

# ***BENEFIT CORPORATIONS: A New Structure for Green Business***

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# ***WHAT*** is a benefit corporation?

- California general corporation
- That voluntarily opts-in to becoming a new class of corporation called a “Benefit Corporation” that:
  - *Purpose*: creates a material positive impact on society and environment, taken as a whole
  - *Accountability*: obligates itself to consider environmental and social factors in its actions and operations (as well as profits)
  - *Transparency*: reports annually on its environmental and social performance using an independent third-party standard
- Does NOT need to be a certified “B Corp”
- Reversible
- NO impact on other corporations or business entities



# **WHY** do we need this?

## **Stand out as CSR leader to:**

- Conscious consumers
- SRI (impact) Investors

## **Legal protection for CSR values:**

- Provides legal authority to consider environmental and social impacts and prioritize them above profits in any given situation
- Investor / Succession planning:
  - Bake desired CSR values into the company despite sale of minority or majority of stock
  - Greater flexibility when you decide to sell the company

**Every green entrepreneur should seriously consider this!**

# *WHY* do we need this?

## Keeping California Competitive:

- Similar to legislation passed in Maryland, Vermont, New Jersey, Virginia, Hawaii and New York.
- Builds on California's leadership of the Green Economy



# PURPOSE

## Traditional Corporations:

- Purpose: Earn profit for shareholders
- Limited ability to consider environmental / social considerations

## Benefit Corporations:

- Additional purpose: Creating public benefit

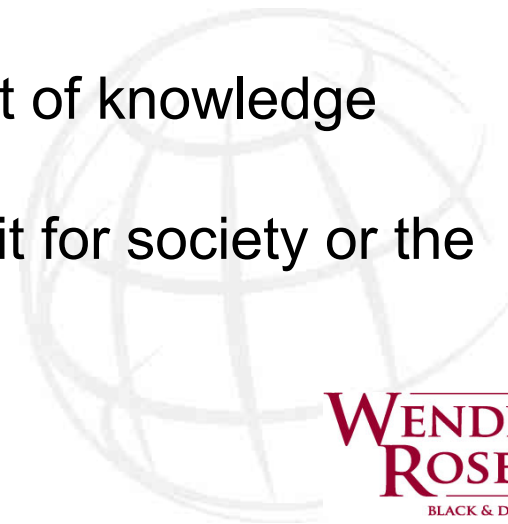
*“A material positive impact on society and the environment, taken as a whole, as measured by a third party standard, from the business and operations of a benefit corporation.”*



# *PURPOSE*

May also identify one or more “specific public benefits”:

1. Providing beneficial products or services to low-income / underserved people / communities
2. Promoting economic opportunity for people / communities beyond the jobs the business creates
3. Preserving the environment
4. Improving human health
5. Promoting arts, sciences or advancement of knowledge
6. Increasing funding to 501(c)(3) charities
7. Accomplishing any other particular benefit for society or the environment



# ACCOUNTABILITY

Board of Directors and Officers MUST consider impacts of any company action or proposed action on all the following:

- Shareholders
- Employees of company, subsidiaries and suppliers
- Customers
- Society, including the local community
- Environment - local and global
- Short-term and long-term interests of company
- Company's ability to accomplish general / specific public benefit purposes



# ACCOUNTABILITY

They MAY consider:

- The resources, intent, and actual or potential conduct of any person seeking to acquire control of the corporation
- Any other pertinent factors or the interests of any other person or group

Not required to give priority to any particular factor or the interests unless benefit corporation has stated in its Articles its intention to prioritize a specific public benefit purpose



# ACCOUNTABILITY

## Enforcement:

### What can be enforced?

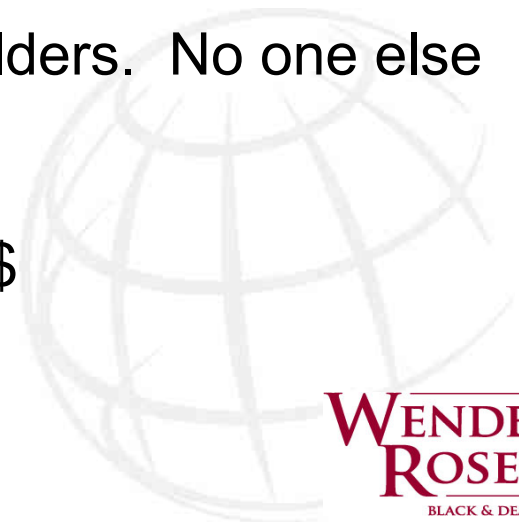
- Failure to pursue general and any specific public benefits
- Director's failure to perform benefit corporation obligations
- Failure to comply with Transparency requirements

### Who has the power to enforce?

- Benefit corporation, Directors and Shareholders. No one else

### What outcomes?

- Court order mandating compliance. No \$\$\$
- No personal liability of directors or officers



# TRANSPARENCY

## Stock Certificates legend requirement:

*This entity is a benefit corporation organized under Part 13 (commencing with Section 14600) of the California Corporations Code.*

## Identification as Benefit Corporation in the Articles of Incorporation



# TRANSPARENCY

## Annual Benefit Report:

- Explanation of how company pursued general / specific public benefit, the extent to which they were actually achieved, and circumstances that hindered achievement
- Names of persons owning 5% or more of the Benefit Corporation's outstanding stock
- Written statement expressing the Board of Directors' opinions on Provided to each shareholder and posted on website
  - Whether the benefit corporation acted in accordance with its general, and any specific, public benefit purpose
  - Whether directors / officers considered the required environmental and social impacts referenced
  - Description of ways the benefit corporation, directors and/or officers fell short
- Assessment of the company's overall enviro-social performance using a qualifying third-party standard
  - No audit or certification required

# TRANSPARENCY

## Third-Party Standard:

- A standard for defining, reporting, and assessing overall corporate social and environmental performance, including company's impact on: workforce, customers, community and environment
- No material relationship with the company or its subsidiaries
- Conflict of interest restrictions – Is not materially financed by, and no more than 1/3 of Standard developer's governing body comprised of:
  - Businesses or trade associations in a specific industry
  - Businesses whose performance is assessed against the standard.

# TRANSPARENCY

## Third-Party Standard:

- Makes the following info publically available:
  - Criteria considered when measuring the overall social and environmental performance of a business.
  - Relative weightings assigned to those criteria.
  - Identity of directors, officers, material owners and the governing body of the entity that developed the standard and controls revisions
  - Describes how revisions are made to the standard and its governing body
  - Accounts the sources of financial support with sufficient detail to disclose any potential conflicts of interest.

# ***TRANSPARENCY***

## Disclosure of Annual Benefit Report:

- Send to all shareholders within 120 days after fiscal year end
- Post on benefit corporation's website (website version may exclude any financial or proprietary info).
- If no website, then provide free copy to anyone upon request



# TRANSPARENCY

Third-Party Standard:

Sample of Qualifying standards:

- B Impact Assessment ([www.bcorporation.net](http://www.bcorporation.net))
- Global Reporting Initiative ([www.globalreporting.org](http://www.globalreporting.org))
- Green Seal ([www.greenseal.org](http://www.greenseal.org))
- People4Earth Business Framework ([www.people4earth.org](http://www.people4earth.org))
- Food Alliance ([www.foodalliance.org](http://www.foodalliance.org))
- ISO 26000 ([www.iso.org/iso/social\\_responsibility](http://www.iso.org/iso/social_responsibility))
- UL Environment - ULE 880 ([www.ulenvironment.com](http://www.ulenvironment.com))

New standards continue to be developed!



# **HOW** to become a Benefit Corporation

## **General process:**

### **1. Shareholder vote and resolution:**

- At least 2/3 must approve of becoming a benefit corporation and adopting any specific public benefit purpose(s)
- Same minimum vote to cease being benefit corporation or amend / drop any specific public benefit purpose
- Can require higher percentage vote, including unanimous

### **2. Prepare / amend Articles of Incorporation**

- Must include statement “This corporation is a benefit corporation.” (14610)
- Must describe any specific public benefit purpose(s) adopted
- File with California Secretary of State



# **HOW** to become a Benefit Corporation

## **General Process (cont'd)**

**3. Prepare / revise stock certificates to include required terms on front:**

*“This entity is a benefit corporation organized under Part 13 (commencing with Section 14600) of the California Corporations Code.”*

**4. Optional: Prepare or amend Bylaws to add greater specificity**

- No specific changes required
- Recommend adding provisions that further detail how company will pursue general and any specific public benefits

**5. Optional: Create board and officer instructions for operating as a benefit corporation**

# **HOW** to become a Benefit Corporation

## **Additional Considerations: If Converting An Existing Businesses**

### **Protections for Opposing Shareholders :**

- Owners among dissenting 1/3 opposing conversion can require the benefit corporation to purchase their shares at fair market value
- Same protection to dissenters if majority owners decide to abandon benefit corporation status Subsequent adoption / termination of specific public benefits

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