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Creating an Industry that Cares: Alternative Entity Types for Social Good

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— LAW OFFICES OF —
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Lauren Mendelsohn is a Senior Associate Attorney at the Law Offices of Omar Figueroa, a boutique Northern California-based law firm serving the cannabis industry. She currently focuses mainly on permitting and licensing, regulatory compliance, business formations and transactions, policy advocacy, and post-conviction relief.

For the past several years, Lauren has been active in the drug policy reform movement as well as other progressive and humanitarian efforts. She is the former Chair of the Board of Directors of Students for Sensible Drug Policy (SSDP), an international non-profit organization working to end the counterproductive “War on Drugs.” Currently, she sits on the Board of Directors of the Sonoma County Growers Alliance, an organization that advocates on behalf of local cannabis businesses. She also sits on the National Cannabis Industry Association’s (NCIA) Diversity, Equity & Inclusion Committee.

Lauren earned her J.D. from the University of California, Irvine School of Law and her B.S. in Psychology from the University of Maryland. She is a proud member of the California State Bar, the Sonoma County Bar Association, the National Cannabis Bar Association, SSDP’s Sensible Society, the National Lawyers Guild, California NORML, NCIA, Americans for Safe Access, and the ACLU.

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LEARNING OBJECTIVES

1. Why one might want to form an alternative type of entity in order to pursue objectives other than, or in addition to, shareholder profits.
2. The differences between Social Purpose Corporations (SPCs), Benefit Corporations, and B Corps.
3. An overview of other alternative entity types for socially-conscious businesses.
4. Applications to, and opportunities for, the cannabis industry.

Fiduciary Responsibility v. Social Responsibility

New Entity Types for Social Good

CALIFORNIA

- ❖ Social Purpose Corporations (formerly “Flexible Purpose Corporations”)
- ❖ Benefit Corporations

OTHER STATES

- ❖ Low-profit Limited Liability Company (L3C)
- ❖ Statutory Public Benefit Limited Liability Company (SPBLLC)
- ❖ Others

Spectrum of Public and Private Entities

Primary public
benefit, with
incidental
private benefit

Primary private
benefit, with
incidental public
benefit

Government	Tax-exempt, nonprofit			Taxable, for-profit		
	Nonprofit public benefit corporations		Nonprofit mutual benefit corporations	Benefit corporations	Social purpose corporations	Other noncorporate entities (e.g., limited liability companies)
	Charities	Social-welfare organizations	Business leagues and trade associations		Corporate constituency statutes	Traditional corporations

Source: Levitt, David and Chiodini, Steven. Selecting and Forming Business Entities: Social Purpose and Benefit Corporations §7A.43 (CEB 2019).

Benefit Corporations

- ❖ Not to be confused with "B Corps" or "Public Benefit Corporations"
 - Any type of entity can receive **B Corp™ certification** from a private company (B Lab®) if they meet certain criteria
 - **Public benefit corporations** are a type of nonprofit entity in California
- ❖ Third-party assessment required
- ❖ Must serve general public benefit; may also serve additional special purposes
- ❖ Annual reporting requirements
- ❖ Benefit enforcement proceedings

Social Purpose Corporations

- ❖ Previously called “Flexible Purpose Corporations”
- ❖ Must serve **specific social purposes** listed in Articles of Incorporation
- ❖ No third-party assessment
- ❖ Annual reporting requirements
- ❖ Less restrictive than Benefit Corporations

Certified B-Corporations

❖ Any type of entity can be certified by the B Lab, a nonprofit company, as a B Corp™ if they meet certain criteria set forth by B Lab®. These criteria are similar to what a business would have to meet if it were to be a statutory Benefit Corporation under California law.

- Performance Requirements – *B Impact Assessment*
- Transparency – *B Impact Assessment Report* must be publicly available
- Legal Requirements – Must consider interests of all stakeholders, not just shareholders

Why Should Cannabis Companies Consider This?

- ❖ Pursue social good in addition to maximizing revenue
- ❖ Environmental stewardship; community reinvestment; research
- ❖ Attract investors who are interested in socially-conscious companies
- ❖ Staying true to the industry's roots as a human rights and social justice movement
- ❖ Creating a positive example for other industries



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Q/A

THANK YOU FOR YOUR TIME!

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