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**CORPORATE SOCIAL RESPONSIBILITY**

**Should Uber become a Public Benefit Corporation?**



BY STEVEN A. DEAN AND DANA BRAKMAN REISER

Attempting to move past “[allegations of rampant sexism](#)” Uber reportedly tried—and failed—to hire a woman chief executive officer. Had they succeeded in hiring Sheryl Sandberg, what would they have gotten? In addition to one of the most widely admired executives in the world, one could argue that hiring Ms. Sandberg would serve as a public commitment by Uber’s board that the corporation would become a better citizen.

Given the current (male) CEO’s plan to have Uber sell its shares to the public in an initial public offering

*Steven A. Dean and Dana Brakman Reiser are the co-authors of “[Social Enterprise Law: Trust, Public Benefit, and Capital Markets](#)”*

*(Oxford University Press, 2017), which offers new insights on how the law can help entrepreneurs and investors find and trust each other, and together realize the promise of a marriage of markets and social mission.*

*Brakman Reiser is Professor of Law at Brooklyn Law School, where she has been teaching and writing about social enterprise and nonprofit law since 2001. Dean, an expert in tax law, is Vice Dean and Professor of Law at Brooklyn Law School, where he has been teaching about Taxation and Tax Policy since 2004.*

within a year or two, it must put this scandal behind it quickly. Fortunately, the law offers Uber an opportunity to publicly declare that it has mended its ways that does not require it to persuade Ms. Sandberg or another high-profile woman to take on its cause.

The Delaware public benefit [corporation—a new type of corporate entity](#) designed to house dual-mission “social enterprises”—provides an alternative to the traditional corporate form. The public benefit corporation form enables ventures to embrace and broadcast their commitments to pursuing both profit and one or more public benefits. A public benefit corporation’s charter must identify one or more specific public benefits it will promote and directors must balance them with the pursuit of profit. This balancing mandate represents a clear departure from a long tradition in corporate law of prioritizing profits at the expense of other values.

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Were Uber to become a Delaware public benefit corporation, it could make gender equality part of its core mission, right alongside generating profits. But it would still be left with an enforcement problem. The Volkswagen emissions scandal shows why. Its brazen deception regarding the environmental impact of its diesel engines offers a particularly spectacular instance of “greenwashing.” VW loudly and publicly gave itself far more credit than it deserved for its commitment to the environment.

Can a Delaware public benefit corporation allow a business to pull the wool over the public’s eyes? The first publicly traded public benefit corporation was Lau-

reate Education, an operator of for-profit colleges. Despite its public benefit corporation status, Laureate has a murky record when it comes to providing benefits to the public. One of its colleges—Walden University—famously had the [second-highest student debt burden in the nation](#). Obviously, the mandate that public benefit corporation directors balance profit and public benefit still gives them considerable discretion.

Even if Uber’s board were sincere in its commitment to pursue public benefits alongside profits, the underlying enforcement problem would remain. In essence, the Delaware public benefit corporation puts the fox in charge of the henhouse. Shareholders, those who would benefit financially from jettisoning the social mission, have the power to decide its fate. Two-thirds of its shareholders can simply decide to prioritize profits.

For solace, as is so often true, the place to turn is the tub of ice cream in your freezer. From its earliest days, Ben & Jerry’s Ice Cream was known not merely for its quirky flavors but also for its commitment to promoting the well-being of its workers and the environment. When Ben & Jerry’s shareholders [sold the corporation to Unilever](#) the ice cream maker came to embody that enforcement problem.

Despite the perception that Ben & Jerry’s owners “sold out” when they sold their shares, the record tells a different story. Although the company started by two hippies in a renovated Vermont gas station was pur-

chased by a huge multinational, it has in large part preserved its unique combination of profit and mission—selling its popular ice cream around the world while supporting causes such as climate justice, LGBT rights, and campaign finance reform. That remarkable feat was not achieved by making a dramatic hire or by adopting a new corporate form, but by drafting a creative and enforceable sale contract that baked preserving its social mission into the deal. The company is still at it, signing the Milk with Dignity Agreement with a farmworkers’ advocacy group this fall.

Not even Sheryl Sandberg would have been a silver bullet for Uber’s problems. Social enterprises like Ben & Jerry’s endure thanks to supportive owners and committed managers. Despite being a Delaware public benefit corporation, Laureate Education’s track record suggests it may have neither. The Delaware public benefit corporation—like Uber hiring a woman CEO—can serve as evidence of commitment, but it offers no guarantees. VW, as the world now knows, fooled millions of customers into believing it was a socially conscious and forward-thinking company by touting fake green credentials. The public benefit corporation will not make a bad corporation good, but it can allow a corporation committed to balancing public benefits alongside private interests the tools it needs maintain—and to broadcast—that balance.