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To Be a B Certified Benefit Corporation or Not to Be

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I. Introduction to B Certified Corporations

A reconceptualization of firm performance is on the rise, one which includes both profit and purpose. Within this revolutionary framework sustainable enterprise is not a form of corporate social responsibility, but a better way of doing business. Despite the notion that refining processes to meet the highest standards of social and environmental performance, public transparency and legal accountability will in fact result in shareholder gain, as well as corporate profit, organizations may not be convinced. In response, this article considers the legal and tax implications from the election of existing options of structuration for socially conscious organizations.

Firms may pursue B certification through the B Lab organization, regardless of their initial legal structure. Depending on state constituency statutes, firms can elect legal structuration as a benefit corporation concurrently or subsequently after pursuance of B certification. Alternatively, socially conscious firms may elect legal structuration as a not-for-profit organization in order to maximize their tax benefits while giving back to the community. This expansion of opportunities for firms to align their mission with their legal structure benefits the firm's reputation. Most of the time, companies will display their B corporation certification under their About Us tab on their respective websites to increase awareness in the community.

Therefore, Part II of this paper will provide a history of society's perspective of socially conscious organizations. Part III of this paper will examine the traditional incorporation of businesses and related tax implications. Part IV of this paper will review the development of B certification, benefit corporations, and non-profit organizations. Part V of this paper will consider the tax, profit, and reputational benefits of each election, respectively. Part VI of this paper will compare the tax benefit from not-for-profit incorporation to the compounding profitability of benefit incorporation with a B certification. Part VII of this paper will conclude with the future for socially conscious companies.

II. History of Society's Perspective of Socially Conscious Organizations

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A. The Corporate Social Responsibility Evolution

It is evident that the trajectory of corporate social responsibility (CSR) owes its current position to the events of the early 1900s. It was World War I that plunged the United States into the Great Depression, causing a great cultural and economic shift within society. Unemployment rates lead to decreased consumer demand and spending as Americans struggled to earn a living wage. It was this crisis which provoked an unprecedented amount of government spending as a result of President Roosevelt's New Deal. "This increase in government spending created a multiplier effect on consumer demand, eventually producing full employment."[1] The impact of economic stimulation on behalf of the government would serve as a catalyst for the reframing of corporate America and its relationship to social responsibility.

Continuing through the evolution of the relationship between economic activity and social responsibility, it was the declaration of neutrality at the beginning of World War II which paved the way for President Roosevelt's Lease-Lend Program. To prevent full involvement in War, Roosevelt developed the Lease-Lend Act in March 1941 and allowed lent supplies to their allies to be paid back in any form after the war. [2] While this was more an act of defense than generosity, it was the first time in history during which corporations had shown signs of social responsibility. For example, the Hormel Company saw the "heightened demand for food that could be easily preserved and shipped abroad. In response to Congress passing the Lease-Lend program, it doubled its hours of production and sent more than 90% of their canned meat to troops."[3] While there was no feast, SPAM became a mealtime staple during the 1940's.

It is no coincidence that, while wars and social unrest dominated the 1950s through the 1960s, this period of history also brought about the first cohesive shift towards CSR viewed as something other than voluntary [4]. In the past, stakeholders and owners could contribute to society only at the individual level. However, with the threat of communism on the rise, the United States government encouraged businesses to expand CSR as a means of aligning business interests with the defense of free market capitalism.

B. Friedman, Kant, and CSR

Milton Friedman and Immanuel Kant are two of the most well-known philosophers on the concept of CSR. Milton Friedman argued that "the Social Responsibility of a business is to increase its profits."[5] Continuing in the tradition of Adam Smith, Friedman criticized suspicious businessmen running the corporations. Alternatively, Immanuel Kant's belief is centered on the following theory, that "goodwill which is not good for its effects but is good in itself; the will is

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[1] Steven Horwitz et al., *The Reality of the Wartime Economy,* 17 THE INDEP. REV. 325, 326 (2013).

[2] History.com Editors, *Lease-Lend Act 4* (April 10, 2020, 2:14 PM), https://www.history.com/topics/world-war-ii/lend-lease-act-1.

[3] Jill M. Sullivan, et al., *The Hormel Girls,* 25 AM. MUS. 282, 287 (2007).

[4] John Elrick, et al., *The Social Responsibility of Business.* 31 J. OF MKTS & MORALITY, 297, 307 (2018).

[5] Elrick, *supra* note 4 at 376.

only good when it strives to fulfil its duty"[6] While theoretical differences are apparent, it was the synergistic effect of both men's perspectives on the corporation's relationship to society.

Both Friedman and Kant provide theory as to how business should be managed, while also contributing to society. Friedman argued that "the basic mission of business is to produce goods and services at a profit and in doing this, business is making its maximum contribution to society, and in fact, being socially responsible."[7] Friedman's theory lies parallel with that of the Invisible Hand, as he trusts that when businesses perform for a profit, they are stimulating the economy and therefore, benefiting society. Coinciding in principle, Immanuel Kant's philosophy is based on building an ethical code that owners can incorporate into the morals of running the business. Kant's theory assumes an ethical code is inherently the guide force of business; if there is something positive to be gained by society or the corporation, then it is not the categorical imperative. The synthesis of these not so distant theories is that the foundation of CSR in the United States was built upon and somewhat solidified, beginning with the Cold War.

Howard Bowen, who is an author and economist, also served as a thought leader in the shift towards CSR in the 1950s. He approached CSR from a macroeconomic viewpoint, with its ultimate purpose to enhance social welfare. Bowen was determined to give a "middle ground between two extremes of socialism and pure laissez-faire capitalism, both incompatible with American ideals. One solution was the ideal social mix of individual self-determination tempered by consideration for social welfare within a mixed-economy framework."[8]

Emerging from the New Deal and World War II, America began an attempt to once again redefine its economy considering this suggestion for a mixed-economic framework and after its prior run with the laissez faire free market. Many business owners were skeptical of CSR, and unsure of how it would impact business operations. With the concurrent global rise of communism, the concept of CSR encouraged the United States to band together and honor traditional American heritage. The United States government used this threat of communism to urge businesses towards adopting CSR measures; arguing that by treating society well and respecting individual rights was "the American, not the Communist, way."[9] In response, increased government regulations on corporate social responsibilities throughout the 1960s and 1970 were passed. Not only were once CSR suggestions made legal requirements, executives became more politically and ethically active as a result of the simultaneous increase in global competition, civil unrest, and inflationary pressures; each which cast blame on the revolutionary government policies.

C. The Political Problems of CSR

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[6] Krzysztof Tapek, *Corporate Social Responsibility in the Light of Kant's Categorical Imperative. Annales,* 21 ETHICS IN ECON. LIFE, 85, 87 (2018); Aurelien Acquier, et al., *Rediscovering Howard R. Bowen's Legacy,* BUS. & SOC'Y. 607, 646 (2011).
[7] Elrick, *supra* note 4 at 300.
[8] Acquier, *supra* note 6 at 616; Richard Marens, *The Hollowing Out of Corporate Social Responsibility*, 39 MCGEORGE L. REV. 851, 874 (2008).
[9] Acquier, *supra* note 6 at 616.

With mounting pressure and legal mandates by the 1980's, businesses were ready for President Ronald Raegan to "get the government off their backs." President Raegan's disbanding of governmental policies became a driving force in shaping CSR, lending him the title "Father of CSR."[10] Through the reduction of government involvement, CSR of businesses fell to pressures of civil society and a company's shareholders. Raegan's decision created an environment in which businesses are forced to respond to the problems created by their economic success by implementing CSR strategies to meet the demands of various special interest groups and communities.

An example of this evolution is that of Walmart, who in the 1980s partnered with a special interest group to enhance the sustainability of their operations and global value chain.[11] Walmart's low-cost, sustainable product strategy has shifted the way corporations view the process of creating sustainable products from a consumer-oriented to a supply-oriented focus. By targeting initiatives towards suppliers, Walmart has improved environmental and social performance without raising consumer prices by implementing three CSR objectives: produce zero waste, utilize 100% renewable energy, and sell products that sustain people and the environment.

Concurrently, Paul Newman, an American actor, launched his homemade salad dressing company in the early 1980s. When Newman's Own exceeded its predicted profits in the first year, Newman envisioned sharing his fortune with others. Reagan's policy implementation allowed Newman to give away all the after- tax profits.[12] This was a revolutionary concept at the time, as his for profit company was the first of its size to voluntarily forfeit earnings for the greater good. Newman's Own was a pioneer in corporate strategy which empowered consumers with a chance to partner in CSR by purchasing its products.
Both Walmart and Newman's Own were on the forefront of a campaign that directly involved consumers in the social responsibility they were demanding from the companies. These campaigns helped to define CSR as it is understood today. CSR stands now on innovation, which extends to both social and environmental sustainability.

D. CSR in the Digital Age

The digital age, between 1990 and 2000, brought with it a greater awareness of global issues such as poor labor practices, human rights violations, and terrorism. This awareness fostered another shift in CSR as more people began to be invested in doing their part to help the world. The influence of social media has been substantial, as consumers have instant access and comprehensive connection worldwide. Thus, with greater access comes great responsibility. CSR has become an essential part of building a brand as it increases customer trust, customer

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[10] Gregory Unruh. *Ronald Reagan: The Father of CSR. 9* (April 10, 2020, 2:17 PM), https://www.forbes.com/sites/csr/2011/03/09/ronald-reagan-the-father-of-csr/#494ed406657f.
[11] Sustainability. *Enhancing Sustainability of Operations and Global Value Chains*, (April 10, 2020 4:03 PM), https://corporate.walmart.com/global-responsibility/sustainability/.
[12] Unruh, *supra* note 10.

loyalty, and corporate reputation.[13] As consumers are becoming more informed and in turn convicted about social equality around the world, corporations are pressured to show alignment in order to maintain market share.

The United Nations saw this point in history as an opportunity to define and emphasize the voluntary nature of CSR. Their efforts began with an initiative which encouraged corporations to pledge to follow ten principles covering environmental sustainability, human rights, and anti-corruption. The initiative was put in place to encourage companies to participate in CSR beyond the point of legal obligation. In the aftermath of the 2008 financial crisis, both public and regulatory bodies were questioning the largely voluntary basis of CSR. This vocal dissent lead to the establishment of a connection between “the responsibility of enterprises for their impacts on society and compliance with government regulations”.[14] These questions were soon answered with a mandate to report non-financial and diversity information to the public; whereas the core voluntary aspect of performing socially conscious actions was still present. However, the reporting system under new regulations placed unprecedented pressure on corporations to uphold the new standards as their actions were made public knowledge.

E. Present Conceptualization of CSR

The next decade brought a large pivot from social sustainability to environmental sustainability. As environmental issues began to garner large increasing amounts of attention, corporations responded and began an attempt to mitigate related issues within their influence. Presently, corporations are developing new innovative approaches to CSR strategies that have also proven to enhance their own performance. Consumer involvement in environmental sustainability has given corporations amplified incentive to participate as well. Consumers have discovered the voting power of their dollars, thereby from a desire to assist in promoting environmental sustainability they in turn can participate by purchasing items from companies which operate under similar values. Like Newman’s Own in the 1980s, consumers are attracted to companies that promote, and advertise, social and environmental actions. Public and verified evidence of CSR has evolved into a critical part of corporate strategy, as a result of organizations such as BLab and the Certified B Corporation seal. Through this certification, corporations can advertise on each product a third party validated seal, ensuring their actions meet the highest standards of verified social and environmental performance, public transparency, and legal accountability to balance profit and purpose.

III. Traditional Incorporation of Business and Related Tax Implications

A. Sole Proprietorship

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[13] W. Puwirat et al., *The Impact of Digital Social Responsibility on Consumer Trust and Brand Equity*, XXII EURO. RES. STUD. J. 181, 182 (2019).
[14] Alvise Favotto et. al., *Euro Crisis in the Press*, THE LONDON SCH. OF ECON. & POL. SCI. (Feb. 5, 2020), https://blogs.lse.ac.uk/eurocrisispress/2015/03/19/corporate-social-responsibility-in-an-era-of-economic-crisis-empty-gesture-or-tool-for-corporate-learning/.

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Sole proprietorship is a form of business entity involving one person, which makes the business the same as the person. There are generally no income tax consequences upon the formation of a sole proprietorship.[15] Income and losses from the business are reported on the individual's income tax return (Schedule C). The sole proprietor is fully liable for the debts and other liabilities of the proprietorship.[16] All of the income and gains from the sole proprietor's business are taxed as earned on his/her individual tax return at the appropriate individual income tax rates.[17] This intertwines the business and the sole proprietor, essentially creating one entity.

While sole proprietors reap the benefits of intertwining their personal lives and business endeavors, they also face challenges and complications when they choose this path. The legislators provide incentives for individuals to become entrepreneurs through tax law.[18] The legislation results in rewarding successful operations of a business venture and cushioning the blow when a small business fails.[19] On the other hand, there are tax code provisions that have the effect of disfavoring small businesses compared to their large corporations.[20] These provisions result in small businesses bearing a disproportionately higher tax burden in comparison to large businesses.[21]

The tax code stipulations cause complications and consequences for small business owners and entrepreneurs. Some studies have linked the tax burden on small business owners to lower profitability, lower rate of entrepreneurial growth, and business closures.[22] While Congress has adopted a number of favorable tax provisions to help small business owners, the Internal Revenue Code is replete with tax provisions that have the effect of unfavorable treatment of small businesses.[23] While these provisions negatively impact small businesses, the corporate form of entities benefit as a result. For example, corporations are entitled to a larger deduction for charitable contributions of inventory property compared to sole proprietorships.[24] In addition, until recently, the tax code has limited the ability of sole proprietors to deduct health insurance costs, unlike corporate taxpayers.[25] The tax code effectively disfavors small businesses by offering certain tax benefits that are beneficial only to businesses that are sufficiently large enough to incur a significant initial capital expenditure.[26]

B. Partnerships

Partnerships are a form of business entity where two or more people pool their skills, abilities, and resources to run a business. There are two forms a partnership can take: limited and

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[15] Craig J. Langstraat, *Choice of Business Tax Entity After the 1993 Tax Act*, 1 AKRON TAX J. 1, 2 (1995).
[16] *Id.*
[17] *Id* at 3.
[18] Rafael Efrat, *The Tax Debts of Small Business Owners in Bankruptcy*, 175 AKRON TAX J. 175, 176 (2009).
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.* at 177.
[23] Efrat, *supra* note 18 at 177.
[24] *Id.* at 176.
[25] *Id.*
[26] *Id.*

general. General partnerships follow the initial definition of a partnership, while limited partnerships are a modified form of general partnerships. The major difference between the two is that a limited partnership includes two classes of owners: general partners and limited partners. The general partners are liable for the debts and obligations of the partnership, but the limited partners are only liable up to the amount of their investment. The implication is that, unlike a limited liability corporation, a general partnership is more closely tied to its owners and, therefore, more closely approximates a true association of people.[27]

Partnerships have multiple advantages, with the most notable being the avoidance of double taxation. As a general rule, investors seek partnership taxation because of the benefits including taxation on an entity's operations, contributions of appreciated property to the entity,[28] current distributions, and liquidations.[29] In both types of partnership arrangements, the entity is not taxed, for federal tax purposes, rather the income, gains, losses, deductions and credits are passed out to the partners equally unless otherwise provided for in the partnership arrangement.[30] This creates a space between the owners and the business that does not exist in a sole proprietorship.

However, there are advantages and disadvantages to partners generating their own distributions and the tax implications. Each year, partners must pay their allocated share of any applicable federal income tax on the partnership's income and gains distributed to them.[31] Partnerships are like an S corporation since their distributions are made tax-free. Partners are taxed the same as S corporations on their share of income, gains and deductions for each tax year.[32]

C. C Corporations

C corporations are separate from its owners in the eyes of the law. This separation can be beneficial about liability, with the owners being shielded from facing personal liability for the debts of the corporation. This separation can also be a burden about double taxation. The downside of creating a separate legal entity is that the corporation can be regulated as such, which means it has to pay taxes and can be subjected to criminal sanctions.[33] Corporate law thus forces individuals to live with the consequences of the organizational form they select.[34]

Corporations are subject to double taxation, meaning the corporation is taxed on its net income, and when the same income is distributed to shareholders in the form of dividends, the income is then taxed again on the shareholders' personal tax returns. Currently, corporate

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[27] Joshua C. Macey, *What Corporate Veil?,* 117 MICH. L. REV. 1196, 1211 (2019).
[28] Martha W. Jordan, *Pennsylvania's Limited Liability Company Act Raises Taxing Questions*, 703 TEMP. L. REV. 704, 711 (1996).
[29] *Id.*
[30] Langstraat, *supra* note 15 at 2.
[31] *Id.* at 3.
[32] *Id.*
[33] Macey, *supra* note 27 at 1202.
[34] *Id.*

income is taxed at a rate of thirty-five percent, and dividend distributions for shareholders are taxed at capital gain rates.[35] The tax items of the incorporated business are reported and federal tax is paid by the corporation.[36] A second level of tax is paid on the same income when the earnings of the corporation are passed to the shareholders in the form of dividends.[37] The idea of double taxation can persuade owners to find a more tax-beneficial entity; however, they could be forfeiting the limitation of liability.

D. S Corporations

S corporations combine the advantages of a partnership and a C corporation. They are like a partnership in that the income of the business is not subject to double taxation. They are like a C corporation in that the owners are not subject to personal liability for the debts or behavior of the business. An S corporation is treated as a pass-through entity for federal tax purposes.[38] Similar to a partnership, the tax items of the S corporation, with some exceptions, are not recognized by the corporation, but rather are passed through to the shareholders to be reflected on their individual tax returns.[39] The S corporation's shareholders must annually recognize the S corporation's income and gains, whether or not actually distributed to them.[40]

One of the primary benefits of S corporation status over C corporation status is that there is, primarily only a single level of tax.[41] For state income tax purposes, the S status may or may not be recognized.[42] Avoiding double taxation would greatly benefit a corporation in the long-term and help establish financial stability. S corporations must meet several requirements in order to be granted this classification, and if any of these requirements are not met, the S corporation status will be terminated and the corporation will be treated as a C corporation for tax purposes.[43] If the S corporation does have C corporation earnings and profits, the dividend distributions are tax free and reduce the shareholder's basis to the extent of previously taxed income and the accumulated adjustments account balance.[44]

E. Limited Liability Company

A limited liability company (LLC) is a form of business ownership that combines the limited liability advantages of the corporation with the tax advantages of a partnership. Since this classification is rapidly growing in the United States, the IRS is still deciding how to treat this classification for tax purposes. The IRS has the power to classify an unincorporated association

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[35] Meredith R. Conway, *Stealth Inequity: Using Corporate Integration to Ease Unfairness in the Tax Code*, 2 WM. & MARY POL'Y REV. 53, 77 (2010) (explores the inequities inherent in the current corporate income tax structure).
[36] Langstraat, *supra* note 15 at 3.
[37] *Id.*
[38] *Id.* at 4.
[39] *Id.*
[40] *Id.*
[41] Langstraat, *supra* note 15 at 4.
[42] *Id.*
[43] *Id.*
[44] *Id.*

as either an association taxable as a corporation or as a partnership for federal tax purposes.[45] Factors which have been set out as determining whether a particular unincorporated association more closely resembles a corporation or a partnership are as follows: (1) continuity of life, (2) centralization of management, (3) limited liability, and (4) free transferability of interests.[46] An organization will be taxed as a partnership unless it has the majority of these characteristics.[47]

An advantage of classifying an entity as an LLC is that members may use their distributive share of the LLC's losses to reduce their income from other sources.[48] As for the LLC's taxable income, it equals the taxable income that the LLC would have reported for federal income tax purposes if the LLC were taxed as a corporation.[49] LLC's are essentially a more cost-effective option with regard to tax implications than corporations. Because the increased cost associated with choosing an LLC is much less than the increased cost of choosing a corporation, investors in this situation, who would have chosen a corporation if LLCs did not exist, will now choose an LLC.[50] Furthermore, because the cost increase associated with choosing an LLC is substantially less than the tax cost associated with choosing a corporation, LLCs make it easier for investors to choose limited liability.[51]

F. Nonprofit Organizations

Some place the earliest forms of nonprofits around the late 1800's, when The Peabody Education Fund was founded. It is said to be the first foundation "created to pool the resources of a number of funders to support charitable activities".[52] Approximately 1.56 million nonprofits were registered with the Internal Revenue Service in 2015, an increase of 10.4 percent from 2005.[53] The nonprofit sector contributed an estimated $985.4 billion to the US economy in 2015, composing 5.4 percent of the country's gross domestic product (GDP).[54] Non-profits are most numerous in these two sectors: Human Services (35.2%), Education (17.2%).[55] However, in terms of revenues and expenses, the Health sector accounts for more than 50%.[56]

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[45] Carol R. Goforth, *The Rise of the Limited Liability Company: Evidence of a Race Between the States, but Heading Where?* 45 SYRACUSE L. REV. 1193, 1210 (1995).
[46] *Id.*
[47] *Id.*
[48] Jordan, *supra* note 28 at 724.
[49] *Id*.
[50] *Id.*
[51] *Id.*
[52] *6 Important Moments in the History of the Non-Profit Sector*, OHIO UNIVERSITY BLOG (Mar. 29, 2020, 9:04 AM), https://onlinemasters.ohio.edu/blog/six-important-moments-in-the-history-of-the-nonprofit-sector/.
[53] Brice S. McKeever, *The Non-Profit Sector in Brief 2018: Public Charities, Giving, and Volunteering*, THE URBAN INST. (Mar. 29, 2020, 9:12 AM), https://nccs.urban.org/publication/nonprofit-sector-brief-2018#the-nonprofit-sector-in-brief-2018-public-charites-giving-and-volunteering.
[54] *Id.*
[55] *Id.*
[56] McKeever, *supra* note 53.

Whereas from 2005 to 2015, the number of nonprofits remained constant despite some fluctuations, the revenues, expenses, and assets of nonprofit rose by around 40%.[57]

IV. Tax, Profit, and Reputational Benefits of Nonprofits, Certified B Corporations, and Benefit Corporations

A. Nonprofits

A non-profit organization is defined by Cornell Law as a group organized for purposes other than generating profit and in which no part of the organization's income is distributed to its members, directors, or officers.[58] These organizations focus on bringing awareness and generating money to support social causes. As for their taxes, American nonprofit organizations receive favorable tax treatment, including tax exemptions and tax-deductibility of contributions, in return for their devotion to charitable purposes and restrictions not to distribute profits.[59] Nonprofits are able to generate an admirable amount of revenue for this specific cause through donations and fundraising events. Charitable nonprofits reported $1.4 trillion in revenue in 2006.[60]

While this seems appealing to many businesses, it is not simple to gain non-profit status. Broadly, state law governs how charitable organizations may be created, the form they may take, the fiduciary duties of their leaders, and the regulation of their continued operation.[61] State regulation was created to support the role of charities in society without allowing for abuse of the system.[62] First, charitable corporations require authorization from the state in order to be created.[63] This supports the ideal that only those corporations with the intent to support a specific cause are allowed to benefit from non-profit operations. The Internal Revenue Code lists the permissible purposes for nonprofit organizations, limits the private benefits of transactions in which nonprofits engage, and restricts the activities and investment of various types of nonprofit organizations.[64]

B. B Law Certification

B Lab was founded in 2006, in Berwyn, Pennsylvania. To be B certified, a company must undertake the B impact assessment, a social impact assessment that will evaluate the effects of both day-to-day operations as well as the company's business model on workers, communities,

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[57] *Id.*
[58] Alyssa A. Dirusso*, American Nonprofit Law in Comparative Perspective*, 10 WASH. U. GLOBAL STUD. L. REV. 39, 41 (2011).
[59]James R. Hines Jr.*, The Attack on Nonprofit Status: A Charitable Assessment,* 108 MICH. L. REV. 1179, 1214 (2010).
[60] Dirusso, *supra* note 58 at 60.
[61] *Id.*
[62] Dirusso, *supra* note 58 at 60.
[63] *Id.*
[64] *Id.*

customers and environment.[65] The questions, and the annual fee are both dependent on the size of the company evaluated. B certified companies have increased by 75% in the last 4 years as 1789 companies where B certified by 2016 while the B Lab website references 3,128 companies in 2020.[66] The amount of B certified companies is growing exponentially across all sectors, but the top three are the service, manufacturing, and finance sectors.

Certified B corporations are businesses that meet the highest standards of verified social and environmental performance, public transparency, and legal accountability to balance profit and purpose.[67] These companies strive to be conscious of elements of business that are not expressly stated. B Corps are accelerating a global culture shift to redefine success in business and build a more inclusive and sustainable economy.[68] By harnessing the power of business, B Corps use profits and growth as a means to a greater end: positive impact for their employees, communities, and the environment.[69] These companies are attempting to positively impact the business community by focusing on their social consciousness. The B Corp community works toward reduced inequality, lower levels of poverty, a healthier environment, stronger communities, and the creation of more high-quality jobs with dignity and purpose.[70]

There are many steps required for a company to complete before they are granted the B Certification. They must first complete a B Impact Assessment, which is a free confidential platform designed to help measure and manage the company's positive impact on their workers, community, customer and environment.[71] A company must obtain a minimum total score of 80, which is totaled from all impact areas.[72] The B Certification assessment measures performance over the past twelve months.[73] The 200 questions asked on the B Assessment are determined by company size, sector, and market.[74]

There are many legal requirements that B Certified Companies must comply with, in order to be granted B certificates. The B Corp legal framework helps companies protect their mission through capital raises and leadership changes and give entrepreneurs and directors more flexibility when evaluating potential sale and liquidity options.[75] While the legal framework is outlined in a specific way, it does allow for flexibility in how to decide to organize the company. The legal requirement can be fulfilled through a variety of structures, from LLC's and traditional corporations to benefit corporations and cooperatives.[76] The best way for corporations to meet

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[65] Certification Requirements, CERTIFIED B CORP. (2020) https://bcorporation.net/certification/meet-the-requirements.
[66] Cao, Ke, Joel Gehman, & Matthew G. Grimes, *Standing out and fitting in: Charting the emergence of Certified B Corporations by industry and region*, 19 FIRM EMERGENCE AND GROWTH, 1, 23 (2017).
[67] *What is a Benefit Corporation?* BENEFIT CORP. (2020) https://benefitcorp.net/.
[68] *What is a Benefit Corporation?* BENEFIT CORP. (2020) https://benefitcorp.net/.
[69] *Id.*
[70] *Id.*
[71] *Id.*
[72] *Id.*
[73] *Id.*
[74] *Id.*
[75] *Id.*
[76] *What is a Benefit Corporation?* BENEFIT CORP. (2020) https://benefitcorp.net/.

the legal requirement for B Corp certification is to use the benefit corporation legal structure. For corporations in some states, notably Delaware, using the benefit corporate structure is the only way to meet the legal requirement for B Corp certification.

C. Benefit Corporations

In April 2010, Maryland became the first U.S. state to pass benefit corporation legislation.[77] Since then, 40 states as well as the District of Columbia have enacted such statutes. The main singularity of such a legal structure is that it adds to the directors' duties to consider the impact business decisions might have on non-financial stakeholders. Benefit corporation statutes have been adopted in several states to address the general perception that a business corporation cannot be operated as a charity or philanthropic organization.[78] The benefit corporation form has emerged as the most popular social enterprise statute type.[79] The benefit corporation can also lead to more complex operations for upper level management. The duties of directors and officers of a benefit corporation can be expected to be more complex than those of a non-benefit corporation because public benefit fiduciary duties are now added to the duty to maximize shareholder value.[80]

V. Comparison of Reputational Benefits

As predicted, the integration of sustainability initiatives into corporate strategy is no longer optional.[81] The assumption that CSR is a burden to the organization has also been discounted. Porter and Kramer introduced the shared value model in which the value of CSR is measured in profit for the corporation and in reduction of harms for society.[82] This approach has been revolutionary in reconnecting company success with social progress. Furthermore, corporate reputational benefits can unlock billions of dollars in potential investments for companies that pursue a positive impact on society and the environment. Evidence has shown CSR provides shareholders with numerous benefits, functional, psychosocial and values, which in turn influence the quality of the relationship between the shareholder and the company.[83] As such, it is evident that benefits of CSR are highly influenced by social perceptions; each which can differ according to legal structure of the socially responsible entity. Some of these benefits follow.

A. Nonprofit Industry

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[77] Baudot, Lisa, Jesse Dillard, & Nadra Pencle, *The emergence of benefit corporations: A cautionary tale,* CRITICAL PERSP. ON ACCT. (2019).
[78] William D. Harrington, *Business Associations*, 44 SYRACUSE L. REV. 27, 49 (2001).
[79] J. Haskell Murray, *An Early Report on Benefit Reports*, 118 W. VA. L. REV. 25, 27 (2015).
[80] Harrington, *supra* note 78 at 50.
[81] Kathleen Wilburn & Ralph Wilburn, *The double bottom line: Profit and social benefit,* 57 BUS. HORIZONS, 11, 12 (2014).
[82] Michael E. Porter & Mark R. Kramer, *Creating shared value,* MANAGING SUSTAINABLE BUS. 323, 326 (2019).
[83] C.B. Bhattacharya et al. *Strengthening stakeholder–company relationships through mutually beneficial corporate social responsibility initiatives,* 85 J. OF BUS. ETHICS 257, 257 (2009).

A positive reputation is important for nonprofits to attract more donations and increase their donors' loyalty.[84] Other data shows that a positive reputation will "draw passionate volunteers and high-quality staff," and help the nonprofit gain access to government contracts.[85] Furthermore, organizations would be more likely to both grow and establish stronger performance if they allocate more resources to their image and reputation or "influential intangible assets."[86] A firm having already established a reputation will not need to divert excessive assets to convince its stakeholders it is trustful and credible.[87] Thus, reputation is a key asset of nonprofit and its management can be of significant importance to the future performance of the company.

B. For-Profit Corporation with B Certification

The shareholder wealth maximization norm has infiltrated corporate America.[88] Even so, businesses under traditional forms of incorporation have always had the ability to meet the needs of social entrepreneurs through affiliated foundations or nonprofit entities.[89] It is now that CSR is an important component of dialogue between companies and their stakeholders[90] that marketing of these CSR efforts has become a key component in maximizing a multifaceted return on CSR investment. As such, the need for socially conscious for-profit corporations to delineate from the norm is of increasing importance. In these instances, it is the CSR initiatives that have the greatest influence on the societal reputation of the firm.

Research suggests consumers tend to form relationships with brands in a similar way as they form relationships with people.[91] There are two key assumptions underlying the reasoning for a for-profit corporation to pursue CSR initiatives. First, the more a firm can benefit from CSR the more it will be inclined to integrate CSR on a strategic level. Second, if companies do not inform consumers adequately about CSR initiatives, they will not reap the full benefits of their CSR investments.[92] In this light, companies can elect to focus the strategic management of CSR investment on either reputation management or building of a virtuous brand.

Bhattacharya argues that in order for CSR initiatives to provide a return to company, they must first provide a return to individual stakeholders, highlighting the reputational or relational

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[84] Schultz, Christian, Sabine Einwiller, Jens Seiffert-Brockmann, & Wolfgang Weitzl, *When Reputation Influences Trust in Nonprofit Organizations: The Role of Value Attachment as Moderator,* 22 CORP. REPUTATION REV. 159, 170 (2019).
[85] *Id.*

[86] *Id.*
[87] Kong, Eric, and Mark Farrell, *The role of image and reputation as intangible resources in non-profit organizations: a relationship management perspective*, In Proceedings of the 7th Int'l Conference on Intellectual Capital, Knowledge Management & Org. Learning, 245, 252 (2010).
[88] J. Haskell Murray, *Choose your own master: Social enterprise, certifications, and benefit corporation statutes,* 2 AM. U. BUS. L. REV. 1, 18 (2012).
[89] *Id.*
[90] Bhattacharya, *supra* note 83 at 257.
[91] Jennifer Aaker et al., *When good brands do bad,* 31 J. OF CONSUMER RES. 1, 16 (2004).
[92] Bert Van de Ven, *An ethical framework for the marketing of corporate social responsibility,* 82 J. OF BUS. ETHICS 339, 341 (2008).

significance of CSR strategy.[93] Relationship marketing is defined as all marketing activities directed toward establishing, developing and maintaining successful relational exchanges.[94] As such, further findings suggest that stakeholders respond to CSR activity based on their perceptions of the company's CSR initiatives.[95]

Hanson, et. al (2019) focus on the people and planet aspects of the triple bottom line to offer theoretical insights that are specific to understanding consumers' attitudes toward brands' CSR activities. It is known that CSR activities, which focus on either environmental or social dimensions, trigger different consumer preferences.[96] Extant literature has found CSR investments should be "on-brand"[97] and furthermore, are dependent on the tangibility characteristics of the brand and the primary focus of operations, either service or merchandising driven.[98]

Reputational benefits of CSR activity at for profit corporations must be evaluated by both the relational significance and the branding communication. The synergistic effect of the B Certification to solidify both signals sent to consumers is significant. BLab has positioned itself as an independently trusted, compliance officer evidencing enough CSR activity encompassing environmental and social activities. Additionally, obtaining and branding corporate communication and products with the B Certification seal, a recognized trademark across all industries, is an ideal solution for maintaining successful relational exchanges, as well as generalizable operations and tangibility characteristics.

C. Benefit Corporation with Mandatory CSR Certification

In terms of societal perception and related benefits, it is the legal benefit corporation which is obligated to report on its overall social and environmental performance using third party standards.[99] As such, unique to the benefit corporation is the mandatory obligation to what was initially an elective choice, CSR. Despite the obligation, legally the benefit corporation must only demonstrate "general public benefit" which allows for broad discretion in determining the type of societal and/or environmental impact to pursue.[100] Lastly, in order to provide corporate transparency and accountability, most states require benefit corporations to annually

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[93] Bhattacharya, *supra* note 83 at 259.
[94] Robert M. Morgan & Shelby D. Hunt, *The commitment-trust theory of relationship marketing,* 58 J. OF MKT'G. 20, 20 (1994).
[95] Bhattacharya, *supra* note 83 at 267.
[96] John Peloza & Jingzhi Shang, *How can corporate social responsibility activities create value for stakeholders? A systematic review,* 39 J. OF THE ACAD. of MKT'G. SCI. 117, 135 (2011).
[97] Danielle Blumenthal and Alan Bergstrom, *Brand councils that care: Towards the convergence of branding and corporate social responsibility,* 10 J. OF BRAND MGMT. 327, 341 (2003).
[98] Sara Hanson et al., *Society or the environment? Understanding how consumers evaluate brand messages about corporate social responsibility activities* J. OF BRAND MGMT. 21, 29 (2019).
[99] BENEFIT CORP. INFO. CTR. (2020) https://benefitcorp.net/businesses/benefit-corporation-reporting-requirements.
[100] Elisabeth J. Teal & A. Rebekah Teal, *Benefit Corporations: A Newer Legal Option for Structuring Socially Responsible For-Profit Enterprises in the US,* J. OF LEGAL, ETHICAL & REG. ISSUES 1, 3 (2019).

disseminate a report to shareholders, stakeholders, and the entire world evidencing their adherence to benefit corporation standards.[101]

The concept of private branding versus public branding is a driving factor to consider in the analysis of CSR on reputational benefit. Private branding includes independent, third party certification of CSR activity such as the B Certification, while public branding is evidenced by public incorporation designation under the benefit corporation.[102] While ample evidence exists highlighting the positive impact on firm growth of private CSR branding,[103]there exists only concern for the complexity of public branding as the obligation to serve a dual purpose can be quite taxing.[104]

It is vital to understand that the legislative formation of the benefit corporation set to create a hybrid organization which allows entities endeavoring to act in the public interest access to markets and investment capital alongside compatible governance processes.[105] However, the blending of public and private business objectives is yet to be determined as desirable. There is little empirical evidence to support quantification of reputational benefits of benefit incorporation, while studies do express concern that benefit corporations acting in the public interest do not become another avenue for transferring public resources into the private sector.[106]

VI. Making Dollars and Sense of Certified B Benefit Corporations

The largest financial benefit to not-for-profit elections is the exemption of federal tax liability imposed on the revenues of the organization, which is known as 501(c) (3). The compounding effect of this tax savings and the ability of the organization to reinvest those reserved funds back into its operations is of extreme significance. However, the impact of the “not-for-profit” mindset of a governance and executive team at a not-for-profit organization is one ripe for empirical research to evaluate the ability of this mindset to negate the potential profitability of the organization, as compared to a traditional for-profit enterprise of the same nature.

Traditional corporations who obtain the B Certification are subject to Federal corporate taxation obligations. In order to achieve the B Certification, corporations must pay an annual fee which ranges from $1,000 to $50,000+ on a scale based on company annual revenues, as well as principles of inclusivity, transparency and fairness.[107] This fee covers verification and

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[101] Brett H. McDonnell, C*ommitting to doing good and doing well: Fiduciary duty in benefit corporations,* 20 FORDHAM J. CORP. & FIN. L. 19, 32 (2014).
[102] Murray, *supra* note 88 at 45.
[103] Simon C. Parker et al., *The impact of B lab certification on firm growth*, 5 ACAD. OF MGMT. DISCOVERIES 57, 77 (2019).
[104] Teal, *supra* note 100 at 5.
[105] Lisa Baudot et al. *The emergence of benefit corporations: A cautionary tale,* CRITICAL PERSP. ON ACCT. 1, 1 (2019).
[106] Robert Jupe & Warwick Funnell., *Neoliberalism, consultants and the privatization of public policy formulation: The case of Britain's rail industry*, 29 CRITICAL PERSP. ON ACCT. 65, 66 (2015).
[107] BENEFIT CORP. INFO. CTR. (2020) https://benefitcorp.net/businesses/benefit-corporation-reporting-requirements.

standards, technology platforms, licensing fees and local and global movement building.[108] While this fee may be quite negligible to many large public or privately held organizations, the efforts which would be necessary to obtain B Certification could be quite costly. There may be as many as 130 to 180 factors a company must address in the certification process, including a direct assessment of the following five impact areas: governance, workers, community, environment and customers. Revisions to supply chain, internal processes and controls and external network engagement necessary to comply with B Lab certification standards and result in earning at least 80 out of 200 total points necessary to qualify for B Certification could result in exponential additional expenses or opportunity costs, depending on the size of the organization.[109]

Benefit corporations must also pay the same fees under the same adjusted scale as traditional corporations to maintain B Certification. However, as the benefit corporation is theoretically designed from the beginning to fit the requirements of the five impact areas, the additional remediation expenses and opportunity costs of sustainable business practices would not apply to these benefit organizations. Additionally, there is no reduction in tax liability for benefit corporations who maintain a B Certification.

One suggested primary financial benefit for traditional corporations who obtain the B Certification is brand and marketing driven. Publicly held, for profit firms can obtain the B Certification at the division level while holding other divisions separate from the sustainable practices required for B Certification. This can allow the brand to enter markets where consumers value social responsibility to a stronger degree.

Secondly, sustainable practices necessary for earning B Certification include improvements to internal processes of a wide range in nature. It is proposed that the implementation of these processes is predictive of future increase in earnings as these practices over time result in process efficiencies, better supply chain management, stronger employee retention, etc., each resulting in increased profitability.

While these potential monetary influences are positive in nature for traditional corporations who hold a B Certification, they may not have the same degree of positive impact on the benefit corporations' bottom line. Instead, the benefit corporation is likely to reap negative consequences if these actions were not taken or circumstances not observed. There is an unprecedented level of board accountability mandated within the benefit corporation statute. As such, what serves as a differentiator for traditional corporations becomes a liability for the benefit corporation.

The primary differentiating factor for social enterprises that have elected traditional incorporation or benefit incorporation, and hold the B Certification, is the organization's ability to enter certain capital markets. Foundations and impact investors are those which are willing

[108] *Id.*
[109] Wilburn, *supra* note 81 at 17.

to sacrifice some profit if a company can further social and environmental goals.[110] Crowdfunding has recently been opened to the general public and is an excellent way to obtain capital for social enterprises. In these two areas, the primary election of an organization as a benefit corporation is likely to serve as an advantage, as opposed to traditional corporations which hold the B Certification and may appear to be “greenwashing”.

VII. Conclusion

It is imperative for organizations to continue their focus on the bottom line; however, we see that is no longer their only focus. Companies are forced to consider social values, fiduciary responsibility and going concern. Due to the shifting awareness of global sustainability concerns, as well as a societal shift towards communitarianism, corporations must find a way to adapt without substantial sacrifice. Moreover, evidence is building that the principles of sustainability can be the source of corporate and product differentiation and competitive advantages.[111] Fortunately, the option of legal structuration as a Benefit corporation and the measures to obtain the Certified B Corporation status add another layer of prosperity for organizations, enabling entrance into certain markets, as well as signaling positive messages to customers and economically linked organizations. CSR efforts, particularly the defined and measured impact factors necessary to maintain the related titles of Benefit Corporation and Certified B Corporation, are poised to raise the prosperity tide in which all ships will sail. Entrepreneurs and organization management need to understand the demands, benefits, and ripple effects from these systemic investments in social responsibility culture.

[110] J. Haskell Murray, *Choose your own master: Social enterprise, certifications, and benefit corporation statutes,* 2 AM. BUS. L. REV. 1, 47 (2012).
[111] Robert B. Bennett, *A Sustainability Manifesto*, 27 MIDWEST L.J. 1, 39 (2017).