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Benefit Corporation Guide

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Introduction

A New Way to Do Business

Today it is clear that the independence of social value and commercial revenue creation is a myth. In reality, the vectors of social value and commercial revenue creation can reinforce and undermine each other. The social consequences of the recent financial crisis demonstrated with great clarity the danger of “negative externalities”—social costs resulting from corporate profit-seeking activities. But in some cases, “positive externalities” may also exist. It is this possibility that [social enterprises] seek to exploit.

“In Search of the Hybrid Ideal.” Stanford Social Innovation Review. Summer 2012.

There are a growing number of entrepreneurs, investors, consumers, and governments worldwide that are embracing the power of business to create the “positive externalities” referenced above, and to do so intentionally. **Social entrepreneurs** are starting businesses that generate earned income (like traditional for-profits) while simultaneously generating a social benefit (like traditional non-profits), and an increasing number of consumers, job-seekers, and investors want to be a part of this emerging **social enterprise** sector.

The Harvard Business Review proclaims the growing ranks of social entrepreneurs “the architects of a new, more sustainable capitalism,”¹ using the power of business to solve social and environmental problems, create stable communities, and improve our quality of life.

The need for social enterprises is obvious: there is an ever-abundant need for solutions to social and environmental problems, and an ever increasing cost to develop and implement those solutions. Businesses that take an active role in stabilizing their local communities, reducing and even reversing their environmental impact, and providing real social benefit are tackling these problems while also providing a good return on investment, quality employment, and sustainable positive economic impact.

And the market wants more of these social enterprises. This trend is evidenced in the growing ranks of networks like the Business Alliance for Local Living Economies, which represents 30,000 entrepreneurs; in studies that show consumers favor brands that are socially responsible²; in a recent survey of MBA graduates who overwhelmingly (88%) have said that they would be comfortable taking a pay cut to work for a company that has ethical business practices³; and in a 2010 J.P. Morgan report that estimated the global **impact investing** market (investors seeking to make investments in social enterprise) will reach \$500 billion within the next decade.⁴

In the area of public policy, over twenty states have enacted legislation creating new hybrid business structures for social entrepreneurs, including the **benefit corporation** in New York State. Performance measurement and reporting standards have also emerged, which companies are using to quantify their social impact for internal benchmarking, to attract consumers and investors, and to publish annual reports of their social and environmental impact.

This guide is intended to be a legal roadmap for the small business social entrepreneur. It will introduce the New York State benefit corporation, and guide prospective social enterprises through both the process of incorporation and the procedures necessary to meet the ongoing requirements of benefit corporation law.

Social Enterprise Center at Buffalo SBDC

Through a grant from the John R. Oishei Foundation, the New York Small Business Development Center at SUNY Buffalo State is now home to the **Social Enterprise Center**, the first of its kind at any Small Business Development Center. The Social Enterprise Center is a leader in providing specialized management and technical assistance that uniquely addresses the challenges faced by entrepreneurs seeking to include a material social or environmental benefit in their business plan.

The Social Enterprise Center provides professional services and support to **social enterprises**: for-profit businesses that take an active role in stabilizing local communities, reduce and even reverse their environmental impact, and provide real social benefit as part of their business model. Through one-to-one counseling, research, and workshops, the Social Enterprise Center provides crucial support and resources for this emerging class of entrepreneurs.

If you are seeking to start or expand a social enterprise, or if you would like more information in the areas of social business planning, benefit corporation filing, social impact measurement and reporting, and financing your social enterprise, contact:

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Legal Form and Tax Treatment for Social Entrepreneurs

Bridging the Gap between Nonprofit and For-Profit

Traditional for-profit and nonprofit legal forms are not designed for the simultaneous pursuit of social and financial bottom lines. Until recently, entrepreneurs had to choose between these two main legal structures, and could only claim the organizational benefits of one, but not the other. For-profits attract loans and investment dollars thanks to their ability to distribute returns to investors, and thanks to the “fiduciary duty” that for-profit directors have to protect shareholder interests. Nonprofits singularly pursue a charitable purpose, and in return, governments offer substantial tax benefits, foundations offer grants, individuals offer donations or volunteer hours, and professionals offer pro bono or inexpensive services.

Many **social entrepreneurs** have solved the nonprofit-or-for-profit dilemma by simply having both. This typically entails the creation of two separate legal entities, one a for-profit and the other a nonprofit. Often, the nonprofit owns equity in the for-profit, which allows the nonprofit to control the activities of the business, preserve the intended social mission, and protect against hostile buyouts. Despite its benefits, this multiple-entity approach requires complex organizational structure and creates administrative silos (not to mention twice the legal and accounting paperwork), which can burden management, especially at small or start-up businesses.

To date, nineteen states and the District of Columbia have enacted legislation to create a new legal form that requires the creation of general benefit for society as well as for shareholders, and reporting of such performance using established third-party standards. In New York State, this new legal form, the **benefit corporation**, was created through a unanimous vote of the NYS Senate and Assembly in 2011 to foster a community of businesses that directly address social and environmental problems, while providing a good return on investment, quality employment, and positive economic impact.

The following is a general guide for understanding and using the benefit corporation law. This guide will help to introduce what the benefit corporation law is and will guide businesses through the process of incorporating as a benefit corporation as required by the New York State Department of State Division of Corporations.

The information contained in this guide does not constitute legal advice for any specific business and is provided solely as a reference. Those interested in electing benefit corporation status under New York State law should consult with a legal representative and accountant before any actions are taken.

What is Benefit Corporation Law?

Does your business have a social mission? Is your business venture motivated by more than profits? Do you want to start a “triple bottom line” business, to pursue both social impact and financial self-sufficiency? If so, benefit corporation legal status might be right for you.

A benefit corporation is a hybrid legal entity that blends elements of nonprofit and for-profit corporations. It is taxed like a traditional corporation. It protects directors from liability for pursuing a social objective instead of simply profit. Benefit corporations measure both financial and social bottom lines, and report their social and environmental impacts in an annual benefit report.

Benefit corporations are subject to the same codes that govern traditional corporations in New York State except for three major provisions concerning corporate purpose, accountability, and transparency. Also, there are unique provisions that address right of action and change of control, purpose, or corporate structure. These provisions are as follows:⁵

Corporate Purpose:

1. Businesses incorporating as a benefit corporation must declare their commitment to creating **general public benefit**, defined 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.”
2. Benefit corporations also have the right to name one or more **specific public benefits** (e.g. 50% profits to charity, carbon neutral, 100% local sourcing, providing a beneficial product to customers in poverty, hiring refugees or individuals from disadvantaged communities).

Meeting the corporate purpose standards of benefit corporation law starts with including these statements in the corporation's Articles of Incorporation upon election of benefit corporation status. For more guidance, see “Steps to Incorporate as a Benefit Corporation” below.

Accountability:

1. Directors and officers must consider the effect of decisions on shareholders, employees, suppliers, customers, community, and environment (collectively referred to as the “stakeholders”).
2. Directors have discretion to give priority to particular stakeholders consistent with general and any specific public benefit purposes.
3. Benefit corporations prepare an **annual benefit report** that includes a statement as to whether the board acted consistent with its obligation to create general and any named specific public benefit purposes, and considered effects of its decisions on stakeholders.

Meeting the accountability standards of benefit corporation status is an ongoing process. Guidance for directors on consideration of stakeholder interests can be found in the section titled “Benefit Corporation Law Requirements Regarding Stakeholders.”

Transparency:

1. Benefit corporations are required to assess their overall corporate social and environmental performance against a **third party standard**. This assessment must be published in the annual benefit report.
2. The benefit corporation statute also requires that annual benefit reports be shared with all shareholders and made public via the company's website, with the exclusion of proprietary data. Finally, the law requires that the annual benefit report be filed with the Department of State.

Guidance on selecting a third party standard that meets the statutory criteria can be found in the section titled "Selecting a Third Party Standard," and a partial list of available third party standards can be found in the section titled "List of Third Party Standards." Guidance for directors on the requirements of the annual benefit report can be found in the section titled "Meeting Benefit Corporation Law Reporting Requirements."

Right of Action:

1. New York State's traditional business corporation law is expanded to include a cause of action if shareholders or directors believe that the corporation:
 - a. fails to pursue the general public benefit purpose of a benefit corporation or any specific public benefit set forth in its certificate of incorporation;
 - b. fails to deliver or post an annual benefit report; or
 - c. if any director or officer neglects, or fails to perform, his or her duties or standard of conduct as defined by the benefit corporation law.

Change of Control/Purpose/Structure:

1. Conversion into and out of benefit corporation form takes a yes vote from at least 3/4 of all classes of shareholders. This ensures a high level of agreement amongst the shareholders. (This is especially relevant for businesses looking to amend Articles of Incorporation.)

The brief description of the benefit corporation law above will help to lay a foundation for the steps explained in the following sections. These steps will cover the process of electing benefit corporation status as required by the NYS Department of State Division of Corporations and the procedures required from companies that are benefit corporations. If you would like more information regarding benefit corporations visit www.benefitcorp.net, an informational website maintained by the nonprofit organization B Lab, which has helped to draft and organize around benefit corporation legislation.

Why Become a Benefit Corporation?

Lead a Movement

Benefit corporations are leading a global movement to redefine success in business. By voluntarily meeting higher standards of transparency, accountability, and performance, benefit corporations are distinguishing themselves in a cluttered marketplace by offering a positive vision of a better way to do business.

Differentiate from Competitors

As consumer and investor demand for social enterprise increases, benefit corporations stand out against those that claim to be "green," "sustainable," and "local" through an official legal designation that requires positive material impact on society and the environment, and public reporting of that impact.

Raise Capital

If you're looking for mission-aligned capital, becoming a benefit corporation should help. Social investors want to invest in companies which (1) achieve high social and environmental impact; (2) are structured to maintain their mission after the next financing, sale or IPO; and (3) can command higher valuations. The legal standards ensure that benefit corporations can meet all three objectives.

Attract and Engage Talent

According to Harvard Business Review, millennials, roughly 50% of the global workforce, want work that connects to a larger purpose. According to Hewitt Associates, companies with higher levels of employee engagement outperformed the stock market by nearly 20%. Benefit corporation status demonstrates to employees that their company walks its talk.

Protect Mission

Benefit corporation status bakes social impact into the DNA of your company as it grows, as it brings in outside capital, or as you plan succession, ensuring that your mission can better survive new management, new investors, or even new ownership. It also offers legal protection to directors and officers to consider the non-financial interests of their workforce, community, and the environment.

Benchmark Performance

Benefit corporations are required to report on their social and environmental performance, measured against a third party standard. This reporting allows benefit corporations to benchmark intended social impacts and set clear targets to improve upon those impacts in the future.

Steps to Incorporate as a Benefit Corporation

This section will help businesses to think about, prepare, and plan for the process of incorporating according to the requirements of the New York State benefit corporation law. The following is not meant to serve as legal advice and all legal matters should be discussed with a legal advisor.

Step 1: Consider your business form and taxation

The steps to incorporate as a benefit corporation in New York State are much like the steps needed to establish any corporation, with a few additions. A **corporation** in New York State is an entity mutually exclusive of the individuals that own and manage the business. A corporation is authorized to sell, buy, and inherit property in its own name and has legal rights, powers, and duties. Corporations are operated for profit and may raise capital by selling shares of interest in the corporation. A corporation's debts and obligations are distinctly its own.

To create a corporation you must meet specific statutory requirements, which include filing a Certificate of Incorporation with the NYS Department of State, creating corporate bylaws, and issuing stock certificates. There are two methods of corporate taxation, denoted by the letters "C" and "S."

Income and expenses of the **S corporation** flow through to investors in proportion to their share holdings, and profits or losses are taxed to shareholders directly at their individual tax rates. Not all corporations qualify for this status. Certain restrictions apply: no more than 100 shareholders; company cannot have more than one class of shares; all shareholders must be human beings, estates, tax-exempt entities, or certain qualified trusts; and all shareholders must be citizens or residents of the United States.

C corporations, on the other hand, report income and expenses on a corporate income tax return and are taxed at corporate tax rates. Profits are taxed before dividends are paid. Shareholders must also pay taxes on their dividends by reporting them as income.

In New York State, both C and S corporations are eligible for benefit corporation status. If your existing business is currently taxed as a C corporation or an S corporation, electing to become a benefit corporation will not have any effect on how your business is taxed.

Other business forms, including sole proprietorships, partnerships, LLCs, LLPs, and cooperative corporations cannot elect benefit corporation status without also converting to either a C or S corporation. If your business is being taxed as a partnership or LLC, for example, you may be able to become an S corporation without a significant change in your tax status. You should discuss in detail with your tax accountant or adviser the implications for your business of becoming a benefit corporation before considering such a conversion.

If you cannot or choose not to become a C or S corporation, you may still choose to amend your partnership, LLC, or LLP governing documents to include the benefit corporation statute provisions, so that you may operate like a benefit corporation. Sample language to amend your existing governing documents is contained in Appendix E.

Step 2: Consider any special legal requirements applicable to your business⁶

With your legal counsel, you should analyze whether your business is subject to any legal requirements in addition to those that apply to ordinary business corporations.

According to New York State law, special corporations called professional service corporations may not become benefit corporations. Professional service corporations are used by professionals such as accountants, doctors, or lawyers to conduct their professional practices.

Banks, insurance corporations, and cooperative corporations are organized in New York State under special corporation laws that are separate from the general business corporation law. Thus a bank, insurance company, or cooperative will not be able to become a benefit corporation. However, if a bank or insurance company is owned by a holding company, it may be possible for the holding company to become a benefit corporation.

And even if you cannot become a benefit corporation due to such restrictions, you may still be able to amend your business governing documents to include the benefit corporation statute provisions or similar language, so that you may operate like a benefit corporation. Sample language to amend your existing governing documents is contained in Appendix E.

Step 3: Review benefit corporation governance requirements⁷

After you have chosen to become a benefit corporation, you should review the provisions of the NYS benefit corporation law with a legal advisor. It will be your responsibility to adhere to the statute's prescribed governance requirements once you are incorporated as a benefit corporation. Issues you will need to consider include:

1. Should you elect to pursue one or more specific public benefits in addition to the creation of general public benefit? If so, do you want any change to named specific public benefit purposes to have the same or a higher vote threshold as is required to terminate benefit corporation status entirely?
2. Should you elect a benefit officer or hire a benefit director? If yes, who should it be? And what should be the duties of the benefit officer or director?
3. What third party standard should you use to prepare your annual benefit report? It will generally be advisable to pick that standard as early as you can so that you can look to it for yearly benchmarking and ongoing guidance as you run your business.
4. Who at your business will be responsible for compiling the annual benefit report and tracking the performance of your intended general public benefit and any specific public benefits?

As with the other steps described, having competent legal counsel to guide you through this analysis will be very beneficial. Some useful guidance on these and other issues is available at www.benefitcorp.net, a clearinghouse of information on benefit corporations maintained by the nonprofit B Lab.

Step 4: Prepare and file necessary documentation

After you have completed the previous steps, it is time to prepare and file the formal legal documents needed for you to become a benefit corporation. If you are forming a new business, follow the steps below beginning with step 4.1.1. If you are converting an existing corporation into a benefit corporation, begin with step 4.2.1. If you are changing your business form to become a benefit corporation from an existing LLC, partnership, or other entity, skip to step 4.3.1.

4.1: Forming a new business

- 4.1.1. **Articles of Incorporation/Certificate of Incorporation:** With the help of your legal adviser, this form or letter must be filed with the Department of State Division of Corporations in order to form a corporate entity. See the sample Articles of Incorporation for a benefit corporation in Appendix A.
 - a. You must declare benefit corporation status in your articles of incorporation.
 - b. You must declare corporate purpose to create general public benefit; specific public benefits may be declared as well, if desired. This declaration may be included in the “profession” section.
 - c. A Certificate of Incorporation must also include the following: corporation name; profession; county; number of shares being made available; address(es) of incorporator(s); names and addresses of all shareholders, directors, and officers; signatures of incorporators, registered agent, and any other parties involved.
 - d. NYS Form DOS-1239-f-I “Certificate of Incorporation” may be used, however the standard articles of incorporation on this form must be amended to include the two unique benefit corporation declarations mentioned in (a.) and (b.) above. Consult your legal adviser for the best way to include these necessary provisions.
- 4.1.2. **Corporate Bylaws:** You will need to draft bylaws for your new benefit corporation, to outline governance, policies, and organizational structure. See the sample bylaws for a benefit corporation in Appendix B.
- 4.1.3. **Fees:** \$5 for each name search, \$20 for reservation of name, \$125 for Certificate of Incorporation, and a minimum tax of \$10 to cover stock issuance. Other fees may apply.⁸
- 4.1.4. **Share Certificates:** Prepare share certificates for your benefit corporation. The following must be included on each share certificate: “This entity is a benefit corporation organized under article seventeen of the New York business corporation law.”
- 4.1.5. **Tax Information:** All corporations must file a franchise tax report and pay a franchise tax for all or part of each calendar/fiscal year the corporation exists. They also must file federal tax returns. Contact the NYS Department of Taxation and Finance and the Internal Revenue Service for more information.
- 4.1.6. **S Corporations:** Under Section 1362 of the Internal Revenue Code, certain small business corporations may report income on personal tax returns as “S Corporations.” Individual shareholders who wish to obtain this option must file federal Form 2553. Once the Internal Revenue Service grants approval, you must file Election Form CT-6 with the NYS Department of Taxation and Finance.
- 4.1.7. Any other forms or filings necessary for your particular business. These include obtaining a Federal Employer Identification Number (FEIN), local and state licenses or permits specific to your business, sales tax, and employer considerations such as workers’ compensation and unemployment insurance.

4.2: Converting an existing corporation to a benefit corporation

Existing corporations that are interested in changing their incorporation status to a benefit corporation are allowed to do so by taking the following steps. The procedure will likely require a legal and tax adviser to ensure all taxation and the amending of articles is done correctly.

- 4.2.1. **Due Diligence Review:** With your legal and tax advisers, review all contracts and the legal status of the affairs of your business, such as its compliance with regulatory laws, and the maintenance of your corporate and other records. The purpose of analyzing your contracts and other issues—which is called a “due diligence review”—is to assure that changing your form of organization will not have any unintended consequences. For example:
 - a. You should review contracts to determine if any consents, notices, or other actions are required in connection with an amendment to your articles of incorporation.
 - b. Similarly, you should review any bank or other loan documents to determine if any consents, notices, or other actions are needed before your business can amend its articles of incorporation.
 - c. You should review your employee benefit plans to verify that they will continue without interruption or change.⁹
- 4.2.2. **Certificate of Amendment:** Fill out a Certificate of Amendment of the Certificate of Incorporation to amend Articles of Incorporation and submit to NYS Department of State Division of Corporations. See the sample Certificate of Amendment for a benefit corporation in Appendix C.
 - a. You must amend your Articles of Incorporation to declare that the corporation is a benefit corporation.
 - b. You must amend your Articles of Incorporation to declare corporate purpose to create general public benefit; specific public benefits may be declared as well, if desired.
- 4.2.3. **Corporate Bylaws:** Prepare amendments to your corporate bylaws as needed to include governance and policy provisions relevant to benefit corporations. See the sample bylaws for a benefit corporation in Appendix B.
- 4.2.4. **Vote:** The decision to amend articles of incorporate on and bylaws is contingent upon a 3/4 minimum vote by the board of directors and by the shareholders (legal advisement may be required). See the sample Resolution of the Shareholders consenting to benefit corporation status in Appendix D.
- 4.2.5. **Fees:** \$60 for filing a Certificate of Amendment.
- 4.2.6. **Share Certificates:** The following must be included on each share certificate: “This entity is a benefit corporation organized under article seventeen of the New York business corporation law.”

4.3: Converting an LLC or other entity to a benefit corporation

New York State corporation law permits the merger of a corporation with other business entities, but does not allow for a simple “conversion” from one business form to another. Thus, if you currently operate a sole proprietorship, partnership, LLC, or LLP in New York State and wish to become a benefit corporation, you must first form a new benefit corporation, and then merge your existing business into the newly formed benefit corporation. Generally, the steps to follow (with the help of your legal and tax advisers) are listed below:

- 4.3.1. **New Benefit Corporation:** Follow the steps in 4.1 to create a new benefit corporation.
- 4.3.2. **Due Diligence Review:** With your legal and tax advisers, review all contracts and the legal status of the affairs of your existing business, such as its compliance with regulatory laws, and the maintenance of your corporate and other records. The purpose of analyzing your contracts and other issues—which is called a “due diligence review”—is to assure that changing your form of organization will not have any unintended consequences. For example:
 - a. You should review contracts to determine if any consents, notices, or other actions are required in connection with a merger of your business.
 - b. Similarly, you should review any bank or other loan documents to determine if any consents, notices, or other actions are needed before your business can participate in a merger.
 - c. You should review your employee benefit plans to verify that they will continue without interruption or change.¹⁰
- 4.3.3. **Plan of Merger:** Prepare a Plan of Merger (sometimes called an Agreement of Merger) with the help of your legal and tax advisers, to merge your existing business into the new benefit corporation.
- 4.3.4. **Vote:** Obtain approval from LLC or partnership members for the merger, according to the requirements in your existing business governing documents. Also, have your new benefit corporation’s board of directors and shareholders approve the Plan of Merger.
- 4.3.5. **Certificate of Merger:** File a Certificate of Merger with the NYS Department of State Division of Corporations.
- 4.3.6. **Fees:** \$60 for filing a Certificate of Merger.

Finding an Attorney

When pursuing benefit corporation status, it is important to retain legal counsel that is both sympathetic to the needs of social enterprise and familiar with the New York State benefit corporation law. Choosing an attorney is one of the most important decisions you will make as a new business, and particular care should be given to finding legal counsel that you trust, and an attorney that shows real interest in your mission as a social entrepreneur. Even if an attorney is unfamiliar with the benefit corporation statutes, you may find that he or she will readily offer to read and interpret the law to work with you, if they have an interest in social enterprise.

The nonprofit organization B Lab compiles an online list of attorneys interested in working with businesses to explore whether benefit corporation status makes sense for them and how it could be most useful. B Lab has not vetted nor endorsed any of the attorneys listed. The list is updated regularly, and can be filtered to show only those attorneys located within New York State. It can be found at the following hyperlink:

<http://benefitcorp.net/for-business/finding-an-attorney>

The Social Enterprise Coordinator, on staff at the Small Business Development Center at SUNY Buffalo State, is also an invaluable resource for connecting prospective benefit corporations with benefit corporation attorneys. The Coordinator keeps regular communication with attorneys in the Western New York area who are interested in providing services to social entrepreneurs, and offers resources and training for attorneys about the New York State benefit corporation statutes.

The Social Enterprise Coordinator can be reached at (716) 878-4030 or via email, delmonas@buffalostate.edu.

Benefit Corporation Law Requirements Regarding Stakeholders

For those pursuing benefit corporation status for their business, it is important to note that the law requires directors to consider the effects of any action or inaction on the following identified stakeholder groups:

1. The shareholders of the benefit corporation.
2. The employees and workforce of the benefit corporation, its subsidiaries, and its suppliers.
3. The interests of customers as beneficiaries of the general public benefit or specific public benefit purposes of the benefit corporation.
4. Community and societal factors, including those of each community in which offices or facilities of the benefit corporation, its subsidiaries, and its suppliers are located.
5. The local and global environment.
6. The short-term and long-term interests of the benefit corporation, including any benefits that may accrue to the benefit corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the benefit corporation.
7. The ability of the benefit corporation to accomplish its general and any specific public benefit purpose.

The benefit corporation law also allows directors to consider “any other pertinent factors or the interests of any other group that [the directors] deem appropriate.”

The above mandate is an important distinguishing feature from the traditional corporation law in New York and many other states. While directors of traditional corporations are “entitled” (but not required) to consider a variety of stakeholders in their decision-making, directors of benefit corporations “shall” consider the effects of any action or inaction on all of the above listed stakeholders.

It is important to note that shareholders are among the stakeholders whose interests the directors of a benefit corporation are required to consider; in fact they are the only stakeholder entitled to bring a legal action against the corporation or its directors. Therefore, directors of benefit corporations may not simply disregard financial stakeholders in pursuing their stated purpose; rather they must consider the interests of shareholders as one of many stakeholders.

While a shareholder of a benefit corporation could still bring a traditional legal action for the failure of the directors to adequately consider shareholder interests, such a shareholder could also now bring a legal action for failure to consider other stakeholder interests, for example, for failure of the directors to adequately consider the impact of a particular action on the workforce or the community. 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.

If directors were found to have violated their duty to consider stakeholder interests, a judge might give directors a fixed period of time to do some or all of the following: (1) consider the issue(s) deemed to have not been adequately considered and (2) implement a policy to ensure adequate consideration is made in future decisions.

Creating General Public Benefit

Benefit corporations are required to have a purpose of creating **general public benefit**. This differs from traditional corporations, which are allowed to form for any lawful purpose but have no explicit public benefit purpose requirement.

General public benefit is defined 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.”

Interpreting “Material Positive Impact”

Government has no role in interpreting “material positive impact.” A benefit corporation, its directors, and its shareholders have the responsibility to determine what they deem to be a “material positive impact.”

Although the requirement to produce a material positive impact may seem vague, the language allows for social entrepreneurs to create their own unique approaches to social enterprise. The requirement for all benefit corporations to measure their impact against a third party standard ensures that these many different approaches to social entrepreneurship can be assessed, compared, and benchmarked together.

General vs. Specific

In addition to the requirement for benefit corporations to have a *general* public benefit purpose, they can also name **specific public benefit** purposes in their articles of incorporation and bylaws.

While the “general” provision makes it clear that benefit corporations must produce a “material positive impact” in whatever ways the social entrepreneur sees fit, these “specific” public benefits allow the social entrepreneur to name specific social or environmental impacts that the business intends to pursue. But, why have both?

The first reason is directly related to the purpose of the legislation itself. One of the main purposes of benefit corporation legislation is to create a voluntary new corporate form that has the corporate purpose to create benefit for society and the environment generally as well as shareholders. The entrepreneurs, investors, consumers and policy makers 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 a corporate form that gives entrepreneurs and investors the flexibility and protection to pursue *all* of these public benefit purposes.

The second reason is to avoid unintended consequences. The “general public benefit” purpose helps to prevent abuse of the legislation by corporations interested in “greenwashing.” Without the general public benefit purpose, a corporation could name a single, narrow “specific public benefit” purpose (e.g., instituting a recycling program for workers) while still pursuing other practices that do the opposite of providing public benefit (e.g., while still emitting toxic effluents into the river in back of the factory). This would undermine the goal and promise of benefit corporations to produce general public benefit for society and the environment.

Determining Specific Public Benefit Purposes

The flexibility afforded by the benefit corporation law's provision to name specific public benefit(s) can be used to institutionalize the particular mission and priorities of your benefit corporation into its legal DNA.

Effective usage of this provision requires consultation with a corporate attorney, ideally one with experience addressing the needs of businesses and investors interested in using business as a tool to solve social and environmental problems. For example, effective usage may require not only naming specific public benefit purposes, but also the creation of distinct voting rights with respect to altering those purposes.

All benefit corporations are required to have a general public benefit purpose (see the previous section) and have the right to name one or more specific public benefit purposes that directors will be additionally obligated to pursue. Any specific public benefit purpose must be named in the benefit corporation's Articles of Incorporation (see the section "Incorporating as a Benefit Corporation" above).

You can name any specific public benefit purpose(s) you wish. Specific public benefit purpose is defined by law to include any of the suggested purposes below, or "any other particular benefit on society or the environment" you choose to name:

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 normal 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; and
7. conferring any other particular benefit on society or the environment.

Selecting a Third Party Standard

Every benefit corporation is required to publish an annual benefit report that includes “an assessment of [its] overall social and environmental performance against a third party standard.” This report must be provided to all shareholders, provided publically on the business website, and filed with the Department of State.

This requirement is intended to help the benefit corporation, its directors, its shareholders, and the general public determine whether the benefit corporation has met its statutory corporate purpose to “create a material positive impact on society and the environment, taken as a whole, assessed against a third party standard.”

In the benefit corporation law, a **third party standard** is defined as “a recognized standard for defining, reporting and assessing general public benefit” that is independent and transparent in accordance with the criteria below:

1. The standard is “developed by a person that is **independent** of the benefit corporation.” Here, “independent” means that a person has no material relationship with the benefit corporation or any of its subsidiaries. “A material relationship between a person and a benefit corporation or any of its subsidiaries will be conclusively presumed to exist if:
 - a. the person is, or has been within the last three years, an employee of the benefit corporation or any of its subsidiaries;
 - b. an immediate family member of the person is, or has been within the last three years, an executive officer of the benefit corporation or any of its subsidiaries; or
 - c. the person, or an entity of which the person is a director, officer or other manager or in which the person owns beneficially or of record five percent or more of the equity interests, owns beneficially or of record five percent or more of the shares of the benefit corporation.”
2. The standard is “**transparent**” when:
 - a. The factors considered when measuring the performance of a business and the relative weightings of those factors are publicly available.
 - b. The identity of the persons who developed and control changes to the standard, and the process by which those changes are made, is publicly available.

Importantly:

1. Government has no role in determining whether a selected third party standard is acceptable or whether the benefit corporation has met its benefit corporation purpose to create a material positive impact.
2. Benefit corporation law does not require a benefit corporation to use any particular third party standard to prepare its annual benefit report. Nor are benefit corporations required to have annual benefit reports certified or audited by any third party.

The nonprofit B Lab maintains a list of third party standards that assess companies' social and environmental performance on its website www.benefitcorp.net, which is reprinted in the following section.

List of Third Party Standards

The below is reprinted from a list compiled by the nonprofit B Lab, and is not intended to be exhaustive. Neither B Lab nor the Small Business Development Center takes any position on whether any third party standard listed or not listed below should be deemed acceptable. It is up to the benefit corporation, its directors, and ultimately its shareholders to determine whether any particular third party standard meets the statutory criteria.

In addition to those third party standards listed below, more than 100 “raters” of corporate sustainability practices are listed in the “Rate the Raters” report published by the research and consulting firm SustainAbility. This list is available for free at <http://www.sustainability.com/library/rate-the-raters-phase-two>.

B Impact Assessment

Governed by B Lab

<http://www.bimpactassessment.net>

The B Impact Assessment is a free, comprehensive, and transparent tool for assessing overall corporate social and environmental performance.

Ceres Roadmap to Sustainability

Governed by Ceres

<http://www.ceres.org>

The Roadmap is designed to provide a comprehensive platform for sustainable business strategy and for accelerating best practices and performance.

Food Alliance Certified

Governed by Food Alliance

<http://www.foodalliance.org>

Food Alliance provides comprehensive third-party certification for social and environmental responsibility in agriculture and the food industry.

Global Reporting Initiative

Governed by Global Reporting Initiative

<http://www.globalreporting.org>

The Global Reporting Initiative (GRI) is a network-based organization that produces a comprehensive sustainability reporting framework that is widely used around the world.

Good Guide Company Ratings

Governed by GoodGuide, Inc.

<http://goodguide.com>

GoodGuide's mission is to provide authoritative information about the health, environmental and social performance of products and companies.

Green America Business Network

Governed by Green America

<http://www.greenamerica.org>

Green America rates companies on their social and environmental impact.

Green Seal Business Certification

Governed by Green Seal

<http://greenseal.org>

Certifying goods and services that meet the highest standards of environmental quality and performance.

ISO 26000

Governed by ISO International

<http://www.iso.org/iso/home/standards/iso26000.htm>

ISO 26000 will distill a globally relevant understanding of what social responsibility is and what organizations need to do to operate in a socially responsible way.

People4Earth Business Framework

Governed by People4Earth

<http://www.people4earth.org>

People 4 Earth is a global non-profit organization improving the well-being of people and the health of our planet by providing a Sustainability Accounting and Management System and framework for products and services.

Sustainability Quotient

Governed by Underwriters Laboratories

<http://www.ul.com/global/eng/pages/offerings/businesses/environment/services/sq/enterprisestandards/UL880>

Sustainability Quotient (UL/SQ) is a comprehensive enterprise-level sustainability program to facilitate the integration of corporate sustainability best practices in enterprises that is built upon 3rd party verifiable standards such as UL 880.

Sustainable Farm Certification

Governed by Sustainable Agriculture Network

<http://sanstandards.org>

The Sustainable Agriculture Network (SAN) promotes efficient and productive agriculture, biodiversity conservation and sustainable community development by creating social and environmental standards.

Meeting Benefit Corporation Law Reporting Requirements

To meet the provisions of the benefit corporation law, benefit corporations are required to publish an **annual benefit report**.

The benefit report not only serves to inform the public about the overall social and environmental performance of the benefit corporation, but also informs directors so they are better able to meet their duties and shareholders so they are better able to exercise their rights.

According to the benefit corporation law, the annual benefit report must include all of the following:

1. **A narrative description of:**
 - a. The ways in which the benefit corporation pursued general public benefit during the year and the extent to which general public benefit was created.
 - b. The ways in which the benefit corporation pursued any specific public benefit that the articles state it is the purpose of the benefit corporation to create.
 - c. Any circumstances that have hindered the creation by the benefit corporation of general public benefit or specific public benefit.
 - d. The process and rationale for selecting or changing the third party standard used to prepare the benefit report. If applicable, a statement of any connection between the organization that established the third-party standard, or its directors, officers or material owners, and the benefit corporation or its directors, officers or material shareholders, including any financial or governance relationship which might materially affect the credibility of the use of the third-party standard.
2. **An assessment of the overall social and environmental performance of the benefit corporation against a third party standard:**
 - a. Applied consistently with any application of that standard in prior benefit reports; or
 - b. Accompanied by an explanation of the reasons for any inconsistent application.
3. The **compensation** paid by the benefit corporation during the year to each director.
4. The **name of each person that owns 5% or more of the outstanding shares of the benefit corporation** either beneficially, to the extent known to the benefit corporation without independent investigation or of record.

Several examples of published annual benefit reports can be found at <http://benefitcorp.net/for-directors/guidance-meeting-reporting-requirements>.

The benefit report must be sent to all shareholders and filed concurrently with the NYS Department of State Division of Corporations. The report must be posted on the benefit corporation's website, or if one does not exist, provided upon request free of charge to any person that requests a copy. The compensation paid to directors and any financial or proprietary information included in the benefit report may be omitted in the publicly available version, and in the version submitted to the Department of State.

Appendices

Appendix A: Sample Articles of Incorporation for a Benefit Corporation

CERTIFICATE OF INCORPORATION

OF

NAME

Under Section 402 of the Business Corporation Law

FIRST: The name of the corporation is: NAME

SECOND: The Corporation is a Benefit Corporation as defined in Article Seventeen of the Business Corporation Law. The corporation will create a general public benefit by having a material, positive impact on society and the environment, as measured by a third-party standard. [Also, the corporation will create the following specific public benefits: [INSERT SPECIFIC PUBLIC BENEFIT PURPOSE(S), IF ANY].]

THIRD: The corporation is formed to engage in any lawful act or activity for which a corporation may be organized under the Business Corporation Law, provided that it is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency or other body without such consent or approval first being obtained.

FOURTH: The county, within this state, in which the office of the corporation is to be located is: BLANK County.

FIFTH: The total number of shares which the corporation shall have authority to issue and a statement of the par value of each share or a statement that the shares are without par value are: 200 No Par Value.

SIXTH: The Secretary of State is designated as agent of the corporation upon whom process against the corporation may be served. The address to which the Secretary of State shall mail a copy of any process accepted on behalf of the corporation is: ADDRESS

Name

Incorporator

Address

CERTIFICATE OF INCORPORATION

OF

NAME

Under Section 402 of the Business Corporation Law

Filer: Attorney Name

Address

City, State, Zip Code

Phone

Appendix B: Sample Bylaws for a Benefit Corporation

BY-LAWS OF [INSERT CORPORATION NAME]

ARTICLE I OFFICES

The principal office of the corporation shall be located in the City of [INSERT CITY], County of [INSERT COUNTY], State of New York. The corporation may also have offices at such other places within or without the State of New York as the Board may from time to time determine or the business of the corporation may require.

ARTICLE II SHAREHOLDERS

SECTION 1. PLACE OF MEETINGS.

Meetings of shareholders shall be held at the principal office of the corporation or at such other place within or without the State of New York as the board shall authorize.

SECTION 2. ANNUAL MEETING.

The annual meeting of the shareholders shall be held at such date and time as shall be determined by the board or the president and stated in the notice of meeting, at which time the shareholders shall elect a board and transact such other business as may properly come before the meeting.

SECTION 3. SPECIAL MEETINGS.

Special meetings of the shareholders may be called by the board or by the president and shall be called by the president or the secretary at the request in writing of a majority of the board or at the request in writing by shareholders owning a majority in amount of the shares issued and outstanding. Such request shall state the purpose or purposes of the proposed meeting. Business transacted at a special meeting shall be confined to the purposes stated in the notice.

SECTION 4. FIXING RECORD DATE.

For the purpose of determining the shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or to express consent to or dissent from any proposal without a meeting, or for the purpose of determining shareholders entitled to receive payment of any dividend or the allotment of any rights, or for the purpose of any other action, the board shall fix, in advance, a date as the record date for any such determination of shareholders. Such date shall not be more than sixty nor less than ten days before the date of such meeting, nor more than sixty days prior to any other action. If no record date is fixed it shall be determined in accordance with the provisions of law.

SECTION 5. NOTICE OF MEETINGS OF SHAREHOLDERS.

Written notice of each meeting of shareholders shall state the purpose or purposes for which the meeting is called, the place, date and hour of the meeting and unless it is the annual meeting, shall indicate that it is being issued by or at the direction of the person or persons calling the meeting. Notice shall be given either personally or by mail to each shareholder entitled to vote at such meeting, not less than ten or more than sixty days before the date of the meeting. If action is proposed to be taken that might entitle shareholders to payment for their shares, the notice shall include a statement of that purpose and to that effect. If mailed, the notice shall be deemed given when deposited in the United States mail, with postage thereon prepaid, directed to the shareholder at his address as it appears on the record of shareholders, or, if he shall have filed with the secretary a written request that notices to him be mailed to some other address, then directed to him at such other address.

SECTION 6. WAIVERS.

Notice of meeting need not be given to any shareholder who signs a waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of any shareholder at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by him.

SECTION 7. QUORUM OF SHAREHOLDERS.

(a) Unless the certificate of incorporation provides otherwise, the holders of a majority of the shares entitled to vote thereat shall constitute a quorum at a meeting of shareholders for

the transaction of any business, provided that when a specified item of business is required to be voted on by a class or series, the holders of a majority of the shares of such class or series shall constitute a quorum for the transaction of such specified item of business.

(b) When a quorum is once present to organize a meeting, it is not broken by the subsequent withdrawal of any shareholders.

(c) The shareholders present may adjourn the meeting despite the absence of a quorum.

SECTION 8. PROXIES.

Every shareholder entitled to vote at a meeting of shareholders or to express consent or dissent without a meeting may authorize another person or persons to act for him by proxy. Every proxy must be signed by the shareholder or his attorney-in-fact. No proxy shall be valid after expiration of eleven months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the shareholder executing it, except as otherwise provided by law.

SECTION 9. QUALIFICATION OF VOTERS.

Every shareholder of record shall be entitled at every meeting of shareholders to one vote for every share standing in his or her name on the record of shareholders, unless otherwise provided in the certificate of incorporation.

SECTION 10. VOTE OF SHAREHOLDERS.

Except as otherwise required by statute or by the certificate of incorporation: (a) directors shall be elected by a plurality of the votes cast at a meeting of shareholders by the holders of shares entitled to vote in the election; and (b) all other corporate action shall be authorized by a majority of the votes cast, except that a vote to terminate the benefit corporation status of the corporation shall require the affirmative vote of three quarters of the shareholders entitled to vote.

SECTION 11. WRITTEN CONSENT OF SHAREHOLDERS.

Any action that may be taken by vote may be taken without a meeting on written consent, setting forth the action so taken, signed by the holders of all the outstanding shares entitled to vote

thereon or signed by such lesser number of holders as may be provided for in the certificate of incorporation.

SECTION 12. SHAREHOLDER PROPOSALS.

No proposal for a shareholder vote on any matter shall be submitted by a shareholder to the corporation's shareholders unless the shareholder submitting such proposal has submitted to the secretary of the corporation a written notice setting forth with particularity (i) the name and business address of the shareholder submitting such proposal and all persons acting in concert with such shareholder; (ii) the name and address of the persons identified in clause (i), as they appear on the corporation's books (if they so appear); (iii) the class and number of shares of the corporation beneficially owned by the persons identified in clause (i); (iv) a description of the proposal containing all material information relating thereto, including, without limitation, the reasons for submitting such proposal; and (v) such other information as the board reasonably determines is necessary or appropriate to enable the board and shareholders of the corporation to consider such proposal. The written notice of a shareholder proposal shall be delivered to the secretary of the corporation, at the principal office of the corporation, not later than (i) with respect to a shareholder proposal to be submitted at an annual meeting of shareholders, ninety days prior to the date one year from the date of the immediately preceding annual meeting of shareholders (and no earlier than one hundred-twenty days prior to the date one year from the date of the immediately preceding annual meeting of shareholders), and (ii) with respect to a shareholder proposal to be submitted at a special meeting of shareholders, the close of business on the tenth day following the date on which notice of such meeting is first given to shareholders. The presiding officer at any shareholders meeting may determine that any shareholder proposal was not permissible under or was not made in accordance with the procedures prescribed in this Section or is otherwise not in accordance with law, and if he should so determine, he shall so declare at the meeting and the shareholder proposal shall be disregarded.

ARTICLE III DIRECTORS

SECTION 1. BOARD OF DIRECTORS.

Subject to any provision in the certificate of incorporation, the business of the corporation shall be managed by its board of directors, each of whom shall be at least 18 years of age and may be shareholders.

SECTION 2. NUMBER OF DIRECTORS.

The number of directors constituting the entire board shall be [INSERT NUMBER]. The number of directors constituting the entire board may be increased or decreased from time to time by resolution of the board of directors, provided that (a) any amendment by the directors to effect such increase or decrease shall require the vote of a majority of the entire board, (b) no decrease shall shorten the term of any incumbent director, (c) the number of directors constituting the entire board shall not be less than three, and (d) the number of directors constituting the entire board shall not be more than [INSERT NUMBER]. As used in these by-laws, "entire board" means the total number of directors which the corporation would have if there were no vacancies.

SECTION 3. ELECTION AND TERM OF DIRECTORS.

(a) Directors of the corporation shall be elected in such manner, and shall hold office for such term, as shall be set forth in the certificate of incorporation.

(b) Unless otherwise prescribed in the certificate of incorporation, directors of the corporation shall be elected, and shall serve until the annual meeting following his or her election. [OPTIONAL: So long as there are at least six directors (including vacancies), the directors shall be divided into two classes, designated Class 1 and Class 2. Each class shall consist as nearly as may be possible, of one-half of the total number of directors constituting the entire board; provided, however, that no class shall have less than three directors, including vacancies. The term of the initial Class 1 directors shall terminate on the date of the [INSERT YEAR] annual meeting of shareholders; and the term of the initial Class 2 directors shall terminate on the date of the [INSERT NEXT YEAR] annual meeting of shareholders. At each annual meeting of shareholders beginning in [INSERT YEAR], successors to the class of directors whose term expires at that annual meeting shall be elected for a two-year term. If the number of directors is changed, any increase or decrease shall be apportioned among the classes, so as to maintain the number of directors in each class as nearly equal as possible, and any additional directors of any class elected to fill a vacancy resulting from an increase in such class shall

hold office for a term that shall coincide with the remaining term of that class, but in no case will a decrease in the number of directors shorten the term of any incumbent director. A director shall hold office until the annual meeting for the year in which his or her term expires and until his or her successor shall be elected and shall qualify, subject, however, to prior death, resignation, retirement, disqualification or removal from office.

If there shall be less than six directors, then, at each annual meeting of the shareholders, directors shall be elected to hold office until the next annual meeting of the shareholders and until their respective successors have been elected and qualified or until their respective earlier death, resignation, retirement, disqualification or removal.

SECTION 4. NEWLY CREATED DIRECTORSHIPS AND VACANCIES.

Newly created directorships resulting from an increase in the number of directors and vacancies occurring in the board for any reason except the removal of directors without cause may be filled by a vote of a majority of the directors then in office, although less than a quorum exists, unless otherwise provided in the certificate of incorporation. Vacancies occurring by reason of the removal of directors without cause shall be filled by vote of the shareholders unless otherwise provided in the certificate of incorporation. A director elected to fill a vacancy caused by resignation, death or removal shall be elected to hold office for the unexpired term of his predecessor.

SECTION 5. REMOVAL OF DIRECTORS.

Any or all of the directors may be removed for cause by vote of the shareholders or by action of the board. Directors may be removed without cause only by vote of the shareholders.

SECTION 6. RESIGNATION.

A director may resign at any time by giving written notice to the board, the president or the secretary of the corporation. Unless otherwise specified in the notice, the resignation shall take effect upon receipt thereof by the board or such officer, and the acceptance of the resignation shall not be necessary to make it effective.

SECTION 7. 7. QUORUM OF DIRECTORS.

Unless otherwise provided in the certificate of incorporation, a majority of the entire board shall constitute a quorum for the transaction of business or of any specified item of business.

SECTION 8. ACTION OF THE BOARD.

Unless otherwise required by law, the vote of a majority of the directors present at the time of the vote, if a quorum is present at such time, shall be the act of the board. Each director present shall have one vote regardless of the number of shares, if any, which he may hold.

SECTION 9. DISCHARGE OF DUTIES.

Consistent with the corporation's purpose of creating general public benefit [and INSERT SPECIFIC PUBLIC BENEFIT PURPOSE(S), IF ANY], in discharging their duties, the directors shall consider the effect of any actions on the following:

- (a) The ability of the corporation to accomplish its general public benefit purpose [and INSERT SPECIFIC PUBLIC BENEFIT PURPOSE(S), IF ANY];
- (b) The shareholders of the corporation;
- (c) The employees and workforce of the corporation and its subsidiaries and suppliers;
- (d) The interests of customers as beneficiaries of the general public benefit purposes [or INSERT SPECIFIC PUBLIC BENEFIT, IF ANY] of the corporation;
- (e) Community and societal considerations, including those of any community in which offices or facilities of the benefit corporation or its subsidiaries or suppliers are located;
- (f) The local and global environment;
- (g) The short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the benefit corporation.

Directors may also consider the resources, intent, and conduct (past, stated and potential) of any person seeking to acquire control of the corporation, and any other pertinent factors or the

interests of any other group that they deem appropriate, consistent with the corporation's purpose to create social benefit.

Directors [are not required to give priority to any of the considerations listed above/shall give priority to [INSERT RELEVANT CONSIDERATION(S)]] in considering the effect of their actions, provided that such actions are consistent with the corporation's purpose of creating general public benefit [and INSERT SPECIFIC PUBLIC BENEFIT PURPOSE, IF ANY].

SECTION 10. PLACE AND TIME OF BOARD MEETINGS.

The board may hold its meetings at the office of the corporation or at such other places, either within or without the State of New York, as it may from time to time determine.

SECTION 11. REGULAR ANNUAL MEETING.

A regular annual meeting of the board shall be held immediately following the annual meeting of shareholders at the place of such annual meeting of shareholders.

SECTION 12. NOTICE OF MEETINGS OF THE BOARD, ADJOURNMENT.

(a) Regular meetings of the board may be held without notice at such time and place as it shall from time to time determine. Special meetings of the board shall be held upon notice to the directors and may be called by the president upon three days' notice to each director either personally or by mail or by electronic communication; special meetings shall be called by the president or by the secretary in like manner on written request of two directors. Notice of a meeting need not be given to any director who submits a waiver of notice whether before or after the meeting or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him.

(b) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. Notice of the adjournment shall be given to all directors who were absent at the time of the adjournment and, unless such time and place are announced at the meeting, to the other directors.

SECTION 13. PRESIDING OFFICER.

At all meetings of the board, the president, or in his absence, a chairman chosen by the board, shall preside.

SECTION 14. EXECUTIVE AND OTHER COMMITTEES.

The board, by resolution adopted by a majority of the entire board, may designate from among its members an executive committee and other committees, each consisting of three or more directors. Each such committee shall serve at the pleasure of the board.

SECTION 15. COMPENSATION.

Compensation to be paid to directors, if any, shall be fixed by resolution of the board and all non employee directors shall receive the same compensation. Employee directors shall receive no compensation for their services as director.

SECTION 16. ACTION WITHOUT A MEETING.

Any action required or permitted to be taken by the board or a committee thereof may be taken without a meeting if all members of the board or the committee consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the members of the board or committee shall be filed with the minutes of the proceedings of the board or committee.

SECTION 17. MEETING BY TELEPHONE CONFERENCE.

One or more of the members of the board or any committee thereof may participate in a meeting of the board or such committee by means of a conference telephone or similar communications equipment that allows all persons participating in the meeting to hear each other at the same time. Such director and/or committee member shall have theretofore been furnished with the meeting agenda and copies of all documents and materials to be considered at such meeting. Participation by such means shall constitute presence in person at a meeting.

ARTICLE IV OFFICERS

SECTION 1. OFFICES, ELECTION, TERM.

(a) Unless otherwise provided for in the certificate of incorporation, the board may elect or appoint a president, one or more vice-presidents, a chief financial officer, a secretary and a treasurer, and such other officers as it may determine, who shall have such duties, powers and functions as hereinafter provided.

(b) All officers shall be elected or appointed to hold office until the meeting of the board following the annual meeting of shareholders.

(c) Each officer shall hold office for the term for which he is elected or appointed and until his successor has been elected or appointed and qualified.

SECTION 2. REMOVAL, RESIGNATION, SALARY, ETC.

(a) Any officer elected or appointed by the board may be removed by the board with or without cause.

(b) In any event of the death, resignation or removal of an officer, the board in its discretion may elect or appoint a successor to fill the unexpired term.

(c) Any two or more offices may be held by the same person, except the offices of president and secretary. When all of the issued and outstanding stock of the corporation is owned by one person, such person may hold all or any combination of offices.

(d) The salaries of all officers shall be fixed by the board.

(e) The directors may require any officer to give security for the faithful performance of his duties.

SECTION 3. PRESIDENT.

The president shall be the chief executive officer of the corporation; he or she shall preside at all meetings of the shareholders and of the board; he or she shall have the management of the business of the corporation and shall see that all orders and resolutions of the board are carried into effect.

SECTION 4. VICE-PRESIDENTS.

During the absence or disability of the president, the vice-president, or if there are more than one, the executive vice-president, shall have all the powers and functions of the president. Each vice-president shall perform such other duties as the board shall prescribe.

SECTION 5. **SECRETARY.**

The Secretary shall:

- (a) attend all meetings of the board and of the shareholders;
- (b) record all votes and minutes of all proceedings in a book to be kept for that purpose;
- (c) give or cause to be given notice of all meetings of shareholders and of special meetings of the board;
- (d) keep in safe custody the seal of the corporation and affix it to any instrument when authorized by the board;
- (e) when required, prepare or cause to be prepared and available at each meeting of shareholders a certified list in alphabetical order of the names of shareholders entitled to vote thereat, indicating the number of shares of each respective class held by each;
- (f) keep all the documents and records of the corporation as required by law or otherwise in a proper and safe manner; and
- (g) perform such other duties as may be prescribed by the board.

SECTION 6. **ASSISTANT-SECRETARIES.**

During the absence or disability of the secretary, the assistant-secretary, or if there are more than one, then one so designated by the secretary or by the board, shall have all the powers and functions of the secretary.

SECTION 7. **TREASURER.**

The Treasurer shall:

- (a) have the custody of the corporate funds and securities;
- (b) keep full and accurate accounts of receipts and disbursements in the corporate books;
- (c) deposit all money and other valuables in the name and to the credit of the corporation in such depositories as may be designated by the board;
- (d) disburse the funds of the corporation as may be ordered or authorized by the board and preserve proper vouchers for such disbursements;
- (e) Prepare, or cause to be prepared, the annual benefit report;

(f) render to the president and board at the regular meetings of the board, or whenever they require it, an account of all his transactions as treasurer and of the financial condition of the corporation;

(g) render a full financial report at the annual meeting of the shareholders if so requested;

(h) be furnished by all corporate officers and agents at his request, with such reports and statements as he may require as to all financial transactions of the corporation; and

(i) perform such other duties as are given to him by these by-laws or as from time to time are assigned to him by the board or the president.

SECTION 8. ASSISTANT-TREASURER.

During the absence or disability of the treasurer, the assistant-treasurer, or if there are more than one, the one so designated by the treasurer or by the board, shall have all the powers and functions of the treasurer.

SECTION 9. SURETIES AND BONDS.

In case the board shall so require, any officer or agent of the corporation shall execute to the corporation a bond in such sum and with such surety or sureties as the board may direct, conditioned upon the faithful performance of his duties to the corporation and including responsibility for negligence and for the accounting for all property, funds or securities of the corporation which may come into his hands.

ARTICLE V CERTIFICATES FOR SHARES

SECTION 1. CERTIFICATES.

The shares of the corporation shall be represented by certificates. They shall be numbered and entered in the books of the corporation as they are issued. They shall exhibit the holder's name and the number of shares and shall be signed by the president or a vice-president and the treasurer or the secretary.

Include on any share certificate the language required by Section 1709 of the Business Corporation Law: "This entity is a benefit corporation organized under article seventeen of the New York business corporation law."

SECTION 2. LOST OR DESTROYED CERTIFICATES.

The board may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the corporation, alleged to have been lost or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate to be lost or destroyed. When authorizing such issue of a new certificate or certificates, the board may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require and/or give the corporation a bond in such sum and with such surety or sureties as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost or destroyed.

SECTION 3. TRANSFERS OF SHARES.

(a) Upon surrender to the corporation or the transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, and cancel the old certificate; every such transfer shall be entered on the transfer book of the corporation which shall be kept at its principal office. No transfer shall be made within ten days next preceding the annual meeting of shareholders.

(b) The corporation shall be entitled to treat the holder of record of any share as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share on the part of any other person whether or not it shall have express or other notice thereof, except as expressly provided by the laws of New York.

SECTION 4. CLOSING TRANSFER BOOKS.

The board shall have the power to close the share transfer books of the corporation for a period of not more than ten days during the thirty day period immediately preceding (1) any shareholders' meeting, or (2) any date upon which shareholders shall be called upon to or have a right to

take action without a meeting, or (3) any date fixed for the payment of a dividend or any other form of distribution, and only those shareholders of record at the time the transfer books are closed, shall be recognized as such for the purpose of (1) receiving notice of or voting at such meeting, or (2) allowing them to take appropriate action, or (3) entitling them to receive any dividend or other form of distribution.

ARTICLE VI ANNUAL BENEFIT REPORT

SECTION 1. SELECTION OF THIRD PARTY STANDARD

Each year, the board shall select a third party standard for use in preparing the annual benefit report. The third party standard shall be a recognized standard for defining, reporting and assessing general public benefit that is developed by a person or organization that is independent of the corporation, and transparent because the following information about the standard is publicly available;

- (a) the factors considered when measuring the performance of a business;
- (b) the relative weightings of those factors; and
- (c) the identity of the persons who developed the standard and control changes to the standard and the process by which those changes are made.

SECTION 2. PREPARATION OF ANNUAL BENEFIT REPORT

(a) The Treasurer shall prepare, or cause to be prepared, the annual benefit which shall contain a narrative description of:

- 1. the process and rationale for selecting the third party standard used to prepare the benefit report;
- 2. the ways in which the benefit corporation pursued general public benefit during the year and the extent to which general public benefit was created;
- 3. [the ways in which the benefit corporation pursued its specific public benefit(s) as set forth in the certificate of incorporation, which consists of [INSERT SPECIFIC PUBLIC BENEFIT PURPOSE] and the extent to which that specific public benefit was created;] and
- 4. any circumstances that have hindered the creation by the benefit corporation of general or specific public benefit.

(b) The annual report shall also include;

1. an assessment of the performance of the corporation, relative to its general public benefit purpose assessed against a third-party standard applied consistently with any application of that standard in prior annual benefit reports or accompanied by an explanation of the reasons for any inconsistent application [and, assessment of the performance of the benefit corporation, relative to its specific public benefit purpose or purposes];
2. the compensation paid by the benefit corporation during the year to each director in that capacity; and
3. the name of each person that owns beneficially or of record five percent or more of the outstanding shares of the corporation.

SECTION 3. DELIVERY AND POSTING OF ANNUAL BENEFIT REPORT

The corporation shall deliver the annual benefit report to each shareholder within one hundred twenty (120) days of the close of the corporation's fiscal year. Additionally, the corporation shall post the most recent annual benefit report to the public portion of its website, if any, except that the compensation paid to directors and any financial or proprietary information included in the benefit report may be omitted from the benefit report as publicly posted.

SECTION 4. FILING OF ANNUAL BENEFIT REPORT

Concurrent with the delivery of the annual benefit report to the shareholders within one hundred twenty (120) days of the close of the corporation's fiscal year, the corporation shall deliver a copy of the benefit report to the New York Department of State for filing, except that the compensation paid to directors and any financial or proprietary information included in the benefit report may be omitted from the benefit report as filed.

ARTICLE VII INDEMNIFICATION OF DIRECTORS, OFFICERS AND OTHER PERSONS

SECTION 1. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

The corporation shall, to the fullest extent permitted by applicable law, as amended from time to time, indemnify any person who is made, or threatened to be made, a party to any action or

proceeding, whether civil or criminal, including an action by or in the right of the corporation to procure a judgment in its favor or in the right of any other corporation of any type or kind, domestic or foreign, or any partnership, joint venture, trust, employee benefit plan or other enterprise, which any director or officer of the corporation served in any capacity at the request of the corporation, by reason of the fact that he, his testator or intestate, is or was a director or officer of the corporation, or served such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity, against judgments, fines, amounts paid in settlement, and reasonable expenses, including attorney's fees actually and necessarily incurred as a result of such action or proceeding, or any appeal therein, if such director or officer acted, in good faith, for a purpose which he reasonably believed to be in, or, in the case of service for any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise, not opposed to, the best interests of the corporation and, in criminal actions or proceedings, in addition, had no reasonable cause to believe that his conduct was unlawful; except that, in the case an action by or in the right of the corporation to procure a judgment in its favor, no indemnification under this paragraph shall be made in respect of (1) a threatened action, or a pending action which is settled or otherwise disposed of, or (2) any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation, unless and only to the extent that the court on which the action was brought, or, if no action was brought, any court of competent jurisdiction, determines upon application that, in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such portion of the settlement amount and expenses as the court deems proper.

SECTION 2. INDEMNIFICATION OF OTHERS.

The Corporation may indemnify any other person to whom the corporation is permitted to provide indemnification or the advancement of expenses to the fullest extent permitted by applicable law, whether pursuant to rights granted pursuant to, or provided by, the New York Business Corporation Law or other rights created by (i) a resolution of shareholders, (ii) a resolution of directors, or (iii) an agreement provided for such indemnification, it being expressly intended that this Article VI authorizes the creation of other rights in any such manner.

SECTION 3. REIMBURSEMENT AND ADVANCES.

The corporation may, from time to time, reimburse or advance to any person referred to in Section 1 of this Article VI the funds necessary for payment of expenses (including attorneys' fees,

costs and charges) incurred in connection with any action or proceeding referred to in Section 1 of this Article VI, upon receipt of a written undertaking by or on behalf of such person (i) to repay such amount(s) if such person is ultimately found, under the procedures set forth in Article VII of the New York Business Corporation Law, not to be entitled to indemnification or (ii) where indemnification is granted, to repay any amount(s) received in excess of the amount of indemnification to which such person is entitled. Nothing contained in this Section 3 shall limit the right of the corporation, from time to time, to reimburse or advance funds to any person referred to in Section 2 of this Article VI.

SECTION 4. SERVING AT THE REQUEST OF THE CORPORATION.

Without limitation of any indemnification provided by Section 1 of this Article VI, any director or officer of the corporation serving (i) another corporation, partnership, joint venture or trust of which the majority of the voting power or residual economic interest is held, directly or indirectly, by the corporation, or (ii) any employee benefit plan of the corporation or any entity referred to in clause (i) above, in any capacity, shall be deemed to be doing so at the request of the corporation.

SECTION 5. DETERMINATION OF ENTITLEMENT.

Any person entitled to be indemnified or to the reimbursement or advancement of expenses as a matter of right pursuant to this Article VI may elect to have the right to indemnification (or advancement of expenses) interpreted on the basis of the applicable law in effect at the time of the occurrence of the event or events giving rise to the action or proceeding, to the extent permitted by law, or on the basis of the applicable law in effect at the time indemnification is sought.

SECTION 6. CONTRACTUAL RIGHT.

The right to be indemnified or to the reimbursement or advancement of expenses pursuant to Section 1 or 3 of this Article VI or a resolution authorized pursuant to Section 2 of this Article VI (i) is a contract right pursuant to which the person entitled thereto may bring suit as if the provisions hereof (or of any such resolution) were set forth in a separate written contract between the corporation and such person, (ii) is intended to be retroactive and shall, to the extent permitted by law, be available with respect to events occurring prior to the adoption hereof, and (iii) shall continue to exist after the rescission or restrictive modification hereof with respect to events occurring prior thereto. The corporation shall not be obligated under this Article VI (including any resolution or agreement authorized by Section 2 of this Article VI) to make any payment hereunder (or under any such resolution

or agreement) to the extent the person seeking indemnification hereunder (or under any such resolution or agreement) has actually received payment (under any such insurance policy, resolution, agreement or otherwise) of the amounts otherwise indemnifiable hereunder (or under any such resolution or agreement).

SECTION 7. JUDICIAL CLAIMS.

If a request to be indemnified or for the reimbursement or advancement of expenses pursuant to Section 1 or 3 of this Article VI is not paid in full by the corporation within thirty days after a written claim has been received by the corporation, the claimant may at any time thereafter bring suit against the corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled also to be paid the expenses of prosecuting such claim. Neither the failure of the corporation (including its board, independent legal counsel or shareholders) to have made a determination prior to the commencement of such action that indemnification of or reimbursement or advancement of expenses to the claimant is proper in the circumstances, or an actual determination by the corporation (including its board, independent legal counsel or shareholders) that the claimant is not entitled to indemnification or to the reimbursement or advancement of expenses, shall be a defense to the action or create a presumption that the claimant is not so entitled.

SECTION 8. SUCCESSOR CORPORATION.

For purposes of this Article VI, the term "the corporation" shall include any legal successor to the corporation, including any corporation which acquires all or substantially all of the assets of the corporation in one or more transactions.

SECTION 9. NONEXCLUSIVITY.

The rights granted pursuant to or provided by the foregoing provisions of this Article VI shall be in addition to and shall not be exclusive of any other rights to indemnification and expenses to which such person may otherwise be entitled by law, contract or otherwise.

ARTICLE VII DIVIDENDS

Subject to the provisions of the certificate of incorporation and to applicable law, dividends on the outstanding shares of the corporation may be declared in such amounts and at such time or times as the board may determine. Before payment of any dividend, there may be set aside out of the net profits of the corporation available for dividends such sum or sums as the board from time to time in its absolute discretion deems proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the board shall think conducive to the interests of the corporation, and the board may modify or abolish any such reserve.

ARTICLE VIII CORPORATE SEAL

The seal of the corporation shall be circular in form and bear the name of the corporation, the year of its organization and the words "Corporate Seal, New York." The seal may be used by causing it to be impressed directly on the instrument or writing to be sealed, or upon adhesive substance affixed thereto. The seal on any corporate obligation for the payment of money may be a facsimile, engraved or printed.

ARTICLE IX EXECUTION OF INSTRUMENTS

All corporate instruments and documents shall be signed or countersigned, executed, verified or acknowledged by such officer or officers or other person or persons as the board may from time to time designate.

ARTICLE X FISCAL YEAR

The fiscal year shall begin the first day of January in each year, or otherwise as the board shall, from time to time, determine.

ARTICLE XI BY-LAW CHANGES

AMENDMENT, REPEAL, ADOPTION, ELECTION OF DIRECTORS.

(a) Except as otherwise provided in the certificate of incorporation, the by-laws may be amended, repealed or adopted by majority vote of the holders of the shares at the time entitled to vote in the election of any directors. By-laws may also be amended, repealed or adopted by the board but any by-law adopted by the board may be amended by the shareholders entitled to vote thereon as hereinabove provided.

(b) If any by-law regulating an impending election of directors is adopted, amended or repealed by the board, there shall be set forth in the notice of the next meeting of shareholders for the election of directors the by-law so adopted, amended or repealed, together with a concise statement of the changes made.

Appendix C: Sample Certificate of Amendment for a Benefit Corporation

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
NAME**

Under Section 805 of the Business Corporation Law

FIRST: The name of the corporation is: NAME

SECOND: The date of filing of the Certificate of Incorporation with the Department of State was DATE.

THIRD: The amendment effected by this Certificate of Amendment is as follows:

A new Paragraph SECOND relating to the election to become a Benefit Corporation shall be added as follows:

“SECOND: The Corporation is a Benefit Corporation as defined in Article Seventeen of the Business Corporation Law. The corporation will create a general public benefit by having a material, positive impact on society and the environment, as measured by a third-party standard. [Also, the corporation will create the following specific public benefits: [INSERT SPECIFIC PUBLIC BENEFIT PURPOSE(S), IF ANY].]”

FOURTH: Articles SECOND, THIRD, FOURTH, FIFTH and SIXTH of the original Certificate of Incorporation are renumbered Articles THIRD, FOURTH, FIFTH, SIXTH and SEVENTH, respectively.

FIFTH: This Amendment of the Certificate of Incorporation was duly authorized by the vote of the board of directors followed by affirmative vote of three-quarters of the shareholders on DATE.

NAME
President
Corporation
Address

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
NAME

Under Section 805 of the Business Corporation Law

Filer: Attorney Name
Address
City, State, Zip Code
Phone

Appendix D: Sample Resolution of the Shareholders

[NAME OF CORPORATION]

RESOLUTION OF THE SHAREHOLDERS

WHEREAS, the undersigned, representing at least **three fourths** of the outstanding shares of [NAME OF CORPORATION] (the “Corporation”) consent to have the Corporation recognized as a Benefit Corporation pursuant to **Article 17 of the New York Business Corporations Law**;

BE IT NOW RESOLVED that the shareholders of the Company approve the following actions:

- 1. The certificate of incorporation shall be amended to state that,
 - a. “The Corporation is a Benefit Corporation as defined in Article Seventeen of the Business Corporation Law. The corporation will create a general public benefit by having a material, positive impact on society and the environment, as measured by a third-party standard. [Also, the corporation will create the following specific public benefits: [INSERT SPECIFIC PUBLIC BENEFIT PURPOSE(S), IF ANY].]”
 - b. [If any other provisions are to be added, insert them here.]

BE IT FURTHER RESOLVED that the officers and directors of the corporation are hereby authorized and instructed to do all things necessary to effectuate the foregoing, including the preparation and filing of all documents required by the State of New York or any other state, and the payment of all necessary fees and costs associated with the foregoing.

This resolution adopted _____.

_____ Shareholder	_____ Shareholder
_____ Shareholder	_____ Shareholder
_____ Shareholder	_____ Shareholder
_____ Shareholder	_____ Shareholder

Appendix E: Sample Language to Amend Governing Documents

If you are not eligible to file as a benefit corporation in New York State due to the nature of your business, or if you would prefer to operate using a different legal business form (such as a sole proprietorship, partnership, LLC, LLP, or cooperative corporation) you may still choose to amend your business governing documents to include language that allows you to operate your business in a similar fashion to a benefit corporation.

Sole Proprietorship

As a sole proprietor, you likely will not have a business governing document. However, you may still choose to add language similar to the below recommendations directly in your business plan.

Partnership, LLC, or LLP

If your business operates as an LLC or LLP, include the below language to amend your governing documents. If your business operates as a partnership, include similar language in your partnership agreement.

In discharging his or her duties, and in determining what is in the best interests of the limited liability company (the "Company") and its members, a managing member shall not be required to regard any interest, or the interests of any particular group affected by such action, as a dominant or controlling interest or factor.

He or she shall give due consideration to the following factors, including, but not limited to, the long-term prospects and interests of the Company and its members, and the social, economic, legal, or other effects of any action on the current and retired employees, the suppliers and customers of the Company or its subsidiaries, and the communities and society in which the Company or its subsidiaries operate, (collectively, with the members, the "Stakeholders"), together with the short-term, as well as long-term, interests of its members and the effect of the Company's operations (and its subsidiaries' operations) on the environment and the economy of the state, the region and the nation.

Nothing in this Article, express or implied, is intended to create or shall create or grant any right in or for any person or any cause of action by or for any person.

Notwithstanding the foregoing, any managing member is entitled to rely upon the definition of "best interests" as set forth above in enforcing his or her rights hereunder and under state law, and such reliance shall not, absent another breach, be construed as a breach of a managing member's fiduciary duty of care, even in the context of a Change in Control Transaction where, as a result of weighing other Stakeholders' interests, a managing member determines to accept an offer, between two competing offers, with a lower price per unit.

You may wish to include language in your governing documents that outlines specific public benefits you intend to pursue through your business, to keep partners, investors, and employees pursuing the same goals.

Also, you may wish to include language in your governing documents that requires your business to measure its social and environmental impacts against a third party standard and publish an annual benefit report (or similar

document) to benchmark your performance each year. See the language in Article VI in the sample Bylaws for a Benefit Corporation in Appendix B above.

Professional Service Corporation, Cooperative Corporation, or Other Business Corporation

If your business is organized as a different type of corporation in New York State, such as a cooperative corporation, professional service corporation, or insurance corporation, you may use the below language to amend your governing documents. Be sure to obtain board and shareholder approval for your amendment, and to file your amended articles with the Secretary of State within one year.

In discharging his or her duties, and in determining what is in the best interests of the corporation (the "Company") a Directors shall not be required to regard any interest, or the interests of any particular group affected by such action, as a dominant or controlling interest or factor.

He or she shall give due consideration to the following factors, including, but not limited to, the long-term prospects and interests of the Company and its members, and the social, economic, legal, or other effects of any action on the current and retired employees, the suppliers and customers of the Company or its subsidiaries, and the communities and society in which the Company or its subsidiaries operate, (collectively, with the members, the "Stakeholders"), together with the short-term, as well as long-term, interests of its members and the effect of the Company's operations (and its subsidiaries' operations) on the environment and the economy of the state, the region and the nation.

Nothing in this Article express or implied, is intended to create or shall create or grant any right in or for any person or any cause of action by or for any person.

Notwithstanding the foregoing, any Director is entitled to rely upon the definition of "best interests" as set forth above in enforcing his or her rights hereunder, and under state law and such reliance shall not, absent another breach, be construed as a breach of a Director's fiduciary duty of care, even in the context of a Change in Control Transaction where, as a result of weighing other Stakeholders' interests, a Director determines to accept an offer, between two competing offers, with a lower price per share.

You may wish to include language in your governing documents that outlines specific public benefits you intend to pursue through your business, to keep partners, investors, and employees pursuing the same goals.

Also, you may wish to include language in your governing documents that requires your business to measure its social and environmental impacts against a third party standard and publish an annual benefit report (or similar document) to benchmark your performance each year. See the language in Article VI in the sample Bylaws for a Benefit Corporation in Appendix B above.

Acknowledgments

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References

¹ Heerad, Sabeti. "The For-Benefit Enterprise." *Harvard Business Review*. November 2011.

² Two recent examples: "2013 Cone Communications Social Impact Study." http://www.conecomm.com/stuff/contentmgr/files/0/e3d2eec1e15e858867a5c2b1a22c4cfb/files/2013_cone_comm_social_impact_study.pdf, and "Rethinking Consumption: Consumers and the Future of Sustainability." <http://bbmg.com/white-paper/rethinking-consumption/>

³ "Today Marks a Tipping Point in the Evolution of Capitalism." *Forbes*. July 17, 2013. <http://www.forbes.com/sites/skollworldforum/2013/07/17/today-marks-a-tipping-point-in-the-evolution-of-capitalism/>

⁴ "Impact Investments: An Emerging Asset Class." *J.P. Morgan*. 2010.

⁵ The full text of the NYS benefit corporation law (Article 17 of NYS Business Corporation law) can be found online: <http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=@SLBSC0A17+&LIST=LAW+&BROWSER=+&TOKEN=24298286+&TARGET=VIEW>

⁶ Clark, Jr., William H. "How to Switch to Being a Benefit Corporation." *Drinker Biddle & Realth LLP*. November 2012. [http://benefitcorp.net/storage/documents/How to Switch to Being a Benefit Corporation.pdf](http://benefitcorp.net/storage/documents/How_to_Switch_to_Being_a_Benefit_Corporation.pdf) p. 2. This brief was written by William H. Clark, Jr., a partner in the Corporate and Securities Practice Group of Drinker Biddle & Realth, LLP. From the brief: "He created the model legislation on which all of the existing benefit corporation statutes are based, and he participated in the drafting of each of those statutes."

⁷ *Ibid.*

⁸ Fees as reported at the New York State Department of State Division of Corporations website, and subject to change: <http://www.dos.ny.gov/corps/buscorp.html>. This website also contains blank PDF forms for corporation filings, and offers online filing for certain documents.

⁹ Clark, Jr., William H. *Ibid.* p. 4.

¹⁰ *Ibid.*