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The Colorado Benefit Corporation Act's Missed Opportunities

Eric H. Franklin[1]

Abstract

There is a global movement to encourage business entities to pursue social and environmental goals in addition to the traditional financial goals of for-profit entities. Current legal structures, however, make this difficult. To address this issue, the Colorado legislature will consider the Colorado Benefit Corporation Act (the "CBCA"). This article discusses how the CBCA addresses the two primary concerns of socially-responsible entrepreneurs – branding and the ability to pursue non-financial goals – and suggests changes that would greatly improve the CBCA's effectiveness. This article begins by discussing the characteristics of traditional legal entities chosen by socially-responsible entrepreneurs, and details reasons that these entities are not sufficient to address the arguments. This article then discusses the CBCA, and suggests eliminating a weak provision that makes the CBCA unnecessarily burdensome and proffers some changes that would render the CBCA more responsive to the needs of socially-responsible organizations and entrepreneurs.

As most corporate attorneys know, forming a corporation in Colorado is simple; by paying a small fee and filing Articles of Incorporation with the Secretary of State, a corporation is born.[2] This small act creates a legal entity separate from the corporation's owners. A corporation is taxed separately and serves as a liability shield to its owners. Further, corporations, in many ways, enjoy the rights of natural persons. They may enter into contractual relationships, sue and be sued, and even participate in our democratic process.[3] Given the bounty of rights and benefits bestowed upon corporations, is it unsurprising that the general public expects corporations to give back?[4] Is it unreasonable to expect corporations to serve interests of the community at-large in addition to the interests of their owners?

However reasonable, at least one court forbade a corporation, craigslist, Inc. ("Craigslist"), from taking steps designed to avoid maximizing profits. This was the holding in *eBay Domestic Holdings, Inc. v. Newmark*.[5]Although organized as a for-profit corporation, Craigslist operated as

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[2] COLO. REV. STAT. § 7-102-103 (2011).
[3] *See, e.g.*, Citizens United v. Federal Election Comm'n, 130 S.Ct. 876, 913 (2010) (holding that "the Government may not suppress political speech on the basis of the speaker's corporate identity").
[4] *See* Celia R. Taylor, *Berle and Social Businesses: A Consideration*, 34 SEATTLE. U. L. REV. 1501, 1502 (2011) (noting that "[t]he idea that businesses should operate not just to make money but also to address social concerns is gaining traction around the globe").
[5] 16 A.3d 1 (Del. Ch. 2010).

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a "community service."[6] Craigslist declined to charge for hosting the vast bulk of classified advertisements, eschewed advertising revenues, and refused to advertise its services.[7] Rather than profits, the Craigslist business plan prioritized "seeking to aid local, national, and global communities by providing a website for online classifieds that is largely devoid of monetized elements."[8]

In *Newmark*, eBay, a shareholder of Craigslist, sued to invalidate a poison pill adopted to prevent pursuit of the "increased monetization" of Craigslist.[9] The Craigslist directors installed the poison pill out of a concern that eBay would threaten Craigslist's community-oriented vision.[10] In other words, a shareholder sued the directors for not actively pursuing potential profits.[11]

The *Newmark* court applied *Unocal* enhanced scrutiny, which, in part, requires a corporation's directors to "identify the proper corporate objectives served by their actions."[12] Despite admitting an admiration of the Craigslist directors' intent,[13] the *Newmark* court ruled in favor of eBay, holding that it "cannot accept as [a proper corporate objective] a corporate policy that specifically, clearly, and admittedly seeks *not* to maximize the economic value of a for-profit . . . corporation for the benefit of its stockholders."[14]

The *Newmark* holding might have been different if Craigslist were a benefit corporation, a relatively new type of legal entity. Directors of benefit corporations are permitted to consider social and environmental goals alongside the traditional goal of profit maximization. To date, at least six states have enacted legislation permitting benefit corporations,[15] and Colorado is considering similar legislation. The Colorado Benefit Corporation Act (the "CBCA") will be re-introduced in the state senate this year,[16] and, if passed, would permit benefit corporations in Colorado.[17]

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[6] *Id.* at 8.
[7] *Id.* ("[C]raigslist's revenue stream consists solely of fees for online job postings in certain cities and apartment listings in New York City.")
[8] *Id.* at 34.
[9] *Id.* at 32.
[10] *Id.* at 21.
[11] *See Id.*at 21, 25.
[12] *Id.* at 28 (citing Mercier v. Inter-Tel (Delaware), Inc., 929 A.2d 786, 807 (Del.Ch. 2007)).
[13] *Id.* at 34 ("Indeed, I personally appreciate and admire [the founder's] desire to be of service to communities.").
[14] *Id.* It should be noted that this holding would likely have been different if the Craigslist directors had asserted a profit-motivation for their actions (e.g., the directors could argue that Craigslist traffic would suffer if the website charged for services or accepted paid advertisements).
[15] The six states are California (CAL. CORP. CODE § 14600 (West 2012)), Hawaii (HAW. REV. STAT. §§ 420D-1 (2011)), Maryland (MD. CODE ANN., CORPS. & ASS'NS §5-6C-01 (West 2010)), New Jersey (N.J. STAT. ANN. § 14A:18-1 (West 2011)), Vermont (VT. STAT. ANN. tit. 11A, § 21 (2011)), and Virginia (VA. CODE ANN. § 13.1-782 (2011)) [hereinafter *Benefit Corporation Statutes*].
[16] *See Summarized History for Bill Number SB11-005*, COLORADO GENERAL ASSEMBLY, http://www.leg.state.co.us/CLICS/CLICS2011A/csl.nsf/BillFoldersSenate_(follow "History" hyperlink for Bill # SB11-005), (last visited January 3, 2012). As of April 20, 2011, the Senate Committee on Business, Labor and Technology voted to postpone the bill indefinitely. According to Senator Bob Bacon, the bill's sponsor, the legislation was stalled due to disagreement among the key stakeholders. The CBCA will be reintroduced in the 2012

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Proponents of the CBCA cite two primary concerns: (i) the inability to easily identify entities that prioritize something other than profits, and (ii) the need for flexible decision-making in the corporate form (an answer, of sorts, to *Newmark*).[18] For the first concern, CBCA proponents cite the difficulty of signaling an entity's dedication to both financial and social ends (known as a "double-bottom-line") or financial, social, and environmental goals (known as a "triple-bottom-line") – also known as the "branding" problem.[19] For the second concern, CBCA proponents cite a need for a legal entity that considers constituents other than shareholders and interests other than financial. For example, they believe legal entities should be able to consider an act's impact on the environment, employees, and the community at-large,[20] and they bemoan the fact that the corporate form devalues the pursuit of goals other than profit maximization. Although the assertion that a traditional for-profit corporation may act only in the pecuniary interests of its shareholders is, at best, dubious,[21] this article will assume, *arguendo*, that directors of traditional for-profit corporations do not feel free to pursue anything other than maximum profits. To allay this concern, the CBCA allows benefit corporations to pursue either a double- or triple-bottom-line.

This article discusses how the CBCA addresses these two concerns and suggests changes that would greatly improve the CBCA's effectiveness. This article begins by discussing benefit corporations under the CBCA and then discusses the characteristics of traditional legal entities chosen by socially-responsible entrepreneurs (nonprofit organizations and limited liability companies). This article then outlines why these entities are insufficient for socially-responsible entrepreneurs. Finally, this article identifies shortcomings of the CBCA and suggests changes that would render the CBCA more responsive to the needs of socially-responsible organizations and entrepreneurs.

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legislative session. E-mail from Senator Bob Bacon, to Eric Franklin, Whiting Clinical Fellow, University of Denver Sturm College of Law (Jan. 9, 2012, 10:55 a.m. MST) (on file with author).

[17] S.B. 11-005, 68th Gen. Assemb., Reg. Sess. (Colo. 2011).

[18] *See* Thomas Kelley, *Law and Choice of Entity on the Social Enterprise Frontier*, 84 TUL. L. REV. 337 (2009).

[19] *Id.* at 338 (describing the "double-bottom-line" as both "financial and social" and the "triple-bottom-line" as "financial, social, and environmental.").

[20] *See, e.g.,* Final Fiscal Note for SB11-005, Colorado Legislative Council Staff Fiscal Note (May 20, 2011), http://www.leg.state.co.us/CLICS/CLICS2011A/csl.nsf/BillFoldersSenate (follow "FN - 5/20/2011" hyperlink for Bill # SB11-005), (last visited January 3, 2012).

[21] There are numerous examples of traditional for-profit corporations engaging in purely philanthropic acts at the expense of corporate profits under the guise of public relations. Indeed, a Delaware court has pronounced that it is appropriate in certain circumstances for the board of directors of a for-profit corporation to take into account "the impact on 'constituencies' other than shareholders (i.e., creditors, customers, employees, and perhaps even the community generally)." Unocal v. Mesa Petrol, 493 A.2d 946 at 955 (Del. 1985). For more examples, *see* Taylor, *supra* note 4 at 1503.

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Benefit Corporations under the CBCA[22]

The CBCA does not define "benefit corporation." In lieu of a definition, the CBCA drafters opted to list the requirements an entity must meet to be a benefit corporation. First, the entity must "have the purpose of promoting general public benefit," which is defined as "a material, positive impact on society and the environment, taken as a whole."[23] In addition to the broadly defined "general public benefit,"[24] a benefit corporation may identify a "specific public benefit" that it intends to promote.[25] Such "specific public benefit" may involve promoting environmental preservation; "improving human health"; "promoting the arts, sciences, or the advancement of knowledge"; or "conferring any other particular benefit on society or the environment."[26] Second, the entity must designate a "benefit director"[27] responsible for producing an "annual benefit report" to be delivered to the entity's shareholders and posted on the entity's website.[28] The annual benefit report must include a narrative description of entity's public benefit activities for the past year, "an assessment of the social and environmental performance" of the entity, the name of the benefit director, the compensation paid to the benefit director, and a list of five percent owners of the entity.[29] Third, if a director of a benefit corporation were to act in contravention of the mandate to promote either the general public benefit or a specific public benefit, a shareholder may bring an action against the director in a benefit enforcement proceeding (the benefit corporation's analog to a traditional corporation's shareholder derivative suit).[30] Finally, the benefit corporation is subject to annual review by a non-governmental third-party.[31]

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[22] Colo. S.B. 11-005. An earlier form of the CBCA was introduced in 2011, but faced opposition from the Colorado Bar Association's Legislative Policy Committee. Although the opposition's complaints were not made public, the Colorado Bar Association has stated that there were "significant problems in the bill as introduced." Proponents of the CBCA have worked with "a group of business lawyers to improve the legislation" in anticipation of reintroducing the CBCA in 2012. *See* Herrick K. Lidstone, Jr., *Entity Legislation Update from the Executive Council*, Colorado Bar Association Business Law Newsletter (February 2011), http://denbar.org/repository/Newsletter%20--%20February%2025,%202011.pdf.
[23] Colo. S.B. 11-005 §§ 7-138-102(4), -201(1).
[24] Colo. S.B. 11-005 § 7-138-201(1).
[25] *Id.*
[26] Colo. S.B. 11-005 § 7-138-102(7).
[27] Colo. S.B. 11-005 § 7-138-302.
[28] Colo. S.B. 11-005 § 7-138-401.
[29] *Id.* The annual benefit report is filed with the Secretary of State, but the benefit director's compensation and any other "financial or proprietary information may be omitted."
[30] Colo. S.B. 11-005 § 7-138-102(3).
[31] Colo. S.B. 11-005 § 7-138-102(4) (noting that the impact shall be "measured by a third-party standard"). Interestingly, one of the chief cheerleaders for benefit corporation legislation is B Lab, a non-governmental party that provides such annual reviews for benefit corporations. In addition to achieving a passing score on the annual review, B Lab requires annual certification fees as follows:

Annual Net Sales	***Annual Fee***
$0 - $1,999,999	$500
$2M - $4,999,999	$1,000
$5M - $9,999,999	$2,500

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Why Benefit Corporations? The Insufficiency of the Nonprofit and LLC Forms for Socially-Responsible Organizations

If an organization desires to pursue goals other than profit maximization, in the absence of a benefit corporation statute, the organization may choose to form as a nonprofit organization or a limited liability company ("LLC"). The intuitive choice, perhaps, is to form as a nonprofit organization. Indeed, the most salient aspect of the nonprofit form is the fact that directors may opt to pursue non-financial goals. As a result, socially-responsible organizations ("SROs") have historically organized as nonprofits.[32] However, this is not the only choice, as an SRO may also opt to form an LLC. Although managers of LLCs owe their members the same fiduciary duties as directors of corporations, LLCs may contractually limit such duties, thereby avoiding the *Newmark* issue.[33] Most LLC statutes are expansive enough to permit pursuit of either a double- or triple-bottom-line, and members of LLCs have great flexibility in drafting membership agreements (the primary governing document of LLCs), thereby allowing members to decouple decision-making rights from profit rights.[34]

Because both nonprofits and LLCs permit organizations to avoid profit maximization, one might question why SROs might require alternative entity forms. The answer goes beyond the restriction of pursuit of non-financial goals. For LLCs, the lack of an identifying label that distinguishes an SRO for the general public (the branding issue) is a primary concern.[35] Further, SROs (LLCs and nonprofits) share a concern that is identical to the challenge facing all entities: access to capital.[36]

Branding

Nonprofit organizations generally do not have a branding problem. By forming as a nonprofit entity, the state government (and for tax-exempt organizations, the federal government) provides a public signal that distinguishes the entity from those solely interested in profit maximization. However, consider an SRO that has decided to form as an LLC. There is no easy method to

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$10M - $19,999,999	$5,000
$20M - $99,999,999	$10,000
$100M+	$25,000

[32] However, there are a number of regulations (especially if the nonprofit organization is tax-exempt) that prohibit certain activities, including a prohibition against private inurement and engaging in certain political activities. Thus, despite the fact that the nonprofit form permits the pursuit of non-financial goals, depending on the SRO's specific intentions or revenue-generating mechanisms, the regulatory limitations may render the nonprofit organization form an imperfect entity choice. *See generally Exemption Requirements – Section 501(c)(3) Organizations*, IRS (Jan. 30, 2012), http://www.irs.gov/charities/charitable/article/0,,id=96099,00.html.
[33] *See* Mohsen Manesh, *Legal Asymmetry and the End of Corporate Law*, 34 DEL. J. CORP. L. 465, 470 (2009).
[34] *See* Kelley, *supra* note 18 at 370.
[35] *Id.* at 361.
[36] *Id.* at 352 (citing Allianz, Dupont, The Skoll Foundation. & SustainAbility, *Growing Opportunity: Entrepreneurial Solutions to Insoluble Problems* 4, 15 (Mar. 28, 2007), http://www.sustainability.com/library/growing-opportunity?path=growing-opportunity).

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differentiate the socially-responsible LLC from the multitude of LLCs formed solely to enrich their members. This lack of differentiation is important, as many "[s]ocial entrepreneurs believe that to succeed in gaining support from the general public, and, more importantly, from the various sources of capital they need access to–charitable, governmental, and private–they must create a recognizable brand for hybrid organizations."[37] The socially-responsible LLC may advertise its socially-responsible motives, but marketing can be expensive and ineffective,[38] and SROs seek a more concrete and impartial indication of their mission.

CBCA proponents hope that benefit corporations will solve the branding issue, arguing that "the primary benefit of the [benefit corporation statutes] will be to create a brand for corporations that are truly and fundamentally committed to socially beneficial outcomes."[39] This hope is contingent upon the general public becoming aware of the existence of the benefit corporation form. This is, of course, difficult to predict. However, the CBCA directly addresses the branding issue and is therefore a step in the right direction.

Access to Capital

Perhaps more important than the branding issue, SROs have very limited access to capital. This is true regardless of whether the SRO is a nonprofit organization or an LLC. Nonprofit organizations obtain capital primarily through donations and grants from private foundations and governmental entities.[40] If a nonprofit is unable to secure adequate capital through these means, the peculiarities of the nonprofit form prevent raising funds in the private market. For example, nonprofits are forbidden from issuing stock,[41] which forecloses the option of funding sources such as venture capitalists or other equity-seeking investors.[42]

Given the nonprofit's difficulty of obtaining capital through the private market, some SROs have formed as for-profit entities. As noted above, LLC statutes offer sufficient flexibility to permit pursuit of either a double- or triple-bottom-line. Further, an LLC may issue equity, thereby giving an SRO access to capital through venture capital financing.

The primary disadvantage for an SRO forming as an LLC is the general unavailability of capital available to nonprofits: private foundations and government.[43] The primary exception to this

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[37] Kelley, *supra* note 18, at 361.
[38] *Id.* (describing the difficulty of "convince[ing] consumers and individual investors that [the Socially-Responsible Organizations] are different from mere corporate philanthropy and [corporate social responsibility], both of which social entrepreneurs and socially conscious consumers view as too closely tied to corporate marketing and too often designed primarily to serve corporations' financial bottom lines.").
[39] Kelley, *supra* note 18, at 367.
[40] *Id.* at 354.
[41] COLO. REV. STAT. § 7-133-102 (2011).
[42] Kelley, *supra* note 18, at 353-54.
[43] *Id.* at 355. It should be noted, however, that LLCs may apply for tax-exempt status, which would make them eligible for such funds. However, in order to obtain tax-exempt status, the LLC's members must, in addition to other requirements, be 501(c)(3) organizations or governmental units, thereby severely limiting the potential purchasers of

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general rule is known as program-related investment ("PRI"). Generally, a private foundation may invest in a for-profit entity if the investment is characterized as PRI. To qualify as PRI, (i) the private foundation must be "motivated solely by a desire to accomplish its exempt purpose;" (ii) any resulting profit must not be a "significant factor motivating the [private foundation's] investment;" and (iii) "no electioneering and only limited lobbying purposes may be served by the investment."[44] If an investment is later deemed not to be PRI, the private foundation may be exposed to excise taxes.[45] For this reason, most private foundations view PRIs as risky. To achieve comfort in a PRI, the private foundation is forced to engage in meticulous monitoring of the recipient's activities to ensure compliance with the three PRI requirements.[46] Depending on the capacity of the private foundation, this might be a prohibitively expensive alternative, rendering PRIs unattractive.

The access to capital issue is not completely addressed by the CBCA.[47] Although benefit corporations may issue stock and therefore engage in some market-based financing options,[48] the capital traditionally available to nonprofits (funds from private foundations) is not available to the benefit corporation.

Recommendations for Strengthening the CBCA: Eliminating the Third-Party Evaluator and Emulating the L3C PRI Solution

The Third-Party Evaluator Problem

The deceptive simplicity of the CBCA requirements masks an unfortunate failing in the legislation. The question of how, exactly, an entity determines the extent to which it has promoted "a material, positive impact on society and the environment" is not clear. Perhaps unsurprisingly, the drafters elected not to embark on the definitional odyssey of identifying what exactly is and isn't "material." Rather, similar to other benefit corporation statutes,[49] the CBCA relies upon review by an unidentified, non-governmental third party.[50] Given the recent failures of private third-party ratings agencies to maintain independence and provide consumer protection,[51] the decision to leave such a fundamental determination to a non-government entity

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equity. *See generally* Richard A. McCray and Ward L. Thomas, *Limited Liability Companies as Exempt Organizations – Update* (2001), *available at* http://www.irs.gov/pub/irs-tege/eotopicb01.pdf.

[44] Kelley, *supra* note 18, at 356.

[45] I.R.C. § 4944(c) (2006).

[46] *Id.*

[47] *See* Taylor, *supra* note 4 at 1515 (noting that benefit corporations "will be limited in their access to capital, as investors seeking maximum economic returns will direct their money elsewhere.").

[48] *But see Id*.

[49] *See Benefit Corporation Statutes*, *supra* note 15.

[50] S.B. 11-005, 68th Gen. Assemb., Reg. Sess. § 7-138-102(4) (Colo. 2011) (noting that the impact shall be "measured by a third-party standard").

[51] *See* Jonathan Katz, Emanuel Salinas, and Constantinos Stephanou, *Credit Ratings Agencies*, CRISISRESPONSE 8, (Oct. 2009), http://rru.worldbank.org/documents/CrisisResponse/Note8.pdf. ("Credit rating agencies have been extensively criticized for their role in fueling the unsustainable growth of the asset-backed structured finance debt market–a major catalyst for the global financial crisis.")

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is curious, if not negligent. However, the delegation itself is less troubling than the virtual dearth of minimum qualifications of such agencies under the proposed legislation. The qualifications of such third party under the CBCA are that it (i) be independent[52] and (ii) use a standard that is transparent.[53] There are no further requirements, and there is no suggested criterion or standard by which the benefit corporation is to be evaluated. Indeed, the CBCA fails to explicitly require *any* evaluation of the applicant's public benefit. Such an evaluation is presumably implied, but it does not take a great cynic to imagine the myriad of ways the unscrupulous might obviate the CBCA's intent.

The Third-Party Evaluator is Superfluous

The fact that the third party evaluator is given unbridled discretion to determine the evaluative rubric obscures the real issue: such evaluation is unnecessary. One can argue that there is no reason to impose this administrative burden upon benefit corporations. Unlike tax-exempt organizations, neither state nor federal governments bestow any benefits upon benefit corporations that are not enjoyed by traditional for-profit corporations. By permitting the creation of benefit corporations, governmental entities are not forgoing tax revenue[54] and contributions to benefit corporations are not tax-deductible. The government, therefore, has little interest in the annual monitoring of benefit corporations.

It is difficult to imagine a viable argument that benefit corporations could not be regulated in the same manner as traditional corporations. This becomes clear by inverting the facts of *Newmark*. Imagine that Craigslist were formed as a benefit corporation and eBay invested in Craigslist because of its operation as a community service. If the directors of Craigslist were to ignore community service and begin charging for access, eBay could sue the directors to stop the offending behavior under a benefit enforcement proceeding.[55] If it is advisable to permit traditional corporations to self-regulate their activities through shareholder derivative actions, why is this inappropriate for benefit corporations?

As noted above, the requirement of a third-party evaluation is imprecise enough to give rise to the specter of circumvention. This requirement's deletion would not only eliminate a requirement providing little direction for such third party evaluator, but also align regulation of benefit corporations with the more familiar regulation of traditional corporations.

The L3C Solution to the PRI Problem

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[52] Colo. S.B. 11-005 § 7-138-102(4) requires the standard to be "developed by a person that is independent of the benefit corporation."

[53] Colo. S.B. 11-005 § 7-138-102(9). A standard is deemed "transparent" if "the following information about the standard is available: (I) the factors considered when measuring the performance of a business; (II) the relative weighting of those factors; and (III) the identity of the persons that develop ad control changes to the standard and the process by which those changes are made."

[54] However, there is an argument that by creating an entity that will make less money, the total amount of state and federal taxes collected will be negatively affected.

[55] Colo. S.B. 11-005 § 7-138-102(3).

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As noted above, the benefit corporation form under the CBCA does not address the access to capital issue[56] and LLCs are ill-equipped to entice funding from private foundations because most private foundations view PRIs in LLCs as risky. To address this second issue, a new form of LLC, the L3C, was designed. To quell the hesitations of private foundations, the L3C model legislation directly quotes the language of Section 4944(c) of the Internal Revenue Code. L3C proponents hope this direct quote will convince the IRS to rule that L3C investments automatically qualify as PRI. The logic is simple: if an entity qualifies as an L3C under a state law that parrots Section 4944(c) of the Internal Revenue Code, then any investment in such entity must therefore qualify as PRI.[57] Although the IRS has yet to issue a ruling that L3Cs are automatically eligible for PRI (a fact which likely gives private foundations pause and, admittedly, limits the usefulness of the L3C form[58]), this is an attempt to ameliorate the access to capital problems faced by SROs formed as LLCs.

The Colorado legislature should follow the lead of the L3C model statute drafters and include the language of Section 4944(c) of the Internal Revenue Code in the CBCA.[59] As noted above, the drafters of model L3C legislation hope investments in L3Cs will automatically qualify as PRIs. Although the IRS has yet to issue such a ruling, this is at least an attempt to address the access to capital problem. Further, even without clear direction from the IRS, the explicit statutory language might provide some comfort to private foundations. Finally, if the IRS ever rules on the issue, it would free private foundations to invest in benefit corporations without fear of future excise tax liability. This would not completely solve the access to capital issue, but it would align the CBCA with L3C proponents and has the potential to open up an avenue for investment that would not be available for benefit corporations.

Conclusion

The CBCA is not expected to create much revenue for the state of Colorado and its implementation will cost an estimated $52,688 in computer system modifications.[60] The CBCA, however, is not intended to generate revenue. It was drafted to address obstacles faced by SROs. Although it fails to address the access to capital issue, the CBCA takes active steps toward solving the branding problem. This commendable, if modest, success should not be ignored.

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[56] *See* Taylor, *supra* note 4 at 1515 (noting that benefit corporations "will be limited in their access to capital, as investors seeking maximum economic returns will direct their money elsewhere.").
[57] Kelley, *supra* note 18, at 372-73; *see also* Taylor, *supra* note 4, at 1516-17.
[58] *See* Daniel S. Kleinberger, *A Myth Deconstructed*, 35 DEL. J. CORP. L. 879 (2010); J. William Callison & Allan W. Vestal, *The L3C Illusion: Why Low-Profit Limited Liability Companies Will Not Stimulate Socially Optimal Private Foundation Investment in Entrepreneurial Ventures*, 35 VT. L. REV. 273 (2010). *See also* Taylor, *supra* note 4, at 1516 ("The efficacy of the L3C designation depends on the willingness of the IRS to support the idea, and there is currently no evidence that it will do so.").
[59] Colorado held committee hearings on proposed L3C legislation in 2010.
[60] Final Fiscal Note for SB11-005, Colorado Legislative Council Staff Fiscal Note (May 20, 2011) http://www.leg.state.co.us/CLICS/CLICS2011A/csl.nsf/BillFoldersSenate (follow "FN - 5/20/2011" hyperlink for Bill # SB11-005), (last visited January 3, 2012).

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However, if legislators were to adopt the recommendations in this article, the potential successes of the CBCA would be much greater. Certainly, it would not eliminate all problems faced by SROs, but it would be a larger step in the right direction.

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