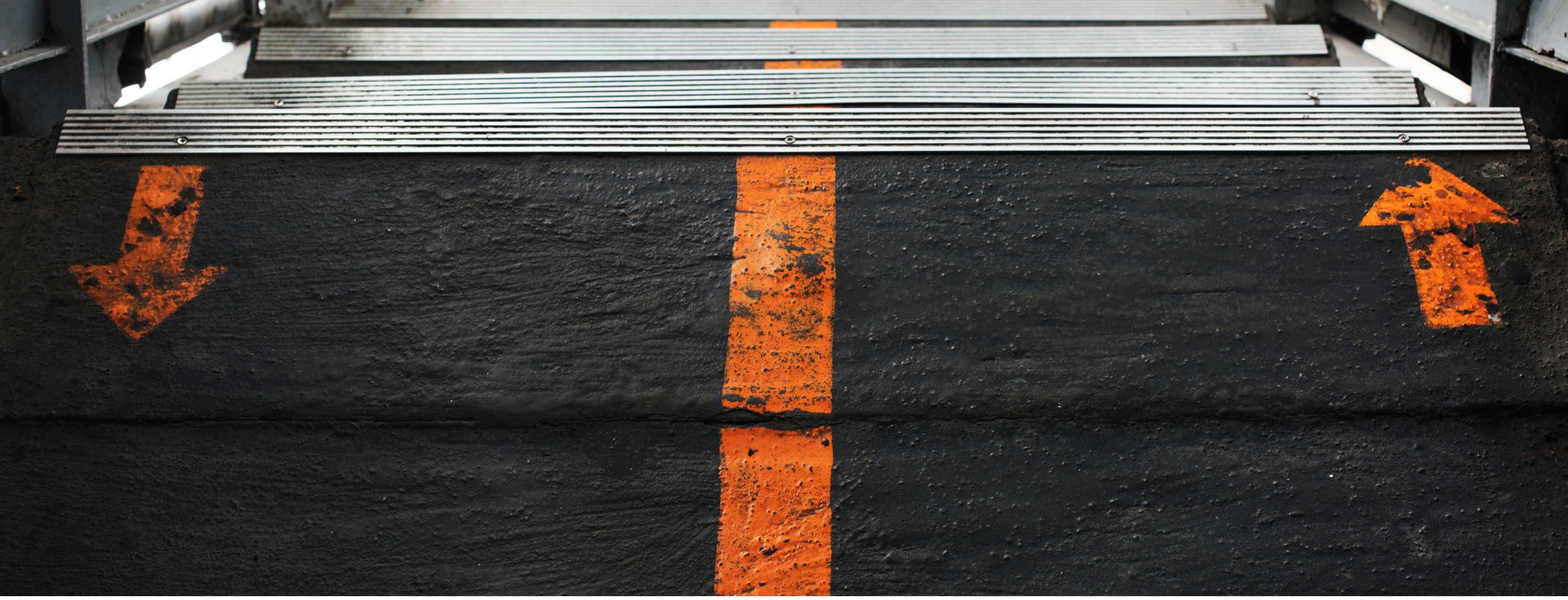
"As the economy continues to shift from manufacturing and resource extraction to technology and services, intangible assets are acquiring an increasingly important part of business valuation; it is the foolish executive who refuses to explore ways to optimize intangible asset values. B Lab quietly offers investors a pair of braided firsts: the first toolbox to help management focus on the kind of patient, steady value creation that defines 'the right way to do business;' and the first window into the DNA of a sustainable business for analysts and diligence professionals who know nothing about sustainable business."

MATTHEW WEATHERLEY-WHITE,
Managing Director and Owner of The Caprock Group

Section 3

Who Are the Public Benefit Corporations?





Who are the Public Benefit Corporations?

allbirds

TOTAL RAISED: $202M at $1.5B valuation

INVESTORS: Tiger Global, Fidelity, T. Rowe Price

"We founded Allbirds as a Public Benefit Corporation. This injection of capital will help us bring our sustainable products to more people... demonstrating that comfort, design and sustainability don't have to live exclusive of each other." Joey Zwillinger, Co-founder

data.world

TOTAL RAISED: $71.3M

INVESTORS: Shasta Ventures, Workday Ventures, Tech Pioneers Fund, Jim Breyer, Arthur Patterson, Pat Ryan

"We actually founded data.world as a C Corporation in 2015 but then, after becoming educated on B Corporations, we quickly pivoted to turn data.world into a Public Benefit Corporation upon our launch on July 11, 2016. It was one of the best decisions we've made and has been a real difference-maker with our customers, community, investors, employees, and partners alike. Ten years from now, I'm confident people will ask, 'Why are you not a B Corporation?' vs. today's 'Why are you...?' And when they ask why we are today, it always becomes a golden opportunity to tell them about how much we care about our mission and building our company for the long-term." Brett Hurt, CEO and Co-Founder

ripple
Dairy-Free. As It Should Be.™

TOTAL RAISED: $146M

INVESTORS: Euclidean Capital, Khosla Ventures, Goldman Sachs, Collaborative Fund

"Most established firms are fully on board with, or exclusively investing in, companies that drive social and environmental good. They want those companies to be authentic — driving measurable results and being transparent about what they do and don't do well and, most importantly, building the capability of continuous improvement. I have never had a potential investor avoid making an investment in our company because we are a benefit corporation." Adam Lowry, CEO

change.org

TOTAL RAISED: $72M, $30M post-conversion

INVESTORS: Obvious Ventures, Greylock, Slow Ventures, Rethink Impact, Omidyar Ventures, Uprising Space Ventures

"The legal conversion required alignment amongst a wide diversity of people. When we had closed our most recent financing and went back to our existing investors, we found a real willingness for the conversion. I think there's a deep understanding amongst our stakeholders that we already act in a way consistent with the mentality and requirements of benefit corporation governance, and that it is legally enshrining an existing practice of behavior. And in fact, the previous structure was inconsistent with the way we talk about our work and the way we act internally and externally." Ben Rattray, Founder

Lemonade

PROFILE: Lemonade shares skyrocketed as much as 144% to hit an intraday high of $70.80, finished up 139% at $69.41 at the end of the day, following an IPO pricing of $29 a share the day prior. That pricing was above an already increased IPO pricing to range of $26 to $28 a share. The company sold 11 million shares, with up to 1.7 million available to underwriters to cover over allotments. Taking into account those additional shares, its day one close values the company at $3.93 billion and made it the most successful IPO of the year as of October 2020.

INVESTORS: Before the IPO, the company had already raised $480 million through several funding rounds, according to Crunchbase, with a $300 million round in April 2019 led by SoftBank Group Corp.

LAWYERS: Latham & Watkins

LAUREATE
INTERNATIONAL
UNIVERSITIES®

PROFILE: At the time of converting to a Public Benefit Corporation (PBC), Laureate was the largest and first PBC to go public on any stock exchange in the world. Listed on the exchange as LAUR, the company raised $490 million from institutional investors by offering 35 million shares at a price of $14.

BANKERS: Credit Suisse, Morgan Stanley, Barclays, J.P. Morgan, Macquarie, BMO Capital Markets, Citigroup, Goldman Sachs & Co.

LAWYERS: DLA Piper, Simpson Thacher

"In October 2015, we redomiciled in Delaware as a Public Benefit Corporation as a demonstration of our long-term commitment to our mission to benefit our students and society." Laureate Education, Inc. S1.

"As a Public Benefit Corporation, our focus on a specific public benefit purpose and producing a positive effect for society may cause our board of directors to make decisions that may not be in the best interests of our stockholders." (p. 15 S1 and 'Risk Factors' laid out on p. 72)

Photo: Lemonade executives ringing in the company's IPO at the New York Stock Exchange. Photo by NYSE

"Establishing ourselves as a Public Benefit Corporation, as a B Corp, where a lot of under-writerings profits goes to nonprofits allowed us to reimagine the whole business model. In fact we live in a flat B Model. A lot like other tech companies and not like insurance companies where you pay me a buck I tell you in advance that I'm going to keep 25 cents on the dollar and if there is money left over after paying claims and buy reinsurance then I'm gouging to give it to a charity of your choosing. This isn't just do good stuff it's about aligning interests so I don't make money by denying your claims and you'll think twice before embellishing your claims and hopefully we'll turn what is today a two player game, a conflicted relationship between two players, into a trilateral relationship by involving nonprofits as well. It keeps you honest, it keeps us honest. And It's allowed us to climb the ranks to be the number one most trusted and loved brand in insurance and we've only been in the market for three years." Daniel Schreiber, CEO Lemonade

PROFILE: IPO August 2020, raised $200 million with a market cap of $1.3 billion at the close Its shares rose 60%, closing at $35. Even before its public debut, it had to boost its opening stock price, initially planned between $15 and $17, to $22. Vital Farms' line of products, including butter, ghee and hard-boiled eggs, brought in $140 million in sales in 2019, with distribution in 13,000 grocery stores from Kroger to Whole Foods. Its network of family farmers as of September 2020 top more than 200.

BANKERS: Goldman Sachs & Co. LLC, Morgan Stanley and Credit Suisse Securities (USA) LLC acted as joint lead bookrunning managers for the offering with Jefferies, BMO Capital Markets Corp. and Stifel, Nicolaus & Company, Incorporated acted as bookrunning managers for the offering.

LAWYERS: Cooley LLP

"I was always looking for the exit. Instead of looking to get rich, I realized I could build a company where I was focused on employees, customers, shareholders, and the environment. It's so much more fun than focusing on profit." Matt O'Hayer, Founder, Vital Farms

"For those seeking to pursue the B Corp Certification, my advice is to build a company centered on all stakeholders from the beginning. This foundation will not only drive the long-term sustainability of your business, but also a more resilient economy for everyone." Russell Diez-Canseco, President and CEO, Vital Farms

Some publicly Traded Companies have adopted Public Benefit Corporation Governance.

DANONE
ONE PLANET. ONE HEALTH

In June 2020, Danone became the first listed company to adopt French legal framework of "entreprise à mission" to create and share sustainable value for all its stakeholders.

"Danone becomes the first listed company to adopt the Entreprise à Mission model created by French law in 2019. This will embed the legal Entreprise à Mission framework within its articles of association (including a purpose) and apply a new governance arrangement to oversee the progress of its environmental, social and societal goals. By doing so, Danone adds to the trajectory that inspired its largest subsidiary, Danone North America, to become the world's largest Public Benefit Corporation. It also propels Danone further down the path of achieving its ambition to become B Corp certified at global level." (source)

amalgamated bank

In July 2020, Amalgamated Bank became the first public U.S. company to add environmental and societal commitments basd on the model U.S. benefit corporation statute to its corporate organization certificate. Its shareholders approved Amalgamated's new business purpose clause, further committing the bank to its B Corp values and ensuring business decisions consider social and environmental factors in-line with shareholder return. In December 2020, Amalgamated Bank announced that they would reorganize with a PBC holding company structure. In January 2021, Amalgamated Bank's shareholders approved the restructure.

"Even more so, we are thrilled to see the groundswell of shareholder support in this movement, which is a true testament to our long held belief that profits and purpose can, and should, go hand in hand." Keith Mestrich, President and CEO of Amalgamated Bank. Board Decision Notes (pages 50 - 52)

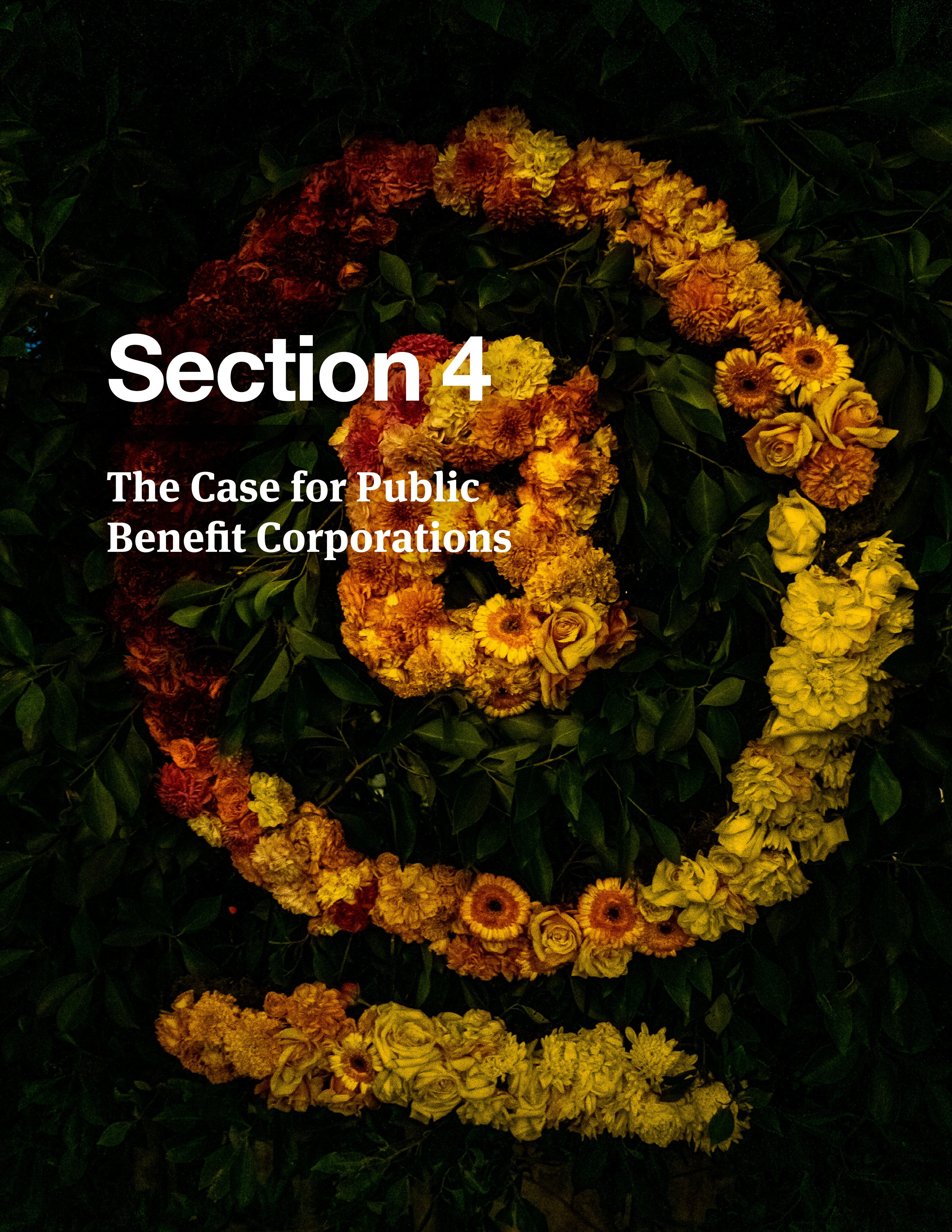
natura

Natura and Co amended its corporate articles in 2015, to include stakeholder governance language based on the model U.S. benefit corporation statute. Natura's institutional shareholders, including T.Rowe Price, Lazard and Oppenheimer, voted in favor of this legal amendment. While certainly not causal, it is worth noting that since adopting the benefit corporation model of stakeholder governance, in 2019 Natura's share price doubled from roughly $27 to $56. Natura's acquisition of The Body Shop an Aesop in 2017 is the first billion-dollar acquisition by a B Corp.

Veeva

Veeva Systems (NYSE: VEEV), with $40B market cap, is the first publicly traded company to adopt PBC status and received a 99% approval from its shareholders in January 2021.

"We met with our top 20 investors, other influencers, and proxy advisory firms. For a significant cross-section of investors — especially those that are more Environmental, Social, and Corporate Governance-focused, that have been thinking about multi-stakeholder-ism or writing about the importance of purpose — I would describe the reaction as almost pent-up demand. There was almost a sense of relief — finally someone's doing this. That was a pretty significant proportion of the shareholders that we spoke to." (source)



Section 4

The Case for Public Benefit Corporations

The Case for Public Benefit Corporations

BUILDING TRUST BY FORTIFYING A REPUTATION FOR LEADERSHIP.

Public Benefit Corporations retain all the virtues of the corporation for aggregating and allocating capital, but eliminate the excesses of 20th century practices that valued profits over our shared future. It provides a trust-enhancing operating system. This shows investors and entrepreneurs from every industry what the future Fortune 500 looks and acts like. By registering as a PBC, businesses join highly respected companies, and will be at the forefront of a growing movement of changing the rules of the game.

IN THE COMPETITION FOR TALENT AND CUSTOMERS, PURPOSE WINS.

Millennials will grow to 75% of the workforce by 2025, 77% say their "company's purpose was part of the reason they chose to work there." (source) Unfortunately 79% of employees in North America do not feel engaged at their work and the cost of disengaged employees by percent of salary is 34% with lost value of $3.4M for every $10M in payroll. (source) While consumer trust of companies' claims around their social and environmental commitment is only 16%, and 52% of the same skeptical consumers actually believe what employees of those companies say instead. (source) Employees are an extended sales team. Benefit corporation status gives prospective and current employees confidence that affirms the company's legacy and that it is legally committed to their mission for the long run.

"The benefit [corporation] model really allows people in a forthright way as a director to say, 'We're going to make some trade-offs,' and it may be frankly that this isn't the most optimal just from the standpoint of stockholders, but it's the decent thing to do. That does not mean it's not wealth-creating for society because... we tend to use stock market price, even though if you treat your workers well, and you pay them so they can live in dignity and send their kids to college and have health insurance, that often is the greatest contribution you can make to social wealth."

- LEO STRINE, former Delaware Chief Justice

"The COVID-19 crisis brought the collective 'stakeholder' back in focus. Gone are the days of companies providing value solely to shareholders. To borrow a phrase recently adopted worldwide: we're all in this together."

BYRON LOFLIN,
Global Head of Board Engagement, Nasdaq

BENEFIT CORPORATION STATUS SIGNALS A LONG-TERM PERSPECTIVE.

Public companies are subject to short-term pressures not experienced by private companies. Benefit governance is a way to address this issue directly, without affecting shareholder rights. PBC makes it clear that directors will make decisions based on building shared and durable value for all stakeholders, rather than just trying to increase the current share price. This may attract shareholders with a longer term perspective, and provide management with credibility when it does make decisions that favor the long term over immediate share price.

"Becoming a Benefit Corporation helps codify and support our mission. In [Altitude Learning's] case, delivering a broad social impact goes hand-in-hand with creating a large and thriving business." – Max Ventilla, Founder of Altitude Learning

CONVENTIONAL CORPORATE GOVERNANCE AGGRAVATES THE PROBLEM.

Under current law, the ultimate goal of directors is shareholder return. Value maximization is strictly enforced in exit transactions, and business strategies that require authentic commitment to stakeholders are compromised. This legal requirement is the underpinning for many of capitalism's greatest failings.

"Public and large private companies receiving bailouts or pandemic-related subsidies could be required to become Public Benefit Corporations under state law, and others could be given positive incentives to do the same. Institutional investors and socially important companies could be required to disclose to the public how much weight they give to issues like worker pay and safety, environmental responsibility and maintaining a strong balance sheet."
New York Times

BENEFIT CORPORATIONS ARE RESILIENT.

Large companies and investors are finally noticing that a root cause of many systemwide challenges that we face as a country is the unyielding focus of shareholder profits for individual companies to the detriment of our society and planet, and thus, our economic system as a whole. We've seen examples of this focus highlighted in new headlines, including the opioid crisis, skyrocketing generic drug prices, wage stagnation, the racial wealth gap, the Boeing 737 Max disaster, and our brittle supply chains' inability to respond to the COVID-19 pandemic. Companies that are accountable to balancing their interests across all stakeholders, and not just one bottom line are flexible and better positioned to survive difficult times. This promotes rapid and efficient transformation of organizational activities. Only a flexible structure allows rapid implementation.

"In the first quarter of 2020, companies identified as having strong environmental, social and corporate governance principles outperformed traditional offerings, in part due to their lower exposure to the energy sector as oil prices crashed. The results come amid debate that 'shareholder primacy' is nearing its end as 'stakeholder capitalism,' where equal value to all stakeholders including customers, employees and suppliers takes hold." Morningstar

BENEFIT CORPORATIONS REDUCE DIRECTOR LIABILITY

Benefit corporation status provides legal protection to balance financial and non-financial interests when making decisions — even in a sale scenario or as a publicly traded company. Under traditional corporate law, directors are obligated to focus on shareholder value as their only consideration, meaning that at the time of sale or when a decision arises that might necessitate a tradeoff between stakeholder value and shareholder value, the directors are required to pick the shareholders. As a benefit corporation, when faced with the same choices, the directors have the freedom to make a choice that does not necessarily create value for shareholders. They can make tradeoffs that traditional corporations cannot.

> **"Since adopting stakeholder governance, Natura has made two major acquisitions — first The Body Shop, now Avon — that suggest they are executing on a long-term plan, not reacting to short-term market pressures. That is something every CEO, every long-term investor, and everyone with a 401(k) should want to see more of in other publicly traded companies."**

JAY COEN GILBERT, Imperative 21

PCBS MAINTAIN STOCKHOLDER RIGHTS AND MAY INCREASE ACCESS TO PRIVATE INVESTMENT CAPITAL

Investing in a benefit corporation gives impact investors the assurance they need that they will be able to hold a company accountable to its mission in the future. Benefit corporations thus create an attractive investment opportunity for the same conscious consumers that have fueled organics, fair trade, and buy local movements, while enjoying a form of inoculation from the short-termism that plagues public equity markets. It also can make your company more attractive to investors as a company with increased legal protection, accountability and transparency around its mission. This can potentially speed up investor due diligence since benefit corporations produce an annual benefit report, which describes their qualitative activities aimed at producing general public benefit.

Shareholders retain all the protections that they have in a traditional corporate model. First, they have all their corporate governance rights. They elect the directors who vote on major corporate transactions such as charter amendments or mergers. Conflict transactions will still be subject to a fairness analysis whenever challenged, so that directors cannot pursue their own interests ahead of the interest of shareholders. Shareholders will retain the ability to bring the same types of lawsuits they can bring against a traditional corporation, including demands to review the company's books and records, election review proceedings to make sure elections are being conducted fairly, and derivative suits to pursue corporate claims against directors for breach of fiduciary duty. The only change under the benefit corporation model is the value proposition: the idea that true long-term value is built by aligning all stakeholder interests, including the interests of shareholders.

"Because of the novelty, or perceived novelty, of the benefit corporation structure, we were concerned that that would be a flag and a deterrent to investors. I think that is becoming less and less the case, and it might have been more of a perception that we had than a reality. What we found pleasantly surprising was the general amenability of our existing investors to support the transition to a benefit corporation legal structure. We have a large investor base of more than 50 individual investors, and so the legal conversion required alignment amongst a wide diversity of people."

BEN RATTRAY, Change.org

PCBS ARE BI-PARTISAN, AND THAT IS A BREATH OF FRESH AIR NOWADAYS

Of the 39 jurisdictions in which benefit corporation legislation has passed, 18 were signed into law by Republican governors, including former Vice President Mike Pence. In recent 2020 data polled by Data for Progress, 73% of people support governance with expanded fiduciary duty, making it the most popular policy reform. This tops: employee ownership (70%), putting workers on Boards (59%), and limiting stock buybacks (55%). This is true even for Americans who describe themselves as 'conservative' and 'very conservative,' 62% of which support it and there is a 6x higher rate of support of expanded fiduciary duty among those same groups compared to: 'restating corporate purpose.'

"Shareholder primacy theory has tilted business decision-making toward delivering returns quickly and predictably to investors, rather than building long-term capabilities through investment and production... does not properly understand how businesses invest in innovation... and has resulted in a diminished understanding of the role workers play and the risk they undertake in the value creation process."

REPUBLICAN SENATOR MARCO RUBIO, American Investment in the 21st Century

Section 5

The Process

The Process

In partnership with Freshfields:

Phase 1: Preliminary Preparatory Work

The decision to convert to a Public Benefit Corporation, for both private companies that may be contemplating an eventual IPO as well as for already public companies, should not be made lightly. Before converting, a company must undertake careful preparatory steps to ensure that the process is as rapid as possible and that risk of an unsuccessful outcome is minimized.

DELIBERATIONS, DILIGENCE AND DECISIONS

By pursuing B Corp Certification, a company commits its mission and brand reputation to using business as a force for good. Since the adoption of stakeholder governance is a requirement of Certification, senior management must engage in the deliberate and thoughtful analysis to determine whether it is strategically the right decision for the company. This discernment process involves considering: the impact of conversion on the value of the company, the ability to continue conducting its operations, the impact on its investors and other stakeholders, and reputational risks.

CONDUCTING A DUE DILIGENCE REVIEW

Management should engage the legal department to conduct a simultaneous review of:

1. The process to ensure there are no legal or contractual impediments to converting to a PBC (with the assistance of outside counsel).
2. Organizational and other relevant corporate documents to confirm whether any consents or amendments may be required.
3. The company's organization documents (including the certificate of incorporation, any certificates of designation and the bylaws).
4. All shareholders, investor rights, rights of first refusal, co-sale, registration rights and voting agreements and any other agreements with shareholders.
5. Any agreements pursuant to which a person has a right to purchase securities of the company, including any pre-emptive rights.
6. Any other agreements (including leases, indebtedness agreements and licenses) under which changes relating to corporate form may trigger rights to notice, termination or modification.

Note: as of August 2020 appraisal rights have been removed from DE Public Benefit Corporation statute and the required shareholder approval vote was reduced from 67% to 51%.

ENGAGEMENT WITH DIRECTORS AND INVESTOR NOMINEES ON THE BOARD

Once management has completed this preparatory work, management can engage with the board on this topic, sharing its balanced view/ recommendation with the board of the benefits, but also the risks, of operating as a benefit corporation. The board ought to be apprised of:

- The legal framework of benefit corporations.
- The differences in their duties as directors of a PBC.

Management's role is to socialize this with a few board members, prior to a formal meeting, to better be able to speak to potential concerns. This may require more than one board meeting to encourage and facilitate a robust discussion among the board members, respond to all questions from directors, and take some time to continue the conversation until a consensus has been reached by the board on the benefits of conversion. As part of this iterative process, it is also critical for management to follow up on any requests for additional information from the directors. For companies whose board comprises representatives of key stockholders, their views will be particularly informative as an early indication of the company's ability to obtain broader support from a sufficient number of stockholders to satisfy the approval requirement for conversion.

REVIEW AND UPDATE CHARTERS, POLICIES AND PROCEDURES

As the conversations with key stockholders trend in the direction of supporting a conversion, management, ideally will also prepare:

- Revised versions of charters.
- Internal guidelines.
- Codes.
- Policies and procedures to reflect the identification of the public benefit.
- Measurement and pursuit of the company's public benefits and tripartite balancing.

“The legal process of the conversion was not an impediment. Some of the reservation we had as an organization was because the timing of converting to meet the [B Corp Certification] deadline overlapped with when we were raising capital. Potential investors ask a lot of questions about business performance in doing their due diligence, and we wanted to minimize the number of potential flags that would deter them from committing capital. Because of the novelty, or perceived novelty, of the benefit corporation structure, we were concerned that that would be a flag and a deterrent to investors.

I think that is becoming less and less the case, and it might have been more of a perception that we had than a reality. What we found pleasantly surprising was the general amenability of our existing investors to support the transition to a benefit corporation legal structure. We have a large investor base of more than 50 individual investors, and so the legal conversion required alignment amongst a wide diversity of people.

When we had closed our most recent financing and went back to our existing investors, we found a real willingness for the conversion. I think there’s a deep understanding amongst our stakeholders that we already act in a way consistent with the mentality and requirements of benefit corporation governance, and that it is legally enshrining an existing practice of behavior. And in fact, the previous structure was inconsistent with the way we talk about our work and the way we act internally and externally.”

BEN RATTRAY, Change.org. Full interview here

ENGAGEMENT WITH KEY INVESTORS

Once the board has completed its deliberative process and decided to proceed with the conversion, management engages with key investors that do not have representatives on the board. As with the board:

- Several meetings will not only be necessary, but also beneficial to the process.
- Enough time should be budgeted for completing this phase.
- Management will need to carefully review its stockholder base and specifically schedule sessions with as many other stockholders that are needed for attaining the requisite stockholder approvals as possible.

Phase 2: Approvals and Notifications

At this point the company is ready to make an amendment to the company's certificate of incorporation to expressly:

(a) Specify that the company is a Public Benefit Corporation.

(b) Designate the public benefit(s) the company wishes to pursue.

(c) Include the additional exculpation provisions for directors.

BOARD APPROVAL

The first step in this process is to obtain board approval, which should be a formality given the significant amount of preparatory work already undertaken. While the company's organizational documents will specify the approval threshold required for adoption of the amendments to the certificate of incorporation, at most companies a majority of the board will be required to approve the amendments.

To assure that directors and officers are positioned to take full advantage of the decision-making flexibility and related fiduciary duty benefits that the PBC framework offers, the board minutes and resolutions should reflect the "tripartite balancing" principle as opposed to the typical "best interests of the corporation and its stockholders" objective that characterizes the process at a traditional corporation.

For example, the recitals of resolutions should include clauses that:

- Identifies the public benefit that the corporation has chosen to pursue, and the stakeholders materially impacted by the public benefit.
- Describes the impact of the proposed action on the public benefits and the stakeholders.
- Describes the impact of the proposed action on the company and its stockholders.
- Describes the tripartite balancing process and that the board has considered the impact of the corporate action on the public benefit, the affected stakeholders and the company's stockholders.

STOCKHOLDER APPROVALS

Once the board has approved the amendment to the certificate of incorporation, the stockholders must do the same.

Private companies: Delaware law requires that information be circulated to all stockholders informing them of, among other things, the proposed charter amendment and changes to their rights under the new PBC charter. This can be achieved by collecting written consents.

Public companies: the U.S. federal securities laws require the preparation and filing of a proxy statement that contains similar information. However a written consent will not be a feasible option. The amendment incorporation will need to be submitted to a vote of the stockholders at the next annual meeting, or a special meeting of stockholders called specifically for this purpose.

Be prepared for: “Will this change result in a risk that the corporation will cease to operate in my best interests as an equity investor and, instead, start to pursue pet projects of insiders?”

Management will need to explain why a PBC structure is consistent with the longstanding culture of the corporation and that, rather than provoking a change in direction, the conversion to a PBC will actually, over the long term, permit the corporation to continue with its trademark efforts to take into account the best interests of not only stockholders, but also employees, customers and public benefits – a formula that has worked well for equity investors to date. Many publicly-traded companies will be able to cite back to statements in their IPO prospectuses about the value-driven culture and aspirations beyond merely profit that underpin the culture and business model and how this conversion to a PBC is simply a way of permitting the business to continue to flourish consistent with these historical statements. Posting on the corporate website and use of media, all while complying with filing requirements of the federal proxy rules, will be advisable.

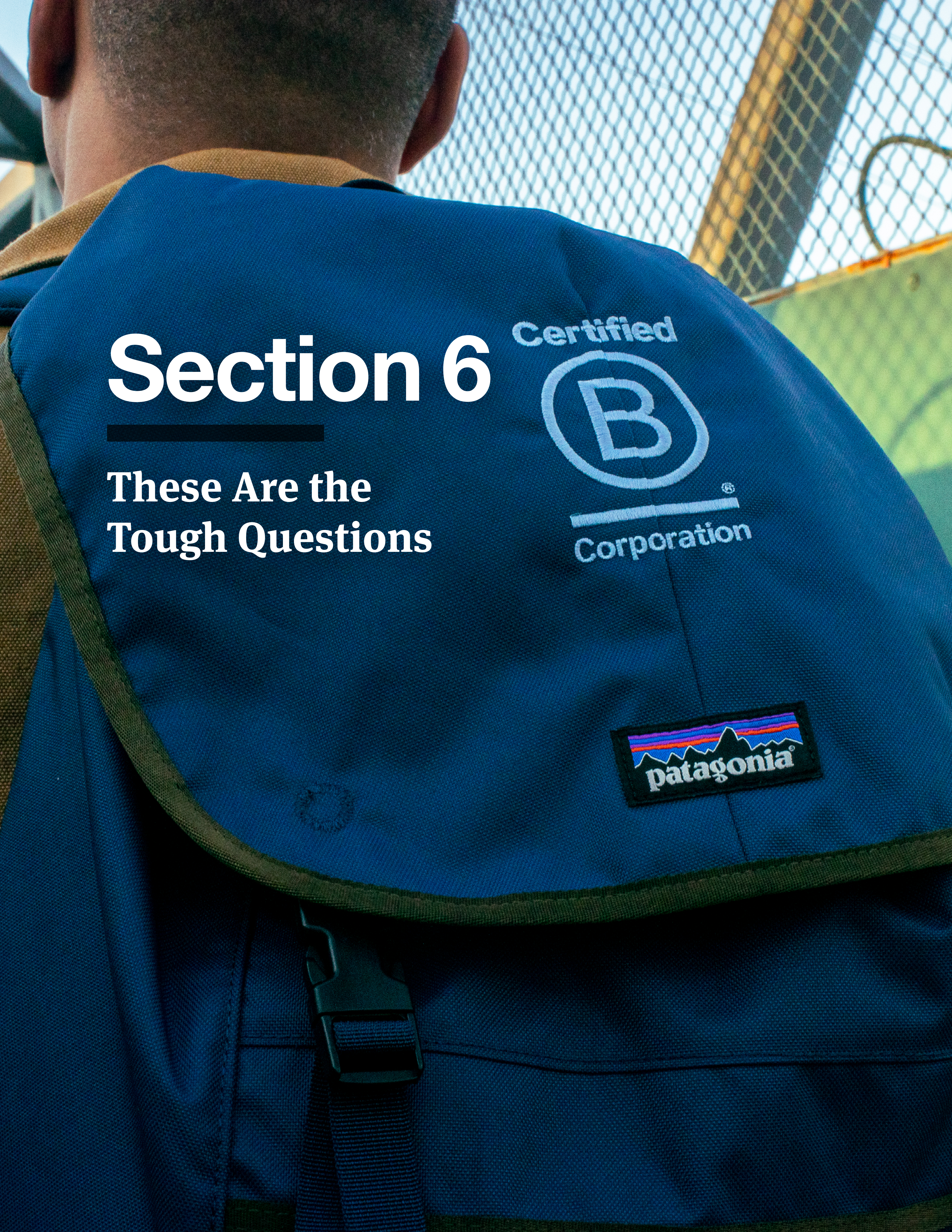
BENEFIT CORPORATION: THE PATH.

Prepare article amendment by adding required language “This corporation is a benefit corporation” and choosing a specific public benefit purpose that reflects the mission of your company.

- Obtain Board approval.
- Conduct discussions with shareholders prior to seeking approval to assure vote.
- Obtain shareholder approval.

Section 6

These Are the Tough Questions



These Are the Tough Questions

In conversation with both a publicly traded Certified B Corporation DE PBC (Company A) and Mayer Brown LLP*, a global law firm advising the world's leading companies and financial institutions, including public benefit companies on ESG and other socially-minded matters.

Activism and Stockholder Backlash

Even once a public company has converted, its ability to pursue its mission and take actions that benefit other stakeholders will be vulnerable to the same forces that constrain traditional corporations. That vulnerability stems from the ability of all stockholders to act at annual meetings (and sometimes, at special meetings or through action by written consent) to replace directors.

When the company was in the registration process with the SEC did it get comments from the staff about Certification or legal status?

> *A: "Yes, the SEC acknowledged that this is a new type of corporation which investors may not be familiar with, and thus they asked us to expand our prospectus disclosure to explain how an investment in a Public Benefit Corporation [PBC] differs from an investment in an entity that does not have that status. They noted possible areas of disclosure to review as: rights of shareholders in a [PBC], dividends and distributions to shareholders, duties and obligations of directors and potential anti-takeover effects and considerations in a sale of the company."*

How does the benefit corp form impact board operations currently and how do you think this might change as a public company?

> *A: "The Board has to make decisions considering the company's stated benefit."*

Did you see any trend in the type of investor that bought into your IPO (e.g. long-term investors etc.)

> *A: "We do not believe the PBC status had any positive or negative impact on our valuation. Rather, it was a way to articulate our mission-driven focus as a newly minted public company. As the first ever [PBC] to go public, this was a new concept for many of the investors we met with on the roadshow, so we had to take time to educate them. Once we explained to them that the PBC status is simply a corporate structure, much like a C Corp or an S Corp, but one that commits itself to high standards of corporate purpose, accountability and transparency, they understood why we chose to structure ourselves as a PBC."*

**The contents and views in this document are informational only, and are not intended to be, and may not be relied upon as, legal advice.*

How does this fit into the narrative/ terms of your S1?

A: "Our company is a mission-driven organization focused on making contributions to society through education. For a long time, we didn't have an easy way to explain the idea of a for-profit company with such a deep commitment to benefiting society. So, we took notice when in 2010 the first state in the U.S. passed legislation creating the concept of a Public Benefit Corporation. After extensive research and consultation with our board, outside counsel and advisors, and the underwriters who were tasked to lead our IPO, we determined that the PBC structure aligned well with the mission of the organization and narrative we wanted to tell as a newly minted public company."

Risk

What is the highest risk from board/investors? Potential Increased Director Liability:

Mayer Brown: "While PBC directors may owe fiduciary duties to stakeholders in addition to shareholders, some state corporate statutes have limited the universe of parties that can bring a suit to enforce compliance with the company's public benefit purpose or the balancing undertaken by the directors of shareholder/ other stakeholder interests (i.e., a benefit enforcement proceeding that is the loose equivalent of the shareholder derivative claim). As a practical matter, PBC directors should not automatically face liability from shareholders and other stakeholders because, generally, only shareholders (and not, for example, the vendor or employee group who may be a stakeholder benefiting from the stated public purpose of a PBC) are permitted under the relevant statutes to bring a benefit enforcement proceeding. Certain states (e.g., Delaware) impose share ownership thresholds, while other states (e.g., California) permit companies to voluntarily expand the list of people entitled to bring a benefit enforcement proceeding by expressly giving them that right in the company's bylaws or articles of incorporation.

A benefit enforcement proceeding should generally not subject the company or a director to monetary damages.

Did you have any problems with D&O insurance?

A: "No, we did not. As the first ever PBC to go public, it did require educating our broker and the market. After that process was completed, we were able to secure the D&O coverage without any issues."
Mayer Brown: "No, a PBC would not be expected to have problems obtaining D&O insurance solely as a result of it being a PBC and in fact, PBCs may even expect a credit (i.e., premium discount) for providing a social good (although we note that insurance companies have not in practice offered such credit). As such, PBCs should normally expect to be issued D&O insurance policies with similar premiums to those offered to traditional for-profit corporations."

Did you encounter any opposition from outside counsel? If so, how did you overcome it?

A: "No, however we did engage with outside advisors as we evaluated the conversion to a PBC. Their feedback was shared with our board before we undertook the vote to convert to a PBC."

Mayer Brown: "A company should be prepared to initially encounter some hesitation or reluctance (and maybe even in some cases, opposition) from outside counsel in connection with consideration of the PBC legal structure and/or status as a Certified B Corp because some lawyers are not familiar with the new structures, and these concepts tend still to be viewed as largely untested in the courts. As such, some outside counsel may be wary of promoting PBC structure or status, or believe it is unnecessary. However, such reactions should reduce or even disappear over time as PBCs and Certified B Corps continue to become more mainstream and lawyers become more familiar with their formation and governance processes."

Did you encounter any opposition from the underwriters? If so, how did you overcome it?

A: "The underwriters were very supportive. As the first ever PBC to go public, they needed to spend a lot of time coming up to speed and were very engaged with management, our board, outside counsel and our advisors. Upon conclusion they advised us that there were no valuation implications for the company and were supportive of the PBC conversion."

Mayer Brown: "Generally, underwriters are conservative when considering whether to bring unique or new types of offerings to the market for fear that investors will not be as familiar with such offerings. Recently, however, ESG-focused investing appears to have taken hold in the markets, and as such, opposition from underwriters would be expected to continually reduce."

Preparation

Who are the right people to have in the room beyond your Board?

A: "Outside counsel and bankers/advisors, public relations team, and senior management."

Mayer Brown: "As a general matter, the board should seek to benefit from a wide and diverse range of inputs and expertise when determining the desirability of converting to the PBC legal structure (or seeking B Corp Certification). It would be helpful to invite one or more of the company's major shareholders to join the discussion, as the decision to convert to a PBC would ultimately need a majority vote (and in some cases, supermajority) of the shareholders. It is also generally helpful to have investment bankers or other financial advisers who are familiar with financing from an ESG perspective in the room to discuss trends, considerations and investor appetite."

What was most useful/valuable for you all to refer to when showing market traction around stakeholder governance?

A: "Our own digital platforms which provided examples of our positive social impact, and our B Corp Certification."

Mayer Brown: "While there are many indications of market traction around stakeholder governance, one only need to look at the news to see that ESG-focused investing and the ESG movement in general has taken hold, as there is a new announcement relating to the ESG movement nearly every day."

Who is best to lead this conversation/champion with your Board?

A: "CEO with support from senior management, with input from trusted external advisors and subject matter experts."

Mayer Brown: "Ultimately the decision needs to be a Board decision, with majority (and in some cases more) shareholder support. However, in getting there, a clear vision and a demonstrated commitment from the top with respect to the public benefit purpose are two keys to a successful transition from a traditional for-profit corporation to a PBC. Such vision and commitment almost certainly requires buy-in from the CEO (or equivalent top manager) and other senior management at the company who will be tasked with convincing the board (and in turn the shareholders) of the merits of PBC and/or Certified B Corp status. On a related (but less direct) championing note, it is not just the CEO and C-Suite that are relevant to the PBC conversion process. It is not unusual for younger generations of employees, especially at smaller or growth companies where hands-on involvement is encouraged and rewarded, to spearhead momentum towards PBC status and gain buy-in from key officers of a company by demonstrating the benefits (including marketing and branding) of the PBC form to the company."

What were any unforeseen hurdles in terms of process you wish you could have prepared for?

A: "For us it was largely the newness of the structure as the first PBC to go public. It required educating the market on what a PBC was, how it works, and why we chose that ownership structure."

What reactions or (tough) questions did you get from investors during your roadshow?

A: "The first and main reaction from all investors was to question if this was a tax planning strategy by the company. Did somehow converting to a PBC lessen our tax expense? That question stemmed from their lack of knowledge on what a PBC was."

Perspectives

change.org

Don't be defensive — it's an asset.

"One of the important things I've learned is to not be defensive – as if the benefit corporation structure is inconsistent with the rest of the pitch you're making for the organization. Look at it as an asset for the company that's reflective of the values of the organization and will contribute to its value over time in attracting talent and press, etc. Leaning into it and articulating how it's contributing to building an immensely valuable business over time has been most effective.

One thing we did which was really helpful was having term sheets that shifted the voting rights on the conversion to a benefit corporation to the board to give investors comfort that the conversion will only be enacted if it feels like it is right for the organization and the organization has developed further than the early shoots of the startup. It was also incredibly helpful because otherwise you have to literally get everyone aligned, three, four, five years after the initial investment."

BEN RATTRAY, Founder & CEO

ripple

Dairy-Free. As It Should Be.™

Bring in support.

"The primary concern I hear is 'Does this structure create any new or additional liabilities that a more traditional structure does not?' It helps to have at least a cursory understanding of shareholder provisions. When that is addressed, investors are generally very comfortable. If you need to go in depth, bring in a lawyer with expertise in that area. At times I have leaned on an attorney familiar with benefit corporation statute in order to answer more technical questions."

ADAM LOWRY, Co-Founder

allbirds

It's the future.

"Great companies are going to come out and be PBCs and B Corps, and that's going to be a contributing factor for why they're such great companies.

I have an extremely positive view on all of this. Investors have never questioned for a moment why we're doing what we're doing, nor have they questioned our benefit corporation legal structure. Some companies have had a challenge of making their B Corp status as a publicly traded company, but frankly I think this is the way the world is headed."

JOEY ZWILLINGER, CEO

Photo: allbirds.com

Final thoughts

Purpose-driven businesses are increasingly regarded as conducive to increasing shareholder value. An authentic commitment to purpose by becoming a benefit corporation creates value for all stakeholders including shareholders. Shareholder primacy however is the legal doctrine and culture in business and finance that drives companies, investors and their directors to maximize profits above all else. Republican Senator Marco Rubio recently released a report, "American Investment in the 21st Century," that specifically calls out shareholder primacy as the root cause of the virus of short-termism plaguing our capital markets, crowding out investments in innovation and undervaluing workers.

Our belief is that waiting for voluntary change simply will not get us where we need to go fast enough to solve the challenges we face. To restore trust in capitalism — and for capitalism to be worthy of our trust — we must pull policy and regulatory levers to ensure that all companies and investors are responsible for the impact of their decisions on all stakeholders and the economic system as a whole.

"This 50-page policy report released by B Lab and developed in partnership with The Shareholder Commons, detail actions by Congress, the Securities and Exchange Commission, the Department of Justice, and the Federal Trade Commission that are necessary to transition the U.S. economy to stakeholder capitalism.

But we all know these theories don't gain traction without demonstrated leaders. It begins with companies like yours to adopt benefit governance to show not only a viable alternative, but one that is valuable for all who benefit from your company's mission and success. B Corps so far have led the way and proven that the sole duty of the corporation needs to change. But they can't do it alone. Investors, other companies, and policymakers need to be a part of the change. The time is right.

HOLLY ENSIGN BARSTOW
B Lab United States & Canada, Director of Stakeholder Governance and Policy

ANDY FYFE
B Lab United States & Canada, Growth Catalyst

In gratitude to the companies featured in this guide for their invaluable perspectives and demonstrated leadership, along with:

Freshfields MAYER | BROWN

Further Resources

[Benefit Corporation Law and Governance: Pursuing Profit with Purpose]

[The Public Benefit Corporation Guidebook]

[Examples of Specific Public Benefits]

[How to Pick a Specific Public Benefit]

[Template Deck]

[Template Email]

[Compelling Data]

B Lab United States & Canada

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