

Benefit or Certified “B” Corporation: A Concept Relevant for ESOP Companies

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Benefit Corporations or certified “B” Corporations are a new type of purpose-driven corporation that creates benefit for all “stakeholders,” not just shareholders. Stakeholders can include employees, suppliers, customers, community, and the environment. In a Benefit Corporation, members of the board of directors have a fiduciary responsibility to take into account the interests of all the stakeholders when making decisions.

Traditionally, company boards and ESOP trustees of ESOP-owned companies, both C and S Corporations, are concerned with protecting only the interests of shareholders. Requiring boards and trustees to consider more than earning profits for shareholders was originally conceived in the late 1980s as a way for companies to resist hostile takeovers by identifying interests beyond merely making money.

In traditional ESOPs, the fiduciaries must act solely for the benefit of the ESOP participants and their beneficiaries *as shareholders*. This can cause problems when ESOP companies receive an offer for more than the current ESOP stock price that will involve substantial layoffs of employees if the offer is accepted. The fiduciaries (board members and ESOP trustees) cannot take into account the impact of the offer on ESOP participants *as employees*, even though the long term value of their jobs and the overall impact on their local community may far outweigh any short term payoff they might receive for their stock.

Because board members and trustees of Benefit Corporations can consider the interests of employees and communities, they have the freedom to take those interests into account before making a decision whether to accept or reject such an offer.

Being a Benefit Corporation does not replace an ESOP company’s status as a C or S Corp. Both C and S Corp ESOPs can choose to be Benefit Corporations.

A Benefit Corporation is a for-profit business with an additional purpose to create a public benefit, either a general public benefit or a specific one, such as preserving the environment, improving human health, or providing economic opportunity beyond just jobs (e.g., a retirement plan or a sense of ownership).

Becoming a Benefit Corporation requires changing the duties of the company’s fiduciaries by a supermajority vote of shareholders (typically, 2/3 approval). Benefit corporations were legally recognized in Maryland and Vermont law in 2010.

In all, 31 states have laws that allow corporations to identify other interests of the company. These are called “constituency” states. Ohio is a “constituency” state. In non-constituency states, becoming a B Corporation is more difficult as those states have ruled that the duty of the company’s board of directors is solely to the shareholders. The 19 non-constituency states are AL, AK, AZ, AR, CA, CO, DE, KS, MI, MT, NH, NC, OK, SC, TX, UT, VA, WA and WV.

A “Certified B” corporation takes the concept of the Benefit Corporation a step further by requiring companies to reach a minimum score on an extensive questionnaire about their beneficial impact in several areas. Certified B corporations are not

required to be Benefit corporations. A certified B corporation is not a creation of state statute but is a certification provided by B Lab, a nonprofit organization dedicated to using the power of business to solve social and environmental problems.

King Arthur Flour, a 100% ESOP-owned corporation in Norwich, Vermont, and Praxis Consulting Group, an ESOP service provider in Philadelphia, Pennsylvania, were two of the 82 Founding B Corporations. Steve Voigt, President and CEO of King Arthur and a past chair of The ESOP Association, stated at the time, “We’re glad to be one of the corporate leaders in this area and hope that our participation will inspire other companies to get on board.” King Arthur displays the B Corp logo on its products, which are sold in all 50 states.

Companies in any of the constituency states can become certified B Corporations by satisfactorily completing B Lab’s questionnaire, amending their articles of incorporation and bylaws, and having those changes approved by a super-majority of the shareholders.

B Lab’s certification is designed to separate substance from hype regarding a company’s social responsibility.

Step 1 is completing B Lab’s 200-point Impact Assessment measuring the company’s impact in the following weighted areas: Accountability, 10 points; Employees, 50 points; Consumers, 30 points; Community, 40 points; Environment, 50 points; Beneficial Business Model, 20 points. A score of at least 80 points is required for certification.

Step 2 is a review of the Impact Assessment with a B Lab staff person to check accuracy and discuss any special circumstances. Certified B corporations are asked to provide documentation for a randomly selected 10% of Impact Assessment answers, and they receive a random onsite review on average once every five years.

In Step 3, the company revises its corporate documents – articles of incorporation, bylaws and others as necessary – to implement B corporation provisions on public benefit purposes and service to multiple constituencies.

Step 4 is certification and payment of the certification fee.

Michael Shay, a Principal at Praxis Consulting Group, stated that the firm’s reason for becoming a certified B corporation was to test the organization on an objective scale; to be part of something larger; and to provide a favorable differentiator for potential clients, new staff and the employee ownership community.

In addition to providing clarity for boards of directors and ESOP trustees, certified B Corporation status can provide advantages for ESOP companies in achieving their mission, which might include a concern for competitiveness, social impact, community impact, environmental impact, business community leadership, pride, ESOP and company sustainability, and ultimately, employee and participant wealth creation.

There are 420 certified B corporations as of this printing. Legal recognition of Certified B Corporations is in its infancy. Philadelphia has granted tax advantages to certified B corporations.

For more information on certified B corporations, go to the B Lab website at www.bcorporation.net. **OAW**