

Northwestern Journal of International Law & Business

Volume 37

Issue 1 *Winter*

Winter 2017

Benefit Corporations in the United States and Community Interest Companies in the United Kingdom: Does Social Enterprise Actually Work?

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Michelle Cho, *Benefit Corporations in the United States and Community Interest Companies in the United Kingdom: Does Social Enterprise Actually Work?*, 37 Nw. J. INT'L L. & BUS. 149 (2017).
<http://scholarlycommons.law.northwestern.edu/njilb/vol37/iss1/4>

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Benefit Corporations in the United States and Community Interest Companies in the United Kingdom: Does Social Enterprise Actually Work?

*Michelle Cho**

Abstract: Social enterprise is becoming an increasingly popular and profitable venture in the United States and around the world today. In the United States, the benefit corporation model leads this movement, offering incorporating companies a positive image, a platform to build consumer trust, and the flexibility to pursue social good. However, though the benefit corporation form comes with the aforementioned branding advantages, states' benefit corporation laws as they currently exist generally lack adequate oversight mechanisms. Consequently, third parties like B Lab play an important role as the primary enforcement entities ensuring that benefit corporations adhere to their stated purposes. The U.S. benefit corporation could gain from a close analysis of the U.K. community interest corporation, as the latter model places greater emphasis on impacts to local community and operates under strict government oversight. Simultaneously, U.K. community interest corporations could enhance their efficacy by incorporating benefit corporations' emphasis on global branding. By gaining from the other's strengths, U.S. benefit corporations and U.K. community interest corporations could gain considerable influence, not only as profitable and community-centered businesses but also as global leaders in today's growing social enterprise movement.

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I. INTRODUCTION

Since the advent of B Lab, a nonprofit corporation dedicated to certifying corporations who wish to identify as “B Corps”¹ in 2007, more than a thousand companies across the United States have either incorporated or reincorporated as “benefit corporations.”² Benefit corporations are companies dedicated to a “triple bottom line” of “people, planet, and profit,” and have become some of the fastest growing companies in the United States.³ Though social enterprise has become increasingly well-recognized in the corporate sphere both internationally and in the United States, the concept is relatively novel and requires additional study, governance, and attention.

The emergence of the U.S. benefit corporation coincided directly with the emergence of a similar hybrid corporate structure in the United Kingdom: the community interest corporation (“CIC”).⁴ A conjunctive examination of U.S. benefit corporations and U.K. CICs demonstrates that social enterprise has been a widely growing and profitable venture in both countries. This success is largely due to strict incorporation and termination measures, as well as evolving systems of external third-party oversight.

In the United States, benefit corporations are business entities that place purpose over profits, or at least purpose *alongside* profits, while effectively capitalizing on this social “do-good” status.⁵ In the U.K., successful CICs consist of local companies devoted to serving the immediate community. While CICs, like benefit corporations, focus on aligning profit and purpose, they are not as concerned with attaining global recognition under the social

¹ It is important to note from the onset that “benefit corporations” are not the same as “B Corps.” In this Note, the former will refer to corporate entities individual state legislation recognizes as social impact companies, while the latter refers to a trademark owned by nonprofit organization, B Lab, as a label for social impact companies that meet its “B Corp” standards. See James Surowiecki, *Companies With Benefits*, NEW YORKER, Aug. 4, 2014, at 23.

² *Id.* (“There are now more than a thousand B corps in the U.S., including Patagonia, Etsy, and Seventh Generation. And in the past four years twenty-seven states have passed laws allowing companies to incorporate themselves as ‘benefit corporations’—which are similar to B corps but not identical.”).

³ See Efreeburg, *Good Growth: 26 B corps on the Inc 5000 List*, B CORPORATION: THE BLOG (Aug. 21, 2015), <https://www.bcorporation.net/blog/good-growth-26-b-corps-on-the-inc-5000-list>; see also Mary Turck, Opinion, *Corporations That Benefit People and the Planet*, AL JAZEERA AMERICA (Mar. 13 2015), <http://america.aljazeera.com/opinions/2015/3/corporations-that-benefit-people-and-the-planet.html> (“B Corporations pursue a triple bottom line: profit for shareholders, good for the environment and benefits for society.”).

⁴ REGULATOR OF COMMUNITY INTEREST COMPANIES, ANNUAL REPORT 2012/2013, 6, 35 (2013), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/243869/13-p117-community-interest-companies-annual-report-2012-2013.pdf (“The UK is widely recognized as having the most highly evolved social enterprise sector in the world and this is due, in no small part, to CICs.”).

⁵ Surowiecki, *supra* note 1.

enterprise label.⁶ These differing motivations are crucial in determining whether these forms of social enterprise actually work. Because CICs have an inherently local focus, they have more effective accountability and oversight systems in place. In contrast, benefit corporations lack this local accountability and instead place greater focus on maximizing global profits based on “B Corp” branding. Thus, benefit corporations require additional accountability to guarantee sustainable, reliable, and global impact. As such, benefit corporations should follow the lead of CICs in this regard.

The inverse, however, is also true. While benefit corporations focus disproportionately on branding, CICs let this aspect fall to the wayside, which can be problematic for a number of reasons. With increased attention to the CIC brand,⁷ CICs could expand local positive impacts to national, or even international, levels. Thus, the differences between the two entities reveal that each respective system can gain from the other. Combining the effective aspects of both social enterprise models would therefore ensure that social enterprise works in the long-term.

In order to examine the thesis laid out in the preceding paragraph, this Note will proceed as follows. Part I will discuss the status of benefit corporations in the United States by focusing on two U.S. benefit corporations and explain key criticisms of the current U.S. benefit corporation model. Part II will discuss the status of CICs in the United Kingdom by focusing on two U.K. CICs, address key criticisms of the current CIC model, and identify key differences from the U.S. benefit corporation model. Part III will introduce recommendations to improve both models in their respective countries, addressing the core issue raised in this Note—whether these two forms of social enterprise actually work and what can be done to improve social enterprise legislation. Finally, Part IV will conclude by explaining why attention to the mentioned recommendations will become increasingly important to the globalized economy.

⁶ While the definition of “social enterprise” varies, this Note will consider all legally recognized businesses, which have acquired the proper registration, filings, and requirements, to fall under this “social enterprise” heading. For a more in-depth discussion of the varying definitions of “social enterprise,” see J. Haskell Murray, *Choose Your Own Master: Social Enterprise, Certifications and Benefit Corporation Statutes*, 2 AM. U. BUS. L. REV. 1, 4 n. 4 (2012); see also HOUSE OF COMMONS LIBRARY, BRIEFING PAPER NUMBER 03426, COMMUNITY INTEREST COMPANIES, 4 (UK) (including a description of “social enterprise” provided by the House of Commons Library); SUSAN M. MANWARING & ANDREW VALENTINE, SOCIAL ENTERPRISE IN CANADA: STRUCTURAL OPTIONS 1, 4 (2011).

⁷ The term *brand* in this Note does not refer to a commonly recognized or registered trademark, but instead refers to the favorable public image that results when a company incorporates as either a benefit corporation or community interest corporation.

II. UNITED STATES: BENEFIT CORPORATIONS

A. Background

In order to become a benefit corporation in the United States, a business entity must pursue the general public benefit, file annual benefit reports, and measure its progress against third-party standards.⁸ A “benefit corporation” is a corporate structure offered by an individual state, under statute.⁹ Benefit corporations are only available in thirty U.S. states and Washington, D.C.¹⁰

Benefit corporation is not synonymous with B Corp. B Corps are defined as companies who have received B Corp certification from the nonprofit organization B Lab, one of the most well recognized third-party organizations and proponents of benefit corporation legislation in the United States.¹¹ B Lab requires certified B Corps and B Corp applicants to take the B Impact Assessment Survey¹² and also uses various rating systems (e.g. the Global Impact Investing Rating System (GIIRS) and the Impact Reporting and Investment Standards (IRIS)) to ensure that each certified B Corp meets both B Lab and organization-specific standards.¹³

According to B Lab, the B Impact Assessment Survey aims to identify a company’s “current impact” via an “objective, comprehensive rating”¹⁴ after examining four impact areas: governance, workers, community, and environment.¹⁵ In contrast, reporting indicators like IRIS assess whether a company is reporting its societal impacts in the most efficient way.¹⁶ B Lab

⁸ See B Lab, *FAQ*, BENEFIT CORP., <http://benefitcorp.net/faq> (last visited Dec. 19, 2016).

⁹ *Id.*

¹⁰ See B Lab, *Benefit Corporations & Certified B Corps*, BENEFIT CORP., <http://benefitcorp.net/businesses/benefit-corporations-and-certified-b-corps> (last visited Dec. 19, 2016).

¹¹ See B Lab, *About B Lab*, BCORPORATION.NET, <https://www.bcorporation.net/what-are-b-corps/about-b-lab> (last visited Dec. 19, 2016) (“B Lab is a nonprofit organization that serves a global movement of people using business as a force for good”).

¹² See B Lab, *Performance Requirements*, BCORPORATION.NET, <https://www.bcorporation.net/become-a-b-corp/how-to-become-a-b-corp/performance-requirements> (last visited Dec. 19, 2016).

¹³ See Murray, *supra* note 6, at 31.

¹⁴ B Lab, *Frequently Asked Questions: Top 10*, B IMPACT ASSESSMENT, <http://bimpactassessment.net/how-it-works/frequently-asked-questions/top-10#how-does-this-relate-to-other-impact-measurement-systems> (last visited Dec. 19, 2016).

¹⁵ See B Lab, *2011 B Impact Report: Patagonia*, B IMPACT ASSESSMENT, <http://bimpactassessment.net/patagonia-2011-report> (last visited Dec. 19, 2016). The “governance” category examines accountability and transparency; the “workers” category examines compensation, benefits & training, worker ownership, and worker environment; the “community” category examines community products and services, community practices, suppliers and distributors, local, diversity, job creation, and civic engagement and giving; and the “environment” category examines environmental products and services, environmental practices, land, office, plant, energy, water, materials, emissions water, waste, and suppliers and transportation.

¹⁶ See B Lab, *The Standards*, B IMPACT ASSESSMENT, <http://bimpactassessment.net/how-it-works/frequently-asked-questions/the-standards> (last visited Dec. 19, 2016) (“[Platforms like IRIS] are

states that both types of reporting indicators are “critical” to its B Impact Assessment.¹⁷ Benefit corporation legislation generally recognizes B Corps as an acceptable type of benefit corporation entity and B Lab’s B Impact Assessment Survey as an acceptable third-party standard.

In contrast, general benefit corporations are held to lower accountability standards than certified B Corps. While benefit corporation statutes largely require corporations to publish and publicize annual benefit reports measured against third-party standards, this requirement merely serves as an unenforced preliminary assessment tool.¹⁸ Thus, a benefit corporation does not necessarily have to meet the third-party standard it has adopted, unless externally required by the third party (like B Lab), in order to retain its status under the benefit corporation brand.¹⁹

B. The Benefit Corporation Branding Advantage as Exemplified by Etsy and Patagonia

In the United States, one of the key advantages of becoming a benefit corporation is branding. Whether classified as a certified “B Corp” under B Lab’s standards or as a legally recognized benefit corporation in the eyes of the law, the benefit corporation label essentially opens up partnership opportunities with already existing benefit corporations that favor doing business with similarly socially conscious companies. Further, registered benefit corporations can effectively utilize marketing strategies that advertise the company’s socially conscious status to the general public. These companies can convince consumers that by purchasing from the company, a consumer is not merely purchasing for one’s own benefit but contributing to a greater social good. Several social enterprise companies have successfully

likely to define specific way[s] to report impact metrics, [like] how to best report a company’s carbon emissions, so that all carbon reports in the future can be easily comparable to each other.”)

¹⁷ *Id.*

¹⁸ See B Lab, *supra* note 8.

¹⁹ However, most, if not all, Certified B Corps are simultaneously benefit corporations because B Lab requires Certified B Corps to apply for benefit corporation status if the state in which the company has incorporated has passed benefit corporation legislation. Conversely, not all benefit corporations are Certified B Corps. See Brady Dale, *Over Etsy’s B Corp status, who will bend: B Lab or Etsy?*, TECHNICAL.LY: BROOKLYN (Mar. 16, 2015, 2:47 pm), <http://technical.ly/brooklyn/2015/03/16/etsy-ipo-b-corp-status/>; see also B Lab, *Corporation Legal Roadmap*, BCORPORATION.NET, <https://www.bcorporation.net/become-a-b-corp/how-to-become-a-b-corp/legal-roadmap/corporation-legal-roadmap> (last visited Dec. 19, 2016).

capitalized on this benefit, including Etsy,²⁰ Patagonia,²¹ Ben & Jerry's,²² and Warby Parker.²³

The DIY (“Do It Yourself”) Internet trend, which allowed consumers to create their own products, home goods, and styles at home, quickly gave rise to Etsy, “the online bazaar of handcrafted goods.”²⁴ When Etsy obtained B Corp certification in May 2012, the online goods site originally scored 80.1 out of 200 on B Lab’s B Impact Assessment survey, barely passing B Lab’s certification threshold of 80 by only 0.1 points.²⁵ While the score may have troubled both consumers and employees at first, Etsy’s Chief Executive, Chad Dickerson, portrayed the score as an opportunity to publicly demonstrate Etsy’s growth in the social enterprise realm. Dickerson stated, “What the certification allowed us to do was identify various areas in the company that we wanted to improve upon.”²⁶

Four years later, in 2016, Etsy’s B Impact Score was 127,²⁷ almost 47 points higher than its initial scoring. In 2013, B Lab honored Etsy with its “Race to the Top” award for “largest improvement in a B Corp’s score.”²⁸ Dickerson stated that the company’s B Corp certification and improved B Impact Score “helped with brand[ing] . . . [and] increase[d] a sense of trust in Etsy if you’re a customer of the business—that you’re going to have a good experience, that Etsy is doing the right thing and that Etsy will be here for the long term.”²⁹ Thus, Etsy’s B Corp status, along with its increased B Impact score, established Etsy as a more sustainable organization in the eyes of consumers and employees alike.

In addition to implementing internal changes to improve its B Corp score, Etsy also became a publicly traded company on April 16, 2015. Etsy considered the ramifications of this decision to go public and reconciled them with the possibility of remaining a publicly held *benefit corporation*. For

²⁰ See B Lab, *B Impact Report: Etsy*, BCORPORATION.NET, <http://www.bcorporation.net/community/etsy> (last visited Dec. 19, 2016).

²¹ See B Lab, *B Impact Report: Patagonia*, BCORPORATION.NET, <https://www.bcorporation.net/community/patagonia-inc> (last visited Dec. 19, 2016).

²² See B Lab, *B Impact Report: Ben & Jerry’s*, BCORPORATION.NET, <https://www.bcorporation.net/community/ben-and-jerrys> (last visited Dec. 19, 2016).

²³ See B Lab, *supra* note 21.

²⁴ Jena McGregor, *What Etsy, Patagonia and Warby Parker have in common*, WASH. POST (April 20, 2015), <https://www.washingtonpost.com/news/on-leadership/wp/2015/04/20/what-etsy-patagonia-and-warby-parker-have-in-common/>.

²⁵ Kate Abnett, *Fashion’s B Corporations Blend Business with Social Good*, BUS. OF FASHION (Oct. 26, 2014, 21:17), <http://www.businessoffashion.com/articles/intelligence/fashions-b-corporations-blend-business-social-good>.

²⁶ *Id.*

²⁷ See B Lab, *supra* note 20.

²⁸ See Abnett, *supra* note 25.

²⁹ See *id.*

instance, Etsy noted under “Risk Factors” in its Initial Public Offering filing that, “[O]ur reputation could be harmed if we lose our status as a Certified B Corporation, whether by our choice or by our failure to meet B Lab’s Certification requirements. Likewise, our reputation could be harmed if our publicly reported B Corporation score declines.”³⁰ Further, under its “Our Values” section in the same IPO filing, Etsy clearly identified its Certified B Corporation status as a key value “integral to everything we do,” including “to minimize the harm and maximize the benefit that we have on people and the planet.”³¹ Etsy’s clear and direct references to B Lab even within its official corporate filings demonstrate how profoundly Etsy values its Certified B Corp status as part of its general brand.

Cementing one’s brand as a benefit corporation not only piques the interest of socially conscious consumers, but also attracts socially conscious businesses. Elissa Loughman, manager of product responsibility at Patagonia, shared that the company bases its collaboration decisions on the B Corp statuses of other businesses, vendors, and suppliers. As such, in Patagonia’s eyes, a company’s B Corp status “adds value.”³² Patagonia’s overall B Impact Score is 114/200³³ and the company’s website emphasizes its shared goal with B Lab to “[g]et[] brands to reexamine their fiduciary responsibility and . . . to change the nature of business by changing corporate law.”³⁴

Based on these examples, one cannot understate the advantages of benefit corporation registration and B Corp certification on a company’s global branding and marketing strategy. Third-party entities like B Lab that conduct audits, suggest improvement measures, and present awards to certified B Corps essentially allow benefit corporations to publicly improve as socially conscious companies and simultaneously maximize brand recognition and partnership outlets through that process.

C. Lack of Accountability and Oversight: The Key Flaw of Benefit Corporations

Critics of benefit corporations point out flaws under two general categories: 1) lack of accountability in existing benefit corporation

³⁰ Etsy, Inc., Registration Statement (Form S-1) at 15, (March 4, 2015).

³¹ *Id.* at 97.

³² Abnett, *supra* note 25 (“[Patagonia does] purchase products from outside vendors and so that can help us to decide who we want to partner with in terms of other businesses and other products . . . If a company has B Corp status, we definitely notice it and that adds value.”).

³³ *See* B Lab, *supra* note 21.

³⁴ B Lab, PATAGONIA, <http://www.patagonia.com/us/patagonia.go?assetid=68413> (last visited Dec. 19, 2016).

legislation and 2) lack of oversight by benefit corporation directors. Insufficient clarity in these two categories leads to “faux corporate social responsibility.”³⁵ According to Kyle Westaway, a leading blogger and adviser to New York benefit corporations, “corporate social responsibility” refers to “responsible corporate decision-making that considers the broad impact of corporate actions on people, communities and the environment.”³⁶ The language within state-specific benefit corporation legislation remains vague and overarching, unable to provide sufficient accountability. In most states, benefit corporation legislation requires annual benefit reports prepared in line with third-party standards. The legislation itself does not specify which third party to use or how to ensure that the third-party assessment would be credible.³⁷ Without guidelines specifying what an annual benefit report should contain or which third-party standards should apply, a corporation is only required to vaguely pursue the “general public benefit.” Though statutes require benefit corporations to “disclose the formula by which [each] standard is computed” and that the selected standard “assess the

³⁵ Murray, *supra* note 6, at 33:

[W]ithout at least some minimal level of board accountability, the benefit corporation statute could be an avenue to greenwashing and faux CSR rather than an antidote to them. In fact, if an appropriate accountability framework is not erected, benefit corporations could allow for an unprecedented amount of rent-seeking and could allow greater management entrenchment than permitted in other entity forms;

see also Rae André, *Benefit Corporations at a Crossroads: As Lawyers Weigh in, Companies Weigh Their Options*, BUS. HORIZONS 243, 243 (2015):

[B]enefit corporations do not empower stakeholders, and therefore are not substantially different from traditional corporations . . . [instead], paradoxically, benefit corporations actually inhibit corporate social responsibility efforts by perpetuating the myth that business corporations do not have the flexibility to pursue social missions, and by claiming to, but failing to empower stakeholders . . . [and] enhances public cynicism about all corporations by creating competing sets of ‘beneficial’ and ‘other’ corporations.

³⁶ Kyle Westaway, *Balancing Purpose and Profit: Legal Mechanisms to Lock in Social Mission for “Profit and Purpose” Businesses Across the G8*, TRUST.ORG 130 (Dec. 2014), <http://www.trust.org/contentAsset/raw-data/1d3b4f99-2a65-49f9-9bc0-39585bc52cac/file>. Westaway also notes that, in the United Kingdom, corporate social responsibility (CSR) is by in large voluntary though laws and regulations that provide a general framework for CSR. *Id.*

³⁷ For instance, New York’s benefit corporation statute requires a benefit corporation to deliver an “annual benefit report” that includes:

an assessment of the performance of the benefit corporation, relative to its general public benefit purpose assessed against a third-party standard applied consistently with any application of that standard in prior benefit reports or accompanied by an explanation of the reasons for any inconsistent application and, if applicable, assessment of the performance of the benefit corporation, relative to its specific public benefit purpose or purposes.

N.Y. Bus. Corp. LAW § 1708 (McKinney 2012); see also B Lab, *State by State Status of Legislation, BENEFIT CORP.*, <http://benefitcorp.net/policymakers/state-by-state-status> (last visited Dec. 19, 2016) (showing third-party legislation statuses as well as assessment and oversight requirements for all thirty-one states that have currently passed benefit corporation legislation).

effects of the corporation's decision on employees, suppliers, customers, community, and the environment—the stakeholders,” the ambiguous definition of what actually constitutes “general public benefit” obscures a consistent assessment across benefit corporations in a particular state, especially by the average citizen.³⁸

This overarching ambiguity results from state legislatures' deference to B Lab and similar third-party entities that have led the benefit corporation movement and the legislatures' desire to offer benefit corporations flexibility. B Lab even provides a template for state legislatures that wish to enact benefit corporation legislation, proposing language that gives incredible discretion to third parties.³⁹ While the proposed template includes additional explanation of why third-party standards are important, the versions adopted by most state legislatures lack this explanation. Instead, most legislation includes only a vague requirement to measure against third-party standards without specifying which third parties are credible or appropriate.⁴⁰

Further, most benefit corporation statutes fail to include dissenters' rights provisions. As such, neither the directors nor the corporation itself will be sanctioned if the company strays from its initial social purpose.⁴¹ Under this framework, there is truly no option for accountability. Even if third-party assessments show that a benefit corporation is performing in violation of its stated social purposes, the corporation faces no threat of liability—at least directly under statute. Instead, a third party, like B Lab, must threaten the loss of its B Corp certification for any accountability to exist at all. In this way, benefit corporations that have incorporated under statutes without dissenters' rights provisions face accountability only if they value the third-party “B Corp” or equivalent brand.

³⁸ Thomas J. White III, *Benefit Corporations: Increased Oversight Through Creation Of The Benefit Corporation Commission*, 41 J. LEGIS. 329, 344 (2015) (“One would think the legislation would pronounce a defined third-party standard in order to provide the market with an objective point of comparison,” but “[i]nstead, the benefit corporation is given free range to hire a third-party to draft said standard [and] [s]o long as the standard meets the statutory requirements, it will prove sufficient.”).

³⁹ See B Lab, *Model Benefit Corporation Legislation*, BENEFIT CORP. (Apr. 4, 2016), http://benefitcorp.net/sites/default/files/documents/Model_Benefit_Corp_Legislation.pdf (“The requirement in section 401 that a benefit corporation prepare an annual benefit report that assesses its performance in creating general public benefit against a third-party standard provides an important protection against the abuse of benefit corporation status.”).

⁴⁰ But see J. William Callison, *Putting New Sheets on A Procrustean Bed: How Benefit Corporations Address Fiduciary Duties, the Dangers Created, and Suggestions for Change*, 2 AM. U. BUS. L. REV. 85, 92 (2012) (Callison argues that B Lab's model legislation is “too rigid and uncompromising” and is a one-size-fits-all approach to benefit corporation legislation that “will ultimately discourage corporations from becoming benefit corporations and will discourage outside investment in benefit corporations and consumer validation of benefit corporation status.”).

⁴¹ See Westaway, *supra* note 36, at 129.

The outcome is not much better in the few states that do include dissenters' rights provisions in their respective benefit corporation legislation. Though benefit corporation legislation in these jurisdictions theoretically provides a right of action against the corporation's board of directors should they fail to pursue the company's stated social goals, only one such lawsuit has ever been filed.⁴² This lack of litigation under dissenters' rights provisions makes unclear whether these dissenters' rights provisions are meaningful, though theoretically actionable. Despite the existence of these dissenters' rights provisions, both state legislatures and potential dissenters alike have deferred to third-party entities to rectify statutory violations. In practice, accountability has become the responsibility of third parties.⁴³

This first criticism about the vagueness of benefit corporation legislation understates the effectiveness of benefit corporation legislation when coupled with enforcement by credible and responsible third-party entities like B Lab. Strong internal metrics within a corporation, continued audits and oversight by third parties, and annual benefit reports are currently preventing faux corporate social responsibility and will continue to effectively do so in the future. A successful benefit corporation that has realized the benefits of social enterprise branding becomes directly accountable not only to a third party, but to the public. The ramifications of being directly liable to the public, the audience to which the company promised the "general public benefit" in the first place, guarantee an inability to outright shirk responsibility. Though legislatures should certainly improve benefit corporation legislation with clearer dissenters' rights and procedural complaint processing provisions, if a benefit corporation strays from its stated social purposes, third-party assessments will publicly expose the corporation to the public and thereby coerce change. If the company intends to continue operating under the benefit corporation brand, it must comply.

However, the current lack of oversight and accountability in U.S. benefit corporations does not solely stem from statutory language—it also results from ambiguous fiduciary responsibilities of corporate directors.⁴⁴

⁴² Jesse Finrock, *Social Entrepreneurship and Uncorporations*, 2014 U. ILL. L. REV. 1867, 1881.

⁴³ See Callison, *supra* note 40, at 94–95.

⁴⁴ Murray, *supra* note 6, at 27–28 (citing Model Benefit Corp. Legis. § 301(a)):

Directors of benefit corporations are told they *must* consider the effects of any action on such diverse groups as: (1) shareholders; (2) employees . . . (3) customers; (4) community and society; (5) "the local and global environment"; (6) "the short and long term interests of the benefit corporation"; and (7) "the ability of the benefit corporation to accomplish its general public purpose and any specific public benefit purpose." Since Biblical times, it has been well-recognized that people cannot properly serve two masters, much less seven or more;

see also Shelly Alcorn, *Benefit Corporations: A New Formula for Social Change*, ASAE: THE CENTER FOR ASSOCIATION LEADERSHIP, https://www.asaecenter.org/resources/articles/an_magazine/2012/april-

Benefit corporation legislation does not specify how corporate directors must fulfill their obligation that the benefit corporation simultaneously pursues profits and purpose. In fact, the lack of distinction from the fiduciary duties of traditional, nonbenefit corporations imply that ordinary nonbenefit corporations could technically achieve the same goals with the right directors. The business judgment rule for traditional corporations would allow for sufficient flexibility for corporate directors to carry out social good even without this new corporate form.⁴⁵

In reality, this criticism is merely theoretical. This scenario assumes that benefit corporation directors and traditional corporation directors have the same priorities when making business decisions.⁴⁶ In practice, unlike traditional corporation directors, while benefit corporation directors can and should keep shareholders' interests in mind, they must keep the general public benefit—e.g., clean water, affordable outdoors products, and preservation of environment—as their highest priority. Regardless of emerging conflicts between directors, the primary purpose of a company's existence as a benefit corporation is to preserve these public benefits. Benefit corporation legislation does not outline detailed ways in which directors should achieve a company's stated goals, which allows directors flexibility to pursue the company's primary purpose in ways both the directors and the general public deem most effective. But even with this flexibility, benefit corporation directors must always keep the general public benefit in mind *in addition to* profit motives.

Several nonprofits have also actively denounced benefit corporations.⁴⁷ Such nonprofits assert that benefit corporations do not have accountability because pursuing a "greater public benefit" is too vague. Instead, benefit corporations "blur[] the lines between for-profits and nonprofits, potentially misleading consumers" and causing unnecessary competition for

may/benefit-corporations-a-new-formula-for-social-change (last visited Dec. 19, 2016).

⁴⁵ *But see* Finrock, *supra* note 42, at 1870 (In certain states like California, "the state does not permit flexibility in the statement of a corporate purpose within a corporate charter, constraining incorporators instead to utilize a stock set of phrases that do not clearly admit social entrepreneurship goals" and directors must thus "weigh costs and benefits of their decisions across a large number of constituencies, including shareholders [and] corporate stakeholders.").

⁴⁶ *Id.* (Even for non-social enterprise companies, the business judgment rule only "grants fiduciaries discretion about *how* to serve their shareholder interests, [but] arguably does not give discretion about *whether* to do so [and] [c]onsequently, for decisions that patently sacrifice shareholder welfare for the benefit of other considerations (including social purpose), even the BJR provides wavering protection.").

⁴⁷ In 2012, the California Association of Nonprofits ("CAN") served as a particularly critical voice against proposed legislation that would strengthen benefit corporations. CAN's chief executive officer repeatedly vocalized doubts on "the need to provide 'nonprofit-like preferences' and advantages to for-profit companies that are not legally required to adhere to 'nonprofit-like restrictions and oversight.'" *Id.* at 1884.

nonprofits.⁴⁸ While consumers may admittedly confuse benefit corporations and nonprofits, it is important to note that this confusion will exist only initially. The continued acceptance of new social enterprise forms will make differences between corporate forms clearer, especially as more successful benefit corporations tout the benefit corporation brand. Regardless, if nonprofits truly exist to better communities and promote social good, why denounce benefit corporations—simply another avenue to expand the cumulative pie of doing good?⁴⁹ The Center for Association Leadership acknowledged nonprofit concern about increased competition with benefit corporations for social-good funding, but noted that funding options for both entities “already exist,” so this dynamic is actually “nothing new.”⁵⁰

Finally, as previously mentioned, the entire purpose of recognizing benefit corporations as a formal corporate form is to allow these entities the ability to specially tailor their goals and profit motives for individualized social enterprise purposes. While state-specific statutes, especially dissenters’ rights, third-party standards, and fiduciary-responsibility provisions deserve reevaluation and revision to increase clarity, limiting statutory language to narrow or concretely define what falls under “general public benefit”⁵¹ would defeat the purpose of flexibility. A successful benefit corporation must be able to tailor its goals to promote social good in innovative and effective ways. Current benefit corporation legislation correctly reflects this need for flexibility, although there is room for improvement.

III. UNITED KINGDOM: COMMUNITY INTEREST COMPANIES

A. Background

In the United Kingdom, Community Interest Companies (CICs) have become widely accepted and celebrated forms of incorporation. The CIC derived from the idea of creating a “public interest company”⁵² and was

⁴⁸ See Alcorn, *supra* note 44.

⁴⁹ The Center remarked, “Call us altruistic, but don’t nonprofits want for-profit enterprises to do more good for society and the environment? And, as an association leader, if a benefit entity is helping address the same problem as my association, shouldn’t I be happy about that?” *Id.*

⁵⁰ *Id.*

⁵¹ See, e.g., N.Y. BUS. CORP. LAW § 1706 (McKinney 2012) (“Every benefit corporation shall have a purpose of creating a general public benefit . . . [and] [t]he purpose to create general public benefit shall be a limitation on the other purpose of the benefit corporation, and shall control over any inconsistent purpose of the benefit corporation.”).

⁵² *Analysis: The Rise and Rise of Community Interest Companies*, THIRD SECTOR (June 1, 2015), <http://www.thirdsector.co.uk/analysis-rise-rise-community-interest-companies/governance/article/1348096>.

officially introduced in 2004 under the Companies Audit Investigations and Community Enterprise Act (Companies Act). The Companies Act governs company law in the United Kingdom. On August 11, 2005, the first CIC incorporated in the United Kingdom.⁵³ The 2004 Companies Act became especially effective when “given effect by two subsequent Regulations”: the Community Interest Company Regulations of 2005 and the Community Interest Company (Amendment) Regulations of 2009.⁵⁴ By March 2012, over 6,000 CICs had formally registered and incorporated in the United Kingdom.⁵⁵

While the Companies Act did not offer any specific strategies or mechanisms for CIC governance initially,⁵⁶ the U.K. government made clear that a CIC must publicly file a “CIC Report” within twenty-one months of incorporation (and subsequently, annually), describing the actions the CIC has taken to benefit the community in line with the company’s initially stated community interest purpose.⁵⁷ These reports serve a similar function to the annual benefit reports state legislatures require in the United States.

In order to become a CIC in the United Kingdom, a business entity must develop a “community interest statement” that outlines “what it will do, who it will help and how.”⁵⁸ Further, it must create an “asset lock,”⁵⁹ and have its application approved by the “community interest company regulator.”⁶⁰ The

⁵³ REGULATOR OF COMMUNITY INTEREST COMPANIES, *supra* note 4, at 38.

⁵⁴ HOUSE OF COMMONS LIBRARY, *supra* note 6, at 5.

⁵⁵ REGULATOR OF COMMUNITY INTEREST COMPANIES, *supra* note 4, at 38–39 (Geographically, “[a]lmost 93% of all CICs are registered in England whilst fewer than 600 are registered in total in Scotland, Wales and Northern Ireland.”).

⁵⁶ See Stuart R. Cross, *The Community Interest Company: More Confusion in the Quest For Limited Liability?*, 55 N. IR. LEGAL Q. 302, 312 (2004).

⁵⁷ See REGULATOR OF COMMUNITY INTEREST COMPANIES, ANNUAL REPORT 2014/2015 1, 18 (2015), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/445334/cic-15-15-annual-report-14-15.pdf; see also OFFICE OF THE REGULATOR OF COMMUNITY INTEREST COMPANIES, INFORMATION AND GUIDANCE NOTES CHAPTER 9: CORPORATE GOVERNANCE 5 (2013), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211749/13-712-community-interest-companies-guidance-chapter-9-corporate-governance.pdf.

⁵⁸ OFFICE OF THE REGULATOR OF COMMUNITY INTEREST COMPANIES, FREQUENTLY ASKED QUESTIONS FOR FUNDING ORGANISATIONS 1, 7 (2016), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/524219/13-782-community-interest-companies-frequently-asked-questions-for-funding-organisations.pdf.

⁵⁹ An asset lock is “a commitment by CICs and those who set them up to lock profits and assets into the company irrevocably,” through the implementation of the following two measures: “(a) prohibit or impose limits on the distribution of assets by community interest companies to their members, and (b) impose limits on the payment of interests on debentures issued by, or debts of, community interest companies.” Cross *supra* note 56, at 310–11; see also Terrance S. Carter & Theresa L.M. Man, *Canadian Registered Charities: Business Activities and Social Enterprise—Thinking Outside the Box*, 2008 NAT’L CTR ON PHILANTHROPY & L. ANN. CONF., 1, 6 (Oct. 24, 2008), <http://www.carters.ca/pub/article/charity/2008/tsc1024.pdf>.

⁶⁰ *Setting Up A Social Enterprise*, GOV.UK, <https://www.gov.uk/set-up-a-social-enterprise> (last

company's community interest statement must pass a "community interest test" that "confirm[s] that it will pursue purposes beneficial to the community" instead of merely serving "an unduly restricted group of beneficiaries."⁶¹ A CIC must "deliver an annual community interest company report about its activities for the public record . . . [which] includes details of assets transferred for less than market value; dividends paid; stakeholder involvement; and directors' remuneration."⁶²

The Office of the Regulator of Community Interest Companies randomly selects annual reports filed by CICs for examination. The CIC Regulator's powers derive from the Companies Act, and the Regulator's Office works with the Companies Investigation Unit of the Insolvency Services to determine whether a deeper investigation is necessary.⁶³

B. The CIC Focus on Local Communities—Bad for Branding, Good for Accountability

1. *CIC Focus on Local Communities is Bad for Branding*

While U.S. benefit corporations benefit from social enterprise branding, CICs in the United Kingdom are not motivated by these same advantages. For example, of the 61 companies that have applied to B Lab to become B Corps in the United Kingdom so far, "[m]ost are small and medium-sized businesses,"⁶⁴ not large, global companies hoping to sell products in foreign markets.

Even larger B Corps in the United Kingdom function more like nonprofit organizations rather than like for-profit businesses. For instance, one larger B Corp in the United Kingdom is Ingeus, "an employment company that runs the government's back to work scheme."⁶⁵ With a B Impact Assessment score of 137/200, Ingeus proudly describes itself on its website as a "founding member of the B Corp Community in the U.K."⁶⁶ and

visited Dec. 19, 2016).

⁶¹ Further, the community interest test is "whether a reasonable person could consider the CIC's activities to benefit the community." HOUSE OF COMMONS LIBRARY, *supra* note 6, at 5.

⁶² See OFFICE OF THE REGULATOR OF COMMUNITY INTEREST COMPANIES *supra* note 58, at 5.

⁶³ See *FOI Release: Information released under the Freedom of Information Act*, GOV.UK, 1, 2 (July 28, 2014), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/360497/Information_release_10_-_Complaints_about_CICs.pdf; see also HOUSE OF COMMONS LIBRARY *supra* note 6, at 10.

⁶⁴ Oscar Williams-Grut, *The Ethical Business 'B Corp' Movement Just Landed in the U.K.*, BUS. INSIDER (Sep. 27, 2015, 1:54 pm), <http://www.businessinsider.com/b-corporation-uk-2015-9?r=UK&IR=T>.

⁶⁵ *Id.*

⁶⁶ *About Us*, INGEUS, <http://www.ingeus.co.uk/about/about-us,70> (last visited Dec. 19, 2016).

as a “leading provider of people-centered services.”⁶⁷ Thus, while falling under the same “B Corp” label as U.S. benefit corporations, B Corps in the United Kingdom focus on serving local communities within the country and not on global marketing or B Corp branding.

In other words, while U.S. benefit corporations focus on more global benefits, CICs (even large ones like Ingeus) place most of their emphasis on local, community benefits. Thus, even B Lab’s recognition of a particular company as a “B Corp” does not imply that a U.K. B Corp functions similarly to a U.S. benefit corporation. While continuing to target local communities, CICs could gain from prioritizing branding as U.S. benefit corporations do to achieve increased awareness and wider profit margins.

Nonetheless, in some ways, traditional CICs are more comparable to benefit corporations than nonprofits. CICs can opt to become Certified B Corps, though not all U.K. B Corps are exclusively CICs.⁶⁸ Like benefit corporations, CICs prioritize public benefit, and registration as a CIC presents no tax advantages (as opposed to registration as a nonprofit or charity). CIC registration also requires annual CIC reports. The U.K. government compiles a list of “Community Interest Companies: Case Studies” that “give a flavour of the good work Community Interest Companies (CICs) are doing around the UK.”⁶⁹ Well-recognized CICs range from theaters to small stores to programs and projects.

Most CICs are organizations or programs that are very focused on being community-driven and local, whether *by* the community or *for* the community. Bristol Together, for example, is a community-driven CIC that exists specifically to “create[] jobs for ex-offenders and long-term unemployed people.”⁷⁰ Paul Harrod, Bristol Together’s Founder, emphasized that the CIC is “not about job preparation,” but about “actually creat[ing] jobs,”⁷¹ setting the organization apart from nonprofits or charities

⁶⁷ *Id.*

⁶⁸ See *Protect Your Mission*, B CORPORATION.UK, <http://bcorporation.uk/become-a-b-corp/why-become-a-b-corp/protect-your-mission-uk> (last visited Dec. 19, 2016):

Any UK business is likely to be eligible for B Corp certification as long as the business can demonstrate; It generates the majority of its revenue from trading, It competes in a competitive marketplace, It is NOT a charity, It is NOT a public body or otherwise majority owned by the state;

see also *B Corps FAQ*, SOCIAL ENTERPRISE UK, <http://www.socialenterprise.org.uk/news/corps-faq> (last visited Dec. 19, 2016).

⁶⁹ Office of the Regulator of Community Interest Companies, *Community Interest Companies: Case Studies*, GOV.UK, <https://www.gov.uk/government/collections/community-interest-companies-case-studies> (last visited Dec. 19, 2016).

⁷⁰ Office of the Regulator of Community Interest Companies, *Case Study: Bristol Together*, GOV.UK, <https://www.gov.uk/government/case-studies/bristol-together> (last visited Dec. 19, 2016).

⁷¹ *Id.*

that focus on the former.

Other CICs emerged through efforts *by* the community itself. For instance, Blues and Beer is an annual festival where hundreds gather to “enjoy live blues music and artisan beer.”⁷² John Curry, the Chairman of Blues and Beer, described the decision to become a CIC as one made by the “loosely knit group of people” who had initially run the festival each year when the group realized that “having a more formal structure” would generate increased financial security.⁷³ After becoming a CIC and effectively realizing the financial benefits of a more formal organization, Curry stated that the annual festival became “more than just a blues festival . . . [it became] a real opportunity to celebrate the local community.”⁷⁴ Consequently, in the United Kingdom, CICs largely exist as entities that strengthen and celebrate local communities rather than as corporate structures that seek wider global branding or reputational advantages.

While U.S. benefit corporations aim to sell products under a “benefit corporation” label, U.K. community interest corporations aim to provide services by and for communities. The U.K. government’s website characterizes the “‘CIC’ brand” as one that “describ[es] a company working for the benefit of the community.”⁷⁵ In contrast, the U.S. website “benefitcorp.net” provides a more in-depth explanation of the importance of the “benefit corporation” brand, describing advantages in concrete subsections that include, “Positive Brand Association” and “Brand Trust.”⁷⁶ As such, U.S. proponents of benefit corporations clearly recognize the branding component as a crucial motivating factor for any business considering incorporating as a benefit corporation. Currently, this emphasis on branding is almost entirely absent from the descriptions of CICs in the United Kingdom, and one that CICs can and should utilize to obtain broader recognition and impact.

⁷² Office of the Regulator of Community Interest Companies, *Case Study: Blues and Beers*, GOV.UK, <https://www.gov.uk/government/case-studies/blues-and-beers> (last visited Dec. 19, 2016).

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ See OFFICE OF THE REGULATOR OF COMMUNITY INTEREST COMPANIES, *supra* note 58, at 5.

⁷⁶ Describing “Positive Brand Association,” the website explains:

Becoming a benefit corporation confirms brand association with positive social and environmental impact in the mind of consumers and in the industry more broadly. An increasing number of consumers, over 70 million today, purchase goods based on the morals or the mission of a business and, increasingly, a company’s mission is a major factor influencing brand loyalty.

B Lab, *Benefit Corporations: Frequently Asked Questions for Investors*, BENEFIT CORP., http://benefitcorp.net/sites/default/files/FAQs%20Investors%206_9.pdf (last visited Dec. 19, 2016).

Describing “Brand Trust,” the website explains, “[b]enefit corporations provide an innovative model to hold a company accountable to its mission and, by committing to this higher purpose, create customer trust.” *Id.*

2. *CIC Focus on Local Communities is Good from an
Accountability Standpoint*

More starkly, CIC legislation provides clearer specifications about how to monitor CICs than U.S. benefit corporation legislation provides about how to monitor benefit corporations. For instance, in its annual community interest report, a CIC must include “how the company’s activities have benefited the community; what steps were taken to consult stakeholders and what was the outcome; what payments were made to directors; what assets transferred other than for full consideration; what dividends were paid; and what performance-related interest was paid on loans or debentures.”⁷⁷ Further, CIC legislation specifies procedures for individuals concerned about a particular CIC to report their concerns to the CIC Regulator.⁷⁸

In contrast, benefit corporation legislation requires annual benefit reports without explanation of what these benefit reports or third-party standards must include to be acceptable. Most benefit corporation legislation leaves out any procedural guidelines for individuals who want to express concerns about existing benefit corporations. Even if broad “dissenter’s rights” provisions exist, they are hardly utilized. Instead, state legislatures disproportionately rely on third-party entities to handle regulatory and remedial measures, including dealing with stakeholder complaints. Thus, the U.S. government must take a leaf from the United Kingdom’s book and establish more effective oversight procedures to preserve benefit corporations’ long-term legitimacy.

C. Criticisms

While criticisms of CICs do not include lack of legislative oversight mechanisms or weakness of CIC accountability, CICs share one specific criticism with benefit corporations: CICs and more common not-for-profit forms like charities are too similar. This argument implies that a current CIC

⁷⁷ See Murray, *supra* note 6, at 11.

⁷⁸ *Id.* at 13 (“If a funder has concerns about a community interest company (CIC) that it is funding, those concerns should be raised with the Regulator of CIC” and the Regulator possesses “supervisory powers . . . to intervene in the affairs of a community interest company (CIC) (for example by appointing or removing directors)”; see also, REGULATOR OF COMMUNITY INTEREST COMPANIES, *supra* note 4 (“As a light touch regulator we use our powers of supervision sparingly, but they are significant and if we need to take action against a CIC we will use them.”); *id.* (outlining the “five key areas” the CIC Regulator will consider when deciding whether to take supervisory action against a CIC, which are, “evidence of misconduct or mismanagement,” “a need to protect the assets,” “the CIC is not satisfying the community interest test,” “the CIC is not pursuing any activities in pursuit of its community interest objects,” and “the CIC is engaging in political activities and/or political campaigning” as well as common scenarios in which the Regulator would not take action).

could operate as a nonprofit or charity without much difficulty.⁷⁹ Just as benefit corporation critics argue that traditional U.S. corporations are adequately flexible to pursue social benefit purposes without the benefit corporation label, CIC-opponents view CICs as entities for “weasely people who want[] to hide behind a veneer of social benefit without the same level of accountability.”⁸⁰ These critics point to charities as an adequate means for social impact. In fact, charities function better because CICs too easily offer “the simplicity of company structure without the extra level of governance” and “a less intense regulatory regime,” since annual community interest reports are “the sole requirement.”⁸¹ Like benefit corporation legislation that requires only annual benefit reports under unspecified third-party standards, the Office of the Regulator is admittedly “light-touch and rarely goes public when following up [with] complaints.”⁸²

However, the Office of the CIC Regulator is a *self-proclaimed* “light touch” regulator—the entity responsible for overseeing CICs purposely embraces flexibility. The fact that the Regulator acknowledges and intends to play only a light touch role further indicates that CICs in the United Kingdom exist to operate in partnership with local communities. Because a CIC serves and is comprised of a truly local community, the CIC’s constituents can be more involved in, and perhaps be even more effective than, the CIC Regulator. The communities that CICs serve firsthand witness and experience the impact CICs make and are consequently able to provide direct and pointed accountability.⁸³ Further, though the CIC Regulator vows to use its “powers of supervision sparingly,”⁸⁴ being “light touch” still means that the Regulator will follow an intricate Complaints Procedure Protocol to determine whether or not it will take action on complaints received,⁸⁵ and not that it will turn a blind eye.

Furthermore, while the difference between CICs and charities can be confusing, the two organizations serve two distinctly different purposes and any similarities are likely intentional. While charities enjoy tax benefits that CICs do not, according to Phil Horrell, the office manager at the CIC Regulator, being a CIC “theoretically offers greater potential for rapid expansion and diversification, not only because of the looser financial

⁷⁹ See Malcolm Lynch, *For and Against the Community Interest Company*, 28 INV. MATTERS 1, 1–4 (2004).

⁸⁰ See *Analysis: The Rise and Rise of Community Interest Companies*, *supra* note 52.

⁸¹ See *id.*

⁸² In contrast, the Charity Commission receives widespread publicity and statutory inquiries. See *id.*

⁸³ See, e.g., Office of the Regulator of Community Interest Companies, *supra* note 72.

⁸⁴ REGULATOR OF COMMUNITY INTEREST COMPANIES, *supra* note 4, at 28.

⁸⁵ See *id.* at 30 (“Complaints Procedure trading”).

regulation but also because of the greater opportunities for raising capital.”⁸⁶ However, Horrell himself admitted that in order to fully realize such financial benefits, the CIC must operate under “good business plans.”⁸⁷ Horrell emphasized that a company should decide to become a CIC over a charity mainly to “be branded as a social business” that the public will view “like [a] charit[y]” while still operating under the “dynamism” of for-profit businesses.⁸⁸ Further, Horrell emphasized that the CIC Regulator was not trying to attract organizations who wanted to register as charities and encouraged all applicants to note that “[a] charity can convert into a CIC and vice-versa.”⁸⁹ Thus, the U.K. government and CIC Regulator have recognized the ambiguity between CICs and charities, but have emphasized that a company should become a CIC for distinctive branding purposes.

However, in practice, even the most successful CICs in the United Kingdom do not sign on for the advantages of social enterprise branding. More meaningfully, CICs and charities are two separate entities because they cover two distinct degrees of benefit: benefit to the community and general public benefit.⁹⁰ CICs aim to realize the capital advantages the CIC form provides—both for the organization itself and for the community at large. Meanwhile, continued ambiguity ensues and the social enterprise branding motive becomes increasingly lost in the CIC/charity distinction. In order to clarify the distinction and to equip CICs to fully realize maximum profits, the CIC Regulator should place greater emphasis on establishing and advertising the CIC brand.

IV. RECOMMENDATIONS: DOES SOCIAL ENTERPRISE ACTUALLY WORK?

In order for social enterprise to actually work on a global scale, U.S. benefit corporations and U.K. CICs must recognize and adopt the positive attributes of the other system. Benefit corporations should adopt similar light

⁸⁶ Paul Jump, *How to: Decide Between Charitable and CIC Status*, THIRD SECTOR (Feb. 20, 2007), <http://www.thirdsector.co.uk/to-decide-charitable-cic-status/governance/article/634004> (opportunities to raise capital include CICs’ ability to use assets within asset-locks as “collateral for loans,” the ability to issue shares though dividends payable to shareholders, “subject to a cap”). *But see* Matthew F. Doeringer, *Fostering Social Enterprise: A Historical and International Analysis*, 20 DUKE J. COMP. & INT’L L. 291, 303 (2010) (operating a business as a social enterprise instead of as a for-profit entity overcomes the “difficulty of raising capital” for for-profit entities because it “involves making choices that can lower the potential to generate economic profits”).

⁸⁷ See Jump, *supra* note 86.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ See HOUSE OF COMMONS LIBRARY, *supra* note 6 (Whereas the community interest test to become a CIC is whether the CIC’s activities would “benefit the community,” charities must pass a different test—“the charitable test of public benefit.”).

touch regulations and oversight procedures employed by CICs, and conversely CICs should capitalize on the branding advantages of social enterprise. By gaining from each other's strengths, CICs and benefit corporations can prove that social enterprise actually works.

A. Recommendation 1: U.S. Benefit Corporations Should Adopt Similar Accountability Mechanisms to CICs

As mentioned above, Etsy and Patagonia have fully capitalized on the benefit corporation or B Corp brand to maximize their global footprints. As a result, both companies are globally renowned as socially conscious businesses to both consumers and employees alike. As mentioned in Part I, one of the main flaws of U.S. benefit corporations is lack of oversight mechanisms. Giving third parties complete discretion to provide oversight may have worked up to this point because benefit corporations are a fairly new corporate entity. However, as benefit corporations become more widely accepted in the United States, allowing third parties unchecked regulatory power can become problematic. The United States should consider using the CIC framework as a roadmap for increased accountability.

If the U.S. government established an entity like the U.K. Office of the Regulator of Community Interest Companies ("CIC Regulator") that is solely responsible for examining benefit corporations according to formal and randomized audit procedures, the public's faith in both benefit corporations and third-party standards would increase substantially. Should the United States establish a clear monitoring⁹¹ system, it would absolve criticisms questioning benefit corporation legitimacy. A CIC Regulator-like entity would also increase transparency and provide consumers with specific complaint processing procedures that outline how complaints will be processed, who will process them, and how corporations should respond. The CIC Regulator-equivalent should establish and facilitate such complaint processing to ensure consistency and accountability in enforcement.

B. Recommendation 2: CICs Should Make Branding a Priority

Conversely, CICs can and should devote attention to social enterprise branding advantages. While a large proportion of CICs currently focus on pursuing local benefits, the Office of the CIC Regulator should educate and encourage CICs to expand into global markets using the CIC brand. While most CICs have seen widespread success locally, several have also been

⁹¹ See Lynch, *supra* note 79.

effective in broader public sector spin-outs.⁹² The CIC Regulator can showcase such global CIC successes to motivate local CICs to consider expanding globally. By increasing awareness of practical business opportunities, including partnerships with other CICs (and with U.S. benefit corporations) and entrance into profitable foreign markets, the CIC Regulator can facilitate increased economic and social advantages for individual CICs and their community interest goals.

V. CONCLUSION

The increased attention towards social enterprise models in the United States and the United Kingdom suggests that both CICs and benefit corporations are here to stay.⁹³ The millennial generation increasingly and unwaveringly values social enterprise business forms as alternatives to traditional for-profit business models.⁹⁴ As such, a thorough understanding of these models⁹⁵ is particularly important. Not only are social enterprise companies generating profits, but they are also gradually achieving the social purposes and goals they had set out to accomplish in their corporate charters.⁹⁶

Examples of successful U.S. benefit corporations and U.K. CICs have shown that social enterprise can successfully draw from both the public and private sectors to engage in lasting profits that will go towards worthy causes as well as to the organizations themselves.⁹⁷ B Lab claims that there are over

⁹² See *Analysis: The Rise and Rise of Community Interest Companies*, *supra* note 52.

⁹³ See REGULATOR OF COMMUNITY INTEREST COMPANIES, *supra* note 4, at 34 (“Interest in CICs is continuing at pace and this is reflected in the hits that our website receives, which is an average of 11,000 per month from countries as diverse as the USA to Denmark and Moldova.”); see also *id.* at 43 (Key statistics regarding CICs in the United Kingdom include the data that, in 2012–2013, there were 7,670 CICs on the public register (An increase of 20% from the year before), 2,055 filed applications to become CICs, and 39 CICs had converted to charities.); Surowiecki, *supra* note 1 (As of 2014 there were “more than a thousand B corps in the U.S. . . . and in the past four years twenty-seven states ha[d] passed laws allowing companies to incorporate” as benefit corporations.).

⁹⁴ See Westaway, *supra* note 36 (Westaway cites to the 2013 and 2014 Deloitte Millennials Reports that “showed that young people believe that the number one purpose of business is to benefit society” and that “fifty percent [of young people] want to work for a business with ethical practices.”).

⁹⁵ For an examination of similar social enterprise entities in additional countries to the United States and United Kingdom, including Canada, France, Germany, Italy, Japan, and Russia, see *id.* at 12.

⁹⁶ See B Lab, *Benchmark Performance*, B CORPORATION, <https://www.bcorporation.net/become-a-b-corp/why-become-a-b-corp/benchmark-performance> (last visited Dec. 19, 2016) (chart compiles an assessment of the distribution of overall B Impact Scores, showing that B Corps score higher than other sustainable businesses who do identify as B Corps or benefit corporations); see also B Lab, *B Corp Benchmarks*, B CORPORATION, <http://www.bcorporation.net/b-corp-benchmarks> (last visited Dec. 19, 2016) (explains the types of benchmark B Lab uses to assess individual businesses); see also REGULATOR OF COMMUNITY INTEREST COMPANIES, *supra* note 4.

⁹⁷ John Converse Townsend, *What the Private Sector Can Do For Your Social Enterprise*, FORBES

950 companies in over 30 countries and 60 industries that have become B Lab certified as of 2014.⁹⁸ Further, B Lab asserts that, compared to “other sustainable businesses,” B Corps are 68% more likely to donate at least 10% of profits to charity, 47% more likely to use on-site renewable energy, and 18% more likely to use suppliers from low-income communities.⁹⁹ As of 2014, 10,000 CICs have been established in the United Kingdom, with the number quickly approaching 11,000.¹⁰⁰ As shown by the cases of Bristol Together and Blues and Beer, CICs have been an effective source of community organizing and profit-maximization.

Incorporating as a benefit corporation in the United States offers a business strong branding and advertising advantages under the social enterprise brand, and at least in theory, gives shareholders the right to enforce the company’s stated social purposes and goals.¹⁰¹ Similarly, incorporating as a CIC in the United Kingdom offers a company or group of individuals the opportunity to utilize a formalized business structure to serve communal goals and meet greater financial motives.¹⁰²

Interestingly, while benefit corporations and CICs serve extremely different purposes in practice, critics of both entities share the same concern: current oversight mechanisms are too vague to provide sufficient accountability. Today, U.K. laws and regulations are far more detailed in outlining processes and procedures to monitor and keep CICs accountable, though the mechanisms are self-proclaimed “light touch” in nature.¹⁰³ While U.S. benefit corporations are not subject to the same degree of governmental regulation, commonly accepted third-party entities like B Lab presently ensure adequate monitoring.

Generally, the central motivation for U.S. companies to incorporate as benefit corporations are branding and marketing advantages, especially under third-party labels like B Lab. Thus, while state benefit corporation

(Jan. 13, 2014, 12:00 AM), <http://www.forbes.com/sites/ashoka/2014/01/13/5843/>.

⁹⁸ B Lab, *2014 Annual Report*, B CORPORATION, <https://www.bcorporation.net/news-media/annual-report-2014> (last visited Dec. 19, 2016). However, the reader must keep in mind that because B Lab counts only Certified B Corps that it, as a nonprofit, approves, there are likely more *benefit corporations* than the number B Lab provides.

⁹⁹ B Lab, *B Corp Community*, B CORPORATION, <https://www.bcorporation.net/b-corp-community> (last visited Dec. 19, 2016); *see also id.* (B Lab also cites that “compared to other sustainable businesses,” B corps are also 55% more likely to cover at least some of health insurance costs for employees, 45% more likely to give bonuses to non-executive members, and 28% more likely to have women & minorities in management-level positions.).

¹⁰⁰ *Analysis: The Rise and Rise of Community Interest Companies*, *supra* note 52.

¹⁰¹ Jump, *supra* note 86, at 154.

¹⁰² *See Community Interest Companies*, COMMUNITY COMPANIES, <http://www.communitycompanies.co.uk/community-interest-companies#incorp> (last visited Dec. 19, 2016).

¹⁰³ REGULATOR OF COMMUNITY INTEREST COMPANIES, *supra* note 4, at 27–28.

legislation does not meticulously regulate benefit corporations, branding incentives ensure that a benefit corporation will not merely pay lip service to its stated goals if it wants to profitably prove to the public that it is a reliable company. Thus, while a more formalized oversight structure in legislation would help, benefit corporations already cannot skirt accountability entirely. Third-party standards have proved effective in ensuring that even large corporations like Etsy made changes to increase sustainability. At least for the time being, third-party entities like B Lab indirectly but effectively represent public will and oversight for the companies that “capitalism-with-a-conscience”¹⁰⁴ consumers support.

In conclusion, benefit corporations and CICs have established themselves as successful social enterprise systems in the United States, the United Kingdom, and globally. The two systems must learn from each other’s strengths, particularly benefit corporation branding advantages and CIC accountability mechanisms, in order to continually grow this success in productive ways that give back to the corporations themselves and the consumers they serve.

¹⁰⁴ Christie Garton, *You Must Do Good For Your Brand to Do Well with Millennials*, ENTREPRENEUR (Sep. 10, 2014), <https://www.entrepreneur.com/article/237243> (Millennials “demand a ‘participation economy’ that allows them to contribute, co-create and shape the giving behaviors of brands they love . . . [and] were also the first to embrace brands making a difference, consistently rewarding them with their money and trust.”).