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Cooley Releases Public Benefit Corporation Incorporation Package

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The Delaware Public Benefit Corporation (PBC) is a new form of corporate organization that is of potentially significant interest to higher education institutions. A PBC has virtually all of the same attributes as a customary business corporation but with one major difference: unlike traditional corporations, the directors of a PBC are required to consider its public benefit purpose and the interests of those materially affected by the corporation's conduct in making business decisions.

This speaks directly to a major challenge to institutions that are organized as business corporations: the claim, which is indeed based on legal principles, that corporate directors and management are obligated to always give full consideration to preserving shareholder value. In a PBC, a company's leadership is not only legally protected when it acts in a manner that is consistent with furthering its public benefit purpose to the advantage of those it serves, even when that may not maximize shareholder value, but it also has an affirmative obligation to do so.

While no postsecondary institution, regardless of how it is organized, can long succeed without putting the interests of students first, the legal tension that attends traditional for-profit corporate structures has strained this relationship and fueled public concern over priorities. Although so far neither regulators nor accreditors have formally differentiated between schools that are organized as PBCs and those that are not, there are growing indications that this new corporate form may provide a more comfortable vehicle for the investor financing of postsecondary education, and over time that may be reflected in differential, and more favorable, treatment of PBCs. At a time when securing both public funding and philanthropic support is becoming increasingly challenging, the PBC option may prove a viable third way to ensure access to quality, affordable higher education.

With its new PBC Incorporation Package, Cooley seeks to address the lack of publicly available incorporation documents for Delaware PBCs and help institutions and investors determine whether being a public benefit corporation is appropriate for their enterprise. To access the PBC Incorporation Package and learn more about PBCs, visit our sister site, Cooley GO.

Mike Goldstein has been a pioneer in the development of new and more effective and efficient approaches to education in general and eLearning in particular through the creation of innovative approaches to combining the resources and interests of the various sectors of the education, technology, financial and governmental communities.
