
LEGAL CONSIDERATIONS FOR SOCIAL ENTREPRENEURS

AGENDA

- What is a social enterprise?
- Why be a social enterprise?
- What are the risks of being a social enterprise?
- How do you balance commitment to mission and risk?
- Fundraising considerations
- What is best for you?

WHAT IS A SOCIAL ENTERPRISE?



- A social enterprise is a for-profit mission-driven organization
- A social enterprise re-evaluates the priorities of a traditional corporation, moving away from a pure focus on the bottom line towards a focus on the triple bottom line: people, the planet, *and* profit



WHY BE A SOCIAL ENTERPRISE?



- Traditional corporations: <https://truecostmovie.com/>
- Evolving corporations: <https://www.youtube.com/watch?v=56a3-Sc65M8>

THE FINANCIAL ARGUMENT FOR BEING A SOCIAL ENTERPRISE



Firms of Endearment: How World-Class Companies Profit from Passion and Purpose by Raj Sisodia, Jag Sheth, and David Wolfe (2015)

- Firms of endearment (FoEs) seek to maximize their value to society as a whole. U.S FoEs had cumulative returns of 1,681.1% over 15 years; in comparison, S&P 500 was 117.64%

Connect: How Companies Succeed by Engaging Radically with Society by John Browne (2016)

- Companies that engage radically in society survive longer and have a stronger bottom line – 2% per annum “superior stock market performance”.

In 2019, The Torrey Project found the FoEs enjoy 100% higher returns than S&P companies over a 20-year period.

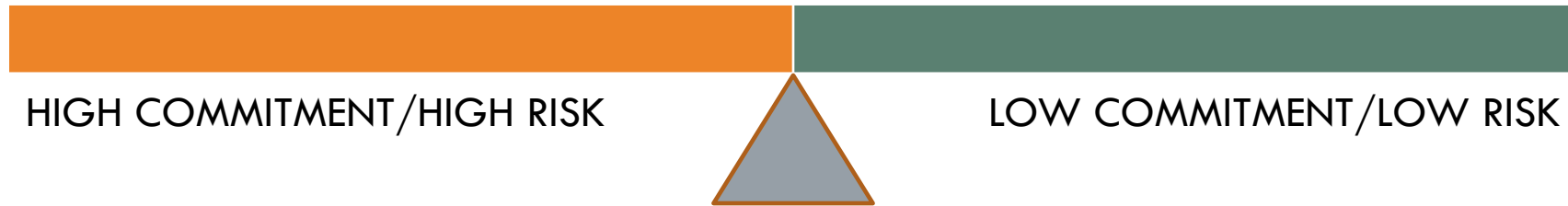
From an investment perspective, ESG funds lost less money, were less volatile, in some cases, outperformed peers in 2020.

WHAT ARE THE RISKS?



- Benefit corporations are a new business entity that has not been tested in the courts
- Potentially expanded liability for directors and officers
- Additional business/reputational risk
- Investment opportunities
- Financial cost to your business

HOW DO YOU BALANCE COMMITMENT AND RISK?



HOW DO YOU BALANCE COMMITMENT AND RISK?



- Incorporate as a Benefit Corporation
- Amend/draft governance documents
- Corporate policies
- B Corp Certification

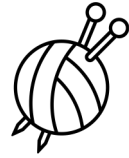


BENEFIT CORPORATION



- Legal entity in 38 states
- Makes commitment to stakeholder considerations legally binding
- Requires appointment of a benefit director and a benefit officer
- Requires filing of annual benefit report
- Provides protection for directors and officers
- Costs:
 - \$125 one-time filing fee (in Pennsylvania)/ \$70 amendment fee
 - \$70 annual benefit report filing fee
 - Lawyer fees in drafting bylaws/operating agreement
 - Potential lawyer fees in drafting benefit report

AMENDING/DRAFTING CORPORATE DOCUMENTS



- Legal entity
- Makes commitment to stakeholder considerations legally binding
- Provides protection for directors and officers
- Does not require an annual benefit report
- Costs:
 - \$125 one-time filing fee (if you are not already incorporated)
 - \$70 one-time amendment filing fee (if you are incorporated)
 - Lawyer fees in amending corporate documents/drafting corporate documents

CORPORATE POLICIES



- Internal guidelines (e.g. hiring, sexual harassment, non-discrimination, CSR, code of conduct, DEI, mission statements, etc.)
- Costs:
 - Lawyer fees drafting corporate policies

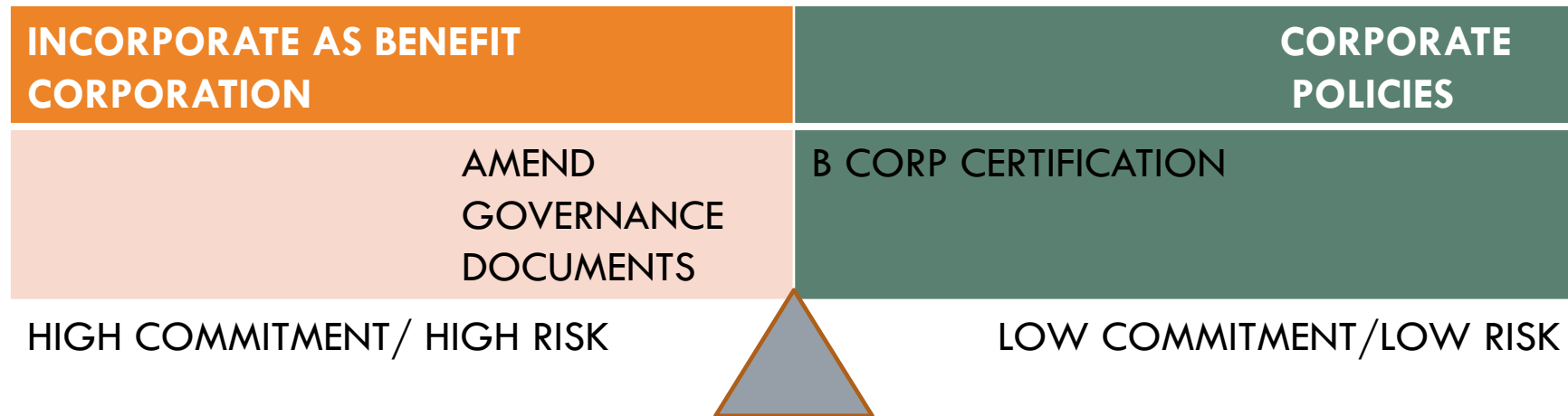
B CORP CERTIFICATION



- Third-party certification (similar to LEED Certification)
- Requires intensive B Impact Assessment
- Must recertify every two years
- Costs:
 - Certification cost is graded, based on your annual sales (starts at \$1,000 - \$50,000+)
 - Lawyer fees in drafting the certification



HOW DO YOU BALANCE COMMITMENT AND RISK?



FUNDRAISING CONSIDERATIONS – WHAT DO INVESTORS THINK?



- It depends on the investor – much like finding an investor that fits with your idea, you need to find investors who are aligned with your vision.
- Institutional investors starting to require more of public companies - how will this trickle down?
- Less risk in impact investing.

HOW BEST TO MERGE PROFIT AND PURPOSE?



- Pick a lawyer who understands what you are trying to do
- Give consideration to where you are in your development as an organization and what you are trying to accomplish
- Take a look at your budget and your resources
- Give yourself room to grow

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