With New Business Form, Profits Take a Back Seat

By ANGUS LOTEN

A brownie supplier to Ben & Jerry's ice cream, a skateboard maker and a payday lender are among the hundreds of existing businesses that plan to incorporate as "benefit corporations" in coming months.

They will be taking advantage of a new and untested corporate charter, available in only a half dozen states, allowing a company's governing board to consider social or environment objectives ahead of profits. The legal structure is intended to shield the board from investor lawsuits.

Mike Brady (right), president of Greyston Bakery, which has goals for hiring locally and child care.

That anything other than maximizing shareholder value should be considered in a company's decision-making normally can open the door to investor suits.
But in the past two years, lawmakers in seven states, including Maryland, Virginia and New Jersey, passed legislation to create benefit corporations as an alternative business model.

California opened up the option Jan 1. New York will do so as of Feb. 10.

Outdoor-apparel company Patagonia Inc., which places high priority on sustainable and renewable production methods, incorporated under the new structure in California this month.

Operating as a Benefit Corporation Makes Room for Other Priorities

What is a 'benefit corporation'?
A company whose charter allows the board to consider social or environmental objectives ahead of profits.

What is the advantage?
Protection from investor allegations of not maximizing shareholder value.

Does that make it a nonprofit?
No, a benefit corporation isn't a nonprofit nor is it tax exempt.

How many states allow it? Seven. With bills introduced in four additional states.

What are the downsides? 'For an investor, this is a terrible idea' due to lack of accountability, says Charles Elson, who teaches corporate governance at the University of Delaware. If management makes a bad decision, 'there's very little you can do about it as a shareholder.'

"We're trying to preserve for the long-term the way our company is run," says Casey Sheahan, chief executive of the Ventura, Calif., company, which was founded in 1972 and had nearly $500 million in revenue in 2011.

In Mr. Sheahan's view, traditional corporate structures don't encourage boards of for-profit companies to sacrifice shareholder value for a public good.

The benefit corporation isn't tax-exempt, nor is it a nonprofit. It is one of several new legal structures to emerge alongside the rise of "social entrepreneurship" in recent years.

Some proponents of the benefit corporation believe its biggest value may come at the time of the sale or breakup of a business, because directors might be able to consider factors other than maximizing shareholder value. The legal structure "tells directors that it's their duty to consider other interests, rather than say they 'may' consider them," says William Clark, a partner at Drinker, Biddle & Reath LLP, who helped draft model benefit-corporation legislation.

This was an issue for Ben & Jerry's Homemade Inc., the ice cream company sold to Unilever PLC in 2000, despite the objections of co-founder Ben Cohen and some directors. "There was a lot of pressure from the lawyers to sell," says Jeff Furman, a Ben & Jerry's director since the 1980s and its current chairman.
If benefit corporations had existed back in 2000, the board probably wouldn't have agreed to the Unilever deal, Mr. Furman says.

Greyston Bakery focuses on hiring workers who live nearby in Yonkers.

Ben & Jerry's now plans to incorporate as a benefit corporation in Vermont within the next few months, he adds, through pressure from its current board. Unilever declined to comment.

By law, a benefit corporation's social and environmental goals must be laid out in the bylaws and the company must publish an annual "benefit report" to measure itself against those goals.

The idea has its share of critics. "For an investor, this is a terrible idea," says Charles Elson, who teaches corporate governance at the University of Delaware. "The structure creates a lack of accountability," he adds, so if the management of a benefit corporation makes a bad decision, "there's very little you can do about it as a shareholder."

Others say that companies can simply add specific goals into their articles of incorporation under existing corporate codes, making a benefit-corporation designation unnecessary.

**States Open Doors to 'Benefit' Firms**

Benefit corporation laws passed

<table>
<thead>
<tr>
<th>State</th>
<th>Effective Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maryland</td>
<td>Oct. 1, 2010</td>
</tr>
<tr>
<td>Vermont</td>
<td>July 1, 2011</td>
</tr>
<tr>
<td>New Jersey</td>
<td>March 7, 2011</td>
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<tr>
<td>Virginia</td>
<td>July 1, 2011</td>
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<tr>
<td>Hawaii</td>
<td>July 8, 2011</td>
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<tr>
<td>California</td>
<td>Jan. 1, 2012</td>
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<tr>
<td>New York</td>
<td>Feb. 10, 2012</td>
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Benefit corporation bills introduced

<table>
<thead>
<tr>
<th>State</th>
<th>Introduced Date</th>
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<tbody>
<tr>
<td>Colorado</td>
<td>Jan. 13, 2011</td>
</tr>
<tr>
<td>North Carolina</td>
<td>Feb. 1, 2011</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>Feb. 11, 2011</td>
</tr>
<tr>
<td>Michigan</td>
<td>May 4, 2011</td>
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</tbody>
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Source: B Lab and WSJ research

It costs about $30 to incorporate as a benefit corporation, not including fees paid to outside lawyers. The incorporation isn't to be confused with "B Corp" certification, which is a privately administered program to label companies aiming to tackle social and environmental problems.

B Corp certification can be obtained in any state, for fees ranging from $500 to $25,000 annually, depending on revenue, according to B Lab, the Berwyn, Pa., nonprofit that developed benefit corporation legislation and oversees the certification process for about 500 firms.
While B Corp certification can be used for do-good marketing purposes, it wouldn't hold up in an investor lawsuit.

Jonathan Harrison, chief executive of Emerge Workplace Solutions, says it plans to incorporate as a benefit corporation in New York next month. He sees the new legal structure as a tool to help his 18-month-old San Francisco business stand apart from other payday lenders that charge higher interest rates and fees for workers needing fast cash between paychecks.

"It's really important for us to have a designation that we're the good guys," he says. His six-employee firm offers short-term emergency loans to hourly workers at annual interest rates from 9% to 19.99%, in contrast to the 400% typically charged by payday lenders. Emerge also provides financial coaching and other services to help the working poor.

The company's seven investors include a national bank. They support the move to become a benefit corporation, Mr. Harrison says.

Mike Brady, the president of Greyston Bakery, a Yonkers, N.Y., supplier of brownies to Ben & Jerry's, says benefit corporations "add another level of accountability and transparency."

The bakery, which had $8 million in sales last year, and has 50 full-time employees, hires from its local, underprivileged neighborhood. It also supports affordable housing and child care for low-income earners through a separate nonprofit foundation.

Comet Skateboards, Ithaca, N.Y., has been preparing the paperwork to incorporate as a benefit corporation since early last year, according to Jason Salfi, owner of the 10-employee firm, which uses eco-friendly materials and recycles old skateboards that are brought back.

Mr. Salfi says the company's B Corp certification has already earned points with customers. "You'd be surprised how much people care about these issues," he says.

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