



## Johnny B, a Goode Corporation? B Corps and Benefit Corporations as a force for good

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In the 1985 blockbuster movie “Back to the Future,” Michael J. Fox stars as Marty McFly, a teenager who uses a DeLorean to travel 30 years back in time. Marty accidentally changes the past events that led to his parents meeting, forcing him to scramble to put history back on the right course and preserve his future existence. In one memorable scene, Marty plays a scorching guitar rendition of “Johnny B. Goode,” leaving the audience at the high school dance in stunned silence. After all, the year is 1955 and Chuck Berry’s groundbreaking song was not released until 1958. Sizing up the confusion, Marty wryly quips, “I guess you guys aren’t ready for that yet, but your kids are gonna love it!”

A sneak peek at the future of corporate culture can be as jaw dropping and revelatory as that unexpected glimpse at the future of rock ‘n’ roll was to the crowd at that 1950s sock hop. Nevertheless, boardrooms and shareholders alike best begin to understand and appreciate the underpinnings of the B Corporation (B Corp) and Benefit Corporation movement.

Although large corporations may not be quite ready for it today, the next generation of entrepreneurs and investors are going to love it.



For decades, the first commandment of corporate purpose was to maximize shareholder value. For directors and top executives, too often that means short-term financial return or profits. In the case of a corporate takeover, the mantra was “sell to this highest bidder!” When there is a conflict between some noble social purpose and shareholder return, the notion of shareholder primacy rules the day, as well as the court cases.



The corporate form in which craigslist operates, however, is not an appropriate vehicle for purely philanthropic ends, at least not when there are other stockholders interested in realizing a return on their investment. Jim and Craig opted to form craigslist, Inc., as a for-profit Delaware corporation and...having chosen a for-profit corporate form, the...directors are bound by the fiduciary duties and standards that accompany that form. **Those standards include acting to promote the value of the corporation for the benefit of its stockholders.**

– eBay’s minority shareholder lawsuit against craigslist, 2010

A business corporation is organized and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end. The discretion of directors is to be exercised in the choice of means to attain that end, **and does not extend to a change in the end itself, to the reduction of profits, or to the non-distribution of profits among stockholders in order to devote them to other purposes.**

– Dodge vs. Ford Motor Company, 1919

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But “The Times They Are A-Changin’!” Millennials and other demographic groups are driving a new paradigm based on sustainability and enduring values. Socially minded entrepreneurs are looking to solve world problems while earning a profit. They want to act socially responsible, make a positive impact, and



make some money in the process. Mission and values are ingrained in the business’s genetic code. Modern entrepreneurs consider the reach and responsibilities of their business as extending beyond shareholders to stakeholders such as employees, customers, the community, and the environment.

Likewise, a new breed of investors and investment managers incorporate environmental, social, and governance (ESG) issues into their analyses and decision making. The bottom line has morphed into a triple bottom line in which people and the planet have equal footing with profits. For them, the “return” on an investment is more than a matter of a financial calculus; it incorporates social costs and benefits as well. What it means to be a Good Corporation is evolving with moral and ethical dimensions supplementing economic metrics.

A B Corp refers to a certification conferred by B Lab, a global nonprofit organization headquartered in Pennsylvania. For-profits of all legal business structures (S Corps., C Corps., limited liability companies [LLCs], and limited and general partnerships) are eligible for B Corp certification. To be granted this certification, a business must first complete an online assessment for social and environmental performance and receive a qualifying score. A review process with conference calls and supporting documentation is required to meet B Lab’s criteria for positive impact in the areas of governance, employees, community, and the environment. Once those conditions are satisfied, the company is required to incorporate its stakeholder commitments into the company’s governing documents and the fiduciary duties of directors and officers.

### A Few “Good” Definitions

- **B Corp:** A certification granted by B Lab; analogous to a Fair Trade certification
- **Benefit Corporation:** A corporate form allowed in 34 U.S. states whereby creating a public benefit is an explicit corporate goal
- **Bene:** Latin root for good
- **“Johnny B Goode”:** The seventh greatest rock ‘n’ roll song of all time according to the *Rolling Stone* magazine; With “All Apologies” to Marty McFly, written and first performed by Chuck Berry
- **Triple Bottom Line (TBL or 3BL):** A broad notion of business value in which positive impact on people, planet, and profits are measurable objectives

B Corp	Mission/Public Benefits
<b>Patagonia</b>	<ul style="list-style-type: none"> <li>• Sustainability, stewards for the environment</li> <li>• “Worn wear” clothing for repair, reuse, and recycling of outdoor clothing</li> <li>• 10% of profits to charity</li> </ul>
<b>Ben &amp; Jerry’s</b>	<ul style="list-style-type: none"> <li>• Tradition of engaging in “critical, global economic and social missions”</li> <li>• Early policy in which no employee could earn more than 5 times the lowest paid salary</li> <li>• Increase global happiness quotient with tasty ice cream and creatively named flavors</li> </ul>
<b>Greyston Bakery</b>	<ul style="list-style-type: none"> <li>• Profits go to its charitable foundation which supports low-income housing</li> <li>• Open hire policy for those who have difficulty finding employment</li> </ul>
<b>Warby Parker</b> (online retailer of eyeglasses/sunglasses)	<ul style="list-style-type: none"> <li>• Home try-on program</li> <li>• “Buy one, give one” – for each pair of glasses sold</li> <li>• The company pays for the production of another pair for its non-profit arm, which distributes the glasses to those in need in developing countries.</li> </ul>

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Benefit Corporations are a specific type of corporation authorized by law in 34 states and the District of Columbia and specifically designed for mission-driven businesses. (Think of the term “benefit” to distinguish Benefit Corporations from the certification for B Corporations.) The goals of Benefit Corporations — in addition to making a profit — include creating a public benefit and having a positive impact on employees, the community, and the environment.

Most corporate formalities like the rules for the election of directors and the holding of annual meetings are the same for Benefit Corporations as they are for standard corporations. Officers and directors, however, are accountable to an expanded purpose; they are legally obligated to affirmatively consider the interest of other stakeholders (its workforce, the community, and the environment). There is also a transparency requirement to report regularly on their progress in the pursuit of the public benefit. Although a Benefit Corporation’s purpose is about more than maximizing the financial return of its shareholders, it is taxed on its profits just like any other for-profit business.



Thus, any business entity can choose to apply for (and potentially obtain) B Corp-certified status, and in certain states that entity can incorporate as a Benefit Corporation. Some corporations can be both B Corps and Benefit Corporations; and a business entity can be either one without being the other.

### Other business entities for good

L3Cs or Low-Profit Limited Liability Companies are another business form for social enterprise and social entrepreneurship worth mentioning in this context. The stated purpose of L3Cs is to perform a socially beneficial purpose without maximizing profits. L3C’s articles of organization are required by law to meet the Internal Revenue Service’s (IRS’s) standards for program-related investments or PRIs. PRIs (and its subset of L3Cs) are a unique means by which private foundation charities can meet their 5% grant-writing requirement, not by writing checks to outside charities, but by making investments in a company that performs a public service. L3Cs, therefore, represent an ideal way for private foundations to invest in businesses aligned with their philanthropic mission.



This blurring of lines between the for-profit and nonprofit sectors — philanthropy and capitalism — continues to gain momentum. In response to lobbying by Newman’s Own Foundation (a 501(c)(3) private foundation), the newly enacted Bipartisan Budget Act of 2018 makes it possible for a private foundation to own and operate a business as long as the foundation owns 100% of the voting stock of the business, all profits are paid to charity, and certain independence requirements are met.

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Whether a B Corp, Benefit Corporation, or another variety of a “Good Corporation,” what are some of the core principles and defining characteristics of this movement? Consider the following:

	<p><b>Governance</b></p> <p>There is an emphasis on transparency and accountability on the part of ownership, officers, and directors. Diversity and inclusion are also key values.</p>
	<p><b>Employees/Workforce</b></p> <p>Career development, fair wage practices, wages of workforce in relation to chief executive officer (CEO), safety, work environment, and ownership and wage incentives are significant dimensions. People want to work here, and employees are engaged with their work.</p>
	<p><b>Community</b></p> <p>Suppliers, customers, and community groups are stakeholders, and their values, practices, and loyalty are critical to the business. Sales terms are fair, and privacy is respected. Somewhat reminiscent of a benign 1950s company town, the corporation is an integral part of the social fabric of the community. Employees are actively engaged in volunteerism. There is cooperation and coordination with local schools and educational institutions</p>
	<p><b>Environmental Footprint</b></p> <p>Environmental footprint in terms of energy use, resource utilization, manufacturing processes, pollution control, sustainability, and recycling efforts are as beneficial as possible.</p>
	<p><b>Business Model</b></p> <p>A new breed of social entrepreneur is motivated by change, social impact, and making the world a better place. The products their companies produce are designed to treat disease and illness more effectively or perhaps to accelerate the transition to sustainable transportation. The good company may target underserved geographies or demographic groups, perhaps making micro-financing or micro-credit available to them.</p>

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Is the Good Corporation movement simply a utopian ideal combined with some marketing buzzwords? Like the high school dance audience hearing “Johnny B. Goode” three years early, is this all too much too soon? Or, are there tangible benefits of Benefit Corporations (or B Corps) for entrepreneurs, investors, and society? And, is it possible to scale the value proposition of these Good Corporation entities through publicly traded markets?

A triple bottom line value proposition simply resonates with the entrepreneur focused on pursuing profits with a beneficial purpose. Unlike their predecessors beholden to shareholder primacy, modern entrepreneurs are aware of and sensitive to negative externalities associated with pure profit-making enterprises. They do not want to make money at the expense of future generations. In addition to making some money, they are mission-driven to solve social problems and make the world a better place in which to live. The definitions of capital and return on capital have changed, encompassing dimensions of human, social, and natural capital as well as financial capital.

Entrepreneurs clearly benefit by extending their reach from shareholders to stakeholders. Consumers are more loyal when they know and appreciate the ethos and history of the company and its products. The early stage entrepreneur dramatically enhances engagement by creating a workplace environment in which employees are proud and excited to show up each day. All things equal with respect to costs (and sometimes when they are not), entrepreneurs-with-a-purpose will do business with a growing community of vendors, contractors, and customers who responsibly interact with each other and the planet.

From the perspective of the investor, the advantages of the Good Corporation are found in the emphasis on long-term success and sustainability. At the heart of the Benefit Corporations and B Corp movement are a good business plan and good governance practices. Short-termism and a short-sighted focus on next quarter’s profits are bound to collapse under their own weight. Poor governance discipline and a myopic view on profits can lead to an implosion of shareholder value in the manner of Enron, WorldCom, and AIG. The triple bottom line doctrine, on the other hand, is the perfect inoculation against corporate scandal, environmental litigation, and other forms of corporate apocalypse.

Venture capitalists are looking to invest in a business with enlightened leadership and a sustainable business plan. Investors do not need to concede financial return in order to produce social return. Several empirical studies have already shown that portfolios with high environmental, social, and governance scores outperform other portfolios in the long run. A number of certified B Corps and Benefit Corporations have already raised billions of dollars in private equity and venture capital. Having a public purpose codified in the charter of the Good Corporation offers consistency with investment philosophies of more mainstream sources of capital.

### Is the “Good Corporation” ideal merely a pipe dream?

Perhaps in form, but not in substance, as an increasing number of public corporations are paying keen attention to their environmental footprint, diversity and inclusion practices, and employee engagement policies.



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Imagine taking that DeLorean 30 years into the future to study the defining qualities of successful multinational corporations (a little too “Ironic”). Is there any doubt you will find the innate characteristics of the B Corp/ Benefit Corporation embedded in the DNA of their larger, corporate brethren? The successful corporation of 2048 will indeed be a force for good. Led by enlightened, holistic thinkers, the corporation will employ an engaged and fairly compensated workforce; it will promote harmonious relationships with the community, customers, and vendors; it will carefully consider its impact on the ecology of the planet; and it will be committed to provide products and services that improve society and benefit the corporation’s many stakeholders.

Ready or not for the “Johnny B. Goode” of Corporations, the kids are gonna to love it.

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For more information, please contact your Key Private Bank Advisor.



## About the Author

As Director of Family Wealth Consulting, Tim Malloy focuses on the estate, philanthropic, and business succession needs of Key Private Bank clients. He has over 30 years of experience in the legal and financial services industries, with the last 20 coming at Key Private Bank specializing in working with high-net-worth individuals, business owners, and corporate executives.

Tim specializes in providing strategic advice for business ownership transitions, complex financial and estate planning, establishment of philanthropic foundations, and the formation of trusts to mitigate taxes and help Key Private Bank clients accomplish their values-based financial goals.

Tim graduated cum laude (BA in Philosophy) from the University of Notre Dame and holds a JD from Georgetown University Law Center. He is a Certified Exit Planning Advisor and a Chartered Advisor in Philanthropy.

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