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Taking Good Works to the Next Level: Increasing Investment in and Support for Higher-Risk Innovation

Jessie Capper
Claremont McKenna College

CLAREMONT McKENNA COLLEGE

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Professor William Ascher

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Jessie Capper

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Abstract

This thesis explores the possible avenues available to corporations and capital-managing entities seeking to increase their commitment to good works. These organizations have the potential to fill the gap in societal needs by supporting and investing in good works, including environmental protection and highly-innovative energy technologies, beyond the traditional corporate social responsibility (CSR) norm. These means include charitable giving, working with disadvantaged communities, corporate assistance to environmental or other social non-governmental organizations, and more. This thesis discusses the advantages and limitations of various corporate structures (C Corporations, S Corporations, LLCs, B Corps, L^3Cs, and benefit corporations) and capital-managing organizations (mutual funds, foundations, and pension funds). Recommendations are provided for each to encourage good works with greater impact.

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CHAPTER 1: INTRODUCTION

The Problem

The United States is ranked among the nations with the highest GDP per-capita, and is one of the most powerful countries with its political, social, cultural, and economic influence across the globe.[1] Despite its wealth, the United States has many pressing societal needs, including education, health, and environmental programs, and a need for a consistently improving physical infrastructure. Currently, there is a gap in adequately fulfilling these needs.

Education

The United States spends significantly more on education per-capita than all other Organization for Economic Cooperation and Development countries.[2] According to the National Center for Education Statistics, in 2010, the United States spent 39 percent more per full-time student for elementary and secondary education than the average for other countries in the OECD.[3] Although the United States' spending is high in this particular sector, communities across the country are disproportionately left out of the benefits; the Center for American Progress found that a ten percentage point increase in students of color at a school is associated with a $75 decrease in per-pupil spending.[4] On average, schools holding a greater number of minority populations have "less-experienced teachers who are less likely to be certified."[5] As a result, the test-score deficit of black 9-, 13-, and 17-year-olds in reading and math has been reduced as much as 50 percent compared with what it was 30 to 40 years ago.[6] The limited opportunities for these students is most apparent in our public education system:

> Financed mainly by real estate taxes that are more plentiful in neighborhoods with expensive homes, public education is becoming increasingly compartmentalized. Well-funded schools where the children of the affluent can play and learn with each other are cordoned off from the shabbier schools teaching the poor, who are still disproportionally from black or Hispanic backgrounds.[7]

This achievement gap widens as students progress through our education system. The student loans provided by the U.S. government and other sources lead students to significant debt. The U.S. government offers student loans for those who are not able to afford a four-year university: 90 percent of black students receive a federal, non-federal or PLUS loan by their fourth year in college, compared to 65 percent of white students who do.[8] These student loans often leave students in critical debt, and therefore are not likely to benefit from these programs. Scholars assessing the history of America's educational disparities find that "despite the efforts deployed by the American public education system, nine years later the achievement gap, on average, will have widened by somewhere from one-half to two-thirds."[9]

Health

The inequalities in the United States' education system have additional consequences on other areas in our social system—especially within the health sector. According to *The New York Times*, children of less educated parents "suffer high obesity rates, have more social and emotional problems and are more likely to report poor or fair health."[10] The USDA estimates 23.5 million people who live in these low-income, urban neighborhoods and rural town often suffer from limited access to fresh, affordable, healthy food.[11] Although cities like Atlanta attempted to address this issue with a $30 million federal grant to increase the distribution of agricultural products, develop and equip grocery stores, and strengthen producer-to-consumer relationships, the problems with our healthcare system persists.[12] According to Dr. Sanjay Gupta, Chief Medical Correspondent for CNN, the United States demonstrates numerous weaknesses in the health sector. If the U.S. system providing primary care in 2020 "were to remain fundamentally the same as today, there would be a projected shortage of 20,400 primary care physicians."[13] These deficiencies are costly for the government; in 2010, "additional costs of $1.4 billion were attributed to increased mortality rates with $1.1 billion, or 10 million days, of lost productivity from missed work based on short-term disability claims."[14]

Environment

The need to address these issues will only increase as the impacts of climate change—including warming temperatures, increases in the frequency or intensity of extreme weather events, and rising sea level—pose serious threats to human health. Exposure to extreme heat "can lead to heat stroke and dehydration, as well as cardiovascular, respiratory, and cerebrovascular disease."[15] Additionally, although U.S. air quality has significantly improved since the 1970s, as of 2014 approximately 57 million Americans lived in counties that did not meet national air quality standards. [16] The projected warmer temperatures will increase the frequency of days with unhealthy levels of ground-level ozone; the EPA claims this puts individuals at a "greater risk of dying prematurely or being admitted to the hospital for respiratory problems."[17] Ground-level ozone can damage lung tissue, reduce lung function, and inflame airways; furthermore, the higher concentrations of ozone due to climate change "may result in tens to thousands of additional ozone-related illnesses and premature deaths per year by 2030 in the United States, assuming no change in projected air quality policies."[18]

Combating these environmental issues requires increase in the financial support for research and development of environmentally friendly technologies. Congress's current approach to tackling these pressing problems is insufficient despite the clear need for its assistance. Congress attempted to address the issue of hazardous waste in 1980 through the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), creating the Superfund hazardous substance cleanup program administered by the Environmental Protection Agency (EPA).[19] In the more than 30 years since its enactment, "scientists and engineers have developed increasingly sophisticated approaches to identifying and remediating contaminated sites."[20] Despite this small achievement, "annual funding for Superfund site cleanup is estimated to be as much as $500 million short of what is needed, and 1,280 sites remain on the National Priorities List with an unknown number of potential sites yet to be identified."[21]

Physical Infrastructure

The maintenance of park and recreational space poses another gap in the U.S. physical infrastructural sector. The popularity of parks and outdoor recreation areas in the United States continue to grow, with over 140 million Americans using these public facilities.[22] Despite the widespread use of parks across the United States, discrepancies arise among park users. According to a 2009 survey by the University of Wyoming and the National Park Service, "whites accounted for 78 percent of the national parks' visitors from 2008 to 2009; Hispanics, 9 percent; African-Americans, 7 percent; and Asian-Americans, 3 percent."[23] The inequalities persist when considering the presence of parks in local communities. Nearly 84 percent of communities of color and 80 percent of low-income communities in the West live in areas where the proportion of remaining natural area is lower than the state average.[24] According to a study published by Active Living Research, "The number of park facilities significantly differed across income tertiles, with the medium-income tertile having significantly more facilities than the low- or high-income tertiles." In addition to the lacking access to natural environments, "the low- and medium-income tertiles had significantly more park quality/safety concerns than the high-income tertile."[25]

Although the parks across the United States contribute $646 billion to the nation's economy and support roughly 6.1 million jobs, the nation's largest cities report at least $5.8 billion in deferred maintenance cost.[26] Additionally, the National Park Service estimates an $11 billion backlog of deferred maintenance at NPS sites.[27] Active Living Research advises collective engagement "in evaluating community environments to facilitate partnerships and collaborative efforts to make parks and other recreational facilities more accessible, attractive and safe for physical activity for all." The U.S. government is lacking in its support of the development and expansion of these parks to serve all communities, independent of a community's income level—involvement from non-governmental sources is required to augment the work of the National Park Service and fulfill this need.[28]

Corporate Good Works

Clearly, the U.S. government and public organizations are falling short in addressing the societal needs in education, health, environment, and physical infrastructure. Some private companies, among others, have tried to take on the burden of addressing these issues through corporate philanthropy, partnerships with non-governmental organizations and non-profits, community involvement programs, or altering production practices. The United States is home to over half of the 100 largest companies in the world; seven of the ten largest companies in the world by market capitalization are American.[29] These companies have the potential to fill the gaps in our societal needs. Corporations face two constraints, however, in doing so.

First, according to the goals and mission of a company as outlined by economist Milton Friedman, "a corporation's responsibility is to make as much money for the stockholders as possible."[30] Friedman stated in a 1970 *New York Times* article:

> In a free enterprise, private-property system, a corporate executive is an employee of the owners of the business. He has direct responsibility to his employers. That responsibility is to conduct the business in accordance with their desires, which generally will be to make as much money as possible while conforming to the basic rules of the society.[31]

Friedman believes it is the corporate manager's responsibility to invest the owner's money in a fashion that will yield the highest return; the action of investing money in activities, such as good works, that may not maximize the owner's value, but rather benefits society, presents a principle-agent dilemma. According to Friedman, the owners of the business, not the corporate executive, should determine the amount of money invested in good works. Or, the owner may invest in good works once he or she receives his or her return in dividends, or by selling stock of the company; however, the corporate executive does not have the right to make this decision on behalf of the owner. Although donating to local communities, charities, and non-governmental organizations can be beneficial to a company's brand and popularity, this charitable giving is problematic when not maximizing shareholder value—corporate managers indulging in good works can cause a firm's profit to diminish; therefore, the manager would not be fulfilling his duty as an agent to the principal owner. This could result in job termination, profit loss, and a less attractive firm to the public. Controversy therefore lies in corporations performing good works to better serve the social good rather than pursuing profit to maximize shareholder value.

Friedman's principle-agent relationship with respect to maximizing shareholder value is not as stringent as expected, however. In a later essay titled "Social Responsibility of Business," Friedman states "business executives are obligated to follow the wishes of shareholders (which will generally be to make as much money as possible) while obeying the laws and the 'ethical customs' of society."[32] Friedman presents a caveat of adhering to his original interpretation of managers' responsibilities; obeying the laws and "ethical customs of society" is not the same as maximizing shareholder value. Friedman fails to acknowledge that corporate executives may have duties to the general public that "outweigh their duties to shareholders. For example, suppose that a corporation could maximize its profits by pursuing actions, which expose the public to hazardous pollution. In such a case, the duty to act in the interests of the shareholders might be overridden by the duty not to harm others."[33] According to author Thomas Carson, Friedman's view is only plausible when considered as the best "general policy for businesspeople to follow in their everyday conduct," but is not universally applicable.[34]

The second constraint corporations face are the two existing approaches from the U.S. government—tax deductions and regulation—that encourage good works from companies. Companies can claim tax deductions for numerous decisions related to environmentally friendly or socially responsible business decisions. These deductions, however, direct money away from the government and, in turn, investments in infrastructure, research, and environmental initiatives. Furthermore, simply making regulations more stringent will not encourage companies to adopt other forms of socially responsible initiatives including, but not limited to: charitable giving, working with disadvantaged communities, corporate assistance to environmental or other social non-governmental organizations, and more.

Corporations and other capital-managing organizations (mutual funds, foundations, pension funds) have the potential to fill the health, education, environmental, and infrastructural gaps currently present in our society. They are held back, however, by the limitations described above. This thesis will explore how to overcome these constraints, and what opportunities exist for these other entities to contribute directly to good works, and equally important, to invest the organization's funds in corporations engaging in good works.

CHAPTER 2: THE CORPORATE CONTEXT

The Case for Corporate Good Works and Corporate Structures

"A business that earns nothing but money is a poor business." –Henry Ford

A company can choose to be classified under a range of corporate structures. Furthermore, some corporate structures are more rigid than others in terms of the company's ability to put money into good works. For example, some of these corporations have very stringent requirements to maximize shareholder value, whereas other structures might prioritize the company's commitment to good works. It is important to understand the types of businesses to better understand how corporations can pursue good works beyond traditional corporate social responsibility (CSR) approaches.

The Ford Motor Company maintains a long history of pursuing corporate good works despite periods of backlash from its shareholders. Mark Fields, the CEO of Ford Motor Company, describes the firm as "a company with a soul" due to its commitment of donating "money and employees' volunteer hours to the communities in which the company operates and to the company's high rankings for good corporate behavior."[35]

In the 1919 famous court case, *Dodge vs. Ford Motor Company*, John F. Dodge and Horace E. Dodge sued founder, Henry Ford, for declining to distribute the company's surplus revenue to shareholders; Ford chose to invest in the company's manufacturing capacity by hiring more workers and reducing the price of its cars for its consumers. The Dodge brothers demanded Ford pay out 75 percent of the company's accumulated cash surplus as a dividend and stop investing in new factories.[36] Ford argued, however, that his "ambition ... is to employ still more men; to spread the benefits of this industrial system to the greatest possible number, to help them build up their lives and their homes. To do this, we are putting the greatest share of our profits back into the business."[37]

The Michigan Supreme Court ultimately ruled in favor of Ford, granting him, and the rest of the company's board, the permission to employ whatever strategy they deemed fit. The court believed "that anyone as successful as Ford must have been furthering a plan to boost profits in the long run, even if his plans seemed to limit profits in the short-run and even if he explicitly said he had little interest in lining shareholders' pockets."[38] This landmark case set the precedent for the boards of for-profit corporations to allocate money by paying out dividends, buying back stock, or putting the revenue towards good works. The Michigan Supreme Court ruled that Ford could "invest in research and development, increase employees' wages, give back to their communities, put money into less environmentally harmful production methods, improve product quality, and lower prices."[39] The *Dodge vs. Ford Motor Company* affirmed, "as long as there is some sort of connection to boosting long-term earnings, boards can essentially do as they please."[40] In addition to protecting a businesses' pursuits of good works, this case demonstrated the importance of entrusting a corporation to perform environmentally and socially responsible decision-making rather than hoping each respective shareholder would do so with his or her paid-out dividend. By investing in good works, the company may, in turn, benefit the corporation in the long-run, thereby also increasing the shareholder's value.

A company can choose to pursue corporate good works for different purposes: being more environmentally responsible, giving money to good works, and/or engaging in risky investment of time and effort to discover socially innovative breakthroughs. The company's purpose often determines the classification a company chooses. Corporations performing good works can choose to be classified as stock corporations (C Corporations: companies that have publicly-traded stock) or privately-held firms (S Corporations and Limited Liability Companies); however, additional forms of designation by the U.S. government exist for businesses prioritizing good works over maximizing shareholder value: benefit corporations, B Corporations, and low-profit limited liability company (L^3Cs).

Privately-Held and Publicly-Traded Companies

Contrary to common preconception, some privately-held corporations are quite large. Roughly 440 companies on Forbes' list of the largest privately-held companies employ 6.2 million people, and account for $1.8 trillion in revenues.[41] Furthermore, 90 percent of the more than 150,000 firms operating in the United States that generate over $10 million in annual revenue are privately-held companies.[42]

Privately-held companies have many benefits over publicly-traded firms: there is "no pressure over quarterly earnings [and] no obsession with stock prices."[43] Additionally, unlike public companies, private companies are less susceptible to "hostile takeover attempts through tender offers."[44] The disproportionate impact of the Sarbanes-Oxley Act of 2002 on publicly and privately-held companies demonstrates an additional advantage for private firms: "Sarbanes-Oxley is comprised of 11 titles that describe specific mandates and requirements for public company financial reporting.... Since Sarbanes-Oxley only pertains to public companies, private firms are exempt from the compliance requirements and thus save a great deal of time, money, and headaches."[45] Due to the limited reporting requirements, private firms often have greater control over their operations without requiring shareholder approval; managers do not need to disclose sensitive information that may risk the company's relative success or reduce stakeholder's confidence in the firm.[46] Lastly, S Corporations and Limited Liability Companies (LLCs)—two forms of privately-held firms—are exempt from double taxation on corporate income "by requiring shareholders to report the flow-through of income and losses on their personal tax returns, thus being assessed tax at their own individual income tax rates."[47]

An S Corporation is a standard, privately-held corporation that has elected a special tax status with the IRS; the formation requirements are the same as those for C Corporations: incorporation documents are filed with the state, along with paying the appropriate filing fees.[48] The S Corporation tax status eliminates double-taxation—a corporate income tax return is filed, but "business profits or losses 'pass-through' to shareholders and are then reported on their individual tax returns. Any tax due is paid by shareholders at their individual tax rates."[49] The LLC is an alternative to S Corporations. With its tax status, income is not taxed at the entity level; the LLC typically completes a partnership return if the LLC has more than one owner: "The LLC's income or loss is passed through the LLC and reported on owners' individual tax returns. Tax is then paid at the individual level."[50]

Both owners of S Corporations and LLCs are typically not personally responsible for business debts and liabilities.[51] Furthermore, both are separate legal entities created by a state filing, and have pass-through taxation rights. These two private types of corporations experience differences in ownership, as LLCs can have an unlimited number of members, whereas S Corporations can have no more than 100 shareholders. [52] Lastly, C corporations, S corporations, LLCs, or partnerships cannot own S Corporations.[53] Due to restrictions on the number of shareholders, stock classes, and allowable shareholders, public companies are not able to structure as an S Corporation or LLC.[54]

Publicly-traded companies (i.e. C Corporations), on the other hand, have many benefits that private firms do not. One of the primary advantages is the increased ease of fundraising for a public company than for a private firm.[55] A private company must receive funding through owners savings, venture capital, bank loans, or other funding processes, whereas a public company can file to issue new shares to be sold on the stock markets.[56] Furthermore, publicly-traded companies have the advantage of using market valuations to determine the benefits or disadvantages of acquiring other companies; this, in turn, reduces the riskiness of a firm's cash position during an acquisition.[57] Lastly, an initial public offering can enhance positive perception: "a high visibility mark of success and prestige...public companies are more likely to receive attention from the media."[58]

Mutual Funds

Both privately-held and publicly-held companies have clear disadvantages and advantages. Despite their significant contribution to the U.S. economy, however, both sets of companies, in general, are lacking in their pursuit of corporate good works. The creation of socially-focused mutual funds has attempted to encourage corporate good works through socially responsible investments (SRI or "impact investments") that incorporate environmental, social and governance (ESG) criteria.[59]

Mutual funds are diversified portfolios of equities, bonds, and other securities that allow investors to "buy a stake in each of the investments in the portfolio. Because mutual funds pool many assets together, the risk associated with investing in a mutual fund is lower than a single stock."[60] Mutual funds are typically sold and designed to be value maximizing. Socially-responsible (SRI) mutual funds focus on the financial risk and return of company's environmental, social, and governance (ESG) policies. Unlike traditional mutual funds, SRI mutual funds are explicitly sold and designed to be able to sacrifice profit to encourage corporate good works; these funds are not necessarily receiving a lower-profit, but their social focus permits this. According to the Oxford University and Arabesque Partners' meta-study of 300 sources evaluating the performance of SRI mutual funds, "88 percent of reviewed sources find that companies with robust sustainability practices demonstrate better operational performance, which ultimately translates into cash flows [and] 80 percent of the reviewed studies demonstrate that prudent sustainability practices have a positive influence on investment performance."[61]

Researchers from TIAA-CREF Asset Management confirm SRI-funds are not riskier than non-SRI funds: "incorporating ESG criteria in security selection did not entail additional risk. SRI indexes and their broad market counterparts had similar risk profiles, based on Sharpe Ratios and standard deviation measures."[62] Despite SRI funds' seemingly promising success for encouraging investment corporate responsibility, there is a threshold at which investors may no longer tolerate losing money and will therefore withdraw investments after a certain amount of time. This instability suggests that socially-responsible mutual funds may not be the best structure for pursuing corporate good works.

Investors could be attracted to mutual funds with SRI portfolios due to their lacking increased riskiness, and seemingly positive impact; these funds' incorporation of environmentally sustainable companies, however, are not as admirable as they may seem.

According to the 2012 Deutsche Bank study, SRIs remain competitive by incorporating companies whose "primary objective is not environmental benefits. For example, one of the largest holdings of Trillium Sustainable Opportunities is Apple."[63] Apple does not have the best track record with respect to sustainability as it has been historically scrutinized for its dependence on coal, with 54.5 percent of its data centers relying on coal for energy.[64] Additionally, the MSCI USA IMI ESG Index—used as one of the five SRI indexes in TIAA-CREF Asset Management's study—is comprised of Microsoft, Johnson & Johnson, Proctor & Gamble, Verizon Communications, Intel Corp, Coca Cola, and Pepsico.[65] Mutual funds with SRI portfolios will periodically merge different funds to remain financially comparable in the market, thereby questioning their ability to encourage corporate good works, and suggest that some profit must be foregone to achieve greater environmental and social impact.

Benefit Corporations

Benefit corporation legislation is effective in over half of the United States, with numerous states currently working on it.[66] A benefit corporation designation requires the board of a company to consider environmental and social components of decision-making in addition to maximizing shareholder value; these corporations hold legal protection to pursue a mission that increases the impact of business on society and the environment: "Benefit corporation status provides legal protection to balance financial and non-financial interests when making decisions—even in a sale scenario or as a publicly traded company."[67] Despite this legal security, benefit corporations are not given "tax, incentive, or procurement preferences by state or federal lawmakers. While nonprofits receive substantial benefits for their chosen entity type, benefit corporations receive no such benefits."[68] Although the lack of tax advantage may make benefit corporations a less attractive corporate structure, this avoids the dilemma presented by corporate tax exemptions: redirecting money away from the government back to the corporation that could otherwise be invested in filling the current gaps in addressing societal needs.

The filing fee for a benefit corporation is dependent on the state, and often ranges from $70 to $200.[69] This cost is offset, however, by the advantages a benefit corporation designation presents for a firm:

> Benefit corporation status can make [a] company more attractive to investors as a company with increased legal protection, accountability and transparency around its mission. Benefit corporations can also speed up investor due diligence since they produce an annual benefit report, which describes their qualitative activities aimed at producing general public benefit.[70]

Furthermore, the legal protection of benefit corporations could be subject to abuse by corrupt managers; however, the benefit corporation structure ensures the shareholders' financial interests are protected. First, shareholders maintain the protections they have in a traditional corporate model—they exert their corporate governance rights by electing the directors, and voting on all major corporate transactions.[71] Second, shareholders hold the ability to bring the same lawsuits against a traditional corporation "including demands to review the company's books and records, election review proceedings to make sure elections are being conducted fairly, and derivative suits to pursue corporate claims against directors for breach of fiduciary duty."[72] Third, and most important, the benefit corporation adds an additional duty—the value proposition.[73] This is the idea that the "true long-term value is built by aligning all stakeholder interests, including the interests of shareholders."[74] Shareholders are granted private right of action to enforce the company's mission; they must also receive the annual benefit report detailing the progress towards achieving the long-term mission.[75]

A total of 2,541 benefit corporations have been formed since the inception of this legislation, and 2,144 were marked as currently active as of April 2015.[76] Although there is no publicly traded benefit corporation, Delaware recently passed its benefit corporation law in 2013—half of all publicly traded companies, including 64 percent of the Fortune 500, are incorporated in Delaware.[77] Furthermore, for-profit corporations can convert to benefit corporations. The process for doing so varies by state; however, changes to the Delaware Public Benefit Corporation Act that went into effect August 1, 2015 make it easier for socially minded business owners to convert their for-profit into a benefit corporation.[78] Originally, the state required 90 percent of the for-profit company's stockholders to approve the change.[79] Now, an existing for-profit needs the approval of two-thirds of the outstanding stock of the corporation to become a public benefit corporation.[80]

There are rumors that benefit corporation, Laureate—the world's largest for-profit operator of online and campus-based education—will be going public soon. The company is growing rapidly, with 88 institutions for its more than 1 million students, and a growing revenue base of $4.4 billion.[81] Kohlberg Kravis Roberts is Laureate's high-profile investor supporting the company's recent announcement to register for its IPO; as a result, "the Laureate IPO could convince a lot of people that they're safe to invest in.

The essence of the idea is that by serving the interests of stakeholders as well as shareholders, you create value that companies focused only on their shareholders do not create."[82] Although it would be ideal to see more benefit corporations going public, doing so can be very expensive for companies. According to the IPO Task Force for the U.S. Treasury Department, it costs roughly $2.5 million for a company to attain regulatory compliance for an initial public offering, and an additional $1.5 million per year for ongoing compliance due to underwriting commissions; filing fees; and fees for lawyers, accountants, and transfer agents.[83]

In addition to the high-priced requirements, benefit corporations can face additional issues when choosing to go public or aligning with currently public companies. Ben & Jerry's was acquired by Unilever in 2000 after a tumultuous negotiation process when Ben & Jerry's initially rejected Unilever's offer and moved to accept a lesser offer that promised to honor their corporate mission. As a result, Unilever "sued, and won, on the grounds that Ben & Jerry's had a fiduciary obligation to ensure the maximum return to their shareholders and accept their higher offer."[84] A benefit corporation status would have legally protected Ben & Jerry's by legally obligating the board to consider the social and profit implications of the decision.

Although benefit corporations provide security for corporations choosing to perform good works, the lacking tax or additional benefits suggest minimal encouragement from the government for companies to pursue the designation, and in turn, prioritize environmental or social missions. Benefit corporation legislation is only six years old, however, and has the potential to adapt as more states work on legalizing it; it is, therefore, premature to claim the structure unsuccessful. The increasing federal regulation burden for companies in the United States suggests a potential avenue for increasing incentives for benefit corporations. According to an article released in April 2016, over 25,000 new regulations have been issued since 2008, with an economic impact of $727 billion and 460 million new hours of paperwork; the price of current regulations in California is estimated to cost firms operating in the state nearly half a trillion dollars annually.[85] Small businesses—comprising a majority of listed benefit corporations—bear the largest burden of federal regulations, facing an annual regulatory cost of more than $10,000 per employee; this is more than three times the regulatory cost facing larger firms.[86] Reducing the financial regulatory burden for benefit corporations is an additional incentive to encourage firms to pursue good works through the benefit corporation structure.

B Corporations (B Corps)

B Lab—the certifying body of B Corporations—opened July 5, 2006.[87] B Lab is a nonprofit organization with a mission to "serve a global movement of people using business as a force for good."[88] B Lab formed by the insufficiencies in the government and nonprofit sector to address societal needs. According to B Lab, "Business, the most powerful man-made force on the planet, must create value for society, not just shareholders"[89] The B Lab certification of a B Corp is available to any business regardless of corporate structure, state, or country of incorporation.[90] Each B Corp must pay a certification fee from $500 to $50,000 per year based on the company's revenue.[91] Like benefit corporations, B Corps do not receive any particular tax benefits; unlike benefit corporations, B Corps must undergo a certification process.[92]

The primary requirement to qualify as a B Corp is an explicit social or environmental mission, "and a legally binding fiduciary responsibility to take into account the interests of workers, the community and the environment as well as its shareholders. It must also publish independently verified reports on its social and environmental impact alongside its financial results."[93] B Corps must complete an Impact Assessment—administered by B Lab—that measures company practices that go beyond standard business practice for performing good works. [94] The Impact Assessment asks questions tailored to a company's governance, workers relations, community, and the environment. [95] The Assessment requires B Corps to hold themselves to the "highest ethical standards;" in order to qualify, companies must score at least 80 out of the 200 points available. [96] B Corps are required to undergo recertification every two years against the evolving standards of social and environmental performance, accountability, and transparency. [97] According to certified B Corps, the Impact Assessment provides a beneficial benchmark against over 40,000 businesses around the world on over 300 indicators to determine ways in which they can improve their respective practices to meet the performance of top Certified B Corporations. [98] Jostein Solheim, CEO of Ben & Jerry's—a certified B Corp—claims, "The B Impact Assessment helps us measure, compare, and optimize multiple variables in order to deliver a better result for society and the environment."[99]

Although the B Corp certification encourages businesses to increase their corporate good works, it does not indicate if a company must sacrifice its profit maximization to better society, rather than solely creating value for shareholders. Furthermore, the Impact Assessment seems lenient on what is considered a "good" score;

according to B Lab, "Any score higher than zero points is a good score, as a positive score indicates that the company is doing something positive for society and the environment."[100] Most companies score between 40 and 100 on the scale of 200.[101] Patagonia—one of the first and leading B Corporations—scored only 114 on the B Impact Assessment demonstrating that even the most well-known and admired firms of B Corporations actually fall short on many of the criteria assessed by B Lab.[102] Furthermore, B Lab does not require certified B Corporations to release their full Impact Assessment, thereby concealing any information on the company's true efforts and progress towards pursuing a social mission. Lastly, the Assessment does not measure a company's effectiveness in bringing social or environmental change through its product or services.[103] Clearly, there are many areas for improvement in the certification process.

Despite its areas for refinement, there is a growing community of nearly 1,900 B Corporations across 50 countries and 130 industries, with more than 900 based in the United States.[104] B Corporations find many advantages to the certification. Neil Grimmer, cofounder and CEO of Plum Organics, states "B Corp certification—and the rigorous standards and third-party verification that the logo represents—helps us communicate our story, our mission, and our values in a way that our consumers understand and can trust."[105] The certification has helped Plum Organics, and other B Corps, builds a "deeper, more loyal" consumer base contributing to the corporation's success.[106] More important, the B Corp movement has established a "collective voice" of corporations to create a world where "all companies will compete to be best for the world, and society will enjoy a more shared and durable prosperity for all."[107] Lastly, B Corporations claim the certification allows them to attract the top talent and engage employees. Ryan

Markets, founder and Chief Technology Officer of Rally Software—now known as CA Technologies—reports, "Our B Corp certification gives us a way to differentiate ourselves from Google or the latest tech startup in a marketplace that has negative unemployment."[108]

CA Technologies is one of only two publicly traded U.S. companies with Etsy as the other. CA Technologies was the first publicly traded B Corp, finishing its first year on the market with a stock price of $33.65; it's currently priced at $32.13.[109] CA Technologies' market capitalization is $13.47 billion, and holds forecasted steadily increasing earnings per share for the next three years. Etsy demonstrates a less consistent trend. Etsy completed its first year on the market with a stock price at $27.58, and is currently priced at $14.37.[110] Its market capitalization is $1.62 billion, and reported a negative 95.80 price-to-earnings ratio in 2015.[111] Despite this loss, however, the company has a forecasted earnings growth of 315.38 percent in the next year, and a long-term five-year growth of 10 percent.[112]

It is difficult to determine the success of B Corps based on these two small samples, however. Publicly-traded companies, like Campbell Soup's recent acquisition of Plum Organics, have purchased other B Corps. According to Dave Stangis, Vice President of Public Affairs and Corporate Responsibility at Campbell's claims the company has "seen Campbell stock value higher than before the acquisition, and consumer preferences shifting away from 'big foods' toward organic, less-processed products and companies like Plum Organics."[113] Although B Corps have the potential to benefit company value, their success and impact remains debatable. Marc Gunther, editor at *Guardian Sustainable Business*, exclaims, "I'm not sure that many Fortune 500 executives are talking about B Corporations...Success for the movement is not necessarily rapid growth in the number of Certified B Corporations. Even if there were 100,000 Certified B Corps, they would represent only a small percentage of the total number of businesses worldwide."[114] Furthermore, the B Corp movement may not be ideal or applicable for all businesses as demonstrated by Unilever's consideration to become certified: "The complexity of operating in scores of countries, however, would make B Corp's certification process extremely complex for a company such as Unilever, and becoming a B Corp would take considerable time."[115]

B Lab and B Corps provide valuable measurements of corporations' efforts to perform good works, along with establishing a community of committed companies to improve the world; however, its lenient assessment requirements and seeming lacking applicability to multinational corporations suggest it is not the best structure to push companies to concentrate on social and environmental missions rather than maximizing shareholder value.

Table 2.1 Differentiating Certified B Corporations and Benefit Corporations

What's the Difference?		
Issue	Certified B Corporations	Benefit Corporations
Accountability	Directors required to consider impact on all stakeholders	Same
Transparency	Must publish public report of overall social and environmental performance assessed against a third party standard	Same*
Performance	Must achieve minimum verified score on B Impact Assessment Recertification required every two years against evolving standard	Self-reported
Availability	Available to every business regardless of corporate structure, state, or country of incorporation	Available for corporations only in 30 U.S. states and D.C.**
Cost	B Lab certification fees from $500 to $50,000/year, based on revenues	State filing fees from $70-$200
Role of B Lab	Certifying body and supporting 501c3, offering access to Certified B Corporation logo, portfolio of services, and vibrant community of practice among B Corps.	Developed Model Legislation, works for its passage and use, offers free reporting tool to meet transparency requirements; No role in oversight
* Delaware benefit corps are not required to report publicly or against a third party standard ** Oregon and Maryland offer benefit LLC options		

Source: "Certified B Corps and Benefit Corporations," B Corporations.

Low-Profit Limited Liability Company (L^3Cs)

A low-profit limited liability company is similar to a limited liability company (LLC), but "combines the financial advantages of the traditional LLC form of business with the social benefits of a non-profit entity."[116] A L^3C can be a freestanding business with social purposes or can be created by nonprofit organizations as for-profit subsidiaries with social goods works as its primary goal.[117] L^3Cs are specifically organized to further one or more charitable or educational purposes within the meaning of the Internal Revenue Code (IRC); "An L^3C can earn income and see its property appreciate in value, but the production of income or the appreciation of property cannot be a significant purpose of the company."[118]

L^3Cs are often based on program-related investments (PRIs).[119] PRIs exhibit three characteristics: "[first], their primary purpose must be to accomplish one of the foundation's charitable purposes; [second], a significant purpose of the investment must not be the production of income or the appreciation of property; and [third] no purpose of the investment can be the accomplishment of political or legislative purposes."[120] PRIs from private foundations can be recovered, along with earnings, and redeployed multiple times, for charitable purposes.[121] A foundation's PRI to an L^{3}C encourages social good works: "By taking on higher risk and foregoing market-rate returns, the foundation affords the L^{3}C the opportunity to attract private-sector investment, which otherwise might never support a social venture. It also fosters the L^{3}C's long-term sustainability."[122]

Similar to benefit corporations and B Corps, L^{3}Cs do not receive any tax benefits despite their pursuit of the same purpose as tax-exempt non-profit organizations. [123] L^{3}Cs, like other LLCs, are treated for tax purposes as sole proprietors, partnerships or corporations are. Most LLCs choose to be taxed as partnerships or disregarded entities; L^{3}Cs, however, could benefit from being taxed as corporations.[124] L^{3}Cs owned by nonprofit corporations are treated as a disregarded entity, and the L^{3}Cs profits may be taxed as "unrelated taxable income."[125]

The United States currently has a total of 1,370 L^{3}Cs, with eight states and two Indian tribes recognizing this structure.[126] L^{3}Cs present numerous benefits to share risk and leverage co-investment, thereby encouraging traditional financial investors to consider a social venture that typically are considered "unattractive. At the same time, it invites a flexible governance structure which can harmonize the disparate interests of nonprofit, foundation, and for-profit stakeholders."[127] A key disadvantage to the L^{3}C model, however, is the lacking oversight by state charity regulators or the IRS to prevent exploitation. L^{3}Cs offer low interest-rate loans; however, some nonprofit attorneys have expressed "concerns that the concept can be abused by unscrupulous people."[128]

What Structures Work Best in What Circumstances?

Several considerations influence the structure under which a corporation chooses to be classified. This includes whether the company is pursuing good works on a large- or small-scale, to what degree the company is required to maximize shareholder value, and/or to what degree the company is required to prioritize its commitment to benefit the public rather than their respective shareholders. As a result, there is not one best structure, as a particular structure will be chosen based on differing circumstances.

According to the International Chamber of Commerce (ICC), "growing numbers of companies have been adding environmental and social indicators to their economic and financial results in reports that are often entitled social reports or sustainability reports."[129] The ICC claims there is an increasing amount of companies that view "corporate responsibility as integral to their systems of governance."[130]

There is a range of corporate good works companies can choose to invest in. Due to the diverse range of corporate responsibility, a specific corporate structure is not necessarily better than another. The ICC claims a "one-size-fits-all" approach is incompatible with the great diversity that exists within business.[131] Based on the ICC's suggestion, it is apparent that there is no ideal corporate structure to encourage good works as there are many forms of corporate responsibility—one structure may not be applicable for all firms based on their pursuit of good works.

For example, L^3Cs may work best for smaller, community initiatives or in the realm of environmental sustainability. The L^3C model allows firms to "take advantage of tax benefits offered to renewable energy projects, thus lowering 'the cost of energy to the end use by accessing a wider base through foundations and non-profits.'"[132] When considering the B Corp structure, it is clear the certification process required for B Corps is often difficult for multinational corporations, such as Unilever. B Lab has established a Multinationals and Public Markets Advisory Council to incorporate public firms into the B Corp community. Despite this seemingly progressive step, B Lab has also increased the requirements for publicly-traded firms to become certified: first, publicly-traded are required to make their full B Impact Assessment transparent—other certified B Corporations only have to produce B Impact Report (including the company's score and a quantitative summary of its answers to questions on the B Impact Assessment).[133] Second, publicly-traded companies' performance must be validated by B Lab at the company's expense during each two-year certification term and on-site review—other certified B Corps only have a one in five chance of being selected for an on-site validation process during each two-year certification term.[134] Lastly, publicly-traded companies with multiple entities are required to pay an additional $1000 validation fee for each additional entity. [135] B Lab's requirements for publicly-traded companies limit the B Corporation structure to non-public firms due to the increased complexities.

Despite the lack of empirical evidence, it appears that a combination of the benefit corporation status with additional incentives may be most promising for addressing the many forms of corporate responsibility. The benefit corporation structure is broad enough to include corporations' efforts to increase environmental sustainability initiatives, give money to good works, and/or invest in more research and development of social innovation programs. The legal protection allows these corporations to pursue corporate good works; however, additional incentives are necessary to maintain the commitment and momentum towards this movement—more concerted efforts should be going towards establishing this structure nationally until proven otherwise.

CHAPTER 3: VEHICLES OF CORPORATE GOOD WORKS

Corporate Good Works Beyond the Norm

Despite the conventional corporate social responsibility (CSR) methods pursued by companies, the gaps in addressing societal needs persist. Some companies, however—including some B Corps, Benefit Corporations, and low-profit limited liability companies (L^3Cs)—demonstrate the wide range of corporate good works that go beyond traditional CSR efforts. These actions may not seek profit maximization for the shareholder, but present increased benefits for society and are one step towards closing the gaps in fulfilling societal needs. The following vignettes illustrate how the distinction is made.

Ben & Jerry's

Ben & Jerry's was established in 1978 with a stated mission to use the "company in innovative ways to make the world a better place... To operate the company in a way that actively recognizes the central role that business plays in society by initiating innovative ways to improve the quality of life locally, nationally and internationally."[136] The company is often recognized for pursuing efforts that may not be most profitable for its shareholder but hold a greater benefit for society. The company is a certified B Corp and has been a subsidiary of Unilever since 2000. In 1989, Ben & Jerry's refused to use Recombinant Bovine Growth Hormone (rBGH) due to concern about its adverse economic impact on family farming and "public confidence in the wholesomeness of dairy products."[137] Throughout the late 20th century, the ice cream company continued to support nonprofit organizations raising environmental awareness on a range of issues from supporting local farmers, fighting global warming and fossil fuels, and campaigning to bring children's needs to the top of the national agenda.

The company remained committed to its social mission even after the Unilever acquisition in April 2000, and experienced significant growth in revenue. In April 2000, Ben & Jerry's announced improved first-quarter net sales and a boosted gross profit margin compared to the same period a year before.[138] As of April 19, 2000, the company experienced an approximated eight jump in consolidated net sales for the quarter ended March 25, reaching roughly $54 million verse roughly $50 million for [the previous] year's first quarter.[139] Additionally, Ben & Jerry's gross profit margin for the same quarter increased to nearly 41 percent compared to approximately 36 percent in the same period in 1999.[140] Unfortunately, Ben & Jerry's also faced a 22 percent leap in selling, general, and administrative expenses compared to a year before, most likely stemming to the increased advertising and promotion expenses and the fees stemming from the Unilever buyout who purchased the company.[141]

Ben & Jerry's dedication to good works was not halted by these increased expenses. In 2010, Ben & Jerry's decided to take direct action in its production practices and made the financially risky commitment to Fairtrade: "We're in the process of converting our ingredients to Fairtrade globally where we feel we can have the greatest impact on improving the lives of farmers, strengthening their communities and protecting the environment."[142] This decision required Ben & Jerry's to convert "up to 121 different types of chunk and swirl to Fairtrade, working across 11 different flavors with ingredients such as cocoa, banana, vanilla, fruits and nuts. It also required them to work with Fairtrade co-operatives with a combined membership of over 27,000 farmers."[143] Despite the high upfront cost, Ben & Jerry's remain committed to improve the livelihoods of the communities and environments affected by the company's business and production practices.

Furthermore, the company has remained competitive in the ice cream industry—outperforming many of its competitors in 2016. According to Unilever's Annual Report and Accounts for 2015, Ben & Jerry's delivered double-digit growth contributing to the 5.4 percent underlying sales growth in the ice cream division of Unilever.[144] Additionally, Ben & Jerry's was ranked in the top three of leading ice cream brands of the United States based on sales in 2016, and held 9 percent market share of leading ice cream vendors in 2016—not far behind Good Humor/Breyer's 10.7 percent market share.[145]

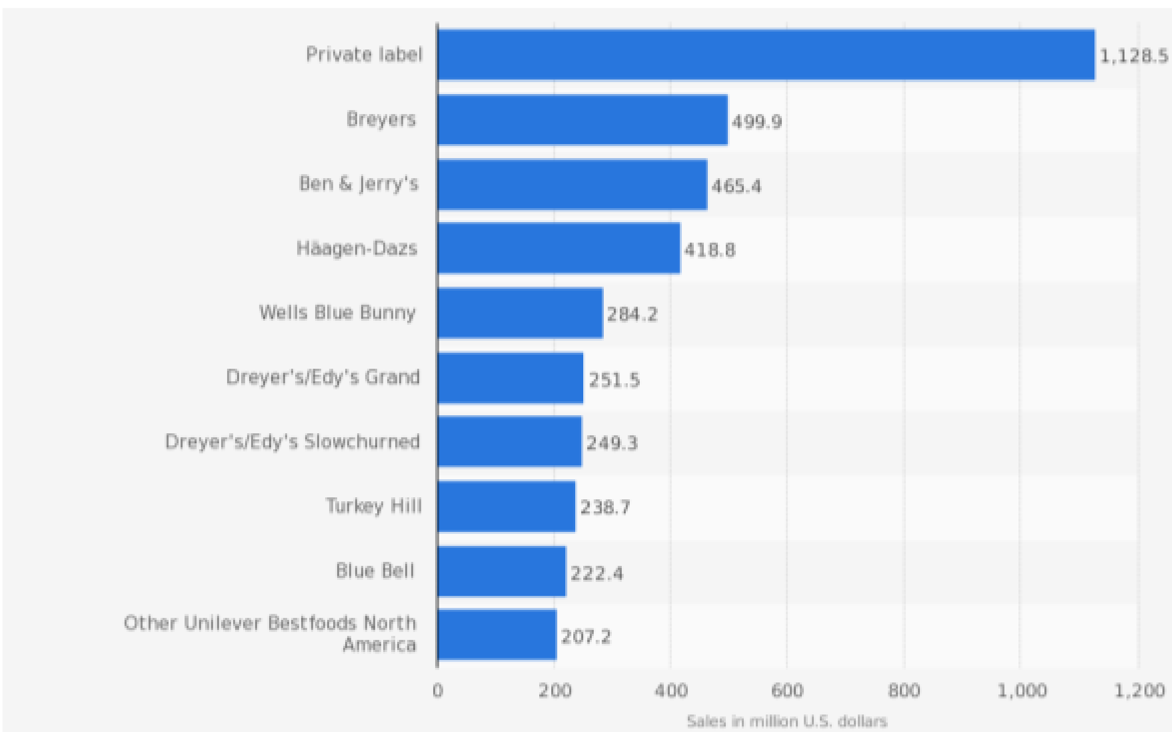

Figure 3.1 Leading Ice Cream Brands of the United States in 2016, based on sales (in million U.S. dollars)

Source: "Top ice cream brands of the United States in 2016...," Statista.

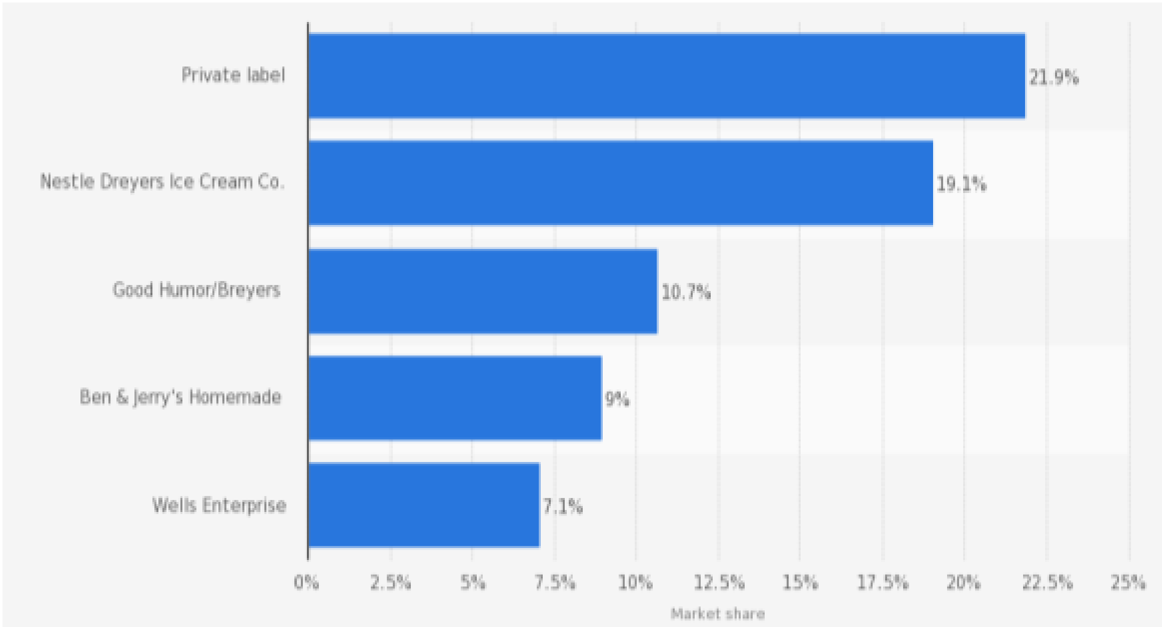

Figure 3.2 Market Share of the Leading Ice Cream Vendors in the United States in 2016, based on sales
Source: "Market Share Leading Ice Cream Vendors U.S., 2016," Statista.

TOMS

Blake Mycoskie founded TOMS Shoes in 2006. Mycoskie established the "One-for-One Movement," giving one new pair of shoes for a child in need with every pair of TOMS shoes purchased. Mycoskie channeled donations through a nonprofit entity, Friends of TOMS, and coordinated "Shoe Drops"—trips that took volunteers abroad to participate in giving.[146] TOMS continues to achieve its mission through partnerships with global organizations pursuing similar social impact. TOMS Shoes currently are given to children through humanitarian organizations who incorporate shoes into their community development programs. TOMS has given over 60 million pairs of shoes to children in need in over 70 countries.[147] The company has expanded its mission since 2006 to other areas of societal need: eyesight, clean water, and safer birth.

TOMS Eyewear launched in 2011, and aided the vision of over 400,000 people in need in 13 countries, providing prescription glasses, medical treatment and/or sight-saving surgery with each purchase of eyewear.[148] The company also supports sustainable community-based eye care programs and training to local health volunteers and teachers.[149]

TOMS Roasting Co. launched in 2014 to give over 335,000 weeks of safe water in six countries.[150] TOMS Giving Partners provide 140 liters of safe water (a one-week supply) to a person in need.[151] TOMS supports the creation of sustainable water systems to provide communities with access to safe water, and in turn, improved health, economic productivity, and job creation.[152]

Most recently, TOMS Bag Collection was founded to provide training for skilled birth attendants and birth kits containing items to safely deliver babies.[153] As of 2016, TOMS has supported safe birth services for over 25,000 mothers.[154]

Although these contributions are significant, questions have been raised about the social impact of this type of giving, saying "that it only alleviates the symptoms of a problem (lack of shoes or eyeglasses) and does not address the roots of the problem (poverty or lack of health care)."[155] Despite this controversy, however, TOMS' efforts have proven to benefit a range of communities—demonstrating its commitment to performing good works.

TOMS has received significant support from private equity giant Bain Capital as the firm purchased a 50-piece stake in the company in 2014, which valued TOMS at $625 million.[156] As of May 2016, Moody's estimated TOMS' revenue for 2015 to be $392 million.[157] Additionally, some other companies have started following the "One-for-One

Movement" built by Mycoskie. Scoots is a hat, glove, scarf, and sock company that donates a product of equal value to a needy individual. Roma Boots donates school supplies, money to local schools, and a pair of boots to a child in need for each purchase of Roma rain boots. Love your Melon donates 50 percent of net proceeds to medical research and organizations that support children with cancer for each of the company's hats or caps sold.

Laureate

Laureate is the largest international online education network, and is a certified public benefit corporation and B Corp. Laureate's stated mission is to use the "power of education to transform lives and remain committed to making a positive, enduring impact in the communities" it serves.[158] Laureate has a network of more than 80 campus-based and online universities in 25 countries that offer undergraduate and graduate degree programs to over one million students worldwide.[159] Laureate claims it allows each institution in its network to develop its own "unique brand, guided by local leadership," and is actively engaged in its respective community.[160]

Although Laureate's work is creditable, questions arise of its true pursuit of CSR methods beyond profit maximization when analyzing B Corp's justification for its certification. Laureate's page on the B Corp site praises Laureate for its "commitment to both permanence and purpose in their communities, believing that when students succeed, countries prosper and societies benefit."[161] Over 95 percent of Laureate institutions advocate for increased adoption of social and environmental standards or voluntary industry best practices.[162] Examples of these increased standards include the 90 percent of institutions that have adopted energy efficiency measures of the majority of their facilities, the 84 percent with recycling at their major facilities, and the over 50 percent of institutions with a formal policy commitment to the environment.[163] Over 40 of the 52 institutions that track the economic class of their customers, at least 34 percent of students on average are from traditionally underserved populations. Additionally, nearly 60 percent of students graduate, and 83 percent of institutions have "structured remedial education programs to help underperforming students succeed."[164]

Although these figures are impressive, they do not demonstrate points in which Laureate has necessarily sacrificed profit for the greater good—this raises concern regarding the true stringency of the B Corp criteria and suggest the certification is diluted.

The Limitations of L^{3}Cs (Low-Profit Limited Liability Companies)

Robert M. Lang Jr, CEO of Mary Elizabeth & Gordon B. Mannweiler Foundation, was the leader in developing the L^{3}C concept to "make it easier for socially-oriented businesses to attract investments from foundations and additional money from private investors."[165] Lang's primary goal was to develop a simple, fast, less costly, and more transparent way for foundations to use Program Related Investments (PRIs): "The common thread among all those who supported the L^{3}C concept was a desire to find ways to use the vast pool of market-rate investment capital controlled by philanthropies and nonprofit charities to achieve socially beneficial goals. They wanted to encourage patient, low-interest investments in ventures that would create jobs, reverse economic declines, provide access to affordable and needed services and meet environmental sustainability standards."[166] To encourage the use of the L^{3}C model, Robert Lang established Americans for Community Development. This organization works with companies to create their business. It lists a range of businesses fit for the L^3C model including: purchasing an empty furniture factory, rehabilitating and re-equipping it to be "lean and green" to be leased at low rates to a furniture company; converting wholly or partially nonprofit museums, concert halls, recreational facilities to be contracted service for the government with the government as a primary source of revenue; creating a local community newspaper; creating affordable or elderly housing in a new or renovated building space; or, establishing a school.[167]

Many companies choose the L^3C model over non-profits for their ability to attract more investors due to their commitment for "doing well by doing good."[168] L^3Cs are permitted to earn profits, and their additional intention to perform good works allow those who lend to them to receive special tax benefits attached to program-related investments.[169] It is believed the L^3C model appeals to foundations and individual investors more than non-profits as they generate a more dependable flow of capital "than in program-related investments that generate nothing but additional nonprofit programs and services. Likewise, in theory, regular venture capitalists outside of foundations will be more interested in making investments in profit-making entities than in pure nonprofits. This—the notion goes—will increase the amount of capital available to support general good-guy behavior."[170] There is a wide range of companies categorized as L^3Cs, demonstrating various pursuits of corporate good works beyond conventional CSR methods.

Homeboy Industries, located in Los Angeles, works to create job opportunities to employ former gang members striving to restore their lives. The company opened in 1988 when members of the Dolores Mission Church and Father Gregory Boyle found a few business owners willing to hire former gang members.[171] The company grew in 1992 when Hollywood producer Ray Stark donated to Homeboy Industries to establish its first independent bakery and social enterprise, Homeboy Bakery.[172] Since opening Homeboy Bakery, Homeboy Industries has expanded to Homeboy Tortilleria, Homegirl Café & Catering, Homeboy Silkscreen & Embroidery, Homeboy Diner, Homeboy Farmers Market, and Homeboy & Homegirl Merchandise; the company has partnered with organizations like USC Medical Center to purchase their products.[173] Homeboy Industries has provided mental health counseling, legal services, and tattoo removal for more than 10,000 former gang members.[174] The company has had an admirable impact thus far; as the company's mission states: "Full-time employment is offered for more than 200 men and women at a time through an 18-month program that helps them re-identify who they are in the world, offers job training so they can move on from Homeboy Industries and become contributing members of the community."[175] Although its members may be less qualified than others in the job market, Homeboy Industries supports community rehabilitation by providing its members opportunities that they may not be able to seek elsewhere.

PeaceMeals is another L^{3}C working to give back to the community rather than maximizing profit. PeaceMeals seeks to impact society "by changing the way we break bread with each other and nourish ourselves."[176] PeaceMeals works with its community to learn skills for nourishing oneself with "simply, tasty, and cost-effective" food in a supportive environment.[177] The company typically charges on a sliding scale depending on the menu, number of participants, and the participant's economic income; it also relies on partnerships with existing non-profits committed to helping others.[178] PeaceMeals does not prioritize financial return, but welcomes all members of the local community to use its services to be "better-equipped to make mindful choices for better health no matter their budget, to support each other, to learn practical skills, and eat some tasty food."[179]

Other L^{3}Cs, like Kaleidoscope Theatre in Rhode Island, perform good works through education in local communities by creating engaging opportunities for audiences to learn more about youth educational issues such as drug dependence, drug prevention, and elimination issues, teen pregnancy, divorce, and deafness.[180] Kaleidoscope Theatre was founded in 1977, and expanded quickly through partnerships with Buster Bonoff, the owner of the Warwick Musical Theatre, and continued support from other non-profits like the Association of Retarded Citizens and the Rhode Island Special Olympics.[181] It strives to teach young people "to develop theatrical abilities by encouraging participation in the production and performance of theatrical plays."[182] By creating an interactive experience for its members to fully engage with the complex issues addressed by the productions, Kaleidoscope Theatre is able to have greater impact on its audience members and participants. Furthermore, by choosing to produce atypical performances that may not be profit-maximizing, such as Les Miserable or The Phantom of the Opera, Kaleidoscope Theatre demonstrates a critical step towards pursuing good works beyond the norm with an increased benefit to society.

The examples provided here represent a small sample of good works conducted by L^{3}Cs. Other examples may include investments in a for-profit drug company made for the purpose of developing a vaccine to prevent a disease that predominantly affects poor individuals in developing countries.[183] Along these lines, investing in a new recycling business in a developing country that will recycle solid waste currently being disposed of in a manner that contributes to significantly to environmental deterioration would be an action that goes beyond conventional CSR methods.[184] In similar fashion to Laureate—a benefit corporation and B Corp—L^3Cs like Creative Online Opportunities for Learning (COOL) have developed a set of low-cost web tools to increase student engagement, character building, and digital literacy: “The selected web tools emphasized in workshops all support the core curriculum of math, reading, science and social studies, and are aligned to support the Common Core State Standards.”[185] Other L^3Cs focus on consulting for impact, and structure themselves similar to consulting companies so they can benefit their respective communities. DEXDesign, for example, consults “with the sole purpose of building the capacity of educational institutions and nonprofits to equip them with the tools needed for making a positive impact in the community.”[186] Michigan consulting firm Disruptive Innovations for Social Change (DISC) works with its clients by catalyzing the “development of community-wide social capital both within and across sectors, professions, organizations and individuals.”[187] Although areas of food sustainability, education, and consulting are popular for L^3Cs pursuing good works beyond the norm, one notable L^3C is making impressive strides in the health sector.

Non-Profits vs. L^3Cs: Kaiser Permanente and Jackson Health Network

Kaiser Permanente was founded in 1945, and is now one of the nation’s largest non-profit health organizations in the United States.[188] It serves nearly ten million people from 38 hospitals and more than 600 medical office buildings and other facilities in eight states.[189] Kaiser employs 195,000 employees and physicians, and schedules more than 40 million outpatient visits, delivers nearly 98,000 babies, performs nearly 224,000 inpatient surgeries, and conducts more than 74 million prescription refills in a single year.[190]

Kaiser Permanente's stated mission is "to provide high-quality, affordable health care services and to improve the health of our members and the communities we serve."[191] In addition to providing personal products and services to its clients, Kaiser Permanente conducts its own research; stating: "Focused on the health and well-being of our members and communities, the people of Kaiser Permanente continually elevate the state of health care with progressive products, services, and advancements."[192]

Kaiser Permanente has defended its nonprofit structure, claiming remaining a nonprofit is what "the marketplace and public policy needs."[193] The CEO and staff of Kaiser Permanente believe nonprofit health organizations "will be able to differentially manage and earn consumers', providers', and the public's trust in health care."[194] There are three ethical challenges managed care organizations must address, according to Kaiser Permanente: Hippocratic oath, distribution of services, and public health.[195] The Hippocratic oath states that the caregiver must act in the best interests of the patient and will make no decision that would cause harm; the challenge is ensuring that the caregiver has all of the resources needed to honor this oath. The second ethical challenge is to equally and fairly manage the distribution of services. Finally, the third ethical challenge is ensuring managed care organizations help take on the burden faced by public and community-based hospitals of providing the appropriate health care people need—whether or not the patient may be uninsured.

Kaiser Permanente believes the answer to these ethical challenges lies with nonprofits: "The primary reason is that, unlike a for-profit, the nonprofit is not obligated to balance fiduciary responsibility to shareholders with responsibility to patients. It is able to take a longer-term perspective on resource allocation issues. And it is able to address the needs and concerns of its providers more effectively."[196] They believe they are able to build a higher degree of trust between its consumers and providers.

Although Kaiser Permanente may have benefitted from the non-profit structure, the same may not apply to other company's pursuing good works. Kaiser Permanente received tremendous support after World War II from the government and two union groups who helped bring Kaiser Permanente to other areas of the United States.[197] The upfront backing provided by insurance companies through a fixed amount per day, per covered worker during Kaiser Permanente's beginnings appealed to thousands of clients and greatly contributed to the company's success.[198] Many other companies require a substantial amount of funding or support when beginning their businesses. The "prepaid group practice" allowed Henry J. Kaiser and Dr. Garfield—the founders of Kaiser Permanente—to establish an innovative health care delivery system that attracted many workers in industrial America.[199] However, the sources of backing a company needs varies on the sector and impact in which the company is entering; as a result, the non-profit classification is not the most universally beneficial.

The Michigan-based L^{3}C Jackson Health Network (JHN) is a collaboration among physicians, healthcare community leaders, and Allegiance Health to "improve patient outcomes and safety, enhance patient experience, and reduce overall cost through an integrated system of care."[200] JHN is a sub-division of a Clinically Integrated Network (CIN) of physicians in the Michigan area to provide uniform, well-organized healthcare to its clients; the CIN "is dependent upon building a strong culture of committed physicians. To help sustain that commitment, the program includes a pay-for-performance system that recognizes and rewards physicians for improved patient care outcomes."[201] Additionally, the CIN uses evidence-based guidelines created by industry leadership groups and local oversight to ensure community needs are met.[202] JHN, and others within Michigan's CIN, believe their work will result in long-term reimbursement despite high upfront costs for its efforts.

The work of both Kaiser Permanente and the Jackson Health Network is notable; however, the benefits and differences between the nonprofit and L^{3}C model is much less substantial when analyzing each critically. As of May 2016, Kaiser Permanente's operating revenue climbed nearly nine percent, with enrollment jumping by 384,000 during 2016's first quarter and operating revenue reaching nearly $61 billion in 2015.[203] Clearly, Kaiser Permanente is prospering with its continually increasing client-base and operating revenue; despite the expanding workload of the doctors and nurses, the physicians of Kaiser Permanente receive a salary between $200,000 and $300,000 annually compared to the industry average of approximately $180,000.[204] Although the non-profit model is identified as a separate entity from an employee-owned company in which employees are shareholders and receive the general profits, there is minimal difference between the two structures; the employees of Kaiser Permanente receive a reasonable salary, similar to employees of an employee-owned business receiving a dividend for their share.

The Jackson Health Network was established through a partnership between Henry Ford's Allegiance Health Organization and a group of private practicing physicians in Jackson, Michigan.[205] Although Jackson Health Network is listed as a L^{3}C, there is no information regarding the distribution of revenue within the company—it is unclear what profit JHN is receiving, and therefore it is unclear whether it is obtaining a low-profit as prescribed by the L^3C model, or if the company is paying their employees more in order to fulfill the mandate of being low-profit. Similar to the little difference between a non-profit and an employee-owned for-profit company, there is less difference than one would imagine between the latter and a L^3C if the L^3C is striving to keep a low-profit by increasing the pay for its own employees.

The Concerning Fate of L^3Cs

According to Robert M. Lang Jr.'s Americans for Community Development organization, the L^3C model presents numerous benefits by creating a "desirable climate for the investment of private capital," and by allowing companies to retain ownership and management rights of the L^3C while "possibly recovering its principal investment and potentially realizing a capital gain and/or a portion of the income."[206] Americans for Community Development states:

> The L^3C was built on the LLC structure in order to provide the flexibility of membership and the organization needed to cover a wide variety of social enterprise situations. The L^3C is a brand that represents the unique symbol of a for-profit company organized to achieve socially beneficial results. The simplicity and socially compelling mission will make the concepts easily understood and increasingly used.[207]

When first introduced, many were hopeful that the L^3C model would reduce the burden on non-profit communities, and allow businesses to perform the good works under a for-profit umbrella that was typically pursued by most nonprofits; it was believed L^3Cs would receive greater investment as transparency and efficiency would "elevate L^3C

organizations from obscurity to high public awareness."[208] Unfortunately, much of this hype has proven untrue when looking at the recent state of most L^{3}Cs.

Vermont was the first state to enact L^{3}C legislature, with 60 companies registering as L^{3}Cs within the first 18 months.[209] Over half of these companies, however, operated in other states or were set up by single individuals; other L^{3}Cs did not seem to be operating within their first year of registering.[210]

Radiant Hen Publishing was established in Orleans, Vermont to pursue impact in local communities around food and agriculture. Its approach, however, is through publishing books for children and adults formed by educators and artists.[211] Radiant Hen partners with existing non-profits and like-minded companies to publish their books.[212] They also seek assistance through individual sponsors, and establishing agreements with their investors; this includes trading press with their sponsors, asking local bookstores to distribute their products, and using their books as fundraising tools through purchases from non-profit groups, schools, and other entrepreneurs. Radiant Hen's books encourage good citizenship, kindness to all living things, environmental awareness and debate and raise awareness of where food comes from and sustainable agriculture."[213] The company also works to offer reasonable compensation and support to all authors, artists, and others who work for or partner with Radiant Hen to provide services to communities via donations of books, workshops, and other activities.[214] Although the company chose to register as an L^{3}C when first structuring, it changed to a sole proprietorship after realizing little benefits from being a L^{3}C. According to a spokesperson from Radiant Hen, "there was no benefit to being an L^{3}C, sadly. Despite claims that funding organizations would recognize us, they never did because we still were not technically a nonprofit, and I was paying more each year to be a corporation."[215]

Maine's Own Organic Milk Company was one of the first L^3Cs to register in 2009 to allow Maine farmers create and operate a farm, owned in partnership with Maine Farm Bureau and the Maine Organic Farmers and Gardeners Association.[216] The Maine Department of Agriculture was also a key player in establishing the company. The company aimed to help farmers by giving them 90 percent of profits; despite its efforts to recruit more sources of funding from foundations and nonprofits, however, the company is currently out of business and acknowledged that this was due to the inability to raise sufficient funds.[217] That said, a very large number of small, standard businesses often get discontinued as well.

Maine's Own Organic Milk Company is not the only company to experience issues with funding. Hemp Amalgamated, an L^3C established in Montpelier, Vermont, set to promote cannabis as a superior and sustainable resource for medicine, food, fabric, and other uses is currently marked inactive in Vermont's business directory.[218] Zigroflex was set up in Norwich, Vermont to develop software for the site of OpenMuseum.org, creating a program of charity called Heritance to allow people "who like museums, art, and culture to visit exhibits online and get to know other people who also like and visit museums."[219] Unfortunately, Zigroflex is also designated as inactive.[220] Finally, Sporting Philanthropy, established in Denver, Colorado, to help professional athletes plan and see through their charitable giving, is currently not in business.[221]

According to Jeff Trexler, professor of social entrepreneurship at Pace University, it is much more beneficial for companies pursuing social good works to remain non-profits. Trexler claims the reasoning for L^3Cs—to attract loans from foundations and investments from for-profit entities—is faulty as "charities could largely receive such support already, albeit with some additional financial steps."[222] Kelly Kleiman, a lawyer and fund-raising consultant, expresses a similar opinion to Trexler as she believes the Council for Foundations' allowance for grant makers to count their support for L^3Cs as their payout requirement is a mistake for increasing philanthropic capital: "If there's any profit, even low profit, then charities aren't getting as much benefit as they could from PRIs [program-related investments]."[223] She argues that more effective legislation would require foundations to spend 10 percent of their assets on charitable causes instead of the current five percent.[224] An additional issue with L^3Cs is that they could simply not be viable due to their mission, regardless of their structure.

The L^3C structure may be appealing to investors who are seeking a way to support good works without sacrificing return on his/her relative investment. Although the L^3C model is commendable for its efforts to increase the opportunities for for-profit companies to perform good works, the lack of financial support from investors and the unsuccessful fate of many L^3Cs raises concern of the true benefits and longevity of the structure.

CHAPTER 4: MUTUAL FUNDS

Too Good to Be True?

According to the UN Principles for Responsible Investment: "1,500 investors representing over $60 trillion in assets under management have committed to integrating sustainability into their investment decisions."[225] This chapter will dive deeper into mutual funds as a potential avenue for increasing investment in socially innovative initiatives, or supporting good works beyond traditional standards.

Despite reports suggesting increased success in socially responsible mutual funds, these funds fail to identify the efforts of companies going beyond the conventional corporate social responsibility (CSR) methods. The study conducted by the TIAA-CREF, for example, focused on five mutual funds: MSCI USA IMI ESG, MSCI KLD 400 Social, Calvert Social, FTSE4GOOD US Select, and Dow Jones Sustainability US (DJSI).[226] TIAA-CREF compared these funds to the S&P 500 and Russell 3000 broad market indices over a ten-year time period from April 2004 to April 2014. Although the researchers claimed these funds did not demonstrate greater risk than non-SRI funds, their report did not evaluate the composition of these funds in depth, nor address the components of environment, social, and governance (ESG) evaluation in the rating process. According to TIAA-CREF:

> The ESG evaluation and rating process itself can vary as indexes use different research approaches to select companies for inclusion in the index. Company assessments may differ depending on the ESG approach, the range of factors considered, and relative emphasis on the "E," "S," or "G" components. The potential impact on performance of

different ESG research approaches was beyond the scope of this paper.[227]

Furthermore, the ESG ratings of companies did not present the most conclusive data on firms' performance of good works as certain industries tend to have lower ESG ratings due to the nature of their business; whereas, some sectors, like technology, tend to receive higher ratings due to the fewer ESG challenges they face compared to other industries such as, tobacco, gambling, or firearms: "these variations can impact performance and alter the investment style versus the benchmark."[228]

When digging into the composition of the studied funds, it becomes apparent that many of these funds incorporate larger companies to reduce the riskiness of the overall return. These larger firms may be taking actions that pursue corporate social responsibility, but are not taking sufficient steps towards pursuing good works beyond conventional CSR methods: investing in environmentally friendly alternatives to practices, donating to good works, and/or putting efforts towards discovering social innovations.

MSCI USA IMI ESG Index

It is useful to look at the case of funds of funds that explicitly signal incorporation of socially-responsible funds as they contain shares of higher-risk companies, and thereby may not hold as high of returns as that of other funds. The MSCI USA IMI ESG Index contained the most large- and mid-capitalization companies in the TIAA-CREF study—the Index broadly targets stocks of all capitalizations with higher ESG ratings, starting with a pool of over 2,400 securities.[229] As a result, the MSCI Index held over 1,000 mostly large- and mid- capitalization firms as of December 2015; this Index and the

MSCI KLD 400 Social Index "had the largest number of holdings among the indexes tracking the Russell 3000 and S&P 500, respectively, and the lowest tracking error."[230] TIAA-CREF concluded the greater percentage coverage of stocks in the benchmark implied a lower tracking error in the respective index.[231]

Table 4.1 Portfolio Characteristics: MSCI USA IMI ESG vs. Russell 3000 (as of 12/31/15)

	MSCI USA IMI ESG	Russell 3000	% relative to Russell 3000
Market Capitalization			
Weighted Average	86,060.4	114,598.2	75%
Median	2,373.2	1,438.7	165%
Weighted Median	38,249.0	51,636.2	74%
# of Securities	1,162	3,021	38%
Dividend Yield	2.04	2.01	101%
Price/Earnings			
Weighted Average	31.2	44.0	71%
P/E using FY1 Est			
Weighted Average	80.3	54.3	148%
Price/Cash Flow			
Weighted Average	21.1	19.4	109%
Price/Book			
Weighted Average	7.1	6.7	106%
Price/Sales			
Weighted Average	15.4	10.1	152%
ROA	7.8	7.2	108%
ROE	16.8	15.9	106%

Source: O'Brien, Amy, Lei Liao, and Jim Campagna, "Responsible Investing: Delivering Competitive Performance."

According to the MSCI Index, there are 355 constituents in the MSCI USA IMI ESG Index in contrast to the 617 in the MSCI USA Index; the ESG Index is "designed for investors seeking a broad, diversified sustainability benchmark with relatively low tacking error to the underlying equity market."[232] Due to their attempt to hold a low tracking error, the MSCI USA IMI ESG Index's top ten constituents include:

1. Microsoft
2. Johnson & Johnson
3. Alphabet C
4. Proctor & Gamble Co.
5. Verizon Communications
6. Coca Cola (THE)
7. Intel Corp
8. Merck & Co.
9. PepsiCo Inc.
10. Cisco Systems.[233]

The MSCI selects these companies using a "Best-in-Class" selection process within regional indexes that make up the MSCI ACWI—a global equity index.[234] Their methodology aims to include securities of companies with the highest ESG ratings; these ratings represent 50 percent of the market capitalization in each sector and region of the parent Index.[235] The MSCI USA IMI ESG Index's selection process results in the inclusion of companies that are pursuing corporate social responsibility to the extent in which they can be listed among the top ESG rankings; these companies' significant market capitalization allow the MSCI USA IMI ESG fund to demonstrate similarly positive returns to that of the MSCI USA Index.[236]

CUMULATIVE INDEX PERFORMANCE - NET RETURNS (USD) (AUG 2010 – OCT 2016)

ANNUAL PERFORMANCE (%)

Year	MSCI USA ESG	MSCI USA
2015	-1.95	0.69
2014	12.21	12.69
2013	32.77	31.79
2012	12.63	15.33
2011	0.57	1.36

INDEX PERFORMANCE — NET RETURNS (%) (OCT 31, 2016)

					ANNUALIZED			
	1 Mo	3 Mo	1 Yr	YTD	3 Yr	5 Yr	10 Yr	Since Aug 31, 2010
MSCI USA ESG	-2.41	-2.28	3.32	5.43	6.66	11.65	na	12.67
MSCI USA	-1.93	-1.79	3.66	5.20	7.98	12.77	na	13.81

FUNDAMENTALS (OCT 31, 2016)

Div Yld (%)	P/E	P/E Fwd	P/BV
2.25	23.06	17.39	3.10
2.15	22.63	16.74	2.80

INDEX RISK AND RETURN CHARACTERISTICS (AUG 31, 2010 – OCT 31, 2016)

				ANNUALIZED STD DEV (%) 2			SHARPE RATIO 2, 3				MAXIMUM DRAWDOWN	
	Beta	Tracking Error (%)	Turnover (%) 1	3 Yr	5 Yr	10 Yr	3 Yr	5 Yr	10 Yr	Since Aug 31, 2010	(%)	Period YYYY-MM-DD
MSCI USA ESG	0.98	1.60	14.20	10.59	10.32	na	0.64	1.10	na	1.05	14.50	2015-05-21—2016-02-11
MSCI USA	1.00	0.00	2.46	10.78	10.39	na	0.74	1.19	na	1.12	14.17	2015-07-20—2016-02-11

1 Last 12 months   2 Based on monthly net returns data   3 Based on ICE LIBOR 1M

Figure 4.1 MSCI Cumulative Index Performance

Source: "MSCI USA ESG Index," MSCI.

Despite the MSCI USA IMI ESG's success, the major holdings of the fund solely demonstrate corporate good works to rank them among ESG listings. The MSCI USA IMI ESG, however, still permits investment in companies that may be higher risk in the pursuit of good works.

Dow Jones Sustainability Index

Similar to the MSCI USA IMI ESG Index, the Dow Jones Sustainability Index (DJSI) begins with the 600 largest-capitalization U.S. companies in the Dow Jones Sustainability North America Index, and selects the most highly rated 20 percent.[237] In contrast to the MSCI USA IMI ESG Index, however, the DJSI had the fewest holdings and the highest tracking error.[238]

The DJSI selects its constituent firms by measuring over 600 data points across environmental, social policies, and economic dimensions including, but not limited to: anti-crime policy, brand management, code of conduct, corporate governance, supply chain management, and tax strategy.[239] The companies included in the DJSI selection process receive a report card comparing their sustainability performance to that of their industry peers. In collaboration with RobecoSAM, notable companies in the Index include:

1. General Motors
2. 3M Co.
3. Johnson & Johnson
4. Proctor & Gamble Co.
5. PepsiCo Inc.
6. Starbucks Corp.

7. NIKE Inc.
8. Intel Corp.
9. Delta Airlines
10. AES Corp.[240]

Although the DJSI strives to encompass a range of corporate sustainability initiatives in its selection metrics, like the MSCI USA IMI ESG Index, it does not require companies to fulfill each data point nor perform good works beyond the conventional corporate social responsibility standards. Similar to the MSCI USA IMI ESG Index, the DJSI provides an opportunity for investors to support companies pursuing good works despite the inclusion of larger-capitalization companies with lower risk.

FTSE4Good Index Series

The FTSE4Good Index Series seems to hold a more stringent criteria when selecting companies as they claim to develop their criteria using "an extensive market consultation process" that is approved by an independent committee of experts: "A broad range of stakeholders help shape the criteria, including NGOs, governmental bodies, consultants, academics, the investment community and the corporate sector. To remain consistent with market expectations and developments in ESG practice, the inclusion criteria are revised regularly."[241]

Despite these increased standards, however, the FTSE4Good Index strives to prioritize liquidity and availability when determining stocks.[242] The stocks in the Index are selected and weighted to ensure that the indexes are "investable and tradable."[243] The criteria are designed to help investors minimize ESG risks. As a result, the top five constituents in the FTSE4Good Index include:

1. Apple Inc.
2. Microsoft Corp.
3. Johnson & Johnson
4. Alphabet Class A
5. Wells Fargo & Company.[244]

The FTSE4Good US Index includes 187 of the 809 companies comprising the FTSE4Good Global Benchmark; additionally, the FTSE4Good US Index leads in five-year performance and total return relative to the other FTSE4Good Benchmarks.[245]

Despite this fund's success, the selection criteria, similar to the other funds studied by TIAA-CREF, do not adequately identify companies pursuing corporate good works beyond the conventional standards. According to FTSE, 300 indicators define ESG metrics across 14 themes, and three pillars.[246] The three pillars—environment, social, and governance—differentiate the 14 themes, including categories such as: climate change, water use, pollution and resources under environment; customer responsibility, labor standards, and human rights and community under social; and, corporate governance and risk management under governance.[247] Each company is given a FTSE ESG rating from zero to five based on these themes and pillars, and is included in the FTSE4Good Index series if it scores a 2.5 or above.[248] In addition to a low standard of 50 percent for qualification, companies are notified when their score falls lower than 2.5; furthermore, firms have a 12-month period in which they can improve their ESG score to stay in the FTSE4Good Index Series.[249]

The goals of the FTSE4Good Index to remain investable, along with the leniency of the selection criteria, demonstrate the Index's insufficient recognition of companies going beyond the traditional corporate sustainability standards. Like the MSCI USA IMI ESG Index and DJSI, the FTSE4Good Index's inclusion of higher-risk companies pursuing good works is a commendable opportunity for investors seeking ways to support good works.

The Limitations of Socially Responsible Mutual Funds

Socially-responsible mutual funds provide investors with the opportunity to support corporate sustainability. Despite these funds' inclusion of large-scale, capitalization companies with lower risk, they also include high-risk companies pursuing good works. These funds, in turn, provide investors an opportunity to support steps taken by these corporations to address the gaps in addressing current societal needs.

If socially responsible mutual funds placed greater weight on companies committed to good works beyond traditional methods pursuing corporate social responsibility, however, the portfolios' successes would be significantly less. For example, Renewable Energy Group Inc. (REGI) is a producer of biodiesel and renewable chemicals converting natural fats, oils, and greases into biofuels; REGI also invests in "research and development capabilities and a diverse and growing intellectual property portfolio."[250] Despite Renewable Energy Group Inc.'s impressive mission, it holds a small-value market capitalization with a generally lower growth and return of the benchmarks of the S&P 500, and Russell 2000—REGI continues to be nearly 12 percent below the 52-week market high, and 44 percent below the five-year high.[251] Furthermore, CA Technologies and Etsy are two publicly-traded B Corps, and have positive forecasted growth in the next three years.[252]

REGI, CA Technologies, and Etsy are all companies pursuing corporate good works beyond the established expectations. Socially-responsible (SRI) mutual funds are often comprised of mid- and large-capitalization firms that engage in standard corporate responsibility approaches. These funds, however, have the potential to hold small-capitalization companies, like CA Technologies and ETSY, even if these companies are not a significant portion of the SRI fund's portfolio. SRI mutual funds could increase their impact by including higher-risk companies pursuing good works.

CHAPTER 5: VEHICLES OF IMPACT INVESTING

What About Foundations?

In April 2016, the Obama Administration modified the IRS tax code for foundations to encourage foundations to make more mission-related investments. This chapter evaluates the potential of foundations as a tool for increasing the investment and support of highly innovative initiatives that pursue good works beyond conventional standards. Through additional investments of a foundation's endowment, a foundation could extend its support of good works in addition to the good works currently performed by foundations.

This new measure from the Obama Administration assures private foundation leaders and investment managers to make investments that advance the foundation's charitable purpose, even if the investment offers a lower rate of return, higher risk, or lower liquidity than other investment options that may not promote the foundation's charitable purposes.[253] The guidance also permits foundation managers to consider "how the anticipated charitable outcomes from the investment might further the foundation's mission in addition to the financial returns that are typically considered. Thus, a foundation may prudently choose to make investments that provide both a charitable and a financial return without fear of facing a tax penalty."[254] Finally, foundations are allowed to use their full range of assets to advance their philanthropic mission.[255]

Under current IRS tax code, tax-exempt investments include loans to individuals, tax-exempt organizations and for-profit organizations, and equity investments in for-profit organizations.[256] Furthermore, a potentially high rate of return does not prevent an investment from qualifying as program-related.[257] The adjustments by the Obama

Administration have potential to significantly impact charitable giving, and, in turn, close the current gaps in societal needs. Combined, U.S. foundations hold approximately $650 billion in philanthropic endowments or assets.[258]

Table 5.1 The Top 5 Foundations in the U.S. by Total Assets, 2014[259]

Foundation Name	Total Assets (USD)	Total Giving (USD)
Bill & Melinda Gates Foundation	$44,320,862,806	$3,439,671,894
Ford Foundation	$12,400,460,000	$518,380,000
J. Paul Getty Trust	$11,982,862,131	$13,317,130
The Robert Wood Johnson Foundation	$10,501,370,521	$346,240,905
Lilly Endowment Inc.	$9,995,102,248	$333,630,649

Source: "Foundation Stats: Fiscal Totals of the 50 Largest Foundations in the U.S. by Total Assets," Foundation Center.

Many of these top foundations' total assets are expected to grow as they reallocate their assets into less traditional asset classes like private equity, hedge funds, and real estate.[260] From 2008 to 2013, the Ford Foundation tripled its allocation to these classes between to $9.78 billion from $3.45 billion.[261] The Bill & Melinda Gates Foundation's aggregate asset allocation at the end of 2007 was roughly 49 percent public equity, nearly 12 percent U.S. and corporate bonds, and almost 40 percent other investments.[262] As of December 31, 2013, the Foundation had an aggregate asset allocation of almost 38 percent public equity, seven percent U.S. and corporate bonds, and 55 percent other investments.[263] According to William Jarvis, Managing Director of the Commonfund Institute—the research and education arm of institutional investment manager Commonfund—the Bill & Melinda Gates Foundation and the Ford Foundation "have a high degree of diversification and a high tolerance of illiquidity."[264]

Although these foundations are taking steps towards performing good works, a new sector of philanthropic limited liability companies (LLCs) is taking shape in place of these foundations' charitable giving. Facebook CEO, Mark Zuckerberg, recently created the Chan Zuckerberg Initiative with his wife Priscilla Chan to donate in the areas of health, education, and community revitalization. [265] Steve Jobs' wife, Laurene Powell Jobs, also established a philanthropic LLC—the Emerson Collective—to focus on improving similar areas to the Chan Zuckerberg Initiative, in addition to immigration reform, environmental initiatives, and social justice issues.[266] This LLC structure allows the founders greater flexibility in their spending practices. There are no minimum distribution requirements or taxable expenditures—donations can be made to individuals, non-charities, or projects abroad without receiving IRS pre-approved requirements.[267] Furthermore, philanthropic LLCs are not required to disclose their tax filings, have no limit on the amount of company stock the LLC can own, and have no lobbying or electioneering prohibitions. [268] Some are skeptical of the work of these two LLCs—the Chan Zuckerberg Initiative and Emerson Collective—due to their many benefits for their founders, including no limits to lobbying power, ability to turn a profit as a non-tax-exempt business, and more flexibility with respect to joint ventures and donations.[269]

Bill & Melinda Gates Foundation

The Bill & Melinda Gates Foundation is a global foundation established in 2000 that works with partner organizations around the world to tackle four program areas. Their Global Development Division strives to help alleviate poverty in the world's poorest areas.[270] The Global Health Division works to save lives in developing countries through advancements in science and technology.[271] The United States Division sets to improve U.S. high school and postsecondary education; this Division also supports "vulnerable" children and families in Washington State.[272] Lastly, their Global Policy &

Advocacy Division "seeks to build strategic relationships and promote policies that will help advance [their] work. [Their] approach to grantmaking in all four areas emphasizes collaboration, innovation, risk-taking, and, most importantly, results."[273]

The Bill & Melinda Gates Foundation has made over 15,500 grants, with almost 1,700 made in 2015.[274] Five of the 12 largest donations granted since 2000 were given to the GAVI Alliance for vaccine delivery—in 2015, the Foundation gave the GAVI Alliance $1.55 billion.[275] Similarly, roughly an additional $1.5 billion was awarded to the United Negro College Fund, Inc. in 2009 for scholarships within their U.S. programs.[276] One of the other largest donations of $750 million was made in 2011 to the Global Fund to Fight AIDS, Tuberculosis, and Malaria.[277] Other grants given in 2016 include: Huawei Software Technologies to support the development and deployment of low-cost digital financial services for impoverished individuals to send and receive payments from and to anyone; the Ethiopian Agricultural Transformation Agency to further develop the Ethiopian economy and elevate Ethiopia to middle income country status; the United Nations Development Programme to support the UN Secretary General's efforts to implement policies that facilitate financial inclusion; Nine Medical, Inc. for discovery and translational sciences; and the World Bank to contribute to its fund for female reproductive rights and empowerment.[278]

In October 2006, the trustees of the Bill & Melinda Gates Foundation created a two-entity structure with the Foundation distributing money to grantees, and the second entity—the Bill & Melinda Gates Foundation Trust—managing the endowment assets. The trustees claimed this structure would allow the Foundation's "program work from the investment of [their] assets."[279] The Bill & Melinda Gates Foundation Trust manages the endowment, including the annual installments of Warren Buffet's gift in Berkshire Hathaway shares, and the funds for the Foundation.[280] Although Warren Buffet recently donated nearly $2.2 billion worth of Berkshire Hathaway shares to the Bill & Melinda Gates Foundation in July 2016, the Foundation Trust claims Mr. Buffet "has no involvement in the investment of the endowment through the Foundation Trust, including decisions that might be made regarding Berkshire Hathaway Inc. stock."[281] Similar to the mission of the Foundation, the Trust is set to "spend all of [their] resources within 20 years after Bill's and Melinda's deaths. In addition, Warren [Buffet] has stipulated that the proceeds from the Berkshire Hathaway shares he still owns upon his death are to be used for philanthropic purposes within 10 years after his estate has been settled."[282] They claim that their decision to use all their resources in this century highlight their "optimism for progress and determination to do as much as possible, as soon as possible, to address the comparatively narrow set of issues we've chosen to focus on."[283]

Despite the respectable claims of the Foundation Trust, and the admirable work of the Bill & Melinda Gates Foundation, the stock holdings of the Foundation Trust demonstrate an area in which the Foundation could have further impact. In the third quarter of 2016, the Foundation Trust had holdings in: Wal-Mart Stores, FedEx Corporation, Crown Castle International Corp., Coca-Cola FMSA, and Arcos Dorados Holdings, Inc.—McDonald's largest franchisee in the world in terms of system-wide sales and number of restaurants.[284] Three of the Foundation Trust's largest investments lie in Berkshire Hathaway with a contributing value of over $12 billion, Waste Management Inc. with a value of $1.3 billion, and Canadian National Railway with over $1 billion.[285]

Table 5.2 Bill & Melinda Gates Foundation Trust's Portfolio—Q3 2016[286]

Company	# of Shares	Price	Value
Berkshire Hathaway	74,349,971	$164.76	$12,249,901,222
Waste Management Inc.	18,633,672	$69.18	$1,289,077,429
Canadian National Railway	17,126,874	$69.07	$1,182,953,188
Caterpillar Inc.	11,260,857	$95.11	$1,071,020,110
Wal-Mart Stores	11,603,000	$66.23	$768,466,690
FedEx Corporation	3,024,999	$186.27	$563,466,564
Ecolab Inc.	4,366,426	$120.78	$527,376,933
United Parcel Service	4,525,329	$105.35	$476,743,411
Crown Castle International Corp.	5,332,900	$86.65	$462,095,785
COCA-COLA FEMSA, S.A.B DE C.V	6,214,719	$62.89	$390,843,678
GRUPO TELEVISA S.A.	16,879,104	$22.16	$374,040,945
BroadWebAsia, Inc.	3,475,398	$81.04	$281,646,254
LIBERTY GLOBAL -C-	3,639,349	$35.00	$127,377,215
AutoNation Inc.	1,898,717	$52.42	$99,530,746
LIBERTY GLOBAL -A-	2,119,515	$36.23	$76,790,029
ARCOS DORADOS HOLDINGS, Inc.	3,060,500	$6.05	$18,516,025

Source: "Bill & Melinda Gates Foundation Trust – Quarter 3, 2016," StreetInsider.com.

In the second quarter of 2014, the Foundation Trust also held nearly $6 million worth of shares in Exxon Mobil, nearly $4.5 million worth of shares in BP, and almost $9 million worth of shares in McDonalds Corp.[287] Although the grants given by the Bill & Melinda Gates Foundation are commendable, the holdings of the Foundation Trust seem to not align fully with the Foundation's mission.

Ford Foundation

In 1936, Edsel Ford granted $25,000 as the beginning investment to establish the Ford Foundation; he left an equivalent of $4 billion upon his death in May 1943 that has grown into $12 billion currently endowed to the Foundation. The Ford Foundation's mission states: "We believe in the inherent dignity of all people. But around the world, too many people are excluded from the political, economic, and social institutions that shape their lives... Our mission has sought to reduce poverty and injustice, strengthen democratic values, promote international cooperation, and advance human achievement."[288] The Ford Foundation is guided by a vision for social justice where all people can live with the protection and "full expression" of their human rights.[289] They focus their investments in three areas: individual leadership, strong institutions, and innovative, high-risk ideas.[290]

The Ford Foundation prioritizes challenging inequality by a combination of five underlying factors: 1. Unequal access to government decision-making and resources; 2. "Entrenched cultural narratives that undermine fairness, tolerance, and inclusion;" 3. Rules of the economy that magnify disproportionate opportunity and outcomes; 4. A failure to invest in and protect public goods; and, 5. Persistent prejudice and discrimination against women, in addition to racial, ethnic, and caste minorities.[291] The Foundation makes grants in seven, interconnected areas that the Ford Foundation believes will help address inequality; these seven areas are: 1. Civic engagement and government; 2. Free expression and creativity; 3. Equitable development; 4. Gender, race, and ethnic justice; 5. Inclusive economics; 6. Internet freedom; and, 7. Youth opportunity and learning.[292]

Due to tax law, foundations are required to pay at least five percent of their assets each year to charitable causes; the Ford Foundation exceeds this amount annually, granting over $500 million to charitable initiatives.[293] In 2009, the Foundation granted $30 million to Self-Help Ventures Fund—signifying one of the largest donations in the Foundation's history.[294] More recently, in 2016, the Ford Foundation invested $21 million in the Institute of International Education, Inc. to administer travel awards, and grants to organizations for other program-related learning activities.[295] In 2016, the Ford Foundation also granted Fundación Capital over $2.5 million to integrate community practice, public policy and private markets to help impoverished citizens in Latin America access the resources they needed to improve livelihoods, manage risk, and build assets.[296] Lastly, the Foundation invested $2.25 million in Family Values at Work: a Multi-State Consortium to advocate for family-friendly workplace policies and protections.[297]

The Ford Foundation's investment structure is changing as it recently made the decision to focus its grants on multi-year, general support grants across all program areas including 20 percent overhead funding in every project grant at a minimum: "From 2016 to 2020, we are dedicating some $200 million of our grant-making budget each year toward institutional strengthening efforts, an effort we are calling BUILD."[298] BUILD is the Ford Foundation's effort to provide investments in institutions' and organizations' "essential programs and operations that help them build a sturdy foundation for their work."[299] The primary goal of this effort is to support stability and growth to drive change over the long-term.[300]

The Ford Foundation states it does not take contributions from donors and receives no additional income other than returns on its invested endowment.[301] Darren Walker, President of the Ford Foundation, released the following statement:

> I no longer find it defensible to say that our investment strategy is only to maximize the value of our endowment—just as it's no longer defensible for a corporation to say its only responsibility is to maximize shareholder value...There is growing evidence that it is possible to find impact investing opportunities that deliver financial and social, double bottom-line returns.[302]

Despite this admirable commitment to investing for the public good, the Ford Foundation has also stated on its site: "our policy is to maximize endowment returns, except in our screening out certain industries. This position, that we maximize returns, has been a source of questioning, discontent, and frustration among those we support, as well as among staff at Ford."[303]

Similar to the investments made by the Bill & Melinda Gates Foundation Trust, the holdings of the Ford Foundation's endowment demonstrate its commitment to maximize return rather than impact. The current stock holdings include: Wal-Mart, PepsiCo, Coca Cola Co., 3M Co., Berkshire Hathaway Inc., Mitsubishi, Toyota, Unilever, General Motors Co., and Royal Dutch Shell.[304] The financial support of these global companies may provide the maximum return for the Ford Foundation's endowment; however, they appear to contradict the Foundation's mission and Walker's commitment to impact investing.

J. Paul Getty Trust

Established in 1953 by J. Paul Getty, the J. Paul Getty Trust supports the presentation, conservation, and interpretation of the world's artistic legacy.[305] It is a cultural and philanthropic institution with the mission that art provides "windows into the world's diverse and intertwined histories, mirrors of humanity's innate imagination and creativity, and inspiration to envision the future."[306] The J. Paul Getty Trust is the third largest foundation in the United States; through the Getty Conservation Institute, the Getty Foundation, the J. Paul Getty Museum, and the Getty Research Institute, the Getty Fund serves the general interested public and a range of professional communities to promote "a vital civil society through and understanding of the visual arts."[307]

The Trust has given over 7,000 grants to nearly 3,800 grantees for a total of over $390 million.[308] Significant grants given in 2016 included the American Associations of Museums, the Association of Art Museum Directors Educational Foundation, Inc., The British Museum, The School of Oriental and African Studies in London, and other research grants in areas like Kenya, Asia, United Kingdom, and Ghana.[309]

The J. Paul Getty Trust holds stocks in companies that do not align with its commitment to the arts, however. Top corporate holdings as of December 2015 include: British American Tobacco, China Overseas Land and Invest, Hyundai, Jaguar Mining Co., Japan Tobacco Inc., Unilever, and Tyson Foods Inc.[310]

The Robert Wood Johnson Foundation

Dedicated solely to improving the health of Americans, the Robert Wood Johnson Foundation (RWJF) was established in 1972 to support research and programs targeting America's pressing health issues.[311] The Foundation strives to "build a national Culture of Health. [Its] goal is to help raise the health of everyone in the United States to the level that a great nation deserves, by placing well-being at the center of every aspect of life."[312] It works towards building healthy environments and closing the gaps in health disparities, mental and emotional well-being, early childhood development, child obesity, health coverage and health care cost. [313] The Foundation invests in four broad areas, including: healthy communities; healthy children and healthy weight; health leadership; and, health systems.[314]

RWJF is able to quantify its impact in these areas using varying measurements; this, in turn, allows the Foundation to evaluate the beneficial or detrimental effects of its grants. Making health a shared value is measured by the percentage of people who strongly agree that health is influenced by peers and communities and percentage who have sufficient social support from family and friends.[315] RWJF quantifies its impact in fostering cross-sector collaboration to improve well-being by the number of local health departments that collaborate with community organizations and employers who work towards better health in the workplace.[316] Creating healthier, more equitable communities is evaluated by the number of grocery stores, farmers' markets, and safe sidewalks; the children in preschool; and affordability of housing.[317] Lastly, it assesses the strength of integration of health services and systems through the percentage of people served by a public health system and the percentage of physicians sharing data with other clinics, health systems, and patients.[318]

RWJF made its largest grant of $50 million in 1999 to the National Center for Tobacco-Free Kids.[319] In 2002, it awarded nearly $31 million to the Center for Health Care Strategies Supporting Organization Inc., for technical assistance and direction, sites and related expenses for RWJF's Medicaid Managed Care Program.[320] RWJF has recently supported the American Heart Association with $13 million to reverse the childhood obesity epidemic, and has also collaborated with YMCAs nationally with $12 million to build a Culture of Health in various communities.[321] By the end of 2015, the Robert Wood Johnson Foundation distributed a total of nearly $370 million in grants with over $55 million to direct charitable activities, $20 million to program-related investments, and over $423 million for programmatic distributions (including the money allocated for grants).[322]

Unlike the other top foundations in the United States, RWJF holds stocks that align more closely with their focus in health with investments in companies like AllScripts Healthcare Solution and Valeant Pharmaceuticals International.[323] RWJF's largest investment as of December 2015 was in Johnson & Johnson with an ending book value of over $1 billion compared to the ranging $1 million to $5 million stock holdings of other companies including the Packaging Corp of America, Tyson Foods Inc., Eastman Chemical Co., and Delta Airlines.[324] This significant difference in its investment portfolio is due to the Foundation's ties to the Johnson family's company, Johnson & Johnson, along with the company's and Foundation's mutual commitment to health.

Lilly Endowment, Inc.

The Lilly Endowment, Inc. was created in 1937 when three members of the Lilly family granted gifts of stocks in their pharmaceutical business, Eli Lilly and Company. These gifts of stock remain the "financial bedrock of the Endowment" even though the Lilly Endowment, Inc. remains a separate entity from the company, with a distinct governing board, staff and location.[325] This Foundation supports the causes of religion, education, and community development choosing to emphasize projects that benefit younger people and "promote leadership education and financial self-sufficiency in the nonprofit, charitable sector."[326] Although the Foundation invests in efforts of national significance, it chooses to remain primarily committed to the areas around Indianapolis and within Indiana.[327] Overall, Lilly Endowment, Inc.'s assets totaled more than $11.8 billion, with nearly 560 million grants approved at the end of 2015.[328] The Foundation provided $435.5 million in grants with Indiana organizations receiving nearly 60 percent of this amount, and 40 percent given to organizations outside the state.[329]

With a focus on community development, Lilly Endowment, Inc. provides grants to programs and initiatives that build or enhance the quality of life in Indiana so businesses and employees will want to remain or locate to the state.[330] In 2015, Lilly Endowment, Inc. gave over $200 million in grants to community development.[331] The Foundation gave a total of $19.3 million to the Central Indiana Corporate Partnership (CICP) Foundation to create "conditions and intellectual capital that are essential for a prosperous economy and help make the community a place that businesses want to call home."[332] Although the Foundation donated money to the American National Red Cross as well, Lilly Endowment, Inc. clearly prioritizes Indiana's community—almost $32 million was given to the Indianapolis Neighborhood Housing Partnership, and $10 million was granted to the Children's Museum of Indianapolis.[333]

Lilly Endowment, Inc. also focuses on education in Indianapolis and Indiana communities through supporting research and higher educational attainment opportunities to "enhance the quality of educational experiences for Indiana residents and help them find meaningful and rewarding employment in the state."[334] The Foundation funds efforts to strengthen educational institutions, research programs, effectiveness and morale of Indiana teachers, expand resources for students to pay for colleges, and more.[335] Over 20 percent—slightly over $110 million—of the total grants given in 2015 were provided for education-related initiatives.[336] Grants were made to organizations like the United Negro College Fund, the Boy Scouts of America Council, the Girl Scouts of Central Indiana, the Indiana Commission for Higher Education, and the Indiana University Foundation.[337]

Lastly, the Lilly Endowment, Inc.'s third area of focus is religion. The Foundation strives to "deepen and enrich the religious lives of American Christians, primarily by helping to strengthen their congregations."[338] To achieve this, Lilly Endowment, Inc.'s grantmaking has consisted mainly of a series "of major, interlocking initiatives aimed at enhancing and sustaining the quality of ministry in American congregations and parishes."[339] The Foundation strives to recruit talented Christian pastors, prepare and train new ministers for faithful pastoral leadership, and improve the skills and sustain the pastors currently serving congregations.[340] They believe in supporting local congregations as "strong, vital congregations play powerful roles in the lives of those who participate in them as well as to the larger civic communities of which they are a part."[341] Lilly Endowment, Inc. gave over $124 million to religious-focused grants—accounting for nearly 30 percent of the total grants given in 2015.[342] Roughly $45 million was given to High School Youth Theology Institutes at Colleges and Universities in 2015; other significant contributions were made to the National Fund for Sacred Places Project with the National Trust for Historic Preservation, and the Campus Ministry Theological Exploration of Vocation Initiative.[343]

Lilly Endowment, Inc. only holds one stock—Eli Lilly and Company. As a result, the foundation's endowment does not receive as consistently high returns as other top foundations in the United States with a diversified stock portfolio. Lilly Endowment, Inc.'s assets peaked in 2001 at over $15.5 billion; the foundation distributed the most grants in this year, totaling nearly $590 million.[344] In 2010, however, the Foundation's endowment dropped to $5.3 billion, thereby limiting their grantmaking abilities to roughly $205 million.[345] Lilly Endowment, Inc.'s endowment is nearly double what it was in 2010, however, and now lies at around $9.9 billion.[346] Despite its recent success, it is unclear if Lilly Endowment, Inc. will be able to maintain its level of impact in communities within Indianapolis, Indiana, and the United States due to an unsteady stock return.

Philanthropic Limited Liability Companies (LLCs)

Facebook's Chan Zuckerberg Initiative

In December 2015, Mark Zuckerberg and his wife, Priscilla Chan, announced their plan to give 99 percent of their Facebook shares—worth about $45 billion—to charitable purposes in their lifetime.[347] They set to do this by establishing the Chan Zuckerberg Initiative (CZI)—a limited liability company (LLC)—to manage the money with the initial areas of focus to be "be personalized learning, curing disease, connecting people and building strong communities."[348]

Zuckerberg and Chan previously had mixed results in earlier charitable efforts; in 2010, they donated $100 million to improve the public schools in Newark.[349] The money was intended to expand high-performing charter schools but was met with resistance from parents, community activists, and unions.[350] Despite this admirable donation, many claim the money caused more damage than good by exacerbating the problems with much of the donation “soaked up by consultants.”[351] Zuckerberg claims the LLC structure of the newly formed Chan Zuckerberg Initiative allows the family to “go beyond making philanthropic grants. They will invest in companies, lobby for legislation and seek to influence public policy debates, which nonprofits are restricted from doing under tax laws.”[352] Furthermore, a spokeswoman for the family stated that any profits from the investments would be channeled back to the Chan Zuckerberg Initiative for future projects.[353] According to Matthew Ingram, journalist for *Fortune Magazine*, the Securities and Exchange Commission (SEC) filing that Facebook made as part of the announcement for CZI “makes it clear that he intends to control the company for a long time. The document says that the Facebook co-founder promises not to give more than $1 billion per year to his foundation over the next three years, and says that he ‘intends to retain his majority voting position in [Facebook] stock for the foreseeable future.’”[354]

Despite Zuckerberg’s extensive control, CZI has had a seemingly successful year of impact in achieving its goals of “curing disease, Internet connectivity, community building and personalized learning—the idea that technology can help students learn at different paces.”[355] In its first year of operation, the Initiative established the Chan Zuckerberg Biohub, an independent research center that brings together physician-scientists, engineers and faculty from across California to “tackle the biggest challenges the scientific community faces today. The Biohub invests in early-stage research with long time horizons and supports the work of creative scientists by providing five years of unrestricted funding through its investigator program.”[356] The Initiative is also striving to develop breakthrough products and practices to address the needs of the education community and provide personalized learning solutions.[357] They use technology and engineering to "turbocharge and scale solutions to facilitate social change."[358]

Although the Chan Zuckerberg Initiative's programs and efforts are commendable, critics claim there is significant room for improvement.[359] There is concern regarding the impact of the Chan Zuckerberg Initiative, and controversy over Zuckerberg's influence over the Initiative's actions; therefore, it is premature to conclude the success of CZI and its LLC structure in performing good works.

Emerson Collective

Similar to the Chan Zuckerberg Initiative, Emerson Collective is a LLC, which allows it to make grants, political donations, and for-profit investments.[360] Laurene Powell Jobs established the Emerson Collective in 2004 with the mission of "removing barriers to opportunity so people can live to their full potential."[361] Emerson Collective focuses its work on "education, immigration reform, the environment, and other social justice initiatives" by partnering with entrepreneurs, policymakers, administrators, activists, and others "to spur change and promote equality."[362]

With respect to education, Emerson Collective has partnered with movements like XQ: Super School Project to redesign high schools to meet the needs of current students and prepare them for the "careers of tomorrow."[363] They have also partnered with Stand for Children that has "designed an innovative program called Stand University for Parents (Stand UP), which helps parents build the skills and confidence it takes to engage on their children's behalf."[364] Emerson Collective also supports efforts towards immigration reform that "will grow the economy, reduce inequality and increase opportunity for all Americans."[365] Lastly, Emerson Collective focuses on partnering with organizations that seek to transform systemic injustice in “the criminal justice system, guarantee food security, and strengthen communities.”[366] They state: “Our approach to social change is nimble and non-traditional, our tools are varied and flexible, and our expertise is continually enriched by the partners we seek.”[367]

According to Laura Arrillaga-Andreessen, Emerson Collective’s LLC structure allows it to “act and react as nimbly as need be to create change, and have the ability to invest politically, in the for-profit sector and the nonprofit sector simultaneously.”[368] She claims, “we are now seeing a blurring of the lines between the sectors in a way that was not even discussed 10 years ago. The way that we are going to solve social problems is by working with multiple different types of investing.”[369] Although Arrillaga-Andreesen praises the LLC structure, others fear “Silicon Valley’s elite risk bringing to philanthropy the same one-dimensional thinking that brought success to their very temporary inventions.” Although the lines between typical philanthropic structures—such as non-profits and foundations—and traditional limited liability companies may be blurring, this may not be as promising as Arrillaga-Andreesen predicts.

Other Avenues for Impact Investing?

In addition to companies establishing their own initiatives, and foundations pursuing good works, other large companies have started investing in renewable energy projects; although these companies’ efforts are admirable, they are not high-risk investments.

In February 2015, for example, Google Inc. invested $300 million to support at least 25,000 SolarCity Corp. rooftop plants for residents, small businesses, commercial companies, governments, schools, water districts, and more.[370] Google is contributing to the largest residential solar fund for SolarCity. Google has committed more than $1.8 billion to renewable energy projects in total; this includes wind and solar farms on three continents.[371] This recent agreement with SolarCity is expected to have a return as high as eight percent—"a sign that technology companies can take advantage of investment formats once reserved only for banks."[372] Although SolarCity's stock price fell nearly 63 percent this year, Tesla's recent bid to buy the company for $2.6 billion is expected to create $150 million in cost efficiencies for the two companies and SolarCity's stock has been rising in the last quarter of 2016.[373]

Other companies, like IKEA, have plans to be energy dependent in their stores by 2020; IKEA is investing $680 million into renewable energy over the next five years by adding solar and wind power to global IKEA locations.[374] Amazon is currently building Virginia's largest solar project—an 80-megawatt solar farm—to power a nearby Amazon Services data centers.[375] Lastly, Berkshire Hathaway—one of the top corporate holdings of the Bill & Melinda Gates Foundation Trust investments—is spending approximately $30 billion on renewable energy projects in Iowa, Wyoming, California and Arizona.[376]

Furthermore, there are some investments in companies focusing on high-risk technological innovations amidst the foundations' investments in high-capitalization companies. The Bill & Melinda Gates Foundation invested nearly $500 million in Ecolab Inc.—a global leader in water, hygiene and energy technologies and services to "keep environments clean and safe, operate efficiently and achieve sustainability goals."[377] The Bill & Melinda Gates Foundation has also invested a small amount—just under $170,000—in the CECP Wind Power Corporation—a company that manages, constructs, operates, and maintains wind power projects with a total capacity of approximated 1900 megawatts in China.[378] Similar to the Bill & Melinda Gates Foundation, the Ford Foundation held roughly $8 million of Ecolab Inc. stock—currently holding a 4.5 Morningstar rating with a Wall Street recommendation to buy—in 2015, and has also invested approximately $750,000 in the Energy Development Corporation, the largest geothermal energy producer in the Philippines, and the second largest in the world.[379] Other foundations, like The J. Paul Getty Trust and The Robert Wood Johnson Foundation, hold stock in companies that focus on improvements in the health industry such as Sun Pharmaceutical Industries and AllScripts.[380] Foundations have significant potential to expand their investments in highly technologically innovative companies, potentially further encouraging companies to pursue good works, and thereby increase the foundation's and company's impact.

First Solar, founded in 1985, is the leading global provider of comprehensive photovoltaic (PV) solar systems using module and system technology. It currently holds a three-star rating on Morningstar, with a majority of analysts recommending investors hold their shares in the company.[381] It sells 13.5 gigawatts worldwide, and reported $3.6 billion in revenue in 2015.[382] The company claims to have a history of financial stability and manufacturing success: "By integrating technologies, services and expertise across the entire solar value chain, First Solar delivers bankable PV energy solutions that enable a world powered by reliable and affordable solar electricity."[383] First Solar prides itself on offering "the most bankable energy solutions in the world with the strongest financial stability in the industry." [384] Additionally, the company claims their model "offers more value and less risk compared to other competitors...delivering more reliable, dependable and cost-effective solutions for [their] customers." [385] Due to its financial stability, First

Solar may offer a potential avenue for foundations to invest in as it plans to triple its thin-film capacity, from 200 megawatts to over 650 megawatts, within the next three to five years and challenge the affordability of conventional fossil fuels and electricity with less expensive renewable electric power.[386] First Solar has a market capitalization of $3.6 billion, and was reported to have a three times better than the industry average for its net margin and return on assets at the end of 2015: "The stock finished 2015 strong, rising from $41 a share to $55 a share in the fourth quarter of the year, and the 2016 market consensus price target for the stock is around $63 a share."[387]

NextEra Energy is another strong, highly innovative renewable energy company as the leading provider of wind and solar energy in North America with reported revenues of approximately $17.5 billion in 2015.[388] NextEra Energy holds a 4.4 on Morningstar's Wall Street Recommendations, suggesting investors either hold or buy shares in the company.[389] As of April 2016, it provided approximately 45,000 megawatts of generating capacity, which includes megawatts associated with non-controlling interests related to NextEra Energy Partners, LP.[390] NextEra Energy has two principle subsidiaries. First, Florida Power & Light Company (FPL) is the largest rate-regulated electric utility in Florida, serving nearly five million customer accounts in the state and has the third largest number of customers in the U.S.[391] Second, NextEra Energy Resources, LLC, along with its affiliated entities, is the world's largest generator of renewable energy from the wind and the sun.[392] NextEra Energy has eight nuclear units at five plant sites throughout the U.S. with the capacity to generate more than 6,400 megawatts of emissions-free electricity—enough to supply the needs of nearly five million households.[393] NextEra Energy has a market capitalization of $56 billion, and annual revenues of nearly $4.5 billion.[394] The three-year average return for NextEra is over 15 percent with stock trading above $97 per share as of December 2015, and a consensus market price target above $115 per share.[395]

First Solar and NextEra Energy may present potential avenues for foundations to invest in that align with the foundations' commitment to performing good works unlike the high-market-capitalization companies foundations currently support. Berkshire Hathaway, a common holding of the top foundations, has a market capitalization of nearly $394 billion with a stock price of approximately $240,000 and earnings-per-share ratio of over $14,000.[396] Other popular holdings of foundations include Unilever, Johnson & Johnson, and Royal Dutch Shell with market capitalizations ranging from $121 billion to over $310 billion.[397]

Despite the admirable efforts of foundations to perform good works and tackle the gaps in societal needs, these foundations could further their impact by investing in highly innovative companies, and holding these investments for long periods of time (as discussed in detail in the subsequent chapter). Other philanthropic companies established by well-known icons like Mark Zuckerberg and Laurene Powell Jobs are structured as limited liability companies (LLC) to hold extensive control over each company along with other benefits that are typically limited by tax laws for nonprofits—specifically with respect to greater flexibility when partnering with other companies. These LLC-structured foundations hold the potential to increase their impact by pursing joint ventures with highly innovative tech companies also pursuing corporate good works.

CHAPTER 6: PENSION FUNDS

Pension funds are a final avenue to consider as a mechanism for investing in and supporting socially-responsible initiatives that pursue good works beyond traditional corporate social responsibility (CSR) methods. One of the largest pension funds, CalPERS, has the most potential to increase its impact, as its sizable scale allows for the greatest flexibility to incorporate small-capitalization, higher-risk companies pursuing good works without significantly impacting the fund's yield. CalPERS, however, has explicitly rejected this opportunity.

Summary of CalPERS

Established by legislation in 1931, CalPERS became fully operational in 1932 providing secure retirement to state employees. In 1939, CalPERS expanded to allow public agency and school employees to join the system; they further expanded in 1962 to administer health benefits for state employees.[398] CalPERS is now the nation's largest public pension fund with a total net position in the Public Employees' Retirement Fund of nearly $307 billion.[399] As of the end of June 2014, CalPERS provides retirement and health benefit services to more than 1.7 million members, and over 3,000 school and public employers.[400]

CalPERS' vision is to "maximize returns at a prudent level of risk, an ever-changing balancing act between market volatility and long-term goals."[401] CalPERS strives to achieve its mission by considering all factors—liabilities, benefit payments, operational expenses, member contributions—when establishing their asset allocation.[402]

Table 6.1 CalPERS' Breakdown by Asset Class as of Oct. 31, 2016

Breakdown by Asset Class as of October 31, 2016	Total Value ($ Billion)
Global Equity	$138.80
Private Equity[1]	$25.37
Global Fixed Income	$56.98
Liquidity	$18.56
Real Estate[1]	$27.72
Inflation Sensitive	$21.40
Infrastructure & Forestland[1]	$5.13
Other[2]	$6.91

Source: "CalPERS Investment Fund Values," CalPERS.

CalPERS lists three primary goals for their organization: 1. "Improve long-term pension and health sustainability;" 2. "Cultivate a high-performing, risk-intelligent, and innovative organization;" and 3. "Engage in state and national policy development to enhance the long-term sustainability and effectiveness of our programs."[403] Although CalPERS is focusing on the future sustainability of their programs, they are not prioritizing any commitment to environmental sustainability or other highly innovative sustainability initiatives.

With regard to their investment portfolio, CalPERS publishes four investment beliefs: 1. "A long-time investment horizon is a responsibility and an advantage;" 2. "CalPERS investment decisions may reflect wider stakeholder views, provided they are consistent with its fiduciary duty to members and beneficiaries;" 3. "CalPERS must articulate its investment goals and performance measures and ensure clear accountability for their execution;" and, 4. "Strategic asset allocation is the dominant determinant of portfolio risk and return."[404] Although CalPERS claims it takes a transparent and strategic approach to its investments so as to represent a diverse set of priorities from stakeholders, the organization frequently asserts that it must make decisions consistent with "its fiduciary duty." In other words, CalPERS can only invest in highly innovative companies solely under the condition that these companies provide maximum returns; CalPERS, and other pension funds, face greater constraints than foundations or socially-responsible mutual funds.

CalPERS' Investment Report and Sustainability Initiatives

Although CalPERS is more restricted than other investment groups (i.e. foundations or socially-responsible mutual funds committed to supporting good works), their investment report demonstrates some investments in alternative energy companies. In fiscal year 2013-2014, CalPERS invested nearly $30 million in NextEra Energy—a leading clean energy company with revenues of roughly $16 billion and almost 46,000 megawatts of generating capacity from renewable, wind, and solar energy.[405] CalPERS increased its investments to approximately $35 million in fiscal year 2015-2016.[406]

In addition to NextEra Energy, CalPERS has invested in companies also included in alternative energy mutual funds. In 2015-2016, CalPERS invested in SunPower Corp, SolarEdge Technologies Inc., Johnson Controls Inc., and many other innovative companies included in the Guinness Atkinson Alternative Energy Fund (GAAEX).[407] Firsthand Alternative Energy Fund (ALTEX) is the mutual fund with the highest concentration of alternative energy investments; Vestas Wind Systems, First Solar Inc., Aspen Aerogels Inc. are all included in both ALTEX and CalPERS' investment portfolios.[408]

CalPERS claims they have furthered their investments in sustainability initiatives by investing in renewable energy development projects. CalPERS' general partner

Blackstone, for example, developed a solar program to cut the energy costs by approximately 10 percent by installing solar systems on the rooftops of select portfolio companies.[409] Miller Capital Advisory, another general partner of CalPERS, recently constructed the first Leadership in Energy & Environmental Design (LEED) Silver-Certified Core and Shell shopping center in the nation.[410] Lastly, CalPERS works with CIM Group Infrastructure Platform that partners with public agencies to make investments to develop and operate clean renewable resource projects that support the sustainability of urban communities.[411]

Historically, CalPERS has pressured companies that they heavily invest in to perform good works. In 2006, CalPERS joined with treasurers in six states and other investors to increase pressure on Exxon Mobil Corp. to address global warming, specifically with respect to its failure to pursue alternatives to petroleum-based fuels.[412] Chief Executive of Exxon, Rex Tillerson, claimed "Exxon Mobil has avoided investments in alternative fuels such as ethanol because its expertise is in finding and refining crude oil...The company expects oil and natural gas to be the dominant energy sources for cars, homes and factories through 2030."[413] Despite these predictions, however, CalPERS and other investors encouraged the company to pursue more sustainable projects. In 2006, Exxon Mobil was the biggest holding in CalPERS' $208 billion portfolio.[414]

In March 2016, CalPERS announced it entered into an agreement to purchase up to a 25 percent ownership stake in Desert Sunlight Investment Holdings, LLC—Desert Sunlight owns two solar PV power generation facilities near Palm Springs, CA.[415] Desert Sunlight began operations in late 2014 with a capacity of 550 megawatts and is currently selling their output to California utility companies under long-term contracts.[416] According to Ted Eliopoulos, CalPERS Chief Investment Officer, "Desert Sunlight presents a great opportunity for CalPERS, allowing us to invest both in California and in clean, renewable energy… Infrastructure has been one of our best performing programs and is an important part of the CalPERS portfolio."[417] CalPERS' Infrastructure Program strives to hold assets that provide predictable returns; the program is also intended to act as an "economic diversifier to equity risk in the portfolio. The program currently makes up approximately one percent of the Total Fund, with a net asset value of approximately $2.3 billion as of January 31, 2016."[418] Although CalPERS' investment in Desert Sunlight demonstrates efforts toward supporting corporate good works, its Infrastructure Program represents a very small percent of its Total Fund, thereby suggesting potential for CalPERS' to improve its impact.

Can CalPERS Do More?

Recent pressures have been placed on CalPERS to base its investment decisions on politically contentious issues rather than maximizing returns on their investment portfolios. Senate President Pro Tem Kevin de Leon won Senate approval for a measure requiring CalPERS and CalSTRS to end new investments in coal companies and divest any current holdings by July 1, 2017, "unless the pension funds conclude that such actions are 'inconsistent with its fiduciary duties.'"[419] An advocacy group, Fossil Free California, wants pension funds like CalPERS and CalSTRS to divest holdings in companies involved with producing or providing fossil fuel energy.[420] Betty Yee, member of the boards of both CalPERS and CalSTRS, claims these two pension funds choose to invest in these companies to hold "the potential for swaying corporate behavior in ways that will ease the transition to a green-energy economy."[421] She states: "Both pension funds ask companies...to examine the long-term business risks from climate change and to take action accordingly. ... How can they change to survive and thrive in the new energy environment and economy?"[422]

Despite these pressures, however, CalPERS—following Yee's comments—plans to maintain its investments in the Dakota Access Oil Pipeline "in order to exert influence over the companies involved."[423] Legislation proposed in California would require CalPERS to divest from companies involved in the building and financing of the nearly 1,170-mile-long underground pipeline project. This is estimated to affect $4 billion in CalPERS holdings. [424] The Pipeline remains a controversial topic, as it will carry crude from Stanley, North Dakota to Pakota, Illinois, causing much concern that a spill could contaminate water supplies underneath Native American tribal lands.[425] CalPERS staff believes "that while divesting stocks of companies involved in the project may reduce stakeholder perception that the fund's investments contribute to climate change, the move would limit CalPERS ability to change corporate behavior through engagement."[426]

CalPERS has a history of being a target of divesting campaigns and has pulled cash out of tobacco and firearm companies, as well as out of Iran, Sudan, and South Africa, on political grounds. CalPERS has not, however, chosen to divest from other contentious companies and defends these holdings by claiming holding onto these companies allows them to maintain influence over the company's practices. It is unclear, however, if CalPERS truly follows through with this commitment. The pension fund has established the CalPERS Clean Energy and Technology Fund to invest across the spectrum of the "global clean energy and technology value chain."[427] Despite this seemingly positive step towards increasing their support of corporate good works, CalPERS' members are not provided with the opportunity to directly invest in these alternative funds; CalPERS allocates their members' investments according to the organization's priorities and investment beliefs rather than giving their members an option. Capital Dynamics is a private asset manager that currently manages CalPERS' Clean Energy and Tech Fund. According to Emily Deng, Vice President of Client Relations at Capital Dynamics, CalPERS is the only listed member of the Clean Energy and Technology Fund, indicating that the money invested in this fund comes from the CalPERS Pension Fund as a whole rather than individual CalPERS' member's investments.[428] Mary DiCarlo worked in the California public school system and has been a member of CalPERS for 16 years. In all of that time, she has never been aware of any choice of funds in which she could invest, even though she would have preferred to invest in highly innovative companies pursuing corporate good works.

CalPERS has supported some sustainability initiatives and established a fund dedicated to renewable energy and technology. Members of CalPERS have the opportunity to place additional money in a CalPERS' 457 Deferred Compensation Plan in which they can choose to further invest in a select set of six funds chosen by CalPERS.[429] Despite presenting their members with this option, there are no funds focused on environmental or sustainability initiatives among the six funds selected by CalPERS.[430] Pressures on the organization persist from advocacy groups and its own members to increase their impact and support of corporate good works. As a result, pension funds—similar to foundations and socially-responsible mutual funds—have opportunities for improvement.

How Can CalPERS and Other Investment Groups Do More?

According to a recent study released by The Chronicle of Philanthropy, less than half of foundations use impact investing—the Center for Effective Philanthropy surveyed over 60 CEOs of private foundations about their organizations' practices.[431] These organizations give at least $10 million annually in grants, yet only 41 percent of respondents said their foundations currently use impact investing, 6 percent plan to in the future, and 20 percent do not have plans to do so.[432] Although these organizations may encourage respectable good works through their grant-making practices, 86 percent of the CEOs said financial return was a key investing consideration for their foundations, and over three-fourths of respondents said returns on their foundations' impact investments are lower than return s on other investments.[433]

In the mid-1960s, the Ford Foundation financed research on the investment responsibility of nonprofit board members. This research was one basis for the 1972 Uniform Management of Institutional Funds Act. This Act "acknowledged that risks could be incurred in fact, they could never be avoided and it considered these risks acceptable as long as they brought commensurate profits and the endowment portfolio as a whole wasn't placed in jeopardy."[434] By ridding of the distinction between "income" and "principal," the Act permitted endowment funds to invest in stock or other assets, and distribute the appreciation, not just dividends, as income.[435] This ultimately led large foundations and nonprofit groups to invest a modest percentage of their funds in risky investments. Investment groups, however, were still limited to the purpose of the organization thereby restricting the extent of risk an organization could take.[436]

In contrast, CalPERS asserts that the sole purpose of a pension fund is to provide financial benefits to its members. As a result, “A pension-fund trustee might take reasonable risks to increase these financial returns, but would not be justified in accepting a lower return or greater risk because of the trustee's personal values or charitable objectives.”[437] Unlike pension funds, the beneficiary of a foundation is the public with the purpose of achieving a charitable objective for the public good. Due to this obligation, “If an investment furthers the donor's intent and provides benefits to the public, then unlike the private trust or pension fund, that may be reason enough to accept a lower return or greater risk especially if the entire portfolio is not placed at undue risk.”[438]

The University of California offers its employees a UC Retirement Savings Plan (RSP), in addition to their primary retirement benefits, separate from CalPERS—the 403(b), 457(b), and Defined Contribution (DC) Plans.[439] The UC RSP offers its members a UC RSP Fund Menu, which includes a full range of asset classes to help “meet [the member’s] needs, no matter what type of investor [he/she] might be... The UC RSP Fund Menu is selected and monitored by the UC Office of the Chief Investment Officer of the Regents.”[440] The UC RSP Fund Menu is divided into three tiers: Tier One includes the UC Pathway Funds based on one’s target retirement date; Tier Two includes bond investments, stock investments, and balanced funds; and Tier Three is Fidelity Brokeragelink which combines retirement plans with a brokerage account.[441] Tier Two lists many fund options for investors, including the Vanguard FTSE Social Index Fund which includes socially responsible funds that “primarily invest in the securities of companies that adhere to social, moral, religious, or environmental beliefs.”[442] A pension fund like CalPERS could offer its members with similar options so as to invest in socially responsible funds like those included in the UC RSP Fund Menu.

Although foundations have greater opportunity to invest in highly innovative companies by making a commitment to increasing their impact despite the increased risk, few foundations have done so. The F.B. Heron Foundation recently announced that it will invest its $274-million endowment in the next five years to advance its mission of fighting poverty.[443] They have combined their grant-making and investment-making teams to be a single group focused on capital deployment.[444] Tony Berkley, director of mission-driven investing at the W.K. Kellogg Foundation, does not expect many other foundations to follow as "[The F.B. Heron Foundation's] endowment must earn at least eight to 10 percent a year to cover the five-percent grants payout, the cost of investing, and inflation."[445] F.B. Heron's announcement is admirable as it must receive a significant return to maintain its commitment, yet the Foundation has not released any statement regarding a long-term commitment to any particular investment or company.

A foundation could have significant impact on a highly innovative company by making a binding, highly-publicized, long-term commitment in holding its stock. Doing so would decrease the availability of shares in the market, thereby potentially increasing the demand of these shares, and, in turn, accentuate the value of the stock. The highly innovative company could sell its respective shares to increase capital and thereby pursue good works even further. A new IRS announcement further encourages foundations to take on these long-term, increased risk investments: a foundation that "knowingly accepts a lower return on an investment that furthers its social goals would not be subject to the [excise] tax."[446]

Self-liquidating foundations also have the potential to support highly innovative companies by disbursing investments in initiatives that will benefit future generations. For example, in 1951, the Fleischmann Foundation—founded by Max Flesichmann, a successful U.S. food-industry businessman—distributed nearly $200 million to a variety of good works such as libraries, research laboratories, scholarship funds, and more. Fleischmann believed "that each generation should learn to care for itself so the life of the Foundation was purposely limited under terms of his will. All funds were to be distributed within 20 years from the death of the Major's widow."[447] The Fleischmann Foundation held a farsighted perspective that some perpetual foundations or pension funds lack. This long-term point of view demonstrates how self-liquidating foundations could make investments in the present to highly innovative companies with the potential for greater impact in the future.

Based on personal communication with Thomas Ehrlich and Joel Fleishman, it is unlikely that many foundations will make any such transparent, long-term commitment to highly innovative companies.[448] Although pension funds may be limited in their investment capabilities, perpetual and self-liquidating foundations still present an opportunity for increased investment in corporate good works due to the organization's purpose under the Uniform Management of Institutional Funds Act, and the recent IRS announcement. Furthermore, pension funds, like CalPERS, could increase their impact by incorporating funds related to environmental sustainability or committed to highly innovative companies as investment options for its members.

CHAPTER 7: CONCLUSION

Corporations and individuals have the potential to address the gaps in societal needs through increasing their incorporation of and investment in highly innovative, sustainable initiatives. Those who want to encourage more activity in good works, however, must understand that some corporate structures or investment avenues are more promising than others.

As mentioned in the treatment of standard C Corporations, the court case *Dodge vs. Ford Motor Company* established protection for a company's pursuit of good works, granting corporations the ability to perform environmentally socially responsible actions rather than entrusting shareholders to do so with their dividend returns. Investing in corporate good works has the potential to benefit the corporation in the long-run, in turn, increasing the shareholder's value. Corporations often perform varying forms of good works; the company's purpose in doing so often determines the structure a business chooses to be classified under. These classifications have their respective advantages and disadvantages.

Although privately-held companies such as S Corporations and limited liability companies (LLCs) are not personally responsible for business debts and liabilities, many government incentives for these companies to pursue good works beyond conventional corporate social responsibility (CSR) methods do not exist. Publicly-traded companies are faced with an additional challenge as they are obligated to provide maximum return on their shareholder's investment.

There are some corporate structures specifically established to support CSR efforts. The B Corp certification encourages businesses to increase their corporate good works, but the B Corp Impact Assessment has lenient requirements, thereby raising concern regarding the impact of certified B Corps. Low-profit limited liability companies (L^3Cs) attract investors due to their commitment to earn profit for their investors while also pursuing good works. L^3Cs have limitations, however, due to the currently limited financial support from investors and the unsuccessful fate of many L^3Cs previously established. Benefit corporations offer the legal protection, accountability, and transparency for a company to pursue good works while simultaneously ensuring the protection of the shareholder's financial interests. The current financial regulatory burden of establishing corporations, however, present challenges to the benefit corporations structure.

Socially-responsible (SRI) mutual funds that incorporate environmental, social, and governance criteria are established to sacrifice profit but simultaneously encourage CSR efforts beyond the norm. Many mutual funds with SRI portfolios, however, incorporate larger companies to reduce the riskiness of their relative return.

Foundations hold enormous potential for increasing investment in good works with the recent modification to the IRS tax code allowing foundations to make investments that provide both charitable and financial returns without fearing a tax penalty. Foundations may use the full range of their assets to advance their philanthropic mission. Some foundations have invested in technologically innovative companies pursuing greater impact, yet there is still room for improvement.

Pension funds are an additional avenue with opportunity for investing more in corporate good works. Similar to foundations, CalPERS has invested in companies like First Solar and NextEra Energy that are committed to improving efforts towards environmental sustainability but only insofar as the investment officers believe that these firms have a comparable rate of return as the other firms in the portfolio. Therefore, despite these small investments, members of CalPERS are not presented with options to invest further in funds committed to environmental sustainability or other forms of good works, thereby demonstrating opportunities for enhancement in pension funds.

Each corporate structure or investment avenue has some potential to encourage good works. Additionally, an individual may have greater access to one option than another. Below outlines recommendations for each course of action.

Recommendations

B Corps

The B Corp certification was established to recognize companies pursuing good works that go above and beyond traditional CSR methods. Because the Impact Assessment granting B Corp certification is lenient on what is considered a qualifying score, the Assessment does not measure a company's overall effectiveness in its pursuit of good works nor demand companies to focus on their impact over maximizing shareholder value. Although the community of committed companies to perform CSR efforts beyond the norm is commendable, the Assessment requirements must be improved so as to push companies to concentrate more on social and environmental efforts rather than maximizing shareholder value. Improvements in the Assessment include raising the minimum score necessary to receive B Corp certification or increasing the frequency of audits of B Corp companies so as to hold these organizations accountable for their commitments. Furthermore, the B Corp certification process for public companies must be mended to be more applicable to multinational corporations so as to have greater impact.

L^{3}Cs

The inadequate oversight by state charity regulators or the IRS of L^{3}Cs, along with the low interest-rate loans provided with this structure, raise concern of exploitation and abuse by unprincipled individuals. In addition, the failure of many L^{3}Cs demonstrates the structure's limited applicability to smaller, community initiatives, specifically in the realm of environmental sustainability. L^{3}Cs have potential, however, to present opportunities for investors seeking to support corporations pursuing good works without sacrificing a stable return on their investment.

Benefit Corporations

Benefit corporations, in contrast, present a broad enough structure to include a range of corporations' pursuits of good works beyond traditional methods, including environmental sustainability efforts, giving money to goods works, and/or investing in more research and development of social innovation initiatives. Although the legal protection for benefit corporations is an effective encouragement of good works, additional incentives like adjusting the financial regulatory burden are necessary to maintain the commitment and momentum towards this movement. Legislation that permits benefit corporations should expand nationally until its success is proven otherwise.

There are currently 31 states that have passed benefit corporation legislation, and eight states are working on doing so.[449] The benefit corporation site provides a model legislation to reflect "the expressed needs of business leaders and investors interested in using the power of business to solve social and environmental problems, and can be conformed to local corporate codes."[450] The provided document on the benefit corporation site outlines the chapters, subchapters, and subsections for a model legislation to use as a template for any state working to pass benefit corporation legislation. This model legislation also includes explanatory comments for further instruction.[451]

The benefit corporation site provides helpful tips beyond the model legislation. The site lists recommended steps such as consulting key stakeholders and legislative bodies such as business associations, chambers of commerce, Secretaries of State, and the Bar Association as all will need to approve and/or will be affected by the passing of the legislation.[452] Benefit corporations usually have bipartisan support "since this is simply a voluntary business choice that expands the free market."[453] Despite this, the site encourages gathering support from more than one party from the start and recruiting the chairs of the judiciary or economic development committees as sponsors to appeal to all parties.[454] The benefit corporation site also suggests contacting the B Lab organization to help "clarify the laws intent and explain the pros and cons of the legislation."[455]

Mutual Funds

Although researchers claim SRI mutual funds are not riskier than non-SRI funds, SRI mutual funds will periodically merge different funds to remain financially competitive in the market. Additionally, studies concluding this did not analyze the composition of SRI funds, nor discuss the environment, social, and governance criteria of these funds. SRI mutual funds have the opportunity to place greater weight on companies committed to good works beyond conventional CSR methods. Although doing so may increase the fund's relative risk and success, these funds are established for investors who hope to encourage greater impact, thereby requiring SRI funds to incorporate a sizable amount of highly innovative companies pursuing good works beyond the norm.

Foundations

Foundations, whether perpetual or self-liquidating, and philanthropic LLCs have greater opportunity to increase their impact by investing in technologically innovative companies despite the risk potentially associated with these investments. Foundations could provide donors with the opportunity to choose specific stocks of the foundation's portfolio in which the donor would like his/her money to be allocated. Additionally, these foundations could expand their investment and support of companies pursuing highly innovative ventures; self-liquidating foundations could disburse current investments in initiatives that will benefit future generations, and philanthropic LLCs could pursue joint ventures with these companies.

Pension Funds

Similar to foundations, pension funds also have potential to increase their support in innovative companies performing good works. Pension funds, like CalPERS, could incorporate funds related to environmental sustainability or committed to CSR beyond the conventional norm in their fund options; furthermore, pension funds could offer its members with similar options to those included in the UC Retirement Savings Program (RSP) Fund Menu so as to invest in SRI funds with greater impact than non-SRI funds.

The UC RSP is a voluntary program to offer a "convenient, tax-advantaged ways to save for retirement."[456] Employees can contribute up to $18,000 annually ($24,000 if age 50 or older at any time in the calendar year) in pretax dollars to the Tax Deferred

403(b) and 457(b) Deferred Compensation Plans.[457] The UC RSP presents opportunities for individuals to invest in SRI funds, and provides a disclaimer on its site to encourage its members to "carefully consider the investment objectives, risks, charges, and expenses."[458] The site lists many resources including Fidelity NetBenefit's *Performance and Research* on funds and fund's returns, and additional toll-free phone numbers so members can obtain information on their mutual fund options along with any asset-based fees and expenses, participant-based fees and expenses, and individual service fees.[459] The UC RSP's approach of presenting its members with the options and information to invest in SRI funds exemplifies one way pension funds could increase incorporation and support of highly innovative companies.

There is Hope

Many structures exist for corporations and opportunities for investors hoping to have greater impact in either contributing directly to good works, or investing the organization's funds in corporations pursuing good works. Although there is room for improvement within each opportunity, the potential avenues for investment and support have great potential to fill the current health, education, environmental, and infrastructural gaps in societal needs.

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Mr. Thomas Ehrlich is a current professor at Stanford University and has previously served as president of Indiana University, provost of the University of Pennsylvania, and dean of Stanford Law School. He has researched and written extensively on access and equity, civic, higher, and moral education, and state and federal education policy. Joel Fleishman is a professor in the Stanford School of Public Policy at Duke University, and also serves as the Director of the Center for Strategic Philanthropy and Civil Society. His areas of expertise lay in ethics, leadership, philanthropy, nonprofit organizations, and public service.

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