

NEWS, IDEAS, AND TRENDS IN BRIEF

Priority >>



GANG GREEN
(from left) B Lab
founders Andrew Kassoy,
Bart Houlahan, and
Jay Coen Gilbert,
at the offices of Method
Products, one of the
first B Corporations

A New Kind of Company

B Corporations worry about stakeholders, not just shareholders By Hannah Clark

BY ALMOST ANY STANDARD, Give Something Back is a thriving business. Launched in 1991 with \$40,000 from two founders, the office products company generated \$25 million in sales in 2006. Give Something Back, which donates more than half of its profits to charity, could have grown even faster if founders Mike Hannigan and Sean Marx were willing to take in outside investors. But though they get offers regularly, they've always said no. The reason: "We couldn't offer an investor an opportunity to invest in us and feel in any way that our social goals were protected," Hannigan says.

It's a problem that has long dogged socially responsible businesses. Public companies are legally obligated to maximize returns to shareholders, according to a widespread interpretation of corporate

law. For private firms, it's more a matter of withstanding pressure from investors. Hannigan and Marx, for example, fear their social mission could be threatened if an investor changed his mind about Give Something Back's penchant for charity. They want to avoid the fate of ice cream maker Ben & Jerry's, which received a buyout offer from the Dutch conglomerate Unilever in 2000. Founders Ben Cohen and Jerry Greenfield didn't want to sell, so Cohen assembled a group of investors to make a counteroffer. When they couldn't offer as much as Unilever, shareholders sued, and the company, then publicly traded, was forced to relent. In April 2000, Ben & Jerry's was acquired by Unilever for \$326 million.

That's exactly the situation that B Lab, a new nonprofit orga-

Photograph by Timothy Archibald

JULY 2007 **INC. MAGAZINE** 23

nization, aims to prevent. The group is creating a new kind of company—the B Corporation. (The B stands for “beneficial.”) It’s less a legal designation than a certification system that will allow businesses to define themselves as socially responsible to consumers and investors. To become a certified B Corporation, a company must amend its articles of incorporation to say that managers must consider the interests of employees, the community, and the environment instead of worrying solely about shareholders. Those amendments, according to B Lab, will let entrepreneurs like Hannigan take on outside investors without worrying that their values will be compromised. “For us, this is a huge step forward,” says Hannigan, whose company recently became one of about two dozen certified B Corporations.

B Lab’s founders got the idea from Leslie Christian, president of Progressive Investment Management. In 2004, she co-founded a new venture, Upstream 21, a holding company in Portland, Oregon. Christian says she and her partners “wanted to be really clear that we wouldn’t be doing something solely in the interest of shareholders.” Upstream’s attorney drafted the language, and earlier this year Upstream acquired its first company. “When you look at what makes a company successful, is it the absentee landlords? No, it’s the people who work there,” Christian says.

B Corporations must do more than simply edit their articles of incorporation. They have to pay B Lab one-tenth of 1 percent of revenue, and score at least 40 out of 100 on a survey B Lab developed after consulting with more than 150 entrepreneurs, investors, and academics. It’s similar to the LEED certification system for green buildings or TransFair’s certification of fair-trade businesses. Companies gain points for a number of practices, including democratic decision making, having good benefits, donating profits to charity, and being energy efficient. “We want to help consumers separate good companies from good marketing,” says Jay Coen Gilbert, co-founder of the apparel company AND 1, who launched B Lab with Bart Houlahan, AND 1’s former president, and Andrew Kassoy, a principal at private equity firm MSD Capital, which manages Michael Dell’s money.

Certification, however, can be somewhat suspect; some organic farmers, for example, have said the organic certification system has actually weakened their movement by enabling the creation of organic factory farms. And some of the questions on B Lab’s survey—“Are corporate events or team-building exercises held at least twice annually?”—have dubious social value. B Corporations can be strong in some areas (say, employee ownership) but weaker in others, such as environmental stewardship. But social entrepreneurs are clearly thirsting for standards, and B Lab is far from the

only organization working to develop them. The nonprofit Natural Capital Institute is developing a standard for responsible business known as Wiser, and a labeling initiative called Reveal aims to launch soon as well.

B Lab is different from the others because of the articles of incorporation amendment it requires. But how it might play out in the courts is an open question. If a B Corporation were forced for economic reasons to lay off half its workers, would it risk being sued?

Could Greenpeace take a company to court for not living up to its green goals? That depends, in part, on the state; 11 states have laws that would insulate directors from liability, says R. Todd Johnson, a partner with the corporate law firm Jones Day, who consults for B Lab. Some states don’t even allow companies to add stakeholder interests to their articles of incorporation; only 31 have expressly permitted it by passing what are known as constituency statutes. Ultimately, however, whether the amendments are legally binding will be up for debate until they are tested in court.

It’s also far from clear that the amendment is even necessary. Legal scholars are divided on whether companies are actually legally obligated to maximize returns to shareholders. Margaret Blair, a law professor at Vanderbilt University, calls the legal obligation a “mythology,” and is surprised the owner of a private company would feel the need to amend its articles of incorporation, given that privately held businesses are not subject to hostile takeovers. In a widely cited 1986 case, *Revlon v. MacAndrews & Forbes Holdings*, the Delaware Supreme Court ruled that once a public company is soliciting buyout bids, it must accept the highest offer, though a company can simply refuse to put itself up for sale. But

that decision is valid only for tender offers—often-hostile bids that bypass management and go directly to shareholders, according to Blair. “It just doesn’t happen in the case of private companies,” she says.

Coen Gilbert admits that B Lab is a work in progress. But the group already has lined up powerful supporters, including Adam Lowry, co-founder of Method Products, a popular maker of green soaps and cleaning products; Steve Voigt, CEO of King Arthur Flour; and Jason Salfi, co-founder of Comet Skateboards. Jeffrey Hollender, CEO of the consumer products company Seventh Generation, says he has considered participating in at least 10 rating systems and always rejected the idea—until now. He thinks a successful rating system is vital for the social responsibility movement to succeed. “There is a tremendous potential for the idea to lose credibility because of a lack of standards,” Hollender says. “I don’t want to say this is perfect, but this is desperately needed right now.”

Could you be a B Corporation?

B Lab asks business owners more than 100 questions to determine whether their companies qualify as “beneficial” corporations. A sampling:

Philanthropy

What percentage of net profits is given to charity?

The Environment

Are managers evaluated on their performance with regard to social and environmental targets?

Political Activity

Are all political contributions and lobbying efforts fully disclosed?

Board of Directors

How many stakeholders have representation on the board?

Diversity

What percentage of your managers are women or minorities?

Sourcing

What percentage of company revenue is generated from products that are organic, locally sourced, fair trade, or green?