Research Synthesis: Benefit Corporations in Pharmaceutical Product Development

V1.0 researched and written by Surabhi Agarwal, reviewed by Adrián Alonso Ruiz, Marcela Vieira, and Suerie Moon, copyedited by Adrián Alonso Ruiz. Last updated February 2022.

Introduction

This research synthesis provides an understanding of the Benefit Corporation (BC) legal form, reviews the existing debate on its various aspects and explores the potential of the BC form for the pharmaceutical industry. Currently, the literature on links between BCs and pharmaceuticals is thin*. This synthesis attempts to fill this knowledge gap by reviewing the literature on BCs and the evidence on their performance.

Search terms

This research synthesis is based on a review of the studies published on benefit corporations, along with some grey literature on the topic. Search terms used include 'benefit corporations' and 'pharmaceuticals'. Text was searched on Google Scholar and PubMed. Search was conducted in English.

Synthesis of the literature

Traditional for-profit corporations are often criticized for only pursuing financial returns, prioritizing shareholder interest while overlooking their social responsibility (Hiller 2013). Some countries have attempted to address this by creating new legal categories, with many different corporate forms emerging in the last few years, especially in the United States (Rawhouser, Cummings, and Crane 2015). These new legal entities attempt to look beyond the traditional roles of for-profit and non-profit companies and aim to combine aspects of both. In this way, they theoretically allow balancing economic goals with social and environmental ones. Benefit Corporations (BCs) is one such legal form.

The benefit corporation legislation was first introduced in the United States in 2010 and since then other countries like Colombia, Ecuador, France and Italy have also passed similar laws (Benefit Corporation 2021). These legislations have come up at a time when there are increasing attempts at re-orienting the profit-maximization and shareholder primacy goals of for-profit corporations, to instead allow for broader societal and environmental benefits (Hiller 2013).

Some researchers have highlighted the BC legislation's particular relevance for the pharmaceutical industry. As large multinational corporations dominate the pharmaceutical market, public needs become secondary to the goals of generating revenues and return on investments, leading to a disconnect between health needs and the incentives for such corporations (Mazzucato and Li 2021; Tulum and Lazonick 2018). Since BCs attempt a departure from this, they could prove to be a suitable alternative business model that can lead to better health outcomes (Heled, Vertinsky, and Brewer 2019). However, currently only a few companies in the biosciences sector are organized as a BC and their potential in the pharmaceutical industry remains to be fully explored.

Summary of the contents

This research synthesis is organized into the following topics:

1. Background
2. Benefit Corporations
3. Debate and evidence on Benefit Corporations
4. Conclusion
5. Examples of Benefit Corporations in the Pharmaceutical industry
6. Research gaps and limitations

1. Background

<u>Traditional corporations</u>

Traditionally organizations can register themselves as for profit and non-profits, which mark clear distinctions between how the two function (Resor 2012). Non-profit organizations are designed to pursue a charitable purpose and do not have shareholders. They also cannot engage in profitable activities like raising private capital or distributing dividends (Heled, Vertinsky, and Brewer 2019). On the other hand, for-profit corporations are driven by two main principles - profit maximization and 'shareholder primacy' (Hiller 2013). This means that generally the directors of a for-profit company would put the interests of shareholders first and undertake decisions that produce maximum financial returns for them. Therefore, these two corporate forms are considered inadequate for companies looking to go beyond the economic vs social dichotomy (Resor 2012).

For-profits have limited avenues to pursue social missions as part of their corporate purpose (Pelatan and Randazzo 2016). There are some provisions in corporate law, such as 'constituency statutes' in the US, under which directors of for-profits have certain flexibility in decision-making so that they can consider interests of other stakeholders besides the shareholders and can pursue other goals in addition to generating profits (Hiller 2013). However, there are different definitions of who is considered a stakeholder and scholars have found that the statutes have made no significant impact since they were first adopted in 1983 (Hemphill and Cullari 2014). Corporations also do not have the legal means to protect their social missions in the event of their sale or takeover. Examples of this include the popular case of Ben & Jerry's who felt they had to sell to the highest bidder rather than someone who would 'preserve their commitment to socially responsible practices' (Hiller 2013). From a stakeholder perspective, for-profit corporations are not required to adhere to any accountability and transparency mechanisms for their social responsibilities. This leaves stakeholders and customers with limited means to verify whether the corporations follow responsible practices or check the extent to which they do so (Hiller 2013). In such cases, legal form can become an obstacle for both companies and stakeholders.

Hybrid organizations

New legal forms have been introduced by different countries to accommodate organizations trying to combine economic and social goals, creating 'hybrid' forms that have properties of both for-profit and nonprofit corporations (Rawhouser, Cummings, and Crane 2015).

There have been many such legal forms in Europe and the US which Esposito refers to as 'the social enterprise revolution' (Esposito 2012). In Europe, 'social cooperatives' have gained widespread recognition and support. But the legislation has a narrow scope and most countries have only implemented different versions of a work integration program called Work Integration Social Enterprise (WISE). They have also achieved limited success. In the UK, the creation of Community Interest Companies (CIC) came in response to the need of a new legal entity for socially responsible companies and has a much broader scope than Europe's social cooperatives. CICs include additional restrictions as compared to traditional for-profits to ensure that they serve the community interest, such as guidelines on profit and asset distribution and regulatory mechanisms. CICs have grown in traditionally charitable areas and in the private sector (Esposito 2012).

In the United States, there has been an increase in the available hybrid forms and their general recognition. Some of the legal options include Low profit Limited Liability Corporations (L3Cs), Flexible Purpose Corporations (FPCs), Social Purpose Corporations (SPCs) and Benefit Corporations (BCs). FPCs, SPCs and BCs are all for-profit corporate forms that have a dual purpose of generating profits and social and/or environmental benefit. After being introduced in 2011, FPCs were later renamed to SPCs, and the two forms only have minor differences.[1] The FPC/SPC form is essentially a version of BCs. They differ from the BCs by forgoing some provisions in considering stakeholder interests (Heled, Vertinsky, and Brewer 2019), reporting requirements and liability conditions (Esposito 2012). L3Cs are different from these other forms, as they serve a special purpose of making it easier and safer for charitable for-profit corporations to receive Program Related Investments (PRIs)[2] (Esposito 2012; Resor 2012).

As evident, there are several existing hybrid corporate forms. However, in this paper, we focus on BCs in particular. Among the reviewed hybrid forms, BCs demonstrate the clearest legal obligation for balancing economic goals with social and environmental ones and have also received somewhat greater acceptance among corporations. The following section looks more closely at the BC form and how it is governed.

2. Benefit Corporations

Benefit Corporation is a legal form available to for-profit corporations where in addition to generating profits, companies are required to pursue a general public benefit defined as a 'material positive impact on society and on the environment, taken as a whole' (Pelatan and Randazzo 2016). Additionally, BCs can choose to pursue a specific public benefit such as improving human health, serving low-income communities or 'any other particular benefit on society or the environment'

[1] https://www.adlercolvin.com/blog/2014/10/06/goodbye-flexible-purpose-corporation-hello-social-purpose-corporation-governor-brown-signs-s-b-1301/

[2] PRIs are a way for 'grant-making foundations to make tax-free jeopardy investments in socially beneficial businesses rather than traditional grants to charities'

(Benefit Corporation n.d). BC directors are required to consider broader stakeholder interests and the legislation provides them greater protection 'in their pursuit of a social mission' (Pelatan and Randazzo 2016). Furthermore, BCs are required to produce annual reports that show the progress made on their social or environmental goals. Therefore, the legally binding requirement 'to produce a "general public benefit" is the hallmark of the benefit corporation' (Heled, Vertinsky, and Brewer 2019).

Table 1. Comparison of features of traditional for-profit and benefit corporations

		For-profit Corporation	**Benefit Corporation**
Purpose	Profits	Yes	Yes
	Social/environmental		Yes
Responsibility	Shareholder	Yes	Yes
	Other stakeholders		Yes
Reporting	Regular financial or annual reports	Yes	Yes
	Social/environmental		Yes
Liability (Legal action)	Shareholder	Yes	Yes
	Other stakeholders		No

Source: Author's own elaboration

The BC legislation in the US is based on the 'Model Benefit Corporation Legislation' developed by BLabs, a non-profit promoting socially conscious business practices (Benefit Corporation 2021) (See Box 1). Different states have adopted their own versions of the model legislation and can differ in specific requirements, but the essence of the legislation remains the same. This form provides corporations with the means to protect their mission 'through capital raises and leadership changes' and can focus on their mission even after a public offering. As BCs do not have to sell only on the basis of the highest financial offer, they have greater flexibility in sale and liquidity, (Benefit Corporation 2021). However, BCs do not enjoy any additional tax incentives or regulatory benefits.

Barnes, Woulfe, and Worsham provide a legal guide to incorporating as a BC. New companies can incorporate as a BC in the states where the legislation is passed (Barnes, Woulfe, and Worsham n.d.). Existing for-profit corporations can choose to become a BC by passing amendments to their articles of incorporation which must be approved by a two-thirds majority vote of shareholders.

Other aspects of BCs and how they differ from traditional for-profit corporations are outlined below -

- Purpose - in addition to profit-making, BCs are required to pursue general public benefits and may or may not pursue a specific public benefit as stated above. The Model legislation outlines six specific benefits, but BCs are free to state their own as well. BCs can also choose to state a specific benefit even if not mandated by law.

- Responsibility - directors of BCs are no longer only accountable to their shareholders but have an 'expanded responsibility' to include interests of other stakeholders in the decision making (Pelatan and Randazzo 2016). Stakeholders can include employees, subsidiaries, suppliers, customers, the local community or any other appropriate interest groups. Decision-making should also account for societal and environmental impact, along with the impact on the BC's stated public benefit(s). As such, directors are required to include non-economic grounds in their decisions. They are also given protection from any liability from such decisions, which is unavailable to directors of traditional for-profit corporations.
- Transparency - BCs are also required to produce an annual benefit report which states the progress made in terms of how and to what extent general public benefit was pursued (Pelatan and Randazzo 2016). In most states, BCs are required to make these reports publicly and freely available and sent to all shareholders. The performance can be assessed against an independent third-party standard or by the directors themselves (Heled, Vertinsky, and Brewer 2019).
- Enforcement - Benefit Enforcement Proceedings (BEP) can be initiated against the BC directors if they are seen to be failing in their pursuit of the stated public benefits. Such legal action can, however, only be initiated by those holding more than 5% shares in the corporation or ones that are expressly stated in the articles of incorporation.

<u>Benefit corporation legislation internationally</u>

First introduced in the state of Maryland in the US, the legislation is currently recognized in 38 states (Benefit Corporation 2021). In 2016, Italy adopted a legislation called Società Benefit, which is based on the benefit corporation law in the US (Pelatan and Randazzo 2016). Similar laws have come into effect in a few other countries as well - Colombia, Ecuador and France (Benefit Corporation 2021). Australia also considered a similar bill, but it failed to pass (Ramsay and Upadhyaya 2021). The European Commission has been considering a sustainable corporate governance directive since 2020, that 'aims to improve the EU regulatory framework on company law and corporate governance'.

<u>Box 1. Benefit Corporations and BCorps - an important distinction</u>

Often confused and sometimes used interchangeably, Benefit Corporations and BCorps are two different ways of identifying organizations that aim to use their business for good, and one is not an acronym for the other. While a benefit corporation is a legislation and signifies a particular type of legal entity, BCorp is a certification based on an impact assessment that any type of organization can apply for. Therefore, there are only limited countries or states that recognize benefit corporations, but organizations worldwide can receive the BCorp certification. The ambiguity also stems from the role of BLabs, a non-profit organization that promotes both the legislation and the certification. However, while BLabs are the sole organization evaluating and issuing the BCorp Certification, it can only advocate for a benefit corporation legislation in any country. These are the most crucial differences in their basic form, while other

The basic form of the legislation in these different countries or the different states in the US is similar and makes provisions for promoting public benefit as part of corporate mandate. However, they can differ in their specific requirements and implementation methods. For example, the Società Benefit in Italy requires a more detailed annual report than the Benefit Corporations in the US (Pelatan and Randazzo 2016). Similarly, the new corporate form in France, Société à mission, includes 'greater accountability' in defining the mission as it is evaluated by a special board instead of the company's board of directors (Segrestin, Levillain, and Hatchuel 2018).

Benefit Corporations and its relevance for the pharmaceutical industry

Given this background of BCs and their legal requirement to balance profits and public benefits, some authors have highlighted the role BCs can play in correcting the shortcomings of the pharmaceutical industry. The healthcare market in general shows a disconnect between the private incentives to pharmaceutical companies and public health needs, leading to poor health outcomes even in large economies like the US (Heled, Vertinsky, and Brewer 2019). At the same time, the pharmaceutical industry has garnered large economic returns, making it one of the most profitable sectors (Frood 2017).

Heled, Vertinsky and Brewer point to this disconnect in the ways drug development is prioritized and the lack of transparency in the development process and drug pricing. They argue that while the imperfections of the healthcare market are not unknown, the proposed solutions are all targeted market corrections rather than the actors, i.e., the innovators themselves. With respect to the pharmaceutical industry, the authors suggest that for a substantial market reform, the corporate form under which these companies operate should be targeted as the development of the majority of lifesaving drugs currently remains in the hands of profit and shareholder driven for-profit companies (Heled, Vertinsky, and Brewer 2019). Since hybrid corporate forms such as BCs are mandated to make decisions in the interest of a larger stakeholder group, they could potentially bring patient needs to the center of drug development instead of economic returns. This could also help to keep the often unjustifiable high drug prices in check, making them more affordable and accessible to the general public. Lastly, as drug development involves high upfront costs, BCs can still raise private capital from like-minded investors who support their social mission (Frood 2017). Therefore, under a strong regulatory ecosystem, BCs could be useful in reorienting the industry towards public health needs.

During this research, it was evident that the BC model remains largely untested in the pharmaceutical sector with only a handful of such companies, along with some in diagnostics and alternative therapies. Therefore, to assess the potential of BCs as a feasible alternative business model for pharmaceuticals, this paper reviews the general literature on BCs, regardless of industry type. While evidence on BCs' performance is limited, it proves a useful supplement to the largely theoretical discussion of the legislation's merit and demerits.

3. Debate and evidence on Benefit Corporations

Literature on BCs shows an ongoing debate on the need and effectiveness of this new corporate form, but empirical data is limited. Some of the debate has centered around the two key components of BCs, analyzing whether the legislation is actually able to overcome the 'profit maximization' and 'shareholder primacy' challenges of for-profit corporations. Other areas include reporting requirements and transparency, definition of mission statements and BCs' ability to attract investments compared to traditional corporations.

Challenging profit maximization

On profit maximization, some arguments have focused on whether a new legal form was needed at all, and if the existing provisions in corporate law were sufficient to meet the goals of balancing profits and societal good, such as the 'constituency statutes' reviewed earlier. While some argue that the constituency statutes already provided for-profits a legal route to follow socially-oriented decision-making, others have shown that BCs go well beyond the provisions allowed in those statutes. For instance, BCs makes it legally binding for directors to consider stakeholder interests rather than merely allowing them to do so. Moreover, while the statutes have not been adopted broadly and companies maintain a formal for-profit status, BCs on the other hand give them a more distinct and explicit identity and help in differentiating themselves from others (Hemphill and Cullari 2014). At the same time, BC legislation has also been criticized sometimes for creating a discourse of good vs bad corporates, stating that for-profit companies may feel compelled to convert to BCs because of an unjustified pressure (Hemphill and Cullari 2014). However, the research did not find evidence to substantiate this.

Lastly, concerns have also been raised against the effectiveness of BCs to look beyond profit maximization as some corporations may use the BC status for marketing purposes similar to 'greenwashing' (Dorff, Hicks, and Davidoff Solomon 2020; Stecker 2016; Wilburn and Wilburn 2014). These are mainly based on the provisions for accountability and regulation of BCs. Those arguing in favor of BCs suggest that there are enough accountability and transparency safeguards in the law against this (Stecker 2016).

Challenging shareholder primacy

The criticism of the BC legislation on the shareholder primacy aspect points out that in its current form, it is no different than traditional for-profit corporations (Fisch and Solomon 2021; Kurland 2017; Munch 2012; White 2014). Even though considering other stakeholder interests is one of the key aspects of the BC form, some argue that the law does not provide any additional rights to stakeholders whilst continuing with the same level of authority for shareholders. This in particular is highlighted in the context of shareholder duties, such as electing board members and enacting structural change. Most importantly, the right to initiate any legal action remains with the shareholders. Moreover, just as shareholder majority is needed to convert a for-profit into a BC, they also hold the right to convert a BC back into a traditional for-profit corporation. Therefore, public benefit will only be prioritized as long as shareholders are willing (Fisch and Solomon 2021).

Loose definitions and reporting challenges

Studies have also focused on the aspect of 'public benefit' and emphasized that the definitions are too vague and broad (André 2012; Fisch and Solomon 2021; Mion 2020). Therefore, even the stated general or specific public benefit of BCs are too vague and often not easily quantifiable. Empirical studies conducting qualitative analysis of mission statements of BCs provide evidence to substantiate this. Studies of Italian BCs registered under Società Benefit, find that the BCs lack a clear understanding of what public benefit means and therefore, themselves interpret the definition of 'public benefit' in a heterogeneous manner. This leads to a broad range of mission statements that cover both internal aspects such as promoting individual skills as well as statements more generally oriented to societal and environmental good (Mion and Loza Adaui 2020; Mion, Loza Adaui, and Bonfanti 2021). Moreover, the lack of standard and concrete definitions has led to 'soft value statements' such as inspire change and bring joy to customers, which are difficult to operationalize and can be easily deprioritized in favor of shareholder interests. This could especially be a concern for publicly traded BCs. Highlighting these broad benefit statements, argue that stated purposes should be made more concrete and measurable coupled with stronger accountability measures (Fisch and Solomon 2021).

Many researchers have also looked into the reporting requirements of BCs. As discussed in the previous section, BCs are required to produce an annual benefit report that entails certain provisions on the content and public availability as well. However, at least in the US variation in reporting requirements and the specificity of the law may dilute its effectiveness (Hiller 2013; Murray 2015). Discussion on the reporting requirements broadly covers the following aspects:

- Third-party assessment - Assessment against independent third-party standards is not a requirement in all BC legislations. Some authors also point to the heterogeneity of standards, suggesting that BC directors may choose the ones that are convenient for them. Therefore, transparency issues may arise due to self-reporting (where third-party standards are not required) or in the way standards are selected (Munch 2012).
- Metrics - The legislation is also criticized for not being specific enough in the reporting requirements. Most reporting guidelines are largely descriptive, do not necessitate quantifiable measures (including financial or impact variables), or state any standardized metrics like those in financial reports (Esposito 2012; Murray 2015; Weismann 2017; White 2014). This makes evaluating a BC's performance more challenging. As a result, many benefit reports are of poor quality, and vary in both content and methodology (Mion 2020; Murray 2015). Weismann finds that the actual value of the surveyed BCs is not so much as a measurable social impact but rather through increased brand presence (Weismann 2017).
- Compliance - Due to a lack of accountability processes in most cases, it becomes challenging to evaluate whether BCs are producing and publishing their annual benefit reports as legally required, ensure reporting quality or impose penalties for misleading information (Munch 2012). At the same time, it is argued that such mechanisms would only add further costs which most small BCs would unlikely be able to bear (Esposito 2012). However, empirical studies on the compliance rate of benefit reports have found it to be extremely low, 10% in the US (Murray 2015) and just about 33% in Italy (Mion 2020). This in turn is again explained by the potential cost involved in undertaking a third-party assessment.

<u>Attracting private investments</u>

Studies on the ability of BCs to attract investment are even more limited. Cooper and Webber assess the perception of investors and MBA students to see how the BC status might affect their investment decisions and find generally positive results. Overall, BCs seem to be just as likely or more likely to receive investment if the financial outputs are the same as that of traditional for-profit corporations

(Cooper and Weber 2021). About one-third of the investors and students said they would prefer BCs over for-profits even if it meant lower return on investments, given that BCs are expected to be more committed to their social responsibility (Cooper and Weber 2021). In an empirical study of investments into BCs in the US state of Delaware, Dorff et al. find that BCs received smaller investments at the same stages compared to for-profit corporations. However, both for-profit and BCs received funding from similar, traditional venture capital sources, suggesting that the BC form is accepted to some extent from the investor community (Dorff, Hicks, and Davidoff Solomon 2020). In other isolated examples, companies like Patagonia and Warby have not faced investor related issues since they organized as a BC (Surowiecki 2014). However, as mentioned, studies with such evidence are limited and those focused specifically on benefit corporations in the pharmaceutical industry are even more limited.

Evidence on Pharmaceutical Benefit Corporations

The evidence on pharmaceutical BCs is rather scarce. In general, the few authors exploring the topic have written positively on its potential to lead to better health outcomes and improve accessibility and affordability. Empirical studies are, however, scarce. Eiser explores the issue of high drug prices arguing that the need to generate profits should not mean that drugs can be priced 'beyond reasonable limits' making them inaccessible for most people (Eiser 2016). The pharmaceutical industry thus needs a model that can retain private capital but reorient the industry to be driven by a public mission, and the BC legislation provides an opportunity to bring ethical considerations into its fold. Davidson emphasizes that BCs are especially well placed to address markets that are otherwise ignored by the giants in the pharmaceutical industry and through such focused drug development, they could help fill the existing research and development gaps (Davidson 2019). Frood explores the issue of investment for BC pharmaceuticals. As drug development requires huge upfront costs, attracting investment is crucial for pharmaceuticals. However, investors mainly interested in financial returns might refrain from investing in BC pharmaceutical companies as they prioritize 'benefits over profits' (Frood 2017). The BC status can then instead help in attracting like-minded investors and some of the existing BCs have been successful in doing so. Examples include Beta Bionics, who after initial hurdles was able to raise USD 10 million from Eli Lilly and Novo Nordisk. The company feels that their BC status was one of the reasons they received the investment (Frood 2017). On the other hand, Trek Therapeutics faced financial difficulties in sustaining investment leading to a closure of its operations in 2019 (Smith and Litzky 2019).

The BC form has also been considered in the context of antibiotic development, gene therapy and vaccines. Outterson and Rex review three corporate structures, for-profit, non-profit and BCs, and argue that BCs are best suited for incentivizing antibiotic R&D. Unlike for-profits, BCs are designed to function with comparatively lower-profit margins, which is something that smaller antibiotic R&D companies have struggled with in the past. Additionally, they incorporate a public benefit purpose which ensures their commitment to the social mission. Moreover, they can still access private capital that is unavailable to non-profits and is most likely to come from impact investors and charitable foundations (Outterson and Rex 2020).

BCs could also potentially be influential in limiting the high prices of gene therapies. As more gene therapy products enter development pipelines and the commercial markets, a lack of affordable pricing mechanisms can make lifesaving therapies inaccessible for those who need it the most. Therefore, BCs can help promote 'a meaningful change' where gene therapy companies do not consider return on investment for shareholders as their main goal (Fischer, Dewatripont, and Goldman 2019). Bateman explores this in regard to access to vaccines in developing countries and suggests that if vaccine developers convert to BCs, they can commit to better access in developing countries. Having committed to a social purpose, BC vaccine developers can engage in licensing agreements and partnerships with manufacturers in developing countries that help overcome IP barriers (Bateman 2019). However, the lack of tax or other government incentives also need to be addressed. For example, governments can incentivize more pharmaceutical companies to incorporate as a BC by favoring those with BC status for federal funding and partnerships (Eiser 2016).

Along with the public health benefits, the BC form also poses advantages for pharmaceuticals themselves, and many companies suggest the same. Given the especially poor public reputation of pharmaceuticals, BC status offers avenues to regain customer trust by showing that they are patient-centric and are actively pursuing social goals (Kessel 2014). Moreover, it allows companies that want to focus on patient-centric values or social benefit to protect their mission against the dominance of stockholder interests (Nawrat 2021). Some feel that the BC form helps them attract investors and build stronger partnerships with others who align with the mission, as well as retain talent. The CEO of Aldatu Biosciences has argued that it is better if certain investors are uninterested from the onset as it means they do not have to convince them later of the company's commitment to their social mission (Frood 2017). According to Chiesi Group, one of the first pharmaceutical companies in Italy to adopt the Società Benefit form, the benefit corporation is also a way of evaluating all companies across the same standards, and hence 'promotes healthy competition'.

4. Conclusion

The BC legislation offers corporations the opportunity to publicly state their social and environmental missions and brand themselves as such. They are also given safeguards from shareholders to consider the interests of other stakeholders. However, many argue that BCs do not overcome the profit maximization and shareholder primacy principles of for-profit corporations and offer limited alternatives for stakeholder participation in the governance of companies.

Given the limited data on BCs performance, more evidence is needed to evaluate whether BCs have been successful in meeting their core goals of balancing public benefits with profits. The literature also highlights many issues in the legislation as it exists today including a need for more specific guidelines, and enforcement and regulatory mechanisms that can ensure that companies are following their missions. The select studies of poor compliance with benefit reporting show that ultimately the success of the BC form may depend on the motivations of individual corporations.

Literature on BC pharmaceuticals, and in the healthcare sector more generally, shows that there is a general alignment between the BC model and the potential for a more patient driven industry. However, when reviewed in light of the overall BC literature the capacity to bring change to the established industry may be limited. In the absence of enough evidence, it remains unclear how successful the BC model can be in producing better health outcomes for patients. Nonetheless, the cases of existing BC pharmaceuticals show that it is an interesting corporate form for mission-driven pharmaceuticals.

5. Examples of Benefit Corporations in the pharmaceutical industry

There is no comprehensive database of companies listed as BCs in the US or other countries. The Benefit Corporations website attempts to document the BCs in the US.[3] However, this list cannot be searched specifically for pharmaceuticals. Some of the pharmaceutical initiatives identified in the course of this research are discussed below -

- **Aldatu Biosciences[4] -** A diagnostics company registered as a PBC in the US, their stated goal is to 'advance infectious disease diagnostics that facilitate society's collective response to global health emergencies'. Their PANDAA™ platform can be useful for low-cost and easy-to-use diagnostics and is also used for diagnosing SARS-CoV-2, Lassa fever, and drug-resistant HIV variants. They converted into a PBC in 2015, one year after the company was founded and want to attract like-minded investors. They have been successful in getting investment from mission-driven organizations, which includes Harvard's Office of Technology Development (Frood 2017).
- **Audacity Therapeutics[5] -** Registered in California, US, the pharmaceutical company follows the principles of being complementary, transparent and integrating patients in their research and development process. They prioritize drug projects with great therapeutic potential instead of its profit potential. The company is still in early stages of drug development but is currently developing a therapy for multiple sclerosis (MS).
- **Beta Bionics[6] -** A US based MedTech company, Beta Bionics is one of the first MedTech companies to register as a benefit corporation. They are committed to improving insulin delivery and are currently working on a fully automated delivery device. Their product, iLet® bionic pancreas, is currently under clinical trial.
- **Chiesi group**[7] - Italian pharmaceutical company, Chiesi group, has more than 80 years of experience in drug development and has 'built a strategic plan fully dedicated to sustainability' (Chiesi 2021). The organization changed its legal status to a benefit corporation after the law was adopted in Italy and is also the largest pharmaceutical company to receive the BCorp certification. Their last reported turnover is over EUR1 billion.
- **MAPS PBC**[8] - Multidisciplinary Association for Psychedelic Studies (MAPS)[9] is a non-profit research and educational organization working on the careful uses of psychedelics and marijuana. Its spin-off MAPS PBC, was started in 2014, so that their MDMA-assisted therapy could be made accessible (Nawrat 2021).
- **Perlara PBC[10] -** Perlara is the first biotech company registered as a PBC in 2014. Their approach is to involve patients and their families in the process of finding cures for rare diseases. Since 2014, they have started different

[3] Find a Benefit Corp, https://benefitcorp.net/businesses/find-a-benefit-corp?sort_by=title&sort_order=ASC
[4] Aldatu Biosciences, https://www.aldatubio.com/
[5] Audacity Therapeutics, https://audacitytherapeutics.com/
[6] Beta Bionics, https://www.betabionics.com/
[7] Chiei Group, https://www.chiesi.com/en/about-us/b-corp-and-benefit-corporation/
[8] MAPS Public Benefit Corporation, https://mapspublicbenefit.com/
[9] About, Multidisciplinary Association for Psychedelic Studies (MAPS), https://maps.org/about
[10] About, Perlara, https://www.perlara.com/about

initiatives under their name such as 'PerlArk Drug Discovery Platform' or through partnerships such as Maggie's Pearl, a joint venture between Perlara and Maggie's Cure (which they call Perlara 2). Their website provides limited information on their current activities or details of the Perlara PBC.

- **Phlow**[11] - Phlow is a US based manufacturing firm that provides end-to-end solutions for essential medicines by using continuous flow technology and green chemistry. Their manufacturing offers an alternative to the traditional batch manufacturing. They have also raised USD 354 million from the US government in manufacturing funding and have partnerships with CivicaRx (Nawrat 2021).
- **Trek Therapeutics**[12] - a US-based pharmaceutical company, committed to 'affordable and accessible medicines for the entire world', especially for infectious diseases. Their initial goal was to launch a treatment for Hepatitis C in 2020. The company had raised over USD 8 million and was reportedly looking for further investment. However, according to Smith and Litzky, they had to close operations due to financial difficulties (Smith and Litzky 2019).

Research Gaps and limitations

The research synthesis presented here has certain limitations. The text reviewed is only in English and mainly concerns BC legislation in the US. It does not explore how similar legislations in other countries have evolved. Most of the available literature is based on a theoretical discussion only. Empirical evidence related to benefit corporations is limited especially on their performance, benefit creation and level of investment received. As mentioned earlier, only a few authors have explored benefit corporations in the pharmaceutical context and none of them are empirical studies. For the select BC pharmaceuticals found during this research, the impact of the BC status on their growth and ability to attract investments is unknown.

References with abstracts

André, Rae. 2012. "Assessing the Accountability of the Benefit Corporation: Will This New Gray Sector Organization Enhance Corporate Social Responsibility?". Journal of Business Ethics 110 (1): 133–50. https://doi.org/10.1007/s10551-012-1254-1

Abstract: In recent years the benefit corporation has emerged as a new organizational form dedicated to legitimizing the pursuit of corporate social responsibility (CSR). Eschewing traditional governmental authority, the benefit corporation derives its moral legitimacy from the values of its owners and the oversight of a third party evaluator. This research identifies the benefit corporation as a new type of gray sector organization (GSO) and applies extant theory on GSOs to analyze its design. In particular, it shows how the theory of GSO accountability can be used to assess the potential of benefit corporations for enhancing CSR. This research first examines the statutes that have established benefit corporations in five states in the US, along with bills in other states, to show how legislation defines their specific public benefits and holds them accountable for delivering these benefits. It then compares the accountability of the benefit corporation with that of other corporate-centric GSOs, e.g., GSOs that closely resemble traditional corporations. It concludes with significant design-based concerns about the utility of the benefit corporation as an effective organization for implementing CSR.

Barnes, Abigail, James Woulfe, and Marshall Worsham. n.d. "A Legislative Guide to

[11] What We Do, Phlow, https://www.phlow-usa.com/what-we-do/
[12] Trek Therapeutics, https://www.trektx.com/

Benefit Corporations". Patagonia, Inc., Vermont Law School, and The Yale Environmental Law Association. Accessed July 28, 2021. https://drive.google.com/file/d/13TbdGLYf7am-0wulk02JdRkMRC9AuRJm/view?usp=sharing&usp=embed_facebook

Abstract: Not available

Bateman, Julie. 2019. "Use of Benefit Corporations to Accelerate Access to Affordable Vaccines". Boston College Intellectual Property & Technology Forum. 2019. https://bciptf.org/2019/12/benefit-corporations-to-accelerate-access-to-affordable-vacines/

Abstract: Not available

Benefit Corporation. 2021. "What Is a Benefit Corporation?". https://benefitcorp.net/what-is-a-benefit-corporation

Abstract: Not available

Chiesi, Giacomo. 2021. "Becoming a Benefit Corporation and a Certified B Corp: How Sustainability Practices May Positively Impact Business Operations". European Pharmaceutical Review. June 10, 2021. https://www.europeanpharmaceuticalreview.com/article/156404/becoming-a-benefit-corporation-and-a-certified-b-corp-how-sustainability-practices-may-positively-impact-business-operations/

Abstract: Not available

Cooper, Lauren A., and Jill Weber. 2021. "Does Benefit Corporation Status Matter to Investors? An Exploratory Study of Investor Perceptions and Decisions". Business & Society 60 (4): 979–1008. https://doi.org/10.1177/0007650319898462
Abstract: We investigate whether the disclosure of a firm's decision to organize as a benefit corporation (BC) rather than a traditional C corporation (CC) influences investors. We survey 136 investors and 57 MBA students and find that they expect BCs to attain higher future corporate social responsibility (CSR) than CCs even when both have equal CSR ratings. Approximately one third of our sample prefers to invest in BCs when CCs have greater financial returns, indicating a willingness by some investors to sacrifice personal financial gain for social good. Our results suggest that investors weight the information contained in BC disclosures as reliable and value-relevant in their investment decisions. We extend the CSR disclosure literature by indicating how investors weight this new type of CSR information, which may affect how BCs fare as publicly traded companies.

Davidson, Callie. 2019. "Strategies for Public Benefit Corporations in Pharmaceutical R&D – Corporate Sustainability and Compliance". Berkley Law. August 14, 2019. https://sites.law.berkeley.edu/sustainability-compliance/strategies-for-public-benefit-corporations-in-pharmaceutical-rd/

Abstract: Not available

Dorff, Michael B., James Hicks, and Steven Davidoff Solomon. 2020. "The Future or Fancy? An Empirical Study of Public Benefit Corporations". SSRN Scholarly Paper ID 3433772. Rochester, NY: Social Science Research Network. https://doi.org/10.2139/ssrn.3433772

Abstract: The public benefit corporation ("PBC") is one of the most hyped developments in corporate law, due to the PBC's unique social purpose. Unlike the traditional corporation, directors of PBCs are required under their fiduciary duties to consider the impact of their decisions on a range of stakeholders and communities. This new form is hailed by many as a framework for a reformed capitalism. Critics, on the other hand, have assailed PBCs as unworkable—at best allowing corporations to "greenwash," providing a thin disguise for ordinary corporate profit-seeking behavior. What has been lacking in this debate is evidence about whether and how the new form is being adopted. We fill this gap with an empirical study of early-stage investment in PBCs. Early-stage investment, consisting of venture capital and similar funds, presents an interesting test case for PBC funding, because these investors have profit-maximizing incentives and fiduciary duties of their own. Using our novel dataset, we can discern whether for-profit investment is occurring in PBCs, and if so, whether it is different in kind from ordinary early stage investment.We find that PBCs are receiving investment at significant rates, and that funding is coming from typical sources of venture capital—including traditional, profit-seeking VC firms. We also find that VC firms are investing in more consumer-facing industries, as well as investing smaller amounts than traditional investments at the same stage, raising concerns about greenwashing. While the ultimate arc of the PBC remains uncertain, our results show that it is gaining acceptance as an investment that can earn an acceptable rate of return—though, as we argue, the PBC status itself may be a secondary factor in VCs' decisions. We use these results to develop a theory of future PBC development, which asserts that in the medium term, investment in PBCs is likely to remain siloed in smaller, newly formed firms. We conclude that widespread adoption of the form will take time, as network effects build and experience with the form becomes embedded within the entrepreneurial and legal ecosystem. The PBC is not a failure. But it is in its infancy, and any full embrace will take a significant period of time.

Eiser, Arnold R. 2016. "Can Benefit Corporations Redeem the Pharmaceutical Industry?". American Journal of Medicine, July. https://www.amjmed.com/article/S0002-9343(16)30200-5/fulltext#articleInformation

Abstract: Not available

Esposito, Robert T. 2012. "The Social Enterprise Revolution in Corporate Law: A Primer on Emerging Corporate Entities in Europe and the United States and the Case for the Benefit Corporation". William and Mary Business Law Review 4 (2): 639–716

Abstract: Remarkably, in the face of a global recession, the social enterprise sector continued to experience extraordinary growth in both financial support and the number of newly authorized corporate entities aimed at social entrepreneurs who seek to use the power of business to simultaneously achieve profit and social or environmental benefits. This Article highlights recent developments in the social enterprise movement in Europe and the United States and focuses on the emergence of a surprisingly broad range of newly authorized corporate entities on both continents in response to the needs of social entrepreneurs. These include social cooperatives and the community interest company in Europe, as well as the L3C, the flexible purpose corporation, the social purpose corporation, and the benefit corporation in the United States. In so doing, this Article emphasizes the truly international scope of the social enterprise movement and explains the growing divergence in approaches to social enterprise between continental Europe and the United States. This Article suggests that the benefit corporation, which imposes a new duty to consider stakeholder interests, is currently the most effective vehicle through which social entrepreneurs can ensure their blended value goals are being considered and achieved This Article concludes by responding to critiques of profit-distribution in social enterprise, making the case for the benefit corporation, and suggesting some statutory and tax reforms to further foster the social enterprise revolution

Fisch, Jill E., and Steven Davidoff Solomon. 2021. "The Value of a Public Benefit Corporation". In Research Handbook on Corporate Purpose and Personhood, by Elizabeth Pollman and Robert Thompson, 68–90. Edward Elgar Publishing. https://doi.org/10.4337/9781789902914.00011

Abstract: Not available

Fischer, Alain, Mathias Dewatripont, and Michel Goldman. 2019. "Benefit Corporation: A Path to Affordable Gene Therapies?". Nature Medicine 25 (12): 1813–14. https://doi.org/10.1038/s41591-019-0676-z

Abstract: With the growing number of efficient gene therapies on the market, now is the time to take actions to ensure reasonable pricing of gene therapy products. Among these, we propose to incentivize gene therapy companies to adopt a status that translates their corporate social responsibility into concrete commitments.

Frood, Arran. 2017. "Mission Control: Drug Developers Test the 'benefit Corporation' Business Model". Nature Medicine 23 (10): 1117–18. https://doi.org/10.1038/nm1017-1117

Abstract: Not available

Heled, Yaniv, Liza Vertinsky, and Cass Brewer. 2019. "Why Healthcare Companies Should Be(Come) Benefit Corporations". Boston College Law Review 60 (1): 73
Abstract: Our healthcare system is broken. Despite spending far more on healthcare per capita than any other country, health outcomes in the United States are relatively poor. There is a pervasive disconnect within the healthcare system between private incentives to develop and provide healthcare products and services and public health needs. Mainstream proposals for how to fix the system have focused on changes in regulation, incentive schemes, consumer behavior, and competition in healthcare markets. All of these proposals share the assumption that the development and provision of healthcare products and services will remain primarily in the hands of traditional corporations and, to a lesser extent, non-profit organizations operating within a market-based healthcare system. Yet, as this Article demonstrates, there is an inherent problem with relying on profit-focused corporations to drive healthcare innovation and provide healthcare products and services. Traditional corporations are structured to focus on profits rather than to tend to the public need, a focus that is reinforced by the legal framework that governs them. Even though this profit focus is not unusual nor considered undesirable in most markets, healthcare markets are different in ways that create a divergence between the private incentives to which corporations respond and public health needs. In this Article, we suggest that a change in corporate form can be used to more closely align private incentives with public need by changing corporate incentives from the inside. We propose that companies involved in the provision of healthcare products and services should be encouraged or even required to assume alternative business forms that would both enable and require them to consider the needs of a broader range of stakeholders and the public interest in addition to shareholder value. We identify benefit corporations, broadly defined, as one preferred mechanism for achieving this. We conclude that this approach could help to change corporate behavior in ways that improve healthcare outcomes.

Hemphill, Thomas A., and Francine Cullari. 2014. "The Benefit Corporation: Corporate Governance and the For-Profit Social Entrepreneur". Business and Society Review 119 (4): 519–36. https://doi.org/10.1111/basr.12044

Abstract: The adoption by 19 states and the District of Columbia of a new variant of the business corporation form—known as the benefit corporation—presents several issues for legislatures, for entrepreneurs electing to organize as benefit corporations, for existing corporations that are converting to the new form, and for the stakeholders (other than shareholders) who are intended to be considered in benefit corporation governance. The article presents the history and structure of the new business form and a discussion of what has become its predecessor—the constituency statute. The model benefit corporation statute provisions are reviewed, which many states have adopted in toto. The authors address the obstacles that should be overcome by legislatures, businesses, and stakeholders before further legislative adoptions occur, as well as considerations for effective implementation by government, corporations, and stakeholders under existing and proposed variations of the statute.

Hiller, Janine S. 2013. "The Benefit Corporation and Corporate Social Responsibility". Journal of Business Ethics 118 (2): 287–301. https://doi.org/10.1007/s10551-012-1580-3

Abstract: In the wake of the most recent financial crisis, corporations have been criticized as being self-interested and unmindful of their relationship to society. Indeed, the blame is sometimes placed on the corporate legal form, which can exacerbate the tension between duties to shareholders and interests of stakeholders. In comparison, the Benefit Corporation (BC) is a new legal business entity that is obligated to pursue public benefit in addition to the responsibility to return profits to shareholders. It is legally a for-profit, socially obligated, corporate form of business, with all the traditional corporate characteristics combined with societal responsibilities. Considering the history and perception of shareholder primacy in United States law, it is argued that this new business structure is an ethical step toward empowering socially committed commercial entities. The contribution of this research is to provide a fundamental base of knowledge about the new legal form of business, the BC, upon which further study may rely. First, the legal history of the corporation is briefly reviewed in order to provide context to the relationship of the corporate form to society, including exploration of the premise that shareholder wealth maximization is its best and only purpose. Second, the BC is described in detail, and state statutes are compared. Third, the BC is placed within the context of corporate social responsibility. Finally, opportunities for future research are discussed.

Kessel, Mark. 2014. "Restoring the Pharmaceutical Industry's Reputation". Nature Biotechnology 32 (10): 983–90. https://doi.org/10.1038/nbt.3036

Abstract: Big pharma's storehouse of trouble has fostered consumer mistrust and a negative view of the industry. How does the industry go about restoring its flagging reputation?

Kurland, Nancy B. 2017. "Accountability and the Public Benefit Corporation". Business Horizons 60 (4): 519–28

Abstract: Can benefit corporations be held accountable for delivering requisite public goods? An oft-cited criticism is that they cannot, but little empirical research exists to support that claim. Based on an in-depth case study of the oldest corporation to amend its governing documents as a public benefit corporation (PBC) under Delaware law, this article suggests that a company can be held accountable for delivering requisite public goods when external mechanisms are accompanied by an organization's internal commitment to self-awareness, learning, and measurement. In the case in question, the company established a three-pillar structure focused on professional engagement, community support, and charitable giving built on a 6-year-old sustainability initiative, accompanied by an adaptive learning culture, and driven by top-down and bottom-up efforts. Current challenges include measuring impact and branding the PBC to grow the company's business.

Mazzucato, Mariana, and Henry Lishi Li. 2021. "A Market Shaping Approach for the Biopharmaceutical Industry: Governing Innovation Towards the Public Interest". Journal of Law, Medicine & Ethics 49 (1): 39–49. https://doi.org/10.1017/jme.2021.8

Abstract: Enhancing research and development, and ensuring equitable pricing and access to cuttingedge treatments, are both vital to a biopharmaceutical innovation system that works in the public interest. However, despite delivering numerous therapeutic advances, the existing system suffers from major problems: a lack of directionality to meet key needs; inefficient collaboration; high prices that fail to reflect the public contribution; and an overly financialised business model. COVID-19 has magnified and focalized these challenges. We review these problems and argue that overcoming them requires a fundamental reframing of the role of the state in innovation, from market-fixing to market co-creation and co-shaping, in which risks and rewards are shared across a symbiotic public-private relationship.

Mion, Giorgio. 2020. "Organizations with Impact? A Study on Italian Benefit Corporations Reporting Practices and Reporting Quality". Sustainability 12 (21): 9038. https://doi.org/10.3390/su12219038

Abstract: Benefit Corporations (BCs) were introduced in Italy by Law 28-12-2015 N. 208 based on the previous experience of the USA. BCs are hybrid organizations with a blended economic and social/environmental purpose and aim to generate a positive impact on employees, environment, communities, and other stakeholders in addition to profit-making. For BCs, accountability is crucial to achieve social legitimacy and to prove their positive impact on society. Italian BCs are obliged to prepare and publish a yearly impact report. The present research aimed to explore the impact reporting practices of Italian BCs and to evaluate the quality of the published reports. 47 impact reports were collected from 192 websites, and a qualitative content analysis was performed on these reports. Furthermore, an evaluation instrument was built to measure impact reporting quality and to understand which determinants affected the reporting quality. The study allowed understanding that impact reporting practice was at a very early stage of evolution. Furthermore, the analysis focused on the importance of an external standard for promoting reporting quality. The findings of the study contributed to the existing literature on BCs and on reporting quality and allowed some practical implications for managers, policymakers, and standard setters.

Mion, Giorgio, and Cristian R. Loza Adaui. 2020. "Understanding the Purpose of Benefit Corporations: An Empirical Study on the Italian Case". International Journal of Corporate Social Responsibility 5 (1): 4. https://doi.org/10.1186/s40991-020-00050-6

Abstract: Rethinking the traditional understanding of organizational purpose appears to be necessary. A teleological paradigm shift seems to be on its way, changing the focus of attention from considering business organizations as instruments used to generate profits toward a more comprehensive understanding of their purpose and of the benefit they can create for society. Recently, new organizational entities have emerged, accompanied by the renewal of institutional frameworks, among them are benefit corporations. Italy was the first European country to introduce a legal framework to define the benefit corporation as a particular legal entity. The Italian law on the benefit corporations proposes the promotion of firms that pursue the generation of benefit in a responsible, sustainable, and transparent way and considering diverse stakeholders. This paper explores and describes the multidimensional understanding of benefit and purpose of Italian benefit corporations, utilizing qualitative and quantitative content analysis of 94 Italian benefit corporations' purpose declarations, and providing a deep insight into the purpose declared by benefit corporations. The research highlights a certain vagueness in public declarations of the purpose of benefit corporations, even though it is clear that they attempt to differentiate themselves from traditional businesses by focusing on social objectives more than on economic ones. Furthermore, normative compliance emerged, but further normative requirements seem to be needed to make more effective the transformative potentiality of benefit corporations and to avoid risks of opportunistic behaviors.

Mion, Giorgio, Cristian Rolando Loza Adaui, and Angelo Bonfanti. 2021. "Characterizing the Mission Statements of Benefit Corporations: Empirical Evidence from Italy". Business Strategy and the Environment 30 (4): 2160–72. https://doi.org/10.1002/bse.2738

Abstract: In 2015, Italy introduced a new legal form—"benefit corporation" (società benefit)—that provides legal status to companies that have one or more common benefit objectives in addition to the profit-seeking goal. Italian benefit corporations are obligated by law to operate in a responsible, sustainable, and transparent way and to include the interests of different stakeholders in their corporate strategy. This study examines the

Italian case by applying textual statistical analysis on benefit corporations' public mission statements using the IRaMuTeQ software. Performing hierarchical cluster analysis and correspondence factor analysis identifies the "benefit" concept emerging from the mission statements in terms of promotion of individual skills, development of a new business model, and service to society. This study contributes to the debate on the content of mission statements by giving empirical evidence about this new form of business, and it provides some practical implications for managers, entrepreneurs, and policymakers.

Munch, Steven. 2012. "Improving the Benefit Corporation: How Traditional Governance Mechanisms Can Enhance the Innovative New Business Form" 7: 27

Abstract: In recent years, a number of states have offered innovative new business forms to accommodate social enterprises, organizations that pursue both profit and social purpose. These hybrid forms are designed to free socially conscious entrepreneurs from the strict pursuit of shareholder value maximization that often controls in business practice and law, allowing them instead to serve the interests of other company stakeholders or even society. One form, the benefit corporation, has been adopted by seven states and is now under consideration in several more. This Note details the development, provisions, and advantages of the benefit corporation. It also identifies and analyzes possible flaws in the benefit corporation as it is structured now. In particular, this Note focuses on the potential enforceability and accountability challenges that might accompany the social obligation provisions that are typical of the form. Finally, the Note explores ways in which states might employ traditional corporate governance mechanisms to strengthen the benefit corporation form and better ensure that it effectively serves its dual commitments to shareholders and stakeholders.

Murray, J. Haskell. 2015. "An Early Report on Benefit Reports". West Virginia Law Review 118 (1): 25–58

Abstract: Benefit corporation proponents argue that the new social enterprise entity form "meets higher standards of corporate purpose, accountability, and transparency." This Article analyzes the transparency claim by examining hand-collected benefit report data and the substantive statutory reporting requirements. Data from early benefit corporations shows an abysmal benefit report compliance rate (below ten percent), drawing into question the claims about heightened transparency. This Article also provides reasons to doubt the efficacy of the current substantive reporting requirements due to the lack of specificity and lack of effective enforcement mechanisms in most states' benefit corporation statutes. This Article explains how policy, theory, and now early data, all point to significant deficiencies in the benefit reporting framework. Finally, this Article concludes with suggestions to strengthen the benefit corporation reporting requirements, increase compliance rates, and encourage benefit corporation transparency.

Nawrat, Allie. 2021. "Could the PBC Model Help Pharma Balance Profits and Patients?". Pharmaceutical Technology. March 17, 2021. https://www.pharmaceutical-technology.com/features/pbc-pharma-balance-profits-patients/

Abstract: Not available

Outterson, Kevin, and John H. Rex. 2020. "Evaluating For-Profit Public Benefit Corporations as an Additional Structure for Antibiotic Development and Commercialization". Translational Research 220 (June): 182–90. https://doi.org/10.1016/j.trsl.2020.02.006

Abstract: While antibiotics are a key infrastructure underpinning modern medicine, evolution will continue to undermine their effectiveness, requiring continuous investment to sustain antibiotic effectiveness. The antibiotic R&D ecosystem is in peril, moving towards collapse. Key stakeholders have identified pull incentives such as Market Entry Rewards or subscription models as the key long-term solution. If substantial Market Entry Rewards or

other pull incentives become possible, there is every reason to expect that for-profit companies will return to the antibiotic field. However, the political and financial will to develop such Market Entry Rewards or other similar incentives may be difficult to muster in the timeframes needed to prevent further diminishment of antibiotic research and development, especially if large drug companies are seen as substantial beneficiaries of these taxpayer-funded pull incentives. Bridging solutions are required from private actors in the interim. This article explores potential solutions led by private actors, including (1) traditional for-profit companies; (2) non-profit enterprises; and (3) public benefit corporations with lower profit expectations, akin to a public utility. All face similar commercial struggles, but nonprofits and public benefit corporations can accept lower profit expectations and might be more politically attractive recipients of pull incentives.

Pelatan, Alissa, and Roberto Randazzo. 2016. "The First European Benefit Corporation: Blurring the Lines between 'social' and 'Business'". Esela - The Legal Network for Social Impact. June 30, 2016. https://esela.eu/news/the-first-e

Abstract: In December 2015, the Italian parliament passed the "Stability Act of 2016", thereby creating the "Società Benefit", an innovative company for entrepreneurs looking to pursue a social and business purpose. The characteristics of the Italian "Società Benefit" are very similar to a US Benefit Corporation – a legal entity introduced in 30 jurisdictions in the USA. Even though the Italian equivalent of the Benefit Corporation has adopted the three main characteristics of a US Benefit Corporation, there are still quite a few differences between the Italian Benefit Corporation and the US Benefit Corporation. First of all, the "Società Benefit" must list in its bylaws the specific benefit activities related to the general social purpose. Secondly, the annual report must be more detailed than the US Benefit Corporation. Moreover, no limitation of liability clause exists for Benefit Corporation directors with respect to third party lawsuits. Finally, Italian for-profit companies and limited-profit companies may adopt the Società Benefit legal status. This article will provide an in-depth analysis on the new Italian law introducing the "Società Benefit", a comparison of the US and the European historical and social context, as well as a summary of the potential impacts of the Italian experience on other EU Members' legal systems. We will then further develop the relationship and the interaction, if any, between "B" certification, the "B" impact assessment and the "Società Benefit" under the new Italian law and will predict the global outcome and benefits related to the increasing dissemination of Benefit Corporation, B-Corp companies, and new similar models in Europe.

Ramsay, Ian, and Mihika Upadhyaya. 2021. "The Failed Attempt to Enact Benefit Company Legislation in Australia and the Rise of B Corps". SSRN Scholarly Paper ID 3795039. Rochester, NY: Social Science Research Network. https://doi.org/10.2139/ssrn.3795039

Abstract: A majority of states in the United States (US) have enacted benefit corporation legislation, as have the Canadian province of British Columbia, the US territory of Puerto Rico, and Columbia, Ecuador and Italy. Over 5,000 US corporations have incorporated or re-incorporated as benefit corporations under the US legislation. Under the 'model' US legislation, benefit corporations are required to pursue a 'general public benefit' purpose, defined as 'a material positive impact on society and the environment' and may also pursue a more specific public benefit purpose. In addition, directors of a benefit corporation must consider the effects of any action or inaction on a wide range of stakeholders of the corporation. Benefit corporations incorporated under the benefit corporation legislation are different to Certified B Corporations, or B Corps. A benefit corporation is a specific type of company whereas a B Corp is a corporation that has been certified by B Lab as achieving a minimum verified score on the B Impact Assessment – an assessment of the company's impact on its workers, customers, community and environment. Certified B Corps amend their legal governing documents (for example, their articles of association or constitution) to require the board of directors to balance profit and purpose. There are over 3,500 certified B Corps in more than 70 countries. Given this history, there is understandable interest in countries that are or have considered enacting

benefit corporation legislation. One of these countries is Australia. The Australian subsidiary of B Lab prepared draft legislation and lobbied for this to be enacted. However, the attempt to introduce legislation in Australia was unsuccessful and B Lab ceased its advocacy for the draft legislation in 2020. The authors explore the reasons for the unsuccessful attempt to introduce benefit corporation legislation in Australia. They also explore the parallel increase in the number of B Corps in Australia - in 2019 the Australian subsidiary of B Lab reported that Australia and New Zealand was the fastest-growing region per capita for B Corps in the world and corporations from a broad range of industries are now certified Australian B Corps. However, the authors argue that while B Lab certification achieves, in some important respects, some of what was contained in the draft benefit corporation legislation, had it been enacted, the draft legislation would have ensured greater transparency and accountability for those corporations electing to become benefit corporations than is currently the case for B Corps.

Rawhouser, Hans, Michael E. Cummings, and Andrew Crane. 2015. "Benefit Corporation Legislation and the Emergence of a Social Hybrid Category". SSRN, California Management Review, 57 (3): 13–35. https://doi.org/10.1525/cmr.2015.57.3.13

Abstract: Previous research highlights the tensions that social hybrids face by spanning categories. This paper explores the emergence of legislation to support a new category for social hybrids, focusing on Benefit Corporation legislation in the United States. We present quantitative analysis of the state-level factors that make a state suitable for a social hybrid category (attractiveness for for-profit business and non-profits, existing social hybrid organizations, legislative intensity, political leanings) followed by qualitative analysis of the arguments marshaled for the creation of the Benefit Corporation legal form. Our findings raise important insights for research on social hybrids and suggest a range of practical implications.

Resor, Felicia R. 2012. "Benefit Corporation Legislation". Wyoming Law Review, Wyoming Law Division: Comment, 12 (1): 91–114

Abstract: Not available

Segrestin, Blanche, Kevin Levillain, and Armand Hatchuel. 2018. "French Law Revisits Corporate Purpose (SSIR)". Stanford Social Innovation Review. November 29, 2018. https://ssir.org/articles/entry/french_law_revisits_corporate_purpose

Abstract: Not available

Smith, William, and Barrie Litzky. 2019. "Crossing the Shareholder-First Border: The Case of Trek Therapeutics". Proceedings of the International Association for Business and Society 30 (January): 66–72. https://doi.org/10.5840/iabsproc2019309

Abstract: This project investigates critical issues and events related to Trek Therapeutics experience as a public benefit corporation. We will present and discuss how Trek differentiates itself in an industry where the attention is on high prices supporting high investor returns. Trek's benefit corporation status helped it garner favorable attention in some respects, but has also presented challenges, particularly when it comes to attracting new capital.

Stecker, Michelle J. 2016. "Awash in a Sea of Confusion: Benefit Corporations, Social Enterprise, and the Fear of 'Greenwashing'". Journal of Economic Issues 50 (2): 373–81. https://doi.org/10.1080/00213624.2016.1176481

Abstract: In the last five years, the majority of U.S. states enacted benefit corporation legislation, creating a new legal form of business that embraces the "triple-bottom line" of people, planet, and profit. Benefit corporation status provides legal protections for directors and officers, who may now balance social and environmental impact with shareholder

returns. It also creates rich opportunities for social entrepreneurs, gives investors more socially responsible options, and offers a helpful designation for consumers. I describe the history and purpose of benefit corporations, evaluate their pros and cons, and argue that safeguards against "greenwashing" make benefit corporations a valuable business form of social enterprise.

Surowiecki, James. 2014. "Companies with Benefits". The New Yorker, July 28, 2014. http://www.newyorker.com/magazine/2014/08/04/companies-benefits

Abstract: James Surowiecki on companies that have social responsibility written into their charters.

Tulum, Öner, and William Lazonick. 2018. "Financialized Corporations in a National Innovation System: The U.S. Pharmaceutical Industry". International Journal of Political Economy 47 (3–4): 281–316. https://doi.org/10.1080/08911916.2018.1549842

Abstract: There are widespread claims that a productivity crisis afflicts the U.S. pharmaceutical industry despite the fact that the U.S. institutional environment provides unique advantages for drug R&D. We argue that the explanation for this productivity paradox is the "financialization" of the U.S. pharmaceutical industry. Driven by shareholder-value ideology, the U.S. pharmaceutical industry has adopted a highly financialized business model. Its key performance metrics are stock-price yield and dividend yield, supported by distributions to shareholders through large-scale stock buybacks and cash dividends. With this financial behavior incentivized by stock-based executive pay, value extraction from corporations for the sake of distributions to shareholders comes at the expense of drug innovation. Simultaneously, however, a number of less-financialized European companies are making use of the U.S. innovation system to outcompete the U.S. companies at home. Arguing that all business enterprises face a tension between innovation and financialization, this article employs the theory of innovative enterprise as a framework for analyzing the evolution of this tension for pharmaceutical companies operating in the United States. We provide evidence of the highly financialized character of the major U.S. pharmaceutical companies in the S&P 500 Index, focusing on distributions to shareholders and the stock-based pay of pharmaceutical executives. After documenting the evolution of the U.S. innovation system for drug R&D since the 1980s and summarizing the U.S. product strategies of seven major European pharmaceutical companies, we pose the hypothesis that under a system of corporate governance supporting innovation, the U.S. innovation system could result in a more innovative pharmaceutical industry.

Weismann, Miriam F. 2017. "The Missing Metrics of Sustainability: Just How Beneficial Are Benefit Corporations". Delaware Journal of Corporate Law 42 (1): 1–50

Abstract: Fiduciary duty is the central organizing legal principle of corporate governance in for-profit entities. Expressed as the duty of care and the duty of loyalty, fiduciary duty obligates directors and managers to maximize shareholder wealth. This legal constraint may expose for-profit entities and their directors to potential legal liability when they choose social benefit as a significant corporate purpose. To circumvent this restriction, a majority of states have responded by enacting laws creating new forms of business organizations known as Benefit Corporations and L3Cs. These states have rewritten the rules of domestic corporate governance through legislative innovation of business organization models that seemingly accommodate two potentially conflicting ethical obligations: the fiduciary duty to shareholders and the social responsibility to the stakeholders. A recent study by Rae Andre ("Andre") considered the utility of the Benefit Corporation as a vehicle to facilitate corporate social responsibility ("CSR") using five sample states. This article builds upon and expands that research by analyzing all of the current thirty-nine state enactments of "benefit legislation" to determine whether the new benefit laws require accountability through financial and/or accounting reporting requirements, and thus, enable measurement of the real extent and benefit of the corporate activity. Additionally, in an attempt to navigate the still largely untested waters of "measuring the benefit" of Benefit Corporations, a national survey of benefit entities was conducted as part of the research for this paper, focusing on real asset allocation to the stated beneficial purpose. Based on the research and survey information, this article concludes that the real measure of benefit may be primarily to the benefit entity in pursuit of establishing enhanced brand exposure as opposed to any measurable social value. This conclusion is consistent with Andre's prior research demonstrating the limited utility of Benefit Corporations in the delivery of CSR.

White, Thomas J. III. 2014. "Benefit Corporations: Increased Oversight through Creation of the Benefit Corporation Commission Notes". Journal of Legislation 41 (2): 329–54

Abstract: Traditional for-profit and nonprofit corporate forms do not provide the appropriate framework for an organization pursuing both profits and social responsibility. In response, state legislatures have begun to take initiative by offering new business forms to accommodate for an increased demand in social responsibility. These hybrid forms seek to offer an organization the optimal platform by which to meet their dynamic goals. This Note will analyze the recently popular hybrid form of a benefit corporation. Further, this Note will dissect the Model Benefit Corporation Legislation and explain how benefit corporations provide a solution to the theory of shareholder wealth maximization. In closing, this Note will expose a deficiency in the model legislation and offer a solution to this deficiency. In particular, this Note will argue that the current enforceability and accountability provisions do not provide a sufficient assurance that all stakeholders' interests will be adequately protected.

Wilburn, Kathleen, and Ralph Wilburn. 2014. "The Double Bottom Line: Profit and Social Benefit". Business Horizons 57 (1): 11–20. https://doi.org/10.1016/j.bushor.2013.10.001

Abstract: There is an important shift in business focus in the United States that is empowering companies to not only declare their intent to be ethical firms which do good while making a profit, but also to submit proof of that commitment for annual review by outside evaluators. A new business model is providing structure for non-profits that wish to grow, for for-profits that wish to be socially responsible, and for individuals who wish to invest in companies with a commitment to corporate social responsibility and sustainability. B Lab has taken the lead in providing the models necessary for this shift to a focus on the double bottom line: profit and social benefit. It has created the legal documents for state legislatures to use to pass a new corporate structure called the 'benefit corporation.' In the 3 years of its existence, legislatures in 19 states and the District of Columbia have ratified the new corporate structure. Likewise, B Lab offers a performance assessment program to become a Certified B Corporation, independent of legal corporate status, which also serves as an evaluation program for benefit corporations. Additionally, it has created a ratings agency and analytics platform, the Global Impact Investing Rating System (GIIRS), to help institutional investors evaluate the impact of companies' corporate social responsibility initiatives. This article discusses the requirements and benefits of the new models and addresses the issues that have been raised about them. It also identifies companies that are incorporating the benefit corporation structure and are becoming Certified B Corporations.

---

* For the purposes of this review, we have established three categories to describe the state of the literature: thin, considerable, and rich.
- Thin: There are relatively few papers and/or there are not many recent papers and/or there are clear gaps
- Considerable: There are several papers and/or there are a handful of recent papers and/or there are some clear gaps

- Rich: There is a wealth of papers on the topic and/or papers continue to be published that address this issue area and/or there are less obvious gaps

Scope: While many of these issues can touch a variety of sectors, this review focuses on medicines. The term “medicines” is used to cover the category of health technologies, including drugs, biologics (including vaccines), and diagnostic devices.

Disclaimer: The research syntheses aim to provide a concise, comprehensive overview of the current state of research on a specific topic. They seek to cover the main studies in the academic and grey literature but are not systematic reviews capturing all published studies on a topic. As with any research synthesis, they also reflect the judgments of the researchers. The length and detail vary by topic. Each synthesis will undergo open peer review and be updated periodically based on feedback received on important missing studies and/or new research. Selected topics focus on national and international-level policies, while recognizing that other determinants of access operate at sub-national level. Work is ongoing on additional topics. We welcome suggestions on the current syntheses and/or on new topics to cover.