

A Conversation with B Lab

*Larry Hamermesh, Bart Houlahan, Rick Alexander
& Dan Osusky*

Larry

Hamermesh: This is the panel of people who have been associated with B Lab for various lengths of time, but who really can put practical vision and facts before us in a way that the papers we've heard so far, while all really interesting, can't quite do. All of these papers converge on this subject: what actually happens and what's happened so far. So what I'm going to do is try to lead us through what could be an oral history, if it's appropriately recorded, of B Lab. And thanks in large part to Rick Alexander, who knows the inside story pretty well, I've got a series of questions here that in honor of the program, I'm calling the Berle q's.

We've got four categories to cover. The first one is what I call the birth story of B Lab, and that's going to be talking mostly to Bart Houlahan and a little bit to Rick, as his birth story is kind of interesting, as well.

Dan

Osusky: Not mine?

Larry:

We're happy to hear your educational background at some point because I got a glimpse of that. That's quite relevant. The second piece is about standards, which we've already talked about thanks to Mike Dorff and some others. I want to dive a little bit deeper into that subject. Third—and this is going to focus on Rick, primarily—is some of the legal aspects of B Lab and its work. And then finally, a category stepping back and asking some questions that ask us to assess where we are

and where we're going. So that's the roadmap to this session.

So in terms of the birth story and early days, or pre-early days, as I said I'm going to look mostly at Bart for this one. And I'm curious about who you were and who your cofounders were before B Lab. So take it away.

Bart

Houlahan:

Even before we answer that, just a couple of quick things I think are really important. First to Chuck O'Kelley, thank you for a profound two days I think for all of us, and I think most acutely for the three of us up here, so thank you very much. And to all of you, there's a lot of things we don't do well at B Lab, quite honestly. One of the things we aspire to do is actually take constructive criticism. And I think that's reflected in how the legislation has been working as it's moved across the states. And I think it's reflected in how our standards have changed dramatically over the course of the last eight years.

And so please know that we're deeply appreciative for both—I can't remember the two names—but the one was a concerned supporter and the other an enthusiastic skeptic; honestly all of you. So genuinely, we're deeply appreciative of the work that you put in to try to advance what we all hope to be our life's work. So thank you.

Now Larry, people make fun of attorneys. The truth is that I occupy a profession that perhaps is more hated: I'm a reformed investment banker. I attended Stanford University. I graduated from Stanford, and then I went to Wall Street. I spent a couple of years on Wall Street. I loved the work, but I hated the people. I moved to Boston to continue my work in investment banking, where I ran into a college roommate, Jay Coen Gilbert—he's one of our cofounders at B Lab—at a wedding. At the time, Jay had started an athletic footwear company.

It was about six months old, and it was called AND1. He was lamenting that he couldn't find a president to run the

company. I couldn't believe he hadn't called me, and if I remember correctly, I think I called him a variety of four-letter words at the wedding. I was about six months from starting Harvard Business School, but at the end of the wedding, I called Harvard and told them to keep their deposit and that I was going to join, at the time, a half-million-dollar tee shirt company. For those of you who don't know, AND1 was a company that sold basketball footwear and apparel. We scaled the company up to about \$250 or \$300 million in revenue over the course of 11 years and sold it in 2005.

And so my identity is as an entrepreneur more than a banker. I consider myself as someone who believes in the power of business and as someone firsthand who believes it can be a force for good.

Larry: So here's the question. You're engaged in this entrepreneurial activity. At some point, the light bulb goes off and we think "B Lab." Maybe not in so many words, but what happened?

Bart: In general, there wasn't a eureka moment. This was a process rather than an event for all of us. And so my personal story and how I wound up at B Lab is that AND1 started as a company that was deeply committed to social responsibility. Not because our consumers cared; they didn't. We were selling basketball shoes to 18-year-old kids. It was just the type of company we wanted to be proud of. And over the course of the 11 years, over and over again, our commitment to social responsibility proved to be not only the right thing to do but also good business. We saw that show up in employee retention, relationships with our suppliers, relationships with our retailers, and lots of wonderful stories behind all of that.

But what I also learned in those 11 years is that it's really easy to be socially responsible when there are seven of you, but being socially responsible gets a little bit harder as you scale. It really does. We did a leveraged recap in 1999 where we brought in TA Associates. For those of you who don't know it, TA is a big private equity player.

I'm a huge fan of TA; they're a great investor. But when you're not playing with your own money, it gets acutely difficult, frankly, to continue your commitment to your employees, the community, and the environment and it shows up in the boardroom frequently.

And then finally, two things happened in our 11-year run. First, Nike, Adidas, and Reebok came hard after us. They were asleep at the switch, and eventually they woke up to our scale. And Nike had their national sales meeting, they circulated a key chain; the key chain had a target, and at the center of it was AND1. We dropped \$100 million in 18 months. And I can tell you it is acutely difficult to be cognizant of your employees, the community, and the environment when your business is going sideways.

Second, at the moment of liquidity, when it was time to sell the company, our management team was exhausted. We had turned the company back around; we got it back on a good growth path. And importantly, this is not a Ben & Jerry's story. This is not a story of lament. We sold the company to somebody who paid us absolutely fair value, and we knew what we were doing when we went into the sale process. But at the moment of liquidity, we couldn't even talk at the moment of liquidity about our stakeholders. We had three offers on the table and the decision was about which one was the highest value.

Within three months of the sale, whatever was left of our commitment to employees, community, and environment was completely wiped out by the new board. So for me personally, it felt like there had to be a way that a company could begin with a mission or a purpose, raise outside capital, scale the organization, have a liquidity event, and still know the purpose was maintained. And firsthand, I can tell you that that was not available to us at AND1.

Larry: Okay. So that morphs into the next question. How can you create a structure that will permit you to do what you're doing?

Bart: It starts very narrow. There's got to be a way a company can have mission at its center and know that it can find mission-aligned investors and a succession plan that's going to preserve to the mission long term. That was the center of the bull's eye on day one for B Lab.

Larry: That sounds like it answers the next question I have for you, which builds on something Rick was saying in the previous session. There is a lot of activity out there where impact investing and sustainability are not new concepts. But as I understand it, B Lab is pretty much the pioneer on the frontier of something that goes beyond that and embraces some kind of governance requirement. So how did you get there?

Bart: There's a pragmatic answer and a theoretical answer, so let's deal with both. On day one, again, we had a pretty narrow focus. We didn't launch the certification for a year. From the moment of inception, it was a full year of investigation where the mission of the organization continued to morph. And the mission, relatively quickly, Larry, went from our hope to help a social enterprise maintain purpose long term, to a much broader question which is what is the role of business in society? What do we expect out of corporations more broadly?

Regarding the pragmatic answer for the social enterprise, we needed to create alignment and clarity from the board, investors, and management around what the purpose of the company was. There needed to be a way that purpose was going to last over time. So that manifested into the certification. The certification has higher standards in social and environmental performance that are *built to last* through a legal change. So that was the very pragmatic solution: how can somebody hold onto mission long term?

The more theoretical, though, was that fundamentally our collective vision, recognizing there's thousands of organizations working on this and that we're just one, is to redefine success in business. As we all talk about what a successful business is a generation from now, it

shouldn't exclusively be focused on earnings per share, revenue growth rate, quick ratios, and debt to equity ratios; it must also include employee engagement, community involvement, and environmental footprint. And what we realized relatively early in the first year was that the current system was not structured to do that. The system currently is not structured to try to create organizations that can scale both profits and purpose.

And there were two pretty clear elements of systemic infrastructure, at least to us, that seemed to be missing. First, was a set of standards that helped you define what a good business was; that codified it and differentiated between a good company and just good marketing. And importantly, there are hundreds of standards out there, but they are all very product or practice focused. They are not at the corporate level. And the modest innovation that we tried to introduce was elevating the conversation from one around product or practice to the whole corporation. So that's where our standards came from; the idea of a set of standards that looked at the whole corporation.

And then second, if what we really want in a generation's time are different outcomes from our businesses, then we have to change the rules. There was a core belief that the maxim of shareholder primacy was—again, in our opinion—leading to an externalization of costs that were unsustainable for society and the environment. And that if you really want to be in a position where you're harnessing the power of 80 percent of US GDP towards solving our problems instead of creating them, there has to be a change of rules. And so pragmatically, if you want to scale the positive impact of business, I believe there needs to be a different set of rules.

Larry:

That's actually a perfect point to interrupt and turn to Rick for a minute. Because when you talk about a changed perspective, change that would require in this case legal structure for talking about corporate purpose, you get to Rick and you get to 2013 or 2012 or whenever it was that B Lab first approached us in Delaware. And Rick and I, in case you don't know, have a certain amount in

common. We live a block apart from each other. We're on the same flight tomorrow. But more importantly, we come from the same law firm. I've been away a lot longer than Rick has, but we also come from the same perspective of what corporate law has meant.

And so what I'd like to hear from you, Rick, is your evolution—which I have not completely understood, but I'm getting there—from being the quintessential Delaware transactional advisor to where you are now.

Rick

Alexander:

Sure. And I talk about this a little bit in the paper and in the book, and everywhere I can because I like to talk about myself. But Larry describes it exactly right. Larry and I serve on a committee of the Delaware Bar Association that looks every year at changes to the statute to keep it updated. And I think in 2011—entering the process after Bill Clark wrote, pro bono, the entire model benefit corporation statute and then, with B Lab, went through a process of taking it from legislature to legislature—of course B Lab wanted to get Delaware. Delaware is like a headline for corporation law.

So they came to our group, and I think our initial reaction was that just sounds like this other constituency statute thing that we rejected many years ago because we know how corporate law works. Whatever your political stripes might be, a corporation produces profits and is backed by people who put money in it, and you can figure that's a great way to allocate capital. If you think there are too many externalities, then you go to Congress and lobby for some legislation to make corporations internalize those external costs.

And that's a great system; look how much wealth the corporation—the general corporate law—has produced across the globe in the last 100 to 150 years. So that was our reaction, but B Lab is a persistent organization if nothing else. And somehow, some other people in the state that sat in the state house and the governor's mansion and places like that called us and said, "Why don't you

guys look a little bit harder at this question?” And so we formed a group to look a little bit harder.

I will say that Delaware prides itself on having an enabling statute and not stopping people from doing what they want to do. So even without necessarily believing that the benefit corporation is the best model, there’s a strong logic from the Delaware perspective saying, “Gee, if there are entrepreneurs and investors who want to use a form that has something other than stockholder primacy, we ought not prevent them from doing that unless there’s some very strong, paternalistic reason for doing so.” And as we thought about it, we didn’t think there was, at least if we built in more protections than you might have in the other constituencies provisions.

And so we went to work on that basis. I’ll just say this isn’t important information, but it’s fun information to know that we had negotiations over the actual text of the statute. So if you’re familiar with that . . .

Larry: This is the stage called grudging approval.

Rick: You’ve had that in Tennessee, as well. And people know that our form in Delaware differs. We were really thinking about public companies because that’s our constituency in a way that is not the constituency of other states. But there’s back and forth when you negotiate, and I’ll just say that there finally came a day when it was time to finish—the secretary of state of Delaware thought it was time to finish up. So a member of the Council and myself, Bart, and Andrew—another cofounder—were put in a room. And the Secretary of State stood in the room and said you’re not leaving until you’ve got a statute. And so that’s how we got our statute in Delaware.

Larry: But that was I said, the stage of grudging approval.

Rick: Right.

Larry: But you’ve evolved since then.

Rick: I'd say by the time we got there, I had a view about how the statute should read. But I really did become convinced that not only was it a good model but also there were a lot of assumptions built into the idea that stakeholder primacy was the best way to allocate capital and the assumption—and we've been talking about this for the last few days—that everybody else, every other stakeholder has a shot at negotiating. And so it's only the equity holder who is the residual risk bearer. That just doesn't really describe reality in any way.

The people who are going to live on the earth in 20 years with whatever temperature it is, they're not bargaining with the corporation. So it's really not hard, once you see it, you go from denying to fighting to saying that's obvious. I think once you think about the externalization of cost and the ability of corporations to do that, it becomes hard to believe in stockholder primacy unless you think the government can really regulate down to the last detail—and that's just never going to happen.

Larry: So let me go back to the rest of the birth story. You've got this realization gradually dawning on you that something needs to be done about the legal framework. So what did you do next to get B Lab off the ground and how did it happen?

Bart: You all know better than I do in this room that for 35 years, people have been talking about the idea of a new corporate form. This isn't a revolution; it's been out there for a while. All we did, Larry, is inverted the process. What I mean by that, what we realized pretty early on, was that legislators needed a constituency to act. For a long time, people had talked about trying to create some sort of corporate form, but they didn't have anybody to point to and say, "These are the folks that you're creating it for."

And so we began by creating a community. If you move all the way back, we always had on the roadmap the idea of the creation of a legislative initiative, but we needed a community to advocate for it. And the way to build that

community for us was the creation of the certification. So we found leaders.

There's lots of different ways people are attacking this problem. There is a huge swath of folks who are doing wonderful work focused on the largest corporations in the world and trying to move them by degree towards a more sustainable future—really noble and terrific work.

Our model, however, is to propose an alternative and encourage people to follow that alternative. And so what we needed to do was to find, for us, leaders. When you looked at the community of Certified B Corporations, you could identify companies that you admired. So if we go all the way back to the very beginning, Larry, we laid out a map for us of the stakeholders in the space in fair trade, in green building, essentially anybody who was leading in the space who believed their business had a role to play. And our objective was to find those leaders, to bring them into the community of Certified B Corporations, and then use them as our advocacy group to try to create the new legal form.

That same community of leaders also serves as an inspirational group of people for others. We'll talk a little bit later about. At the end of the day, it is about leadership not the certification. We never envisioned the world to be made up of Certified B Corporations; that's not the intent. The certification is a best in class, gold star certification that we hope will inspire others to follow. And so, Larry, going all the way back, our first stop on the roadmap was finding leaders. Finding folks who people would admire and who are going to be willing to carry this flag and lead in this community of CSR, or call it what you want, for decades.

That was our target—to find leaders, to bring them onboard, and then to use them as our vehicle for advocacy in demonstrating that you could do both. You can make money and make a difference. And in fact, you can do it in a way that actually creates a more resilient business.

Larry: So you got this cadre—that’s not even the best word—of people convinced of the mission. I take it that some days were better than others—good times, bad times. How did it play out?

Bart: Let’s talk good times and then we’ll share some stories, even though we’re on film, about the bad times. I don’t know if you guys are aware. I think on 24 occasions this legislation has passed unanimously. To have legislation in today’s partisan world that’s embraced by Governor Jindal and Governor Cuomo, that’s a good day. That’s a good day. Our community takes great pride in not making this a political movement. Our movement is made up of the far right, the far left, and everyone in between. And the idea of using business as a force for good is one that everyone can get behind. That’s one example of a bunch of good days that we have had as we started to pass the legislation.

You know, there was a bad day, one of our worst days—I probably shouldn’t be sharing this, but here we are. There was a moment while we were in the wonderful negotiations with Delaware where the legislation was headed towards something that was going to be very narrowly focused. It was going to be where you could be a public benefit corporation if you continued to maximize shareholder value and you added . . . something.

And maybe that’s half a loaf? Though half a loaf is a good thing, alone in Delaware we viewed it as potentially devastating—that it would create green washing of the worst kind. That we’d have companies that we all couldn’t imagine being benefit corporations saying, “I’m a benefit corporation because behind Plant 36 is a playground and I put five grand a year into that damn playground, and it is a beautiful playground.” Although I recognize the value of adding some constituency, alone I think it is a huge risk.

And there was a period of time, where we thought we were going to lose the negotiation, and the legislation was going to end up being very specifically focused. Our

argument was if Delaware chose that path, then at least change the name. Don't call it a benefit corporation. At a minimum, please don't call it a benefit corporation. Benefit corporations had recognition and some brand equity at that point. But no, of course they wanted to call it a benefit corporation. So we, as a community, started to think about how we were going to deal with this.

Our possible response included a range of options that we tried to get our community onboard with. If this goes this way, this is what we're going to do. If this goes that way, this is what we're going to do. One option was using publicity to try to encourage the State of Delaware to not make it the home of green washing. Within about an hour of our communication with the community, all those plans had been forwarded to the governor and Chancellor Strine. And oh my goodness, that was a bad moment. That was a very bad moment because we had people who had been working with us in good faith to try to find an answer, and they felt we were planning a response that was going to be potentially very damaging to the State.

So that is a moment from the trenches. Honestly, I would tell you with genuine sincerity that if this endeavor had gone the wrong way, we wouldn't all be sitting here. Benefit corporation would mean something totally different. And I don't think we'd have remotely the traction that we currently have because it wouldn't have passed in Delaware. It would have been a mess. So that is one of the not so good days.

Larry: The good news is that good things followed. That it all worked out.

Rick: It did all work out.

Larry: The mode of persuasion was ultimately done right. I remember hearing from investors, which was something new, terms that we hadn't heard before. That was a very thoughtful strategy because that's sort of a major Delaware constituency. Anyway, Dan, our standards development manager, just by way of transitioning to the

subject of standards, where do you come from? How did you get here?

Dan: I'll keep this short because I guess my career is significantly shorter than the other people I'm up here with. Twenty-nine, right?

Audience
Member:

I would say that.

Dan: My background is actually in philosophy. I used to be an ethics teacher, with an undergraduate degree both in philosophy and economics because I had a particular interest in issues of international development, global poverty, and global justice. And, following graduate school, I had the great fortune of getting an entry level job with B Lab about three years ago. I transitioned myself from a member of the team that actually takes companies through the certification process to working with Bart on the development process and now I oversee that.

Larry: So Dan, do you want to answer this, or Bart, or both of you? Just real quickly, we've talked a lot about the standards, but maybe we ought to drop back and just take a bird's eye view of what they are and how they work.

Dan: I think I've transferred all of my knowledge to Mike Dorff, an audience member. I think stepping back, it's actually worth mentioning the many different ways that our standards are used because I think we've been having this conversation in different places. First and foremost, from the benefit corporation perspective, it can be used for reporting purposes. Then obviously, we use the BIA for B Corp certification. On top of that, we've had an investor-focused tool that's called GIIRS; that's the Global Impact Investing Rating System. And even beyond that, we've expanded into work with a variety of other groups around measure what matters campaigns, where the focus is in getting companies through this process, whether it's for companies in your supply chain or companies in your jurisdiction if you're a municipality, etc. These groups have an eye towards both assessment,

as well as improvement. So the standards that we've developed, frankly, have a lot of different use cases. And they're all probably coming from a slightly different perspective. So we need to balance the variety of ways that our companies are using the assessment when we think about the principles.

The overarching principles that we've baked into the assessment are relatively straightforward. We've discussed at length this concept of it being a positive impact assessment. On top of that, I think one of the other key focuses is around this green washing concept—it's important for it to be a comprehensive assessment. In the sense that the assessment needs to cover all stakeholders that are affected by a business, as well as essentially all the levels of the business as a corporate entity.

In addition to those two principles, the tool needs to be both objective and independent. It needs to be dynamic, as well as governed by an outside group so we can all recognize imperfections that it currently has and make sure there's a mechanism for it to improve. It's also—particularly for the value of those measure what matters campaigns—both educational and aspirational. And so what that means is there's a real value in creating indicators in the assessment that show you how to get somewhere and don't just tell you whether or not you are there.

We want this to be as actionable as possible so we're actually creating a roadmap for companies to improve themselves. In addition to that, I know as part of Mike's talk, he's discussed some of the balances that need to be struck. The assessment is intended to be standardized and comparable across companies and be particularly comparable within industry, size, etc. At the same time, because of that, we also need to recognize that it's customized. So it's this balance between full standardization and customization to make sure it's relevant to the actual users of the tool.

Larry: So I think you've partly answered this, but if it seems clear that you're not the philosopher king who sits in the room dreaming up ideal standards

Dan: As much as I would like to be, that sounds kind of fun.

Larry: But it's much more than that, obviously. And so maybe with an example of one standard, describe where it came from.

Dan: Yes. So let me give a little bit of a general introduction and then we can talk about an example. So we have talked about this independent governance. We have a Standards Advisory Council that's actually split into two different bodies: one for emerging markets and one for developed markets. This is a multi-stakeholder group; it's about ten individuals on both sides. And so I'm in the unenviable position to not only have to report to Bart but also to report to 20 experts in the space as we're presenting this information.

They ultimately oversee all the decisions of the content that goes into our assessment. On the other side, there needs to be input mechanisms from our users and from other stakeholders. And so within our assessment tool there's actually opportunities for anyone in that assessment to leave feedback on any given question in our assessment. We get around 3,000 pieces of feedback through that tool each year, and that's expanding. So we're reviewing the feedback and basically accumulating those for presentations through that Standards Advisory Council.

We also engage with external stakeholders, particularly other standards organizations because they're going to have a variety of expertise, as well as other stakeholder engagement mechanisms that we're ultimately able to utilize. That we can work with them and partner so it's not just our engagement with users, but it's their engagement that can really inform the assessment's content.

So to give you an example, I think there's two I can talk about. I'll start with one because I think it also highlights where we see this continuous improvement ideal. There's been some conversations around for-profit higher education and their impact, as well as any new potential concerns around that. Our assessment tool, in some circumstances, particularly around the product impact of a company, can at times be relatively blunt. And so for something like an educational institution which previously had, in our assessment, been recognized simply as an educational institution, we'd allocate some credit for that simply because there's value in education.

Additionally, there's ultimately extra credit if you are serving underserved groups with that beneficial product. When you look at that, and when you look at an industry like for-profit education, there's a pretty big concern. They are almost exclusively serving these underrepresented groups, and there's real questions around the actual quality of the service that's being provided. And so that blunt tool just didn't really work.

In order to address that within our assessment, first we actually placed a moratorium on certifying any for-profit higher education institute because there was a real concern about using our existing standard. And we actually embarked on what was almost a two-year process—18 months—where we convened an expert working group of folks who have expertise in the higher education industry to develop an addendum to our assessment. That addendum, working with that working group, consisted of about a year of research looking at other standards, looking at the data, and working with their expertise to develop drafts. And then taking that addendum out to the marketplace before it became official, where we have both an alpha and beta testing process to get feedback from some of the institutions themselves. There was also a public comment period, where even before incorporating it into the standard, all interested stakeholders are able to review it and provide their feedback for us to provide another iteration before it gets published. And we launched the higher education

addendum in October of 2015 after about a year and a half of work.

Larry: What you said is going to resonate with every law professor who has ever served on a self-study committee. But your description of the process of developing standards sort of leads inexorably into the ultimate question. To the person who's not initiated into the work of B Lab in certification—who sees the statutes and hears talk about a material plan to benefit the society and thinks what the hell's that—how would you explain to someone who's new to the process, who's relatively new, why you had any comfort that you're able to distinguish between what are good companies and bad companies?

Bart: That's a great question, and I'll begin with the caveat that impact measurement is incredibly challenging. It's a brand new field and we don't have it right. One of the things I wanted to add to what Dan said is that the whole point of our assessment is it iterates every two years. A whole new version comes out every two years with significant improvements, Larry. If you look at where we were eight years ago and where we are now with V5 having launched in January of 2016, it's a radically improved assessment.

Our assessment still has a long way to go, with granularity around its specificity per industry; we've added now a half dozen industry addenda and we'll continue to do that. Obviously, the emerging market piece was a brand new addition that we added what, four years ago now? Yeah, four years ago now. And so I'll begin by saying it's really hard. That being said, as I mentioned the other day, there is a body of work that we're building on. This is not the Dan and Bart Show talking about what we need to assess. There has been a long history of work around what it means to be a sustainable business contributing to society.

And we're building on that work, whether it be the Natural Capital Institute, or GRI, or work that's been done by the Social Venture Network. There are plenty of books and materials out there that we rely upon to actually,

Larry, cull what we think are the most relevant practices. One of the things that we've added that's a pretty, I think, significant addition to this body of work is the idea that there are two elements that we need to look at in a business. One is how they operate, and the other is what their business model is because you can be a beautifully sustainable business with a business model that has nothing to do with creating impact.

That is worthy of recognition and you can earn points in our assessment for that. And that is most of our overlap with GRI. If you think of GRI, it's really about a deep dive in ESG metrics. But we've added on top of that the essential lens of those organizations that truly are social enterprises—that walk through the door with the business model where as they scale, they're scaling not only profits and revenues but also impact. That could be in the product that they create. That could be in the people they employ. That could be in the ownership structure they employ. That could be in the value chain they use. We've created something we call impact business models that look at 16 different impact business models. That concept is additive to a lot of that work I was talking about before.

So at the core, the idea is to harmonize as much as possible across a wonderful body of work that evaluates not only the positive impact that's been created but as we discussed—I can't remember the two days, now—also making sure we disclose the negative impacts. And those negative impacts we also didn't create out of whole cloth; they came from the IFC exclusion list plus a few others. And so you put it all together and you try to use it as an indicator. You create—largely, what I get most people comfortable with—a process and an end result.

What I would leave you all with is that as you evaluate any standard, including ours, I would focus as much on process as the current end result because I believe a good standard is one that's independently governed, that's dynamic in its process, and that's transparent in everything that it creates—that there is no black box and it creates continuous improvement where over time it will

continue to improve. So I don't pretend we have it right today. I'm biased, but I do believe it's, if not best in class, among the best in class in evaluating the whole, and simultaneously we've got a long way to go.

Dan: One thing I'd add to that is there are also others who have visions out there outside of the business standards world that's also incredibly influential and useful in this process. For example, the Sustainable Development Goals from the UN recently have been getting a lot of exposure and there's been a pretty broad conversation around businesses' role in achieving those. So we've been spending quite a bit of time thinking about things like that in terms of this overarching vision and how businesses should be achieving those or contributing to those, and how we incorporate that into our assessment.

Larry: So what you both said leads to the next question, but the nerd that I am, when I hear gaining points is what you need to get to be certified, the inevitable question is, how do you get points? Why those points? Why not those points?

Bart: Great question. A couple of things, going both directions here: first, a lot of people ask why 80 and where did the 80 come from— Michael Dorff already talked a little bit about this. This is a corporate certification. What that means is that if you're perfectly green, but you treat your employees like crap and you're not engaged in your community, then you're not going to pass. Or if you're an ESOP with beautiful working conditions, but you're dumping your effluents out the back door, then you're not going to pass.

At the end of the day, that would be a product certification or a practice certification. If you're trying to certify the whole corporation, you need to assess the whole corporation—that is a firm opinion of B Lab's and is not shared by everybody. Our firm opinion is that comprehensive matters. So, if you look at the allocation of points, the balance on the 80 is really about trying to create a balance where you have to show typically

excellence in at least one area and proficiency in three others to get over the hump. That's very intentional. That's first, full stop, where the 80 came from and how that fits together.

Then secondly, the other thing that Michael has appropriately noted is that we've normalized the point scale. It's 200 points. It doesn't matter whether you're a law firm or Dow Chemical. You have 200 points to work with. It is the judgment of the independent Standards Advisory Council to focus on materiality. Once you start with 200 points, the question is how do you allocate those 200 points in that Rubik's cube of 72 different versions towards the elements that are mostly material?

Simplistically, to make this really tangible, we don't weight environmental practices the same for Dow Chemical and for Drinker, Biddle & Reath. They're weighted differently. Dow Chemical's potential impact in the environment is far greater than Drinker, Biddle & Reath's. So as a result, it begins at the highest level with an allocation of points based upon where the opportunity for impact is most material based upon the three variables we discussed: size, location, and industry.

The next layer is, as Dan said, we're trying to create an educational platform. Frankly, it would be much easier if the objective was to exclusively measure the impact of these companies. You'd have probably 20 metrics to follow if you just focused on outcomes and impact, and you'd ignore policies and practices, as well as inputs and outputs. You'd just focus on outcomes. We intentionally decided that this was a public good, so it's free for anybody to use. That includes our case studies and best practice guidelines that are all layered throughout that are totally free for anybody to use. We're going to give you the roadmap. We're going to tell you what policies you'd start with, what is the practice that comes out of the policy, what are the inputs that should go into the practice, what are the outputs from that practice, and what are the outcomes we're seeking.

All that being said, if we're talking about materiality, the weighting needs to be on the outputs and outcomes. And so a little over 70 percent of the overall weighting of the 200 points is really on the outputs and outcomes. We weight the policy piece really, really lightly because, frankly, it doesn't indicate that you've actually done anything—just that you wrote it down. That's a good place to start.

So you can imagine that, in your framework with outputs and outcomes, that's what you're going to weight most materially. First, you're going to try to determine, based upon where you are in that Rubik's cube, your point allocation across the impact areas. Then, the next layer down, you're going to try to determine your point allocation across the sub goals of the impact areas. And then, the next layer down, you're going to try to determine your point allocation across the questions in the sub goals. So it just layers all the way through. And that's why you end up with Michael's wonderful observation that employee ownership is more heavily weighted for a service company than for a manufacturer.

And the reason being is that the environmental section for a manufacturer is more heavily weighted and therefore employee ownership is weighted less. I absolutely recognize that there's all sorts of wonderful debate around that. This is the best we've got so far and it needs to be improved, but we're not going to let perfect be the enemy of the good.

Larry: So speaking of reactions, I take it that you've had—I won't say unhappy customers—but rather pushback on the allocations that you've made or ways you've designed the system.

Bart: Oh, sure.

Larry: So what are some examples of where you've—I don't want to say gotten burned either—but rather had to readjust in the face of criticism?

Bart: Yeah. If you're trying to create an impact assessment that's evaluating all companies everywhere in the world, by definition, certain things that you have in the impact assessment aren't going to apply to everyone. As a result, people have really strong opinions about elements that they don't feel apply to their business. It is why we have 80 points as our threshold. It is also why there's never been somebody who's scored 200 points nor do I ever anticipate anybody scoring 200 points because there are pieces that don't resonate with your model.

Dan and I were talking about it earlier today that an easy example is that we have a whole section on local businesses. There is a body of really wonderful scholarly work about how local businesses help rebuild local communities, create better places to work, minimize environmental footprint, and rebuild the fabric of our communities. That section is inapplicable to a multinational, largely, and the fact that they are not going to be awarded points in the local section irritates them.

Another example—are you all familiar with Method Home Products? Method is one of our founding B Corps. They are a great group of folks that scaled beautifully and sold to Ecover. They've now converted Ecover into a Certified B Corporation. Great, wonderful story. When Method got to the charitable giving section of our assessment, they lost their mind. They said, “How could you expect us to take capital out of the business and give it to a charity when we don't know anything that is more impactful than what we're doing by bringing green to the mainstream? Why would you give points to charitable giving? If we gave that money away, we believe we'd be reducing the impact of our organization.” That's another great point. It doesn't mean that charitable giving isn't a very legitimate way to create impact for other companies. It just happens to not be the way that Method's creating impact.

Dan: Okay. And that's why the certification is aspirational. It's not compliance oriented in the sense that you need to check everything off. We set it up so it's a brush. You're

doing the good things and we are able to track that. If you're doing enough, then you receive the certification.

Larry: Right. You're not disqualified just because you don't make charitable contributions.

So, suppose someone from the local cannabis industry approaches you and says, "We'd like to be certified as a B Corp." The broader question is: Are there businesses you won't certify? Not that I have a problem with the cannabis industry.

Dan: That's an interesting example. I guess we can talk about that in a little bit more detail. So, at the highest level, illegal industries would be a place where we draw the line. Beyond that, and Bart alluded to this earlier, we've been pretty cautious in the fact that we wanted to frame our certification and our standard around a different model, which is this positive impact model. Whereas a lot of the previous conversations have been about defining these types of organizations around what they are not.

And so frankly, we are theoretically very hesitant to say there are prohibitive industries that we will not certify. Pragmatically, however, the Standards Advisory Council has the right to choose not to certify a company. Generally, we will review those companies in a particular context versus just the review of the industry. At some point in the future, we imagine the Standards Advisory Council is determining there is something about the particular industry that—beyond any of the particular practices of the company—we should, at the very least, wait perhaps for an addendum or something along those lines, or wait to see how that industry perhaps cleans up and changes. I'll pause there. Anything else to add?

Bart: Dan's exactly right. We began with the belief that creating a list of prohibitives is a rabbit's hole that you never get out of. So we begin with no prohibitives and then we deal with issues as they show up.

And the way we've written the term sheet and certification is you have to both achieve an 80 and adopt our legal standard. But even if you do those two things, we still reserve the right to deny certification based upon an organization that doesn't meet the spirit of our Declaration of Interdependence. We talked about that a little bit earlier with Michael. At the core, there needs to be an opportunity for the Standards Advisory Council to take a look at those industries that are highly controversial and determine whether they belong in the community.

Dan: There are two other mechanisms that we have that are really meaningful. When the Standards Advisory Council reviews a company, they could determine that the company is required to provide incremental disclosure; just transparency. It enables the stakeholders, the public, to make their own judgment where perhaps we were not ready to say no. In addition to that, the Standards Advisory Council could also advise remediation. That could be involved in an industry, but also in any other potential negative practices.

The Standards Advisory Council could say the company can be a Certified B Corporation, but they must stop doing this. This has happened before, and it's been done with success. And when we think about what our mission as an organization is, which is to drive improvement, both that transparency piece as well as that remediation piece is a lot more moving of the mountain than probably just banning a bunch of companies.

Larry: And speaking of moving mountains, you were telling me a coal company would not get turned away automatically.

Dan: That's right.

Larry: So going the other direction, you've got to process at least the certification of companies. And we heard yesterday that there's a process—not called audits, necessarily, but rather periodic reviews. And you find out something in that periodic review that maybe is inconsistent with representations at the outset or reflects a deterioration in

practices. Then you have to consider whether you're going to continue with the certification or decertify.

Decertification is available as a remedy, I guess. How do you apply it? How does it work? Generally, what is the thought process? Are there governing principles?

Dan: So I actually want to add, in addition to that ongoing certification/recertification process where sometimes this gets flagged, we do conduct background checks on companies to actually determine beyond whether they voluntarily indicated something in our disclosure questionnaire—whether there are issues of concern. We also have a public complaint mechanism, which means that at any time if an interested stakeholder has a concern about any Certified B Corporation, they can reach out to us. We receive many complaints of varying credibility, I would say.

Larry: Some by competitors?

Dan: You know, “My shoes fell apart, therefore they shouldn't be a Certified B Corporation.” We'll look for a few things. The two general principles that we use to determine whether or not decertification would perhaps be necessary is first and foremost, has the company potentially misrepresented themselves to us? If they have been engaged in any fraud to us and we find out about it, that would essentially be automatic grounds for removal from the community.

In addition to that, I think we alluded to this a little bit earlier, we've got these broad principles that all companies sign onto when they become a Certified B Corporation, which is our Declaration of Interdependence. It's the general vision statement that we offer. And the second caveat for potential action from our Standards Advisory Council would be essentially an irremediable violation of the spirit of that Declaration of Interdependence.

I would be the first to say I think that our Declaration of Interdependence doesn't provide the specifics to determine if this company did X in this circumstance, and therefore that's beyond the pale. But that is the general framework, which our Standards Advisory Council utilizes to make that judgment. It is something that I think we've been in the process of developing with a little bit more rigor—how to perhaps apply that in the future.

Bart: So complaints show up. A complaint has to be material, specific, and credible for us to launch an investigation. And then that complaint falls into a materiality matrix. The materiality matrix looks at three things: the scope of the problem, the intensity of the problem, and whether it's a repetitive problem. And so imagine another Rubik's cube that has those three variables on it where we're scoring the issue on low, medium, or high to determine (A) whether it needs to go to the Standards Advisory Council, and then (B) if it goes to the Standards Advisory Council, the Standards Advisory Council has remedies.

The first remedy is just disclosure. This isn't something that needs to be remediated or is disqualifying, but it absolutely is something of note for the industry and to our stakeholders. Second is remediation and third is removal. And we have applied all three remedies historically.

Larry: So it's not the case that upon ascertaining the existence of a material problem you wipe the slate clean and do a zero-based reevaluation and somebody who qualified initially with 82 points is now down to 76, and therefore gets decertified?

Bart: In the case that has an 82 down to 76 because they materially misrepresented themselves on the assessment, we're not having any further conversations. If there's a material misrepresentation—intentional misrepresentation

Larry: Absent that, though.

Bart: Yeah, absent that, what certainly happens is they go back and do an evaluation process. And in some cases, people actually drop out of the community because they've fallen below the bar. If they want to come back into the community after they've remediated, it begins with another onsite. We have a required onsite at that juncture. In fact, in some cases, we also track things over time.

The Declaration of Interdependence sounds a lot like a morality clause that I used in all my contracts with NBA players when I was back at AND1. Hopefully, this is not dissimilar to the things that you all are familiar with. It just creates the opportunity for reputational protection.

Dan: Before we take anything to the Standards Advisory Council, we conduct what is essentially a 90-day investigation for any of the issues that trigger that matrix and therefore would require the review. And so in those 90 days, we are gathering as much information as we possibly can about the issue with the company, as well as the broader issues and concerns around whatever is the issue in question. And so there's been some conversations around Etsy—it went through this process, which has been disclosed. So we were engaging with tax experts, etc. to better understand the relevant issues.

Larry: A couple of more quick questions about standards and then we can move onto our third topic. This came up a little bit yesterday. One of my points was about negative points. Is there anything further you want to say about why that's not part of the practice or how it's treated?

Bart: Hopefully people understand our position on it, which is that there is a philosophy which acknowledges that it's a real issue and the way that we lean into it is through disclosure. We believe that the way to balance all of this is to provide full transparency. One of the things that we haven't talked a lot about over the last few days is that we talked about core standards of performance through the assessment. We've talked about higher standards of accountability through the legal framework.

The third element of all Certified B Corporations is transparency. So once you take the assessment, you need to be transparent with the actual results. And pushing that even farther, Larry, if you've actually indicated on your disclosure questionnaire that you're a wine producer, that obviously needs to be disclosed. That is one of the IFC exclusionary practices. If you've had material litigation in the last five years, that needs to be disclosed.

So we lean heavily into transparency around negative practices to try to provide to stakeholders the opportunity to make their own decisions on balance. As we've indicated, in certain circumstances the background check or DQ issue might be so significant that it has triggered a review by the Standards Advisory Council and we've denied certification. But more often than not, it ends up in remediation and/or disclosure.

Larry: I want to give you a chance to close out this scaling point. Little company, big company. Big company has a huge—potentially—more positive impact on the world than the little company. Does that get factored in and how?

Dan: I think that the first clarification that we made on that earlier, which is depending on what exact product you're thinking about, in terms of what we are offering, that scale is incorporated. So for instance, for GIIRS ratings on that analyst side for sophisticated investors, etc., who are interested in diving in, they are able to access that scale information. Importantly, that is separate from the score. So you're able to look at the two of them together and draw your conclusions.

We have deliberately chosen not to incorporate that scale piece into the scoring itself. I'll give a quick example. The worker section of our assessment at a high level is essentially asking the question: how well are you treating your workers? If we were incorporating scale into that score of how well you're treating your workers, then the large company that is scoring relatively poor and not treating their workers very well, would have a higher

score than the small company that is treating their workers great.

We've also been discussing how we've incorporated this in our GIIRS ratings and that analytics product, and it probably does make sense for us to think about how we can incorporate that into the public profile of B Corp certification. So I think that's something that we'll explore in the future.

Larry: The last question about standards—a reliability question—depends to some extent on the quality of your investigation, the information you're getting. Have you considered doing more?

Bart: Sure, yeah.

Larry: Like a cost-benefit analysis?

Bart: Yeah. Let's acknowledge where we're at, which is certainly that our preference would be doing an audit of every Certified B Corporation on the globe. I'm sure that would be great to have—we'd have about seven B Corps and they all would have paid 200 grand to certify. So there's a balance that you need to create between verification where you have confidence in the results and simultaneously cost where you don't price yourself out of the market. And as it is, I'll acknowledge as I did last night: Certification is a terrible business. It is a terrible business.

In the foreseeable future, I don't think B Lab will break even on its certification business. If we made this a fully loaded cost for certification, the cost of creating the tech platform, standards, and verification process would be seven digits for larger companies. And it's just not pragmatic. So we've tried to find that combination of a survey review with our team, documentation, and onsite.

We're trying to verify 50 to 70 percent of the points that you earned from documentation. So that can be 25 to 30 questions. It depends upon how well you score. But we do

documentation and an assessment review, and we do the onsite. And the onsite is essentially the old red velvet hammer, right? There's a one in five shot in every certification period where somebody's going to show up and verify what you did. And moving to GIIRS, when we launched GIIRS, we launched it with Deloitte as our partner to do the verification work for GIIRS.

What did we hear back from the market? "I'm not paying for that. I'm not ready to pay for validated GIIRS ratings. Just reporting today is enough." So what I fully anticipate in benefit reports, in GIIRS ratings, and even in B Corp certification, is there's going to be a marketplace that develops around verification. Where people will determine—for example, Prudential, UBS, or the 120 investors we work with—that they want all their GIIRS ratings validated in future years.

We will have created a marketplace for Ernst & Young, Price Waterhouse, Deloitte, and the rest who have all been validated to actually do the incremental verification. But that's going to be market driven, as much as anything. And so we've actually priced different levels of verification—we offer that currently. The only thing we insist upon is our bare minimum for certification and a GIIRS rating.

Rick: And there are companies that get assurance from accounting firms on their CSR reports.

Bart: Right.

Rick: So it's a business that's out there. It's not right for our standards, but for others' standards.

Dan: I also want to add, our verification process, as is for B Corp certification, is not at an audit level. It's intended to get the right score—not to identify fraud. On that note, it's actually doing a really, really good job of it. The way that we structured it—where there is a random selection process, both at the documentation level and the onsite level, and with the data we've seen around what that

actually means for scoring—we can say that at the end of that process, that company has gotten to this score, within a relatively tiny margin of error. So I'd like to highlight that for a moment.

Bart: And we also acknowledge that if somebody intentionally walks in the door with a focus on committing fraud, it will be very hard to determine if, for example, they manufacture the documents because an audit requires third-party validation. We do not do third-party validation.

Larry: It'll work for a while?

Bart: For a while.

Dan: We have, incidentally, caught fraudulent documents before through our public complaint mechanism. That does a lot of work for us by allowing our public to be a watchdog for us. So we have complaints from employees internally who are concerned about what their company is doing and how we can address that.

Larry: Rick—How about we change gears and talk about our third subject, which is the legal side of all this? Two related questions, just to review, what is the legal requirement for certification and why?

Rick: I actually think we haven't really talked about what the legal requirement is. Basically, as Bart sort of expressed, long before I had anything to do with B Lab, the founders had this concept that part of what wasn't working in allowing businesses to be a force for good was this notion of stockholder primacy. So the requirement is basically that if you're going to certify, then you need to adopt what we call mission aligned governance, if you can. We don't require anybody to change where they're incorporated, and we don't require anybody to change the form of entity that they have.

So, for example, if you're an LLC in just about every jurisdiction in the US, you are able to change. Through an

amendment to your operating agreement, you can adopt mission aligned governance because there's a provision in the LLC act that says you can change fiduciary duties—you can just put that in. And if you go on our website, you can see the language that we ask you to put in your operating agreement to make sure that the manager has duties to all stakeholders. And then if you're a corporation in a state that has benefit corporations, we would ask you to become a benefit corporation.

But if you're a corporation and in a jurisdiction where you could simply amend your charter and that would get you to have stakeholder obligations, then you can do that. A good example of that is the UK because the Companies Act Section 172 says your duty is to your members, which means your stockholders, and then you look at all the stakeholders—we talked about that earlier today, but its subsidiary to the stockholders. However, Section 172 goes on to say that you can change the objects and you can broaden that. So we have language that we ask UK companies to put into their charter.

And what's interesting about Carol Liao's presentation today is we've come to understand that Canadian jurisdictions are sort of like the UK where you could get to stakeholder obligation, but only if you amend your charter. So we've asked companies to do that. We're going to take a hard look at Carol's work to see if we're prying too much in Canadian corporations.

We're agnostic as to form, as long as the form gets you to have obligations to all your stakeholders, not a select set of stakeholders.

Larry: So I take it you got some pushback from this. Do some companies say we are perfectly capable of doing good without going into this legal form and that hasn't worked?

Rick: That hasn't worked to change our view.

Larry: Right.

Rick: That is correct. That's correct that we've gotten pushback and that is correct that we're not planning to change it.

Larry: Is that even an obstacle?

Rick: I think for some companies. So here's how it works. If you can get the 80 points, you get to sign the term sheet. You can be certified and we give you a two-year grace period. You have to recertify every two years so by the time you get to your recertification, you need to adopt mission aligned governance. We have an exception where we give you a longer period of time—if it's four years from the date your jurisdiction allowed you to adopt that because it takes time for everybody to work it out.

So, for example, January 1, 2016, was the four-year deadline for California because it was four years since its benefit corporation statute became effective. We had a whole bunch of companies that had certified and that were coming up at the deadline so we had to work with all these companies to get them across the finish line. And out of, I don't know how many, I think we lost two companies. I think it was six that didn't make it by the deadline. We gave four extensions and we had two that we lost. The deadline for Delaware is August 2017, so that will be another date where we'll be working with companies to make sure that they've been able to convert to benefit corporations.

Larry: Did you have 50-some of these?

Bart: More than that, yeah. And one thing I do want to add is again, coming back to the perfect is the enemy of the good, there are some jurisdictions that we determine you cannot consider stakeholders—that it would not be upheld in a court of law. An example is Australia where we've actually had a brain trust of maybe two dozen attorneys working on this for over 18 months now. Their determination is that rewriting a charter actually would not be upheld in a court of law, and as a result, we need legislation—we have a community of 100 B Corps in Australia.

And what they essentially signed is an agreement that says when we determine the legal pathway in your jurisdiction for stakeholder consideration, you will have two years to adopt it or you will lose your certification. So coming back to let's build a community, that community of 100 Certified B Corporations are now working with that brain trust. Bill Clark has been over there twice to actually pass the legislation over the course of the next year.

Rick: And that was the case in Italy, as well. They have now adopted legislation.

Bart: Same problem.

Larry: Inability to determine that without it, you could commit to

Bart: Correct.

Larry: So I have a couple of related questions dealing with this incipient growth of public benefit corporations—call it public. Is the legal requirement an obstacle in particular to the growth of public companies? I had in mind concern about litigation risk in public companies. Is that going to be a deterrent to adopting this form? At least we all understood these uncertainties.

Rick: I think Brett's and Jim's presentation clearly presents some issues that this would raise for a public company that it wouldn't raise for a privately owned company. I boil it down—and maybe it's more complicated than this—to the fact that there is a professional plaintiff's bar with respect to public companies, and I'll try to be neutral as to whether that's a good thing or a bad thing. I think a lot of people would say the reason that we don't have to regulate the relationship between directors and stockholders is because we have these private attorneys general who do the job.

And it's been great, but it's very painful for those of us who do a lot of management representation over our

careers and those that sit on the bench and deal with some of those complaints. But I think a lot of people would argue that, for whatever its imperfections, having a professional plaintiffs bar is actually one of the best ways to do that regulation. The concern is that you're going to have that same plaintiffs bar being the regulator, essentially, and bringing cases. So the concern among public companies would be whether that litigation is going to make it difficult for us to do business.

And again—we talked about this today and yesterday already—we worked hard on the statute to make it pretty difficult to bring (we hope) lousy claims. You have to have a pretty strong claim, we would think. You can't have 100 shares—Delaware is actually a pretty low threshold because for a public company, you only have to have \$2 million worth of stock. And so if you can get people who have some skin in the game and they think they have a claim that can get past the rationality test and business judgment rule, then you could bring that claim.

So I think there is a discussion that you don't have to have with private companies. Ultimately, I hope that will not be the obstacle. We have beginning proof of concept in that we have lawyers for KKR (KKR directors are going to be on that board), who were comfortable going forward with an IPO. We've had discussions with other public companies that are very interested in making the move. Also, there are companies in the pipeline that we hope will eventually go forward with an IPO.

Just sort of thinking largely about it, there's a lot of discussion today about the uncertainty with respect to some of these litigation outcomes. I say there's absolutely uncertainty, but the reason there's uncertainty is because you've moved the frontier. The idea is you are opening up more options for the board so there's a broader space for the board to do things they are comfortable doing and they know they won't get sued. The reason there's uncertainty is because you don't know exactly where those margins are and figuring out where those margins are would require litigation.

Bart: And just really quickly, so we say it out loud, although there is no benefit corporation in the US that's gone public and only Laureate has filed their S1, there's a couple of things we have taken as a decent indicator that we're on the right path. First, although Etsy has yet to convert, their IPO story was largely that they were a Certified B Corporation. The press around that offering was that this is a Certified B Corporation and it's going public. As Brett noted, despite their difficulty thereafter around a drop in stock price, importantly it was written in the S1 as a risk. I'm going to just pause for a second. That means that this was potentially a risk of loss of value if Etsy lose their certification, rather than a risk of the opposite. We were heartened by that. When the stock went out it doubled in the first day and maintained that price for some time before they hit their own bumps in the roads with their own financials.

Secondly, are people familiar with Natura Cosmetics in Brazil, a \$4 billion public company traded on the Sao Paulo exchange? Our language for Brazil looks very similar to the Delaware statute. Natura became a Certified B Corporation. In the same week of the Etsy IPO, Natura actually held the shareholders' vote to rewrite their charter to include the benefit corporation language. That was approved by 100 percent of their institutional investors. Those institutional investors look really familiar to this room, right? They look really familiar to this room.

Third and finally, two other things changed for us in the last year, as I said, within a week. Guilherme Leal, who is one of the cofounders in Natura, finally got in Paul Polman's ear. For those of you who don't know Paul, he's the head of Unilever. Jostein Solheim, the CEO of Ben & Jerry's, had been working with Paul for a while and said, "Hey listen, I think this is an important development."

And Paul, to his credit, has been a leader in the sustainability movement for a long time. At Davos, right after Natura joined, Paul went public and said, "Our North

Star is to be a Certified B Corporation. But they're not ready for us yet." And he's right, but he said that's where we want to head. And then he reiterated his aspiration to certify with President Bill Clinton at Clinton Global Initiative. That all happened within a two-week span.

I can honestly tell you that we now get three calls a week from multinationals who want to be part of this community. Now not all of them will fit. Frankly, the vast majority probably won't. However, I do think there's a sense from the broader community that this is the cute, little \$2 million social enterprise that's building wells in Tanzania. We have some of those. They're important companies.

Larry: Not that there's anything wrong with that.

Bart: There's nothing wrong with that, but that's not our aspiration. After Unilever's announcement, Danone has actually joined forces with us. They're in the process of putting ten of their corporations through the assessment, potentially joining us as Certified B Corporations and their aspiration, too, is to have global headquarters eventually certified. Again, I have no idea if they're going to qualify, but it's heartening to us that we're actually beginning to have the conversations with the mainstream. How do we move this to the mainstream? It's slowly, but surely.

Rick: And talking about public companies and other ways that they're getting in, as you know, Campbell Soup acquired Plum Organics and they are maintaining Plum Organics as a benefit corporation and a Certified B Corporation. United Therapeutics is a biotech company and they also converted—they're not a member of the Certified B community, but they converted their operating subsidiary Lung Bioscience into a benefit corporation.

There are a lot of public companies who are looking at some very interesting things, including forming benefit corporations and using them to raise money. They want to have a piece of the business that is very socially oriented

and that's the way they want it structured. So there's actually a lot of interest from different directions in the public market to get involved with benefit corporations.

Larry: So what got us here, at least to begin with, is concern about litigation as a potential deterrent to public company participation. There are two others yet to be identified if you think about going public. You mentioned one, Rick, it's proxy advisors—another rating organization. And then there's activist stockholders. So what's your thought about whether those players are going to be a problem?

Rick: We've talked to the major proxy advisory firms and others, and ISS actually recommended in favor of a vote for Natura to opt in. We also spend a lot of time talking to institutional investors and the view always seems to be we can't tell you benefit corporations are good in a vacuum, but if what you're telling us is this is a good business and this is a tool that they think they're going to use to create value for us, we're onboard.

And ISS is largely in that same boat. And also—this is true both for ISS and for a lot of the management and governance people at the institutions—they, separate from just thinking about value, have sustainability functions. They do think broadly at the institutions, somewhat like universal investors. I say at ISS, they don't jump at the chance to say that because that's not how they advise people. They very much advise company by company votes.

But of course, they are often proponents of stockholder proposals and social proposals, and they have a pretty pro-sustainability tilt. There is less an issue there than you might think. And I sort of went into those discussions with great trepidation, but came out of them feeling pretty good.

Now, to move to the activists, where the trepidation is perhaps more real. Because what I think you have there—and this is to state the obvious, but to sort of just spell it out—is concern that let's say you take the firm

commitment at face value and you say we think we're going to get more value by committing up front to do certain things, and maybe that will get everybody to buy in. But then you get to a point in your life where you have to follow through with that commitment, so there would be the temptation. In theory, temptation to defect.

And the board is, in good faith, not going to defect. Well, what if the activists say, "Arbitrage play, right? We'll get rid of that board that's acting in good faith and we'll put in some people who defect"? That, to me, is a real risk and there is a menu of ways to address the risk. You can address it structurally by saying the way we're going to enforce our benefit corporation purpose is that when we go public as the benefit corporation, we're going to have a staggered board, we're going to have an A/B stock structure, or we're going to have tenured voting—sort of naming your defense so that we will make it hard for activists to come in with that arbitrage play because it will preserve value.

I think it will be up to the market because you can go to your stockholders and you can make that sales pitch. When you're doing your IPO, you can say we're a benefit corporation and this is how we're going to protect it. And they might say, "We don't like that. We'd rather you were a benefit corporation and don't worry, we'll deal with the activists." And you hope that could work—Unilever is a really good example. If you look at the studies of their stockholder profile, their stockholder profile became much better when Paul Polman came in and started talking about long termism.

I think I said at the very beginning yesterday that this doesn't work unless you bring the institutions that own 70 percent of the market. The activists, they're a relatively small portion, but they're influential. And you're going to have to bring the institutions along, and they're going to have to understand that this won't work if you just sort of flip for the arbitrage play every time it comes along.

Larry: Okay. In about five minutes, it's time for our audience to ask questions. Let's get back and talk about where are we and how we have done. Are you where you expected to be ten years ago?

Bart: No.

Larry: Further along? Further away?

Bart: We're both ahead and behind. We're certainly farther ahead in terms of legislative issues, both domestically and globally. We're farther behind what we expected in terms of Certified B Corporations. At this juncture, we thought we'd have tens of thousands of Certified B Corporations. And Larry, you asked earlier about the barrier to certification. It's not the standards, but the legal requirement, without question, for private companies (anybody with outside investors). This is a process. You have to educate the investor, you have to talk to the board, and it requires a board vote. They need to understand what's happening—it's a process. And so without question, we are not as far along as we anticipated in the number of Certified B Corporations.

Backing all the way up, let's take a moment and just talk about the theory of change and we can put some numbers to it. You guys decide whether we've made progress or not.

The objective of B Lab is to redefine success in business. That means institutionalizing certain things that include standards and a legal change. It also means normative behavior change. At the core, to make any of this work, there needs to be a change in the culture around business. Our approach is to shine a light on the leaders and then create easy paths for others to follow. The leadership community is now 1,800 big, including 51 countries and 150 industries, and growing more rapidly outside of North America than inside of North America. This year we will have more B Corps outside of the US than inside the US.

We introduced our global work probably five years ago and it is accelerating nicely. So that's the community of leaders. I will tell you in North America, we have largely shifted from quantity to quality. We still want as many Certified B Corporations as possible, but in terms of our efforts, we far prefer getting another Eileen Fisher and Kickstarter, both who joined in the last six months, than the next 15 beautiful startups or small companies. So quality matters—it actually moves the needle for us much more rapidly.

The two pathways to scale is adoption of the legal framework and our measure what matters initiative. So we can only track, Larry, the people who have (and frankly poorly) actually become benefit corporations. It's really hard, as has been indicated by everyone here. It's hard to know what that number actually is. We estimate somewhere between 3,000 and 4,000 if you include the LLCs, somewhere in that range. And, as somebody else appropriately noted, there's a ton of misfires in there.

There's also a ton that we're not capturing because they're not tracked by the secretaries of state. Because they get this passed in the state and they say, "Guys, I can't deal with more bureaucracy. Do not put me on the hook of trying to track all this." And so admittedly, we don't have a real good database of how many of those are benefit corporations. But even with the numbers we have, I think we feel okay with the fact that we're four years into the legislation and we now have almost tripled the number of benefit corporations than we have Certified B Corporations in terms of a leadership play.

If we back up, the second scaling tool is the use of the impact assessment tool or our measure what matters initiative. So maybe five years ago, we had about 600 B Corps and we had 6,000 users of the assessment. We had a 10 to 1 leverage ratio. And it was at that juncture that we decided that we were going to create a strategy that was about trying to drive adoption of the assessment and increase that leverage ratio. So today we have 1,800 Certified B Corporations and are closing in on 50,000 on

the assessment. So we're around a 30 to 1 ratio and our hope is to take that to a 100 to 1 ratio over the course of the next few years.

And the way we do that is we work with intermediaries. We work with investors, government, supply chain decision makers, and business associations. For examples, we have a program with the City of New York called Best for NYC. They asked us to work with them to encourage all companies to be like a B Corp in the City of New York, so we created a competition called Best for NYC. To qualify, you use the assessment.

So in our first three-month pilot, we had about 2,000 users. We had 200 finalists and 100 honorees. The City—this is their estimate, not mine—estimated that we'll have 60,000 companies on the assessment in the next five years. We now have 30 cities that have also expressed interest. It's launching in Rio, Sydney, Denver, and potentially Portland or Philadelphia this year. Those are pilots to try to figure out how to do this well.

We have about 20 to 30 companies that use it for supply chain. Most recently, Bancolombia down in Medellin developed a partnership with us where they're running 150 companies through this year. They want to expand that to 12,000 companies within three years and that's their supply chain.

Also, I don't know if you all know the B team? Richard Branson and Jochen Zeitz have a bunch of others who are talking about Plan B for capitalism. We just went into a partnership with them around "Born B"—the idea of creating insight and a program for companies to adopt this early, whether it's the corporate form or using the assessment. Those are just examples of distribution channels. When we lift our heads and say we've got 1,800 Certified B Corporations, we recognize we have an awfully long way to go.

That being said, we are heartened by a beginning of a change in the conversation, whether it be Paul Polman or

Danone. Forbes came out this year with their five business trends to master 2016, one of which was be like a B Corp. Fast Company came out with 20 things that mattered most over the last 20 years—it included the iPhone, streaming music, Uber and Airbnb, and the creation of B Corp was there. Slightly hyperbolic, at a minimum. But the point is, as I said to Chuck yesterday morning, look who's in the room. You all came to talk about this. So I know we've got a long way to go, but I'd like to say, the conversation is starting to change. It's starting to change and ultimately the long-term objective is a fundamental change around the culture of business.

Larry: You may have noticed this is not a group that's shy about asking questions. So that's a good place to stop and see what people have to say—yeah, Chuck.

Chuck
O'Kelley: I tried to get someone to do an article on the question I'm going to ask you. What can you share with us about how B Lab itself is organized and governed?

Bart: I'm going to try and make it quick because I'm sure there are a lot of questions. Standards depend on governance, and we try to create a layered governance structure where we have an independent board of directors that oversees B Lab with only one member of management on it—that's myself—and six other members. We then have two more layers of governance that we fit into our structure, one of which is that independent Standards Advisory Council that is not a fiduciary body—we're not trying to create liability for those folks who sit on that Standards Advisory Council.

So the way that it works is they make recommendations to the B Lab board of directors who carry the fiduciary responsibility. But those recommendations require a supermajority vote of the board of directors to overturn. So the idea is to empower that Standards Advisory Council.

Then underneath the Standards Advisory Council are working groups. We had one working group that created

the higher education addendum and one around health and safety. We also had one working group around the financial services industry. Those groups report to the Standards Advisory Council—same structure where they make recommendations that require two-thirds super majority vote of the Standards Advisory Council to overturn any of the work of the working group for them to feel empowered.

Lastly, we have a Global Governance Council that oversees the global expansion of the movement. We work with independent nonprofits in each of the markets. There's B Lab Europe, B Lab Australia, B Lab UK, Sistema B down in Latin America—all of those are independent nonprofits. They all have representation on the GGC. We have the GGC that oversees the acceptance and the removal of any partner in the global community.

They also oversee all earned income strategies around conflicts of interest, all grants around conflicts of interest, and all policy. Because at the end of the day, we can't have rogue policy coming out of any member of the community because it influences the entire, broader group. So really quickly, that's the framework of our governance.

Carol
Liao:

Thank you so much, that was really interesting. I know that we're seeing more of B Lab and the global reach that you have. On your website, you talk about how you are now in 51 countries. My question is, are you concerned about the Americanization of your standards and the sort of ethnocentrism that may occur? You talk about being an education platform for these certifications all over the world and telling them that this is the policy and the process you have to follow. This is a concern that obviously came up in Canada, as you saw from my presentation.

I'm curious, is this something that you think about when applying your standards to other institutions in other countries? Your work in Canada has evidenced how your

organization is susceptible to ignoring a nation's existing laws and cultural context. So my first question is, are you worried about the Americanization of the standards or not? And second, if so, what do you think you'll do to solve that?

Bart: Hugely concerned. Hugely concerned about the Americanization—the single greatest criticism of B Lab globally and the movement globally is that it's an American export, full stop. We're doing what we can to combat it. Let me talk it through. Every member of that global community nominates somebody to the Standards Advisory Council. So the Standards Advisory Council actually has representatives from every global partner, including Canada and all the other markets. Each region has their own standards council that is governed and managed by the global partner that makes recommendations to the Standards Advisory Council about what's most appropriate for that particular market.

One of the great tensions we have is maintenance of the standards and globalization of the standards. So currently, we have essentially three different versions based upon regions: US, global, and emerging market. Ideally, what we'd be able to do over time is add local nuances to

Carol: Where's Canada in that?

Bart: Global.

Carol: Okay, I just wanted to make sure. I didn't know if it was just folded into U.S. Okay.

Bart: We can talk later about that. But no, it would be global. And so we have all of that feedback that comes into the Standards Advisory Council and it's translated into four languages—we used to have more, but we dropped Mandarin, Russian, and Vietnamese because it was too much to maintain—not enough of a community and, for example, no B Lab Vietnam there to actually drive it. So ultimately, this needs to reflect local realities. The standards need to reflect local realities.

And then second, Carol, I'll tell you the same thing applies for the legal standard. B Lab doesn't choose the requirement in each particular market about what charter change and/or benefit corporation legislation would be most appropriate. That's determined by a local group of attorneys, who have formed local legal groups to determine what the appropriate ways are to incorporate stakeholder consideration within the global context. They're in Argentina, Chile, Columbia, Brazil, Canada, Australia, France, and the UK—so yes.

Carol: In Canada, I know some of the legal counsel you have used are offering pro bono time. It's not necessarily that they're supporting B Lab's initiatives. They're just answering the legal questions for you and that may not necessarily provide the cultural context to whether or not they think it's appropriate or necessary, but whether or not it's possible to advance.

Bart: It's global. We certainly have rah-rah and we have folks who are answering questions.

Carol: My question is also about those few B Corps that are coming out in other countries. For example, you have one African B Corp. Where do they come from and what is the motivation behind them? Is it an American parent company with an African sub company, or is it an American customer telling their supplier to become a B Corp? Are they approaching you? I'd like to know the motivation behind these companies.

Bart: Almost exclusively the latter, meaning that almost all those one-offs come to us. And often it results in the creation of a community. So we currently have ten B Corps in Taiwan, nine in Korea, and we don't have a B Lab office in either of those markets. There was somebody who heard about the movement, an entrepreneur, and said, "This is who I am. I want to join this community." And then they created a ton of local energy.

I would imagine by the end of the year, we will have a B Lab Taiwan because the first B Corp in Taiwan ended up organizing an event in March and have recruited eight other B Corps in the community. Their event was keynoted by the President of Taiwan, sponsored by the Taiwanese Stock Exchange and the Small Business Administration in Taiwan, and it had 500 participants. One of the great tensions that B Lab has that we haven't talked about is building a movement and simultaneously making sure that the integrity of the movement isn't lost. What gives me the most anxiety is that it is incredibly challenging to make sure that the core identity of what it means to be a B Corp and the community that we're building both has the latitude to thrive and simultaneously has the central point that is the identity of what this movement's about.

Dana
Brakman
Reiser:

So I'm incredibly impressed by the distance that B Lab has covered since its inception. I was at Berle One; I was the last person to present to a room that was not nearly as sympathetic as this room to the idea. And I told them about this idea and the reaction from many of the attendees was, essentially, that I must be a crackpot. And now the whole symposium is about the benefit corporation and you've gotten a tremendous amount of traction in state legislatures and even a global reach.

I sometimes say skeptical things about the benefit corporation in particular, but I'm very impressed with the organization that you've grown and the impact it's had. It seems to me—drawing on the comments from Rick Alexander and Bart Houlahan—that the benefit corporation statute and the legal change strategy is about getting the law out of the way. There are people out there that want to pursue blended value and whatever the outcome of the Strine-Stout debate may be, the law is seen as an obstruction and we're going to get that out of the way.

I'm not sure how big of a problem the shareholder wealth maximization norm is or for whom, but I agree that if it's a problem for potential social entrepreneurs, we want to get it out of the way—I'm on board with that.

But Steven Dean and I believe there is a further frontier from the legal perspective once you have the law out of the way. That's not where the legal challenges end. Rick's comments reflected this notion when he spoke about the public company context. He is concerned that once you have a benefit corporation going public, you need to consider how a standard board will act and some way to prevent arbitrageurs from seeking control in order to shift away from social mission.

Even outside of the public context, though, anytime you bring in capital, you need to get your investors on the same page with the folks who are running the company and you need to have that trust developed. Bart's experience with outside investors certainly speaks to this need.

Our view is that, fortunately, there are many legal tools to develop that trust.¹ We don't think any legal form can actually do that on its own—and it sounds like you agree with us. Is B Lab interested in working on developing other legal tools that would help further that kind of second generation of social enterprise law to help entrepreneurs and investors align on mission to increase capital access?

Rick:

We wouldn't discourage people from doing that, but I think it's important for us to be sort of agnostic with what structures people put in. In other words, I think it's perfectly appropriate for somebody to say, "Look, you don't have to be the most—the stuff's all there on the shelf." There's tons of ways to help companies have more time with respect to stockholder decisions. But I think there are many ways. I think you have to let people try—if people think they can do it, essentially begin as dual

1. See Dana Brakman Reiser & Steven A. Dean, *SOCIAL ENTERPRISE LAW: TRUST, PUBLIC BENEFIT AND CAPITAL MARKETS* (forthcoming 2017).

class, it's only dual class until the investors sell out and they are converted down.

So they're comfortable going that route. Now, maybe that'll turn out to be a big mistake and people will say, "If we're going to go public as a benefit corporation and we're going to get the benefit, we really do need these structures." But I do think we have to be careful not to say, "We live in 2016 when stockholder activism is greater than it's ever been and that's how the world always is." There was a long period of time when companies had the ability to sort of take their time and think long term, and they didn't have to have staggered boards in order to do that.

And then things changed and you have the current markets. So I just don't want to get stuck in the moment. I just don't want to get stuck in you need dual class, you need a staggered board, you need this. I think we're going to have to let people try different things.

Dana: I don't want to monopolize the conversation, but there are a lot of things outside of corporate governance that you could do to get mission alignment. You could structure your financing in a way to do that. You could do exit planning to do that. My work with Steve focuses on these further moves, but B Lab could be a leader in these innovations, as well.

Rick: I don't know if you're thinking in the public or the private, but clearly in the private

Dana: In the private context, particularly.

Rick: Clearly, in the private context to me there are a lot of things you can and should do in order to preserve mission if that's what you want to do. But I think in public context, your tools are more limited.

Bart: The only thing I'd add to that, Dana, is that we do end up being a repository of best practices, which we are happy and excited to do. And whether it's being a distributor of

the SASB impact metrics or carrying Hitachi's best practice guidelines, one of the things we have access to is a lot of companies. We're trying to educate them—we welcome being a library where people can actually ask us. And over time, there are also ways that things actually work their way into the assessment.

Haskell
Murray:

I'm with Dana. Dana has written a good bit more than I have in the social enterprise law area,² but I wrote one of my very first articles about benefit corporations and was told by a number of people that I was wasting my time studying these entities because the benefit corporations were going to be a short-lived fad.³ There's still skepticism and there is still progress to be made with benefit corporation law, but I think it's encouraging to see that we've come far enough to have an entire, serious, two-day academic conference on the form. Scholars are certainly taking benefit corporations more seriously now, even if there continues to be valid concerns in some areas of the law. B Lab's openness to constructive criticism and willingness to evolve has impressed me, and its continued openness is going to be important in the future of social enterprise.

That said, I have a rather narrow question. I believe Yvon Chouinard, Patagonia's founder, was on record saying that one of the reasons Patagonia became a benefit corporation was to "lock-in" the firm's mission. He's very passionate about the social mission of Patagonia, especially the environmental piece, and he appears to want to lock it in for a long time. I agree with Dana that the benefit corporation does not provide a very secure lock for the social mission. It may be a hurdle to get two-thirds of your shareholders to agree to make the switch out of the benefit corporation form, but if there is a lot of

2. See, e.g., Dana Brakman Reiser, *Governing and Financing Blended Enterprise*, 85 CHI.-KENT L. REV. 619 (2010); Dana Brakman Reiser, *Benefit Corporations-A Sustainable Form of Organization?*, 46 WAKE FOREST L. REV. 591 (2011); Dana Brakman Reiser, *Theorizing Forms for Social Enterprise*, 62 EMORY L.J. 681 (2013); Dana Brakman Reiser, *Regulating Social Enterprise*, 14 U.C. DAVIS BUS. L.J. 231 (2014).

3. J. Haskell Murray, *Choose Your Own Master: Social Enterprise, Certifications, and Benefit Corporation Statutes*, 2 AM. U. BUS. L. REV. 1 (2012).

money to be made, that vote may be easier to get. However, then the social mission of the firm may be compromised.

And so I am thinking about ways to lock in the social mission of a benefit corporation. Do you think Delaware would be open to something like a dead-hand poison pill in the public benefit corporation context, even though Delaware is obviously not open to defenses like that in the traditional C-corporation context?

Rick: In Anne Tucker's work on constituency statutes, she looks at the cases. I think if you look at the Nevada cases, you might say you can't take other constituency-type ideas too far—the stockholder franchise is still the stockholder franchise. So I would not be confident that you could get to a dead hand pill under that law. But I want to say, I'm not sure it's a snap to have the board get rid of the benefit corporation provisions with a two-thirds stockholder vote. Because when they make that decision, when they are voting as directors, they have their benefit corporation director obligations. They need to make a case as to why it's in the best interest of their balanced constituencies to convert out.

Haskell: The board can be removed.

Rick: The board can be removed, but then another board is going to have to

Haskell: They still have that.

Rick: I understand what a wild case that's going to be. But it's there and it's something that's similar—again, as someone said earlier, it's not the enforcement so much as the reinforcement here.

Frank Partnoy: What should we take back and teach our students? Should we be focused on the various statutes? Should we focus on cases or on hypotheticals? Should we have a discussion about the various policy issues and if so, which issues?

How much information should we include about the development of these new entities? We have limited bandwidth in our courses, so what should be our priorities in teaching? We've got a bunch of professors here, so please give us some guidance as to what we should take home and teach.

Rick: To me, it's all these questions that I've heard and these marginal questions. How is enhanced business judgment going to work when you've got more constituents? What about this switching back and forth? When you switch into the benefit corporation law, do you have to put your stockholder primacy hat on as a director and say, "Despite the two-thirds vote, or despite the 99 percent vote that I'm going to get, do I have to worry about that one percent stockholder who wants to stay stockholder primacy?"

So there's that question going back and forth. There's great questions about appraisal value. There's an article that started that conversation that Larry and I coauthored,⁴ but there's a lot of valuations and

Larry: Let me also say you other law professors do something I know on ultra vires and corporate purpose. When I've done it, which has been a couple of years now, I didn't talk about B Corps, but I would now. I think it must be part of the curriculum if you're going to talk meaningfully about corporate purpose. Corporate purpose has become too big of a deal—we have statutes to look at. There's a lot more curriculum on that subject now than there was three years ago. So I'm not telling you what to say, but it seems to me that's where I would go with it.

Bart: Not surprisingly, I want to be far more simplistic: teach anything on this. Backing all the way up, when you think about our long-term objective, we focus on barbells. We focus on influencers over here, and then we focus on startups over here. And in the middle, we let it show up. That's our strategy. People can take issue with it, but that's our strategy. On the left hand side means being

4. Frederick H. Alexander et al., *M&A Under Delaware's Public Benefit Corporation Statute: A Hypothetical Tour*, 4 HARV. BUS. L. REV. 255 (2014).

embedded in law schools, in business schools, and undergraduate institutions. We work with 500 universities currently who teach something about this movement.

And so I think most of the room is law professors and there are some business school professors. We have a whole area on our website that includes the beginning pieces for materials around what's a B Corp.⁵ What's the difference between a benefit corporation and a Certified B Corporation? There are wonderful topics on our website. We need folks to leave school with the knowledge that they have another choice. We hope it would be coupled with the growing evidence that the choice isn't exclusively for a social enterprise, but it's also for the organization that's trying to create long-term value. I think there is a body of work that is relatively compelling regarding the idea that environmental and social governance issues absolutely return good value to your shareholders over the long haul.

Rick: I think the important piece there is that you can't teach the fiduciary duty question at the corporate level in isolation. You must look up the investment chain—I think the Cambridge Handbook on Institutional Investment and Fiduciary Duty⁶ is a great work with lots of really good articles, including one by Keith Johnson,⁷ who is a great proponent of this idea that investment fiduciaries aren't really doing their job if all they're focusing on is company by company, static thinking and not being sensitive to the choices made within their portfolio on their entire portfolio. That's got to be a piece of the puzzle.

5. B Corporation, *Resources for Educators*, <https://www.bcorporation.net/educators> [<https://perma.cc/XZ6Y-Y76Y>].

6. CAMBRIDGE HANDBOOK OF INSTITUTIONAL INVESTMENT AND FIDUCIARY DUTY (James P. Hawley et al. eds., 2014).

7. Keith L. Johnson & Stephen Viederman, *The Philanthropic Fiduciary: Challenges for Non-profits, Foundations and Endowments*, in CAMBRIDGE HANDBOOK OF INSTITUTIONAL INVESTMENT AND FIDUCIARY DUTY 89 (James P. Hawley et al. eds., 2014).