

BEYOND THE BOTTOM LINE

THE ALABAMA BENEFITS CORPORATION

Then There were Three

On New Year's Day 2021 there emerged a third Alabama corporate entity, the benefit corporation. The benefit corporation is a for-profit corporation taxed as either a regular "C" corporation or a Subchapter S pass-through to the shareholders paying the tax. *The benefit corporation is a paradigm shift from the traditional focus on profit-making to focusing on the social impact of its operations on its stakeholders.* Profit-making may be secondary to the social mission, but it is still important to the sustainability of the benefit corporation. Stakeholders include employees, customers, the community, the local/global environment and, finally, its shareholders. Alabama, recognizing this shift in corporate purpose, requires the benefit corporation to shed "incorporated" from its corporate name.

The benefit corporation must declare in its incorporation document (or conversion document) a provision describing how and what public benefit the corporation will pursue. Alabama benefit corporation law requires a public benefit provision in the certificate of incorporation. The benefit provision states that the corporation shall pursue one or more identified public benefits. Alabama benefit corporation must "pursue their mission in a responsible and sustainable manner" creating a positive effect on society and the environment. The benefit corporation must also conduct its business in a manner that will serve the interest of its stakeholders and shareholders.

What is the public benefit? Benefit corporation Model Legislation acknowledges the following public benefits:

- Improving human health.
- Increasing the flow of capital to entities with a public benefit purpose.
- Promoting economic opportunity for communities or individuals beyond the creation of jobs in the ordinary course of business.
- Promoting the advancement of knowledge, the arts, and sciences.
- Providing underserved individuals or

low-income communities with beneficial services or products.

- Restoring, protecting, and preserving the environment.
- The accomplishment of any other particular benefit for society or the environment.

The new Alabama legislation defines public benefit as follows:

PUBLIC BENEFIT means a positive effect, or reduction of negative effects, on one or more communities or categories of persons (other than stockholders solely in their capacity as stockholders) or on the environment, including effects of an artistic, charitable, economic, educational, cultural, literary, medical, religious, social, ecological, or scientific nature.

Existing corporations can elect to become an Alabama benefit corporation with at least a two-thirds vote and agreeing to submit to the requirements under the benefit corporation requirements. Upon conversion the entity will use B.C. or benefit corporation in place of Incorporated in its name.

The public charity and the benefit corporation can share the same social mission; where the benefit corporation differs from the charity is their access to private funding, especially like-minded "angel investors" not available to the public charity. Their focus on providing a positive impact for its stakeholders and the environment makes them attractive, socially-minded private equity groups

As practitioners, we know the maze of regulations facing tax exempt entities to keep their tax-exempt status. As a taxable entity, the benefit corporation avoids all that not-for-profit red tape giving them more latitude in approaching and fulfilling the same social mission of the tax-exempt charity.

The benefit corporation is a relatively new entity having its debut in Maryland during 2010. Presently, 40 states and the District of Columbia have proposed or passed benefit corporation legislation. There is an international presence

"as of 2021, there are over 3,300 actively registered, certified B Corps across countries, including 1,300 in the US and 2 within the state of Alabama." (*Alabama Benefit Corporations: Growing the Ecosystem* (University of Alabama)).

The benefit corporation organization provides a certification process through B Lab. Benefit corporations can submit to a review process resulting in achieving *certified* as a "B" corporation with the privilege to use that "B" trademark. The B Lab offers a free service to benefit corporation startups and, through its tools, allows the company to submit to a review to gauge where they are and where they need to go to achieve certification (no obligation to become certified). Certified B Corps include some familiar names such as Ben & Jerry's, Patagonia, and Etsy. The B Corp certification is a not requirement to be considered a benefit corporation; non-certified benefit companies "may be 3-5 times higher than the number of B Corps." (*Alabama Benefit Corporations: Growing the Ecosystem*).

Benefit corporations span many industries, with "food, agriculture, and energy comprising the largest number." "Community bank benefit corporations have the greatest impact." (*Alabama Benefit Corporations: Growing the Ecosystem*). Benefit corporations hire and promote women and minorities at a higher rate than traditional companies. Women and minority-founded business are more likely to become benefit corporations (*Alabama Benefit Corporations: Growing the Ecosystem*).

What motivates a company to become a benefit corporation? Below are reasons expressed in University of Alabama paper *Alabama Benefit Corporations: Growing the Ecosystem*:

- Purpose-driven integration of social values within the daily life of the enterprise. Trend setting in their industry
- Differentiates their company in a competitive market by earning the B Corp designation.
 - o Less lofty reason to adopt is avoiding being left behind while the rest of their industry adopts benefit corporation status.

- Access to new sources of funding by socially conscious capital investment firms.
- Insulates the company from critics and challenges in their pursuit of the company social mission in a way not achievable by regular companies.
- Recruits talent from among millennials who tend to be more socially and environmentally aware.
- Attracts millennials as customers.

The benefit corporation's pursuit of positive social impact is evident in their focus on employee stakeholders hiring and promoting underserved populations, including women and minorities. Benefit corporations tend to offer expanded employee benefits. The benefit corporation's introspective look at their business's impact on social and environment sets their mission and will be how it is measured. Patagonia outdoor equipment company did such an inventory in 2012 by examining its impact on its workers, the community, and its customer. The company's path to social responsibility began with a concern over the impact on rock faces with the use of their rock-climbing equipment. This internal process resulted in improved benefits to its workers while encouraging their contractors to provide childcare. They have demanded that foreign manufactures in Taiwan return money extorted from their workers.

Patagonia's commitment to its social goals does not stop at the corporation but includes all aspects of its business, including their vendors. Their vendors are encouraged, when bidding on a supply contract, to include the vendor's cost of providing both employee childcare cost as well as providing organic food for their workers. Patagonia employs a team who monitors the company's adherence to their social mission all the way down through their supply chain.

Unlike the traditional business model, benefit corporations are focused on long term impact of its mission as well as its sustainability. These are two critical aspects of corporate governance which attracts investors. Socially driven start-up businesses appear to be good candidates for adopting the benefit corporate structure. I believe as advisors we need to make our startup clients aware of the option to elect Alabama benefit corporation status.

The shift to more socially aware company operations, in my opinion, is not a just a fleeting trend but represents the future. This change is powered by the millennials' focus on the social and the environment of business operations. The millennial workforce appears to be more concerned with social/environment impact on the globe of their employer than monetary

reward. Expanded employee benefits, coupled with a more balanced life, are valued more than the monetary carrot of old.

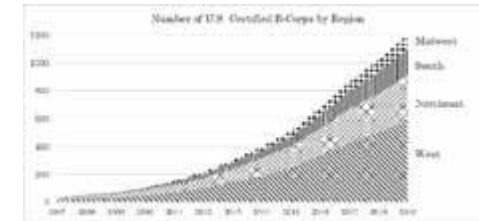
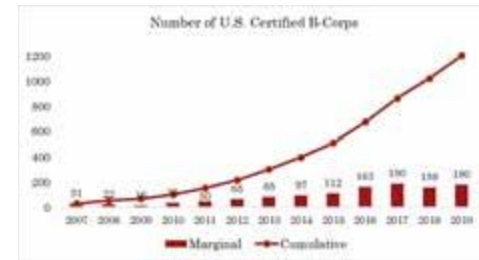
Our role as financial advisors is to help our client evaluate whether electing benefit corporate status makes sense. According to an article in the July 2018 Journal of Accountancy *The CPA's Role in Forming Benefit Corporations*, there are seven steps we as CPAs can take to aid in a client's decision to become a benefit corporation.

1. Seek legal counsel that is knowledgeable in benefit corporate law.
2. Inform the client of the tax consequences of electing benefit corporate status reminding them that they will still taxable corporate entities (C or S).
3. Employ due diligence regarding state rules on the benefit corporation for the states your client will be operating.
4. Selecting state of incorporation
5. Advise on governance
 - a. Mission
 - b. Social objectives
 - c. Financial transparency
 - d. Employee matters
 - e. Environmental concerns
6. Help develop measurable standards for evaluating the social impact. Consider the B Corporation free measurement to assess your client's success with its social goals.
7. Assist the client in collecting data relating to their social mission. This involves establishing the collecting of this nontraditional data.

Once a client decides to become a benefit corporation, the CPA's role will be to assist clients in measuring their progress toward achieving their social objectives by helping to establish metrics that change as the mission evolves. Further, we can assist in finding financial funding from socially conscious investors. CPAs can actively assist in both the income tax reporting and helping the client set measurable social/environmental goals. Finally, we can assist in the required annual reporting of clients' progress toward their social benefit goals.

If I have piqued your interest, I recommend reading the paper Alabama Benefit Corporations: Growing the Ecosystem (University of Alabama). I want to thank Lou Marino, one of the authors of the article, for making me aware of Alabama's new benefit corporation law and sharing the article with me, including permission to share graphics. The Culverhouse College of Business, through Lou Marino and the Department of Management, is working with the Alabama Power Foundation to put benefit corporations into action in

Tuscaloosa and throughout Alabama. Please contact Lou Marino if you have a client who is interested in pursuing Alabama benefit corporation status.



10 States with the Most Certified B-Corps Per Million People

Vermont	73
Oregon	40
District of Columbia	29
Colorado	22
Massachusetts	11
Idaho	10
California	9
New York	9
New Hampshire	9
Montana	8
Maine	8

Fastest Growing Certified B-Corp States 5 Year Avg. Annual Growth Rate

Pennsylvania	139%
Minnesota	86%
Texas	66%
Idaho	63%
Florida	54%
Maryland	52%
Vermont	48%
Georgia	42%
Illinois	39%
North Carolina	36%

Note: States must have certified at least 1 before per year to be considered

Source: UA benefit corp whitepaper

Thomas C. Zoebelin, CPA, MBA, CGMA is a Director of Tax Research for Pearce, Beville, Leesburg, Moore P.C. in Birmingham, AL. He blends 28 years of industry experience with 21 years of public accounting experience, bringing a wealth of knowledge and insight to the to the accounting profession.

