



How can Ben & Jerry's be a Certified B Corporation if they are a part of Unilever?

Ben & Jerry's Homemade, Inc is a distinct corporate entity, a wholly-owned subsidiary, as opposed to a division, of Unilever. While divisions or individual brands within larger corporations are not eligible for certification, subsidiaries of larger corporations can be certified as long as they meet the relevant performance and legal requirements for certification.

Why does B Lab certify wholly-owned subsidiaries?

The ability to certify wholly-owned subsidiaries can enable existing Certified B Corporations to have more opportunities to scale or exit in mission-aligned ways, including the opportunity to sell the company while maintaining independent third-party validation that under new ownership the subsidiary will continue to maintain a high level of social and environmental performance, accountability, and transparency. Certifying wholly-owned subsidiaries also gives large (non B Corp Certified) corporations the opportunity to acquire existing mission-driven companies in a manner that mitigates the risk of alienating the very consumers upon whose trust the mission-driven company's brand equity has been built.

Does Ben & Jerry's meet the same performance requirement as Certified B Corporations that are not wholly-owned subsidiaries?

Yes.

How does Ben & Jerry's meet the legal requirement for certification as a B Corporation?

The legal requirement for B Corp certification has two components. First, directors must be legally obligated to consider the impact of their decisions on all stakeholders, not just shareholders. Second, shareholders must be able to hold directors accountable to this higher standard of conduct through an expanded right of action. These provisions are generally included in the company's articles of incorporation.

Ben & Jerry's is organized as a Vermont "close corporation". Under Vermont law, this type of entity is not legally required to have a board of directors, but rather is allowed significant latitude in structuring its governance and management.

Furthermore, Ben & Jerry's is a wholly-owned subsidiary of Unilever. The expanded accountability to shareholders contemplated by the B Corp legal framework is not meaningful for a wholly-owned subsidiary, since the single shareholder of the wholly-owned subsidiary would have no reason to litigate against the company it owns. (If the single shareholder felt the directors and/or management of the company were not meeting their B Corp duties, the single shareholder could simply replace them.)

Therefore, Ben & Jerry's satisfies the legal requirement for B Corp certification in a manner described below which takes account of its Vermont close corporation and wholly-owned subsidiary status.

Consideration of Stakeholders:

According to the Agreement and Plan of Merger pursuant to which Unilever purchased Ben & Jerry's, Ben & Jerry's is governed through a unique distribution of powers between the CEO, Unilever (formally Conopco), and an independent Company Board. According to this distribution of powers, the Company Board has 'primary responsibility for preserving and enhancing the objectives of the historical social mission of the Company as they may evolve from time to time consistent therewith' and 'safeguarding the integrity of the essential elements of the Ben & Jerry's brand-name'.

Ben & Jerry's states on its website that its Social Mission is to "use our Company in innovative ways to serve the common good." In its 2010 Social and Environmental Assessment Report, Ben & Jerry's further defines its Social Mission Goals to "Use our Company to further the cause of Peace and Justice", to "Make ice cream that's aligned with our values" and to "Take the Lead Promoting Global Sustainable Dairy Practices."

While Unilever has primary responsibility for the financial and operational aspects of the Company, and has the final authority to approve the annual business plan by which the Company will be managed, Unilever and the CEO are required to review the annual business plan presented by the CEO "in good faith consultation" with the Company Board and are required to "use good faith efforts to reach agreement" on the business plan.

Neither the B Corp 'consideration' standard nor the Ben & Jerry's 'good faith consultation' standard imply that any particular outcome of that consideration or consultation is preordained. The objective of both is a more inclusive, balanced decision-making *process*.

On the basis of the express powers given to the independent Company Board to preserve and enhance the objective of the company's Social Mission, coupled with the requirement that the CEO and Unilever enter into good faith consultation with the Company Board to approve the annual business plan by which the Company is managed and into which the Social Mission Priorities are required to be integrated, and the broad definition of the Social Mission, B Lab concluded that the directors of Ben & Jerry's are

legally obligated to consider the impact of their decisions on the Ben & Jerry's social mission, not just shareholders.

Expanded Right of Action:

The purpose of the expanded right of action for shareholders is to empower shareholders to hold accountable the directors of a Certified B Corporation to meet the 'consideration' standard of conduct. The presumption is that if the directors were perceived to fail in their duty to consider stakeholder interests, then a shareholder would have standing to bring a lawsuit.

Due to Ben & Jerry's unique governance structure (as a Vermont close corporation and wholly-owned subsidiary governed by the Agreement and Plan of Merger described above), this expanded shareholder right of action is meaningless insofar as Unilever, and not the Company Board, has authority to hire and fire the CEO and approve the annual business plan by which the company is managed.

Additional Legal Requirements:

To mitigate against the absence of meaningful shareholder accountability as a wholly-owned subsidiary, and the lack of clarity about the right of action of the Company Board, in connection with its certification Ben & Jerry's is required to meet additional requirements designed to provide incremental accountability to the public:

- Mandatory audit: Ben & Jerry's B Impact Report must be audited during each two year certification term. In contrast, 20% of all Certified B Corporations are subject to random audit during each term.
- Increased transparency: The following information must be transparent on www.bcorporation.net:
 - the company's ownership structure (e.g. Ownership: Wholly-owned subsidiary of Unilever)
 - the company's full B Impact Assessment. In contrast, other Certified B Corporations are required only to make transparent the summary information in the B Impact Report.
 - relevant excerpts from the Agreement and Plan of Merger pursuant to which Unilever purchased Ben & Jerry's and the Ben & Jerry's Amended and Restated Articles of Incorporation

The mandatory audit and increased transparency requirements (less the Ben & Jerry's specific requirement regarding relevant excerpts of its Agreement and Plan of Merger and Amended and Restated Articles on Incorporation) are and will be generally applicable to all wholly-owned subsidiaries seeking B Corp certification.



[B Lab welcomes questions regarding the certification process for wholly-owned subsidiaries and other unique or unconventional legal entities or structures.]

Ben & Jerry's Governance Documents Excerpts

Amended and Restated Articles of Incorporation of Ben & Jerry's Homemade, Inc.

ARTICLE 6 Special Provisions

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(c) The shareholder of the Corporation has agreed in writing to regulate the exercise of the corporate powers and the management of the business and affairs of the corporation pursuant to 11A V.S.A. § 20.09. Such agreement restricts the discretion and powers of the Corporation's board of directors in certain respects as set forth therein. The liability of directors imposed by law is, to the extent of the restrictions contained in such agreement, instead imposed upon each person in whom the board's power is vested pursuant to such agreement.

ARTICLE 7 Directors

The number of directors of the Corporation shall be fixed at 11. The Board of Directors of the Corporation shall be divided into four groups consisting of: (i) the Chief Executive Officer of the Corporation from time to time; (ii) seven directors (the "Class I Directors") to be composed of (A) such persons who were members of the Board of Directors on April 11, 2000 (other than the current CEO and Ineligible Directors (as defined in the Agreement and Plan of Merger dated as of April 11, 2000, as amended and restated as of July 5, 2000, among Conopco, Inc., Vermont All Natural Expansion Company and the Corporation)) who elect to be members of the Board of Directors of the Corporation and (B) such other persons as may be necessary to fill any vacancies in the seven members as shall be designated for election by a majority of the persons specified in clause (A); (iii) two directors (the "Class M Directors") to be designated by Meadowbrook Lane, Inc. ("Meadowbrook"); and (iv) one director (together with any alternate that Conopco may from time to time designate, the "Class U Director") to be designated by Conopco.

The Directors shall be elected for one year (subject to earlier removal, death or resignation), and a majority of the Directors then in office in each Class shall designate the candidates for election to the Board of Directors in such Class each year, and the shareholder of the Corporation shall cause the election of such candidates and the Chief Executive Officer of the Corporation to the Board of Directors. Vacancies on the Board of Directors shall be filled in a like manner. The shareholder of the Corporation, shall remove any director at the written request of at least a majority of the directors of such Class then in office and shall not otherwise remove any member of the Company Board,

other than a Class U Director or the CEO following termination of his or her employment. No Ineligible Director shall be permitted at any time to be elected to the Company Board, unless otherwise agreed prior to the date hereof.

Agreement and Plan of Merger

SECTION 6.14. Operations of the Surviving Corporation. (a) The Company Board immediately following the Effective Time shall consist of: (i) the CEO; (ii) seven members to be composed of (A) such members of the Company Board (other than the current CEO and Ineligible Directors (as defined in Section 9.03)) as of the date hereof who wish to continue or rejoin as members of the Company Board following the Effective Time and (B) such other persons as may be necessary to fill any vacancies in the seven members as shall be designated for election by a majority of the persons specified in clause (A) (the “Class I Directors”); (iii) two members (the “Class M Directors”) to be designated by Meadowbrook Lane, Inc. (“Meadowbrook”); and (iv) one member (together with any alternate that Conopco may from time to time designate, the “Class U Director”) to be designated by Conopco. The size of the Company Board shall be fixed at 11. Directors shall be elected for one year terms (subject to earlier removal, death or resignation), and a majority of directors then in office in each Class shall designate the candidates for election to the Company Board in such Class each year, and Conopco shall cause the election of such candidates and the CEO to the Company Board. Vacancies on the Company Board shall be filled in a like manner. Conopco, as sole shareholder of the Surviving Corporation, shall remove any director of any Class at the written request of at least a majority of the directors of such Class then in office and shall not otherwise remove any member of the Company Board after the Effective Time, other than a Class U Director or the CEO following termination of his or her employment. No Ineligible Director shall be permitted at any time to be elected to the Company Board.

(b) Immediately following the Effective Time, the Surviving Corporation shall delegate authority to the CEO to manage the affairs of the Company, substantially in the form of Exhibit B, appropriately adjusted for inflation and other relevant factors. The Surviving Corporation, with the consent of Conopco, shall review on an annual basis the proper scope of such delegation and shall make a new delegation to the CEO as of January 1 of each year. Within the scope of the authority delegated by the Surviving Corporation to the CEO, the CEO may act without obtaining the prior approval of Conopco or the Company Board. The Company Board shall not alter or challenge in any way the scope of any delegation of authority by the Surviving Corporation to the CEO.

(c) Decisions with respect to the appointment, compensation and removal of the CEO shall be made by Conopco after good faith consultation with, and the participation in discussions of, an advisory committee of the Company Board (the “Appointment Committee”) consisting of Ben Cohen (“B.C.”) and Jerry Greenfield (“J.G.”); provided, however, that, if from time to time one or both of B.C. or J.G. is not a member of the Company Board, then a majority of the Class I Directors then in office shall appoint one or two, as the case may be, Class I Directors or Class M Directors to the Appointment Committee.

(d) Subject to Sections 6.14(e) and 6.14(f), which place primary responsibility for Social Mission Priorities and the Essential Integrity of the Brand (each as defined below) with the Company Board, the Surviving Corporation shall be managed by the CEO in accordance with an annual business plan. Each year the CEO shall present a business plan for the following year to Conopco and the Company Board. Conopco and the Company Board, in good faith consultation with each other, shall review the proposal and Conopco, the Company Board and the CEO shall use good faith efforts to reach agreement on the annual business plan. If such parties are unable to reach agreement on the annual business plan, the ultimate determination of such plan shall be by Conopco. The annual business plan may be modified following the principles set out in the previous two sentences.

(e) The Company Board shall have primary responsibility for preserving and enhancing the objectives of the historical social mission of the Company as they may evolve from time to time consistent therewith (“Social Mission Priorities”). The Company Board shall work together with the CEO to integrate Social Mission Priorities into the business of the Surviving Corporation. The Company Board shall have a committee (the “Social Venture Committee”) that shall oversee the Social Venture Fund (as defined below) consisting of one Class M Director, appointed by a majority of the Class M Directors then in office, and B.C., or, if B.C. is not a member of the Company Board, J.G., or, if neither B.C. nor J.G. is a member of the Company Board, a Class I Director appointed by a majority of the Class I Directors. Schedule 6.14 contains an illustrative list of Social Mission Priorities of the Company as of the date hereof.

(f) The Company Board shall be the custodians of the Ben & Jerry’s-brand image and shall have primary responsibility for safeguarding the integrity of the essential elements of the Ben & Jerry’s brand-name (the “Essential Integrity of the Brand”). The Company Board shall work together with the CEO to provide that the business of the Surviving Corporation is conducted in a manner that preserves and enhances the Essential Integrity of the Brand. As part of this responsibility, the Company Board may prevent any action by the CEO in the areas of new product introduction, the changing of product standards and specifications, the approval of the content of marketing materials and the licensing or other use of the Ben & Jerry’s trademark that, in each case, a majority of the Company Board reasonably determines to be inconsistent with the Essential Integrity of the Brand.

(g) The Company and Conopco shall work together to develop and mutually agree to a set of measures of the social performance of the Surviving Corporation (“Social Metrics”). The Surviving Corporation, under the direction of the Company Board, shall seek to have the Social Metrics of the Surviving Corporation increase at a rate in excess of the rate of sales increases of the Surviving Corporation.

(h) The Surviving Corporation shall continue the Company’s practice of making charitable contributions by making contributions, for a minimum of ten years, of \$1.1 million per year adjusted annually (i) by multiplying such amount by the ratio of the

U.S. Producer Price Index for the month of December of the year in which the determination is made to the U.S. Producer Price Index for December 1999 and (ii) by multiplying the product of such calculation by the ratio of the equivalent gallon sales of Products bearing the Principal Licensed Mark (each as defined in the License Agreement) sold by any person in such year to the equivalent gallon sales of Products sold in 1999; provided, however, that such ratio shall never be less than one. To the extent that a material portion of the Company's business consists of activities other than the manufacture and sale of Products, Conopco and the Surviving Corporation shall agree on an appropriate equivalent measure of sales volume for clause (ii) with respect to such non-Product activities. The Company Board shall have the responsibility for allocating annual contributions among The Ben & Jerry's Foundation, Inc. (the "Foundation"), local community charitable initiatives with the support and oversight of employee Community Action Teams and charitable institutions selected by the OCEO. The Company Board may allocate a portion of such contributions to the Foundation so long as (i) the Foundation does not significantly change its charitable purpose, (ii) none of the trustees of the Foundation disparages the Surviving Corporation, its products or its management and (iii) any replacement or additional trustee of the Foundation is reasonably satisfactory to Conopco. After such ten year period, the Surviving Corporation shall continue to make contributions as calculated in accordance with the first sentence of this Section 6.14(h) unless the activities and performance of the Foundation cease to be reasonably acceptable to Unilever, and provided that the Foundation meets the other requirements set out in the previous sentence. The Company Board shall also be responsible for making the determination referred to in Section 6.05(d).

(i) Conopco shall not prevent the Surviving Corporation from fulfilling its obligations under this Section 6.14.

(j) Conopco shall have primary responsibility for the financial and operational aspects of the Surviving Corporation and the other aspects of the Surviving Corporation not allocated to the Company Board pursuant to this Section 6.14. Each member of the Company Board after the Effective Time and all employees of the Surviving Corporation shall agree to abide by the Unilever Code of Business Conduct, and all employees of the Surviving Corporation shall agree to abide by Unilever's financial, accounting and legal procedures.

(k) Following the Effective Time, the Surviving Corporation shall establish a new product development unit responsible for special projects to be headed by B.C., for so long as B.C. is a member of the Company Board and an employee of the Surviving Corporation. The role of such unit shall include the test-marketing of new products to a reasonable extent, provided that such test-marketing is performed in conjunction with the Surviving Corporation's marketing department to ensure that proper measures are utilized to determine the success or failure of such test-marketing.

(l) The parties agree that the Company Charter and the Company By-laws shall be amended after the Effective Time to the extent necessary to implement the provisions contained in this Section 6.14, including if necessary the Surviving

Corporation electing to become a close corporation in accordance with the provisions of the VBCA.

SECTION 6.15. The Foundation. Immediately prior to the Effective Time, the Surviving Corporation shall, and Conopco shall cause the Surviving Corporation to, make a one-time contribution of not less than \$5 million to the Foundation so long as (i) the Foundation does not significantly change its charitable purpose, (ii) none of the trustees of the Foundation disparages the Surviving Corporation, its products or its management and (iii) any replacement or additional trustee of the Foundation appointed before the date of payment is reasonably satisfactory to Conopco.

SECTION 6.17. Social Milestones. Following the Effective Time, Conopco shall cause the Parents to, and the Company shall, appoint John Elkington (or such other person as the parties may agree from time to time) (the “Social Advisor”) to work with the Parents and the Company to develop a program of social milestones for the assessment of the Parents’ efforts to incorporate socially responsible practices into their businesses, based on the Parents’ social audit to be completed in the year 2000 (the “Parents Social Audit”), which will set out five-year performance goals with interim annual targets (the “Social Milestones”), each of the Social Milestones to be agreed between the Parents and the Company. The Social Advisor shall carry out an annual audit of the Parents’ performance in relation to the Social Milestones, such audit to be publicly disseminated to the extent consistent with the dissemination of the Parents Social Audit, or, if the Parents Social Audit is not publicly disseminated, on a time frame and in a manner reasonably acceptable to the Parents and the Company Board, which manner shall include publication on the Parents’ website. The reasonable fees of John Elkington shall be borne by Conopco or its affiliates.