CONVERSION TO A BENEFIT COMPANY AND DISSENTERS' RIGHTS

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I. INTRODUCTION

This Article focuses on dissenters' rights (also known as appraisal rights) in cases of conversion of a company to a benefit company and termination of the benefit status. It is worth emphasizing that dissenters' and appraisal rights have the same meaning and are often used interchangeably.[1] Of course, the wording of each state statute varies, sometimes referring to one or the other concept, even though not expressly. The concept of dissenters' rights is a bit wider. It is apt to incorporate regulations that address the issue of protecting minority shareholders ("minorities"), even if they do not explicitly mention such an issue. These regulations may pertain to objections or dissent regarding charter amendments, or they may relate to the withdrawal right from an LLC, which could be outlined in the operating agreement in cases of dissent.

In addition to the rules governing Benefit Corporations, this Article also encompasses regulations concerning Benefit Limited Liability Companies (BLLC), Low-Profit Limited Liability Companies (L3C), and Limited Liability Companies (LLCs) as a flexible model, eligible for social entrepreneurs. This Article will specifically focus on states with significant

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1 *See* Steven J. Cleveland, *Appraisal Rights and "Fair Value"*, 43 CARDOZO L. REV. 921, 922 (2022) [hereinafter Cleveland]; Barry M. Wertheimer, *The Shareholders' Appraisal Remedy and How Courts Determine Fair Value*, 47 DUKE L.J. 613, 614 (1998) [hereinafter Wertheimer, *Shareholders' Appraisal Remedy*].

amounts of benefit companies. Although the regulation of dissenters' rights varies across state statutes, it is possible to define a general framework and generally prevailing trends in order to analyze the most influential regulations.

In the previous decades, there have been radical changes in the cases where dissenters' rights are provided.[2] When comparing scholarly analysis of the late 1990s to current company law regulations, the tendency towards substantially reducing the scope of application of dissenters' rights is clear.[3] Going into deep detail about the history of dissenters' rights is not the goal of this Article. However, the changes in dissenters' rights regulations, which occurred in a relatively short period, seem more relevant than their modifications during their first century of life. While it was reasonably common thirty years ago to afford the right in case of dissent from fundamental transactions or alterations of shareholders' rights, it is becoming increasingly frequent to provide for such minority protection only in cases related to minority cash out.[4]

II. THE EVOLUTION OF DISSENTERS' RIGHTS IN UNITED STATES' COMPANY LAW

A. Dissenters' Rights and Majority Rule

The origins of dissenters' rights in United States corporate law date back to the nineteenth century,[5] when the need to overcome unanimous consent became clear.[6] Prior to the creation of dissenters' rights, amendments to a corporate charter required a unanimous vote from all shareholders of the company.[7] The realization that dissenters' rights were necessary stemmed from two different but related reasons. First, companies wanted to avoid the impact of minority shareholders' vetoes, which tended to obstruct valuable modifications of the company agreement.[8] Secondly, allowing such

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2 *See* Matthew Evans Miehl, *The Cost of Appraisal Rights: How to Restore Certainty in Delaware Mergers*, 52 GA. L. REV. 651 (2018).

3 For example, Delaware regulation used to provide appraisal right in the mentioned cases, and currently does not anymore. Peter V. Letsou, *The Role of Appraisal in Corporate Law*, 39 B.C. L. REV. 1121, 1121 n.1 (1998).

4 *See id.*

5 *See* Thomas E. Rutledge, *The 2015 Amendments to the Kentucky Business Entity Statutes*, 43 N. KY. L. REV. 129, 134 n.25 (2016) [hereinafter Rutledge] (referring to the 1928 Uniform Business Corporation Act); *see also* Robert B. Thompson, *Exit, Liquidity, and Majority Rule: Appraisal's Role in Corporate Law*, 84 GA. L.J. 1, 55 (1995) [hereinafter Thompson] (listing the origins of appraisal provisions).

6 *See* Barry M. Wertheimer, *The Purpose of the Shareholders' Appraisal Remedy*, 65 TENN. L. REV. 661, 664 (1998) [hereinafter Wertheimer, *Purpose of the Shareholders' Appraisal Remedy*].

7 *See id.*

8 *See id.*

modifications promoted company and economic progress.[9] As a counterbalance to the exclusion of the veto right for every single shareholder, national legislation started to provide a different form of protection, consisting of the right to have one's stocks bought out by the company in case of dissent from specific relevant modifications.[10]

Given the history of dissenters' rights, some scholars believed there was a connection between the rights of dissenting shareholders and the fundamental transactions desired by majority shareholders.[11] Consequently, these scholars regarded safeguarding the interests of minority shareholders as one of the critical purposes of these rights.[12] Dissenters' rights generally provide a shareholder with a "way out" of a modified investment that no longer resembles the original investment made by the shareholder.[13] This is particularly important in closed or private companies with no easy market exit.[14] On the contrary, it usually does not apply when a market allows shareholders to sell quickly, which occurs under Delaware regulation.[15]

The connection between dissenters' rights and minority protection is evident in light of the most recent amendments to appraisal regulations across the United States.[16] However, as this Article will highlight below, such connection should be more accurately described, paying due attention to the constant evolution of company law regulations regarding the dissenters' rights, as it often regards only some specific cases in which minority shareholders are provided such protection.

In other words, it is necessary to distinguish the links between dissenters' rights on the one hand and majority rule and minority protection on the other. While minority protection is related to majority rule, dissenters' rights tend to protect minorities only in specific cases of majority decisions.[17] At this point, it is prudent to seek a more precise definition of the scope of

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9 *See id.*; Thompson, *supra* note 5, at 3 (listing the origins of appraisal provisions); William J. Carney, *Fundamental Corporate Changes, Minority Shareholders, and Business Purposes*, 5 AM. BAR FOUND. RES. J. 69, 78 (1980).

10 *See* Rutledge, *supra* note 5, at 135 n.26 (references to case law about the compensation granted to shareholders for the abrogation of the common law right to consent to fundamental transactions through appraisal right); Wertheimer, *Shareholders' Appraisal Remedy*, *supra* note 1, at 614.

11 *See* Wertheimer, *Purpose of the Shareholders' Appraisal Remedy*, *supra* note 6, at 667.

12 *See* Rutledge, *supra* note 5, at 134 (discussing the origin of appraisal statutes).

13 Wertheimer, *Shareholders' Appraisal Remedy*, *supra* note 1, at 614; Wertheimer, *Purpose of the Shareholders' Appraisal Remedy*, *supra* note 6, at 667.

14 Douglas K. Moll, *Minority Oppression & (and) the Limited Liability Company: Learning (Or Not) from Close Corporation History*, 40 WAKE FOREST L. REV. 883, 891, 948 (2005) (underscoring the absence of a market for shares in close corporations).

15 *See* DEL. CODE ANN. tit. 8, § 262 (2023).

16 *See* Rutledge, *supra* note 5, at 135 n.25; George S. Geis, *An Appraisal Puzzle*, 105 NW. U. L. REV. 1635, 1644 (2011) [hereinafter Geis]; Wertheimer, *Shareholders' Appraisal Remedy*, *supra* note 1, at 615; Thompson, *supra* note 5, at 4.

17 *See* Wertheimer, *Shareholders' Appraisal Remedy*, *supra* note 1, at 614; Wertheimer, *Purpose of the Shareholders' Appraisal Remedy*, *supra* note 6, at 661.

application of dissenters' rights, which can be accomplished by delineating the minority interests currently associated with it.

B. Dissenters' Rights and Minority Protection

As several scholars underscore, the purpose of dissenters' rights is gradually shifting from protecting minority shareholders who dissent from fundamental transactions to protecting them in cases of squeeze-out deriving from mergers or share exchanges.[18] Dissenters' rights have become a mechanism that serves as a check against management (and the majority shareholders) in mergers and other transactions where the majority forces the minority shareholders out of the company.[19] As a result, it can assist in deterring opportunistic behaviors exhibited by the majority,[20] as well as in overseeing transactions in which management, controlling the transactions, may face conflicts of interest.[21]

The utilization of dissenters' rights as a means of protecting minority interests in merger scenarios has become a prevalent aspect of state statutes in the United States in recent decades, consistently ensuring this right in such instances.[22] The sale of all or substantially all of the company's assets was frequently associated with dissenters' rights.[23] The majority of regulations typically granted these rights to shareholders who opposed specific changes to the corporate charter.[24] However, as already mentioned, this scenario has significantly changed over the last few years. A comparison between regulations cited twenty years ago as samples of the provision of dissenters' rights arising from charter amendments and their current formulation clearly shows a consistent reduction of the scope of application of dissenters' rights.[25] Certain state statutes provide protection for dissenters' rights in the event of charter amendments, using language that can encompass any

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18 *See* Rutledge, *supra* note 5, at 135 n.25 (referring to the 1928 Uniform Business Corporation Act); Geis, *supra* note 16, at 1644 (holding that appraisal right rarely arises from dissent from a new line of business); Wertheimer, *Shareholders' Appraisal Remedy*, *supra* note 1, at 615; Thompson, *supra* note 5, at 4 (noting that less than one out of ten cases on appraisal rights arise from fundamental change concerns); *Id*. at 25 (underscoring that appraisal right is usually invoked in case of minority squeeze out).

19 *See id.*

20 Thompson, *supra* note 5, at 4.

21 *See* R. Garrett Rice, *Give Me Back My Money: A Proposed Amendment to Delaware's Prepayment System in Statutory Appraisal Cases*, 73 BUS. L. 1051, 1057 (2018) [hereinafter Rice]; Thompson, *supra* note 5, at 53.

22 *See* Geis, *supra* note 16, at 1636 n.9 (holding that appraisal right rarely arises from dissent from a new line of business); Thompson, *supra* note 5, at 9.

23 *See id.*

24 *See* Letsou, *supra* note 3, at 1121 (underscoring the necessary relevance of charter amendments, like alterations of the corporate purpose).

25 For example, Delaware regulation used to provide appraisal right in the mentioned cases, but no longer does so. *Compare* Letsou, *supra* note 3, at 1121 n.1 *with* DEL. CODE ANN. tit. 8, § 262 (2023).

adverse changes to stockholders' rights.[26] In contrast, other statutes address specific amendments, such as modifications to preferential distribution rights or the creation, alteration, or elimination of a redemption right.[27] Therefore, even if the dissent from charter amendments can trigger dissenters' rights, a specific definition of charter amendments relevant in this regard is necessary, and such a definition typically shows a relatively narrow extension of dissenters' rights.[28]

In conclusion, dissenters' rights are accorded when the risk run by shareholders significantly changes due to majority alterations.[29] However, at the same time, while the modification of such a risk arising from a cash-out merger—consisting of potentially unfair evaluation of stock—typically entails this right, other charter amendments do not have the same consequences unless expressly provided in the state statutes or the charter of the corporation.[30]

C. Two Influential Regulations: Model Business Corporation Act vs. Delaware Corporation Act

Two different regulatory models regarding dissenters' rights (appraisal rights) are considered particularly influential in the United States: The Model Business Corporation Act and the Delaware Corporation Act.[31] The diffusion of rules provided by the Model Business Corporation Act through adopting resembling regulations is relevant.[32] Moreover, Delaware's leading position in corporate law is also well known.[33]

Delaware regulations afford appraisal rights in certain merger scenarios.[34] Delving into every facet of this regulation is not the objective of this Article, which primarily concentrates on appraisal rights. Nevertheless,

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26 *See* Cleveland, *supra* note 1, at 926. The case of Maryland will be analyzed in detail *infra* Part II, B.

27 *See* Thomas E. Rutledge & Katharine M. Sagan, *An Amendment Too Far? Limits on the Ability of less than All Members to Amend the Operating Agreement*, 16 FLA. ST. U. BUS. REV. 1, 31 (2017).

28 *See id.*

29 *See* Letsou, *supra* note 3, at 1137 (underscoring the unpredictability of the alteration); *id.* at 1150 (charter amendments triggering appraisal right are supposed to be "serious," such as those altering the corporation's purposes).

30 *See generally* Rutledge & Sagan, *supra* note 27, at 31.

31 MODEL BUS. CORP. ACT §§ 1.01-18.05 (2023) (AM. BAR ASS'N); DEL. CODE ANN. tit. 8, §§ 101-616 (2023).

32 *See* Rice, *supra* note 21, at 1083; Mary Siegel, *An Appraisal of the Model Business Corporation Act's Appraisal Rights Provisions*, 74 LAW & CONTEMP. PROBS. 231, 232 (2011) [hereinafter Siegel].

33 Cleveland, *supra* note 1, at 924.

34 *See* DEL. CODE ANN. tit. 8, § 262 (2023).

it is noteworthy to underscore the recent uptick in the utilization of this right, reaffirming its potential significance in broader contexts.[35]

The provision in the Model Business Corporation Act extends to additional instances where appraisal rights apply, such as the disposition of assets and amendments of the Articles of Incorporation concerning a class, series of shares that reduce the number of shares of a class, or series owned by the shareholder to a fraction of a share (provided the corporation is obligated or entitled to repurchase the fractional share created).[36] It also expressly provides for the possibility of admitting appraisal through the Articles of Incorporation, bylaws, or a board of directors' resolution.[37]

Again, even if the scope of the application of appraisal rights is relatively broad,[38] it is worth underscoring that the amendments from which it can arise are well-defined and clearly apt to cover only particular cases of alteration of the risk run by minority shareholders dissenting from such amendments.

D. Withdrawal Rights in LLCs

Due to the radical differences between corporations and LLCs,[39] considering the withdrawal rights rules in LLC statutes could seem peculiar. However, in light of the relatively high number of Benefit LLCs compared to the number of Benefit Corporations,[40] it is necessary because omitting this point would give only a partial description and analysis of the problem. Not surprisingly, despite some common attributes of dissenters' rights, withdrawal right regulations present specific features.

Corporation and LLC laws in the United States vary in every state.[41] However, LLC statutes tend to vary much more than corporation statutes.[42]

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35 *See* Charles K. Korsmo & Minor Myers, *Interest in Appraisal*, 42 J. CORP. L. 109, 111 (2016); Wei Jiang et al., *Appraisal: Shareholder Remedy or Litigation Arbitrage*, 59 J.L. & ECON. 697 (2016).

36 MODEL BUS. CORP. ACT § 13.02 (2023) (AM. BAR ASS'N).

37 *See id.* The radical differences between Delaware and MBCA regulations are stressed by Siegel. Siegel, *supra* note 32, at 23; Wertheimer, *Shareholders' Appraisal Remedy*, *supra* note 1, at 621.

38 *See* Wertheimer, *Shareholders' Appraisal Remedy*, *supra* note 1, at 703 (discussing the broadness of the MBCA and the drafter's intentions in Appraisal Statutes).

39 Robb Watts & Jane Haskins, *LLC Vs. Corporation*, FORBES ADVISOR (Aug. 1, 2022, 4:09 PM), https://www.forbes.com/advisor/business/llc-versus-corporation/.

40 Although this data is not recent, it is interesting to note that out of more than 5,000 benefit entities in total, almost 1,000 were benefit LLCs when B Lab formed a list. *See Benefit Corporations List*, B LAB, https://data.world/blab/benefit-corporations-list (last visited Nov. 21, 2023). Very different ratios emerge considering Delaware (3136 PBCs vs 175 Benefit LLCs). *id.*; *see also Active Benefit Companies*, OREGON.GOV (Feb. 20, 2024), https://data.oregon.gov/business/Active-Benefit-Companies/baig-8b9x.

41 *State by State Corporate Law Codes*, NORTHWEST REGISTERED AGENT, https://www.northwestregisteredagent.com/start-a-business/state-laws (last visited Feb. 16, 2024).

42 *See* ALAN PALMITER & FRANK PARTNOY, CORPORATION: A CONTEMPORARY APPROACH 136 (St. Paul: West Academic Publishing ed., 1st ed. 2010).

This remark tends to have limited relevance regarding the dissenters' and withdrawal rights. As shown, there are significant differences between state corporate regulations of dissenters' rights.[43] On the contrary, there are clear trends in the evolution of withdrawal or dissociation rights regulations under LLC statutes.[44]

When examining the regulations in place during the 1990s, it was common for LLC statutes to grant members withdrawal rights unless otherwise outlined in the operating agreement.[45] Since then, the general trend has been in the direction of removing the default right to withdraw and obtain the value of the interest.[46] Reasonably, this evolution is due to the modifications of tax law.[47] Prior to 1996, whether the LLC tax rules applied was determined by the absence of at least two out of four corporate characteristics, one of which was the continuity of life.[48] Providing for the LLC's dissolution upon the exercise of withdrawal rights, state statutes aimed to ensure the application of LLC-specific taxation.[49] Under different LLC taxation regimes introduced in 1997, there was no need to avoid the LLC's perpetual duration to secure the application of the specific rules, and the default rules about withdrawal and dissolution were modified accordingly.[50] In addition, the absence of a statutory withdrawal right can be explained by considering potential adverse tax consequences that could arise from it.[51]

Under current uniform and state regulations, the establishment of any member dissociation protocol typically relies on specific provisions outlined in the operating agreement,[52] or it may be restricted to mergers, possibly due

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43 *See* Cleveland, *supra* note 1, at 926.

44 *See* Allan G. Donn, *Withdrawal and Cash-out from Partnerships and LLCs*, J. PASSTHROUGH ENTITIES, Nov. -Dec. 2000, at 13, 15.

45 Various state statutes mentioned, *see* Robert R. Keatinge et al., *The Limited Liability Company: A Study of the Emerging Entity*, 47 BUS. LAW. 375, 418 (1991).

46 *See* Donn, *supra* note 44, at 15 (underscoring that withdrawal rights became a default rule in the Uniform Limited Liability Company Act (ULLCA) and proposing examples of state statutes in which there is no default right to withdraw). The trend is thus confirmed: *see* further examples in Allan G. Donn, *Unincorporated Business Entity Statutory Developments*, 2 J. PASSTHROUGH ENTITIES 15, 16 (1999).

47 *See* Jens Dammann, *Homogeneity Effects in Corporate Law*, 46 ARIZ. ST. L. J. 1103, 1113 (2014).

48 *Id*.

49 *See id.*

50 *See id.* at 1113-114.

51 *See* Daniel M. Hausermann, *For a Few Dollars Less: Explaining State to State Variation in Limited Liability Company Popularity*, 20 U. MIA. BUS. L. REV. 1, 25 (2011).

52 In some states, withdrawal rights can be accorded by the operating agreement. *See* N.Y. LTD. LIAB. CO. LAW, § 606(a) (McKinney 2023); TEXAS BUS. ORGS. CODE ANN. § 101.107 (2023) (recognizing it can be amended by the operating agreement in light of §101.054). With regard to appraisal right, this is not the same, but does have a similar function. DEL. CODE ANN. tit. 6, § 18-210 (2023); *see also* MD. CODE ANN. CORPS. & ASS'NS § 4A-605 (1) (2023) (stating it can be excluded). It also seems relevant to review the interest transfer regime in these cases. All of these statutes provide for the possibility of excluding transfers in the operating agreement. N.Y. LTD.

to the emulation of the corporation regime as a model.[53] Under the Revised Prototype Limited Liability Companies Act, there is no mandatory rule imposing a dissociation right,[54] and—even more interestingly—this right does not imply the right of dissociated members to have their interests purchased by the company.[55] Once dissociated, they lose their rights as members and become transferees.[56] This approach mitigates the primary risk faced by a company resulting from a member's departure—the obligation to buy out her interest. Of course, this approach raises a "lock in" issue,[57] which members and their advisors should consider carefully. Additionally, the possibility of waiving such a right represents another potential shortcoming of this protective measure.[58] Finally, there are also different remedies provided by the Uniform Limited Liability Company Act and the Revised Uniform Limited Liability Company Act.[59] For example, applying for dissolution of an LLC may resolve the issue, but only in the case of oppressive misconduct.[60]

In summary, when it comes to addressing withdrawal rights in an LLC, it typically requires a review of the operating agreement.[61] The significant freedom to customize terms within this model is crucial, as most state regulations do not establish default provisions or mandatory rules regarding this matter.[62] It is difficult to predict how frequently members will defend themselves through appropriate provisions on withdrawal rights in the

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LIAB. CO. LAW § 603(a) (McKinney 2023); TEXAS BUS. ORG. CODE, tit. 3, § 101.108 (stating it can be amended by the operating agreement in light of § 101.054); DEL. CODE ANN. tit. 6 § 18-702 (a) (2023); MD. CODE ANN. CORPS. & ASS'NS § 4A-603(a) (2023).

53 *See* Rutledge & Sagan, *supra* note 27, at 32.

54 *See* the Revised Prototype Act Comment referring to RPLLCA§§ 601-602, in Revised Prototype Limited Liability Company Act Editorial Board, LLCs, Partnerships and Unincorporated Entities Committee, ABA Section of Business Law, *Revised Prototype Limited Liability Company Act*, 67 BUS. LAW. 117, 171 (2011).

55 *See* the Revised Prototype Act Comment referring to RPLLCA§§ 601-602, in Revised Prototype Limited Liability Company Act Editorial Board. I*d.* The same solution is proposed also in certain state statutes. *See, e.g.,* VA. CODE ANN. § 13.1-1040.2 (2023). It is worth highlighting that under this statute it is also possible to exclude the transfer of interest in the operating agreement. *See id.* at § 13.1-1039.

56 *See Revised Prototype Limited Liability Company Act*, *supra* note 54, at 171.

57 *See* Daniel S. Kleinberger, *The LLC as Recombinant Entity: Revisiting Fundamental Questions Through The LLC Lens*, 14 FORDHAM J. CORP. & FIN. L. 473, 488 (2009) (underscoring the differences between LLCs and close corporations from this perspective and clarifying that "the transferee is 'locked in' to its status in perpetuity.").

58 *See* Rutledge & Sagan, *supra* note 27, at 33.

59 *See* Joan MacLeod Heminway, *The Death of an LLC: What's Trending in LLC Dissolution Law*, 2016 BUS. L. TODAY 1, 2 (2016) [hereinafter Heminway, *Death of an LLC*].

60 *See id.*

61 *See* Anthony Cartee, *LLC Withdrawal and the Operating Agreement: Know Where the Exits Are Before Creating Your LLC*, CARTEE, LC, https://www.ac-legal.com/llc-withdrawal-operating-agreement/ (last visited Feb. 16, 2024).

62 *See* Donn, *supra* note 44, at 15 (proposing examples of state statutes in which there is no default right to withdraw).

operating agreement. However, this does not seem to be frequent. Especially considering that under Delaware regulation and the Revised Prototype Limited Liability Companies Act,[63] the operating agreement could be written, oral, or implied, and, at least in the case of oral or implied agreements, it is plausible that members could not cover some issues.

III. CONVERSION TO A BENEFIT CORPORATION AND DISSENTERS' RIGHTS

Some scholars in the United States commonly perceive dissenters' rights cases resulting from the conversion of a standard corporation to a benefit corporation as unlikely.[64] This perception endures despite the occurrence of such cases at least once in the past.[65] Given their historical incidence, it is reasonable to anticipate that similar cases may arise in the future.[66]

Indeed, it is noteworthy to recognize that establishing a benefit company entails more than just converting from a standard corporation to a benefit corporation.[67] This can also be achieved through spin-offs, which do not typically trigger dissenters' rights.[68] However, this alternative is available only to companies capable of bearing its associated costs and when it aligns with their net worth. Conversion can be more demanding in certain respects. However, it may also hold potential appeal for small businesses, which comprise most of the benefit market.[69] Conversion to a benefit corporation

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63 Del. Ltd. Liab. Corp. Act, DEL. CODE ANN. tit. 6, § 18-101 (9) (2023), and REVISED PROTOTYPE LTD. LIAB. CORP. ACT, § 102 (13) (AM. BAR. ASS'N 2011) use the same language to this extent.

64 J. Haskell Murray, *The Social Enterprise Law Market*, 75 MD. L. REV. 541, 558 (2016); Joan Macleod Heminway, *Corporate Purpose and Litigation Risk in Publicly Held U.S. Benefit Corporations*, 40 SEATTLE U. L. REV. 611, 627 (2017) [hereinafter Heminway, *Corporate Purpose and Litigation Risk*] (making examples of possible actions brought by shareholders, without mentioning dissenters' rights).

65 *See* John Montgomery, *Mastering the Benefit Corporation*, 2016 BUS. L. TODAY 3 (2016), available at https://growthorientedsustainableentrepreneurship.files.wordpress.com/2016/07/gv-an-introduction-to-benefit-corporations.pdf.

66 *See* Frederick H. Alexander et al., *M&A under Delaware's Public Benefit Corporation Statute: A Hypothetical Tour*, 4 HARV. BUS. L. REV. 255, 257 (2014).

67 *See, e.g.*, Christine Mathias, *What is a Benefit Corporation?* NOLO, https://www.nolo.com/legal-encyclopedia/what-is-a-benefit-corporation.html?cjdata=MXxOfDB8WXww&utm_campaign=cj_affiliate_sale&utm_medium=affiliate&utm_source=cj&utm_content=5250933&utm_term=12360908&cjevent=86cf7d958e5911ee82b900070a82b824&PCN=Microsoft+Shopping+%28Bing+Rebates%2C+Coupons%2C+etc.%29&PID=100357191&data=source:cj_affiliate|CID:5250933|PID:100357191 (last visited on Nov. 28, 2023).

68 *See* David Porter, *Competing with Delaware: Recent Amendments to Ohio's Corporate Statutes*, 40 AKRON L. REV 175, 191 (2007) (indicating in most states spin-offs do not require shareholder approval).

69 *See* Ellen Berrey, *Social Enterprise Law in Action: Organizational Characteristics of U.S. Benefit Corporations*, 20 TRANSACTIONS: TENN. J. BUS. L. 21, 40 (2018).

generally entails an amendment of the corporate purpose,[70] which is likely to be the basis for dissenters' rights provisions.

There are at least two noteworthy observations to be made regarding this, considering two distinct perspectives on the effects of such a conversion. First, becoming a benefit corporation typically involves embracing a particular benefit objective, as mandated by Delaware regulations (though not under the Model Benefit Corporation Legislation).[71] This conversion may mean shifting from a broad, general purpose to a more specific one, and this change can be significant.[72] This becomes particularly pertinent when the intended purpose is broad and holds the potential to modify the risks borne by shareholders due to its connection with the company's initial mission and operations.[73]

Secondly, a conversion to a benefit corporation could have substantial and non-substantial results regarding the alteration of the risk run by shareholders, depending on each case's peculiarities. With this in mind, given that public benefit definitions are intentionally broad to accommodate socially conscious entrepreneurs in choosing the most suitable objectives,[74] it is not immediately apparent that the conversion significantly affects them in terms of corporate purposes. Rather, this is contingent upon the benefit goal the corporation will pursue and the significance of the alteration in the corporation's activities resulting from the adoption of the benefit status.

Following the Model Benefit Corporation Legislation, state statutes can only require a general public benefit, which can be vague and ambiguous.[75] This ambiguity can challenge directors in later efforts to define it more precisely.[76] In these cases, assuming the existence of a fundamental amendment of the corporate purpose may not be correct. Even if Delaware regulations mandate a specific public benefit, it might be restricted to just one of several potential goals. In such cases, its significance should not be assumed to be self-evident. Scholars emphasize the potential for pursuing a

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70 *See* Janine S. Hiller & Scott J. Shackelford, *The Firm and Common Pool Resource Theory: Understanding the Rise of Benefit Corporations*, 55 AM. BUS. L. J. 5, 31 (2018) [hereinafter Hiller & Shackelford]; William H. Clark Jr. & Elizabeth K. Babson, *How Benefit Corporations are Redefining the Purpose of Business Corporations*, 38 WM MITCHELL L. REV. 817, 819 (2012) [hereinafter Clark Jr. & Babson].

71 *See* DEL. CODE. ANN. tit. 8 § 362 (2023); *contra* MODEL BENEFIT CORP. LEGIS. § 201 (B).

72 *See* Clark Jr. & Babson, *supra* note 70, at 839.

73 *Cf. id.* at 850 (indicating risk of directors' abuse).

74 *See id.* at 839-41.

75 *See* Justin Blount & Kwabena Offei-Danso, *The Benefit Corporation: A Questionable Solution to A Non-Existent Problem*, 44 ST. MARY'S L.J. 617, 651 (2013) [hereinafter Blount & Offei-Danso]; Kyle Westaway & Dirk Sampselle, *The Benefit Corporation: An Economic Analysis with Recommendations to Courts, Boards, and Legislatures*, 62 EMORY L.J. 999, 1034 (2013).

76 *See* J. Haskell Murray, *Social Enterprise Innovation: Delaware's Public Benefit Corporation Law*, 4 HARV. BUS. L. REV. 345, 353 (2014); J. William Callison, *Putting New Sheets on a Procrustean Bed: How Benefit Corporations Address Fiduciary Duties, the Dangers Created, and Suggestions for Change*, 2 AM. U. BUS. L. REV. 85, 108 (2012) [hereinafter Callison].

narrowly defined purpose when selecting a specific public benefit[77] along with the limited "demands on corporate production" associated with such a scenario.[78]

Moreover, empirical data tends to indicate a significant reluctance among benefit corporations to clearly delineate social purposes, opting instead for succinct descriptions.[79] Although the purpose can vary depending on each case, and paradoxically, a very brief but influential benefit goal could have significant relevance for shareholders, this usually is unlikely, given that a poorly defined goal will hardly affect corporate purpose.

Currently, under state statutes, the dissenters' rights, in case of conversion to a benefit corporation, derive simply from the formal presence of a charter amendment, without a connection of the right to the relevance of the amendment.[80] As it will be analyzed in the conclusion, a different approach could be proposed. To connect the theme to minority protection, it is necessary to consider the prospective consequences of the charter amendment depending on conversion to a benefit company and its actual impact on the risk run by shareholders.[81] Minority protection appears to be inconsequential when the company's purpose does not undergo significant changes following the conversion.

A. The Importance of the Issue and the Relevance of the Different Solutions

1. The Approach Adopted by the Model Benefit Corporation Legislation (and the Proposed Modifications)

Conversion to a benefit corporation or termination of benefit status does not entail the existence of specific dissenters' rights under the Model Benefit

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77 *See* Sarah Thornsberry, *More Burden than Benefit – Analysis of the Benefit Corporation Movement in California*, 7 J. BUS. ENTREPRENEURSHIP & L. 159, 168 (2013); Briana Cummings, *Benefit Corporations: How to Enforce a Mandate to Promote the Public Interest*, [112] COLUM. L. REV. 578, 592 f. (2012).

78 *See* Hiller & Shackelford, *supra* note 70, at 35.

79 *See* Dilek Cetindamar, *Designed by law: Purpose, accountability, and transparency at benefit corporations*, 5 COGENT BUS. & MGMT. 1, 8 (2018) (only half the companies replying to a survey about this clearly stated in the charter the social goals, and most of them in a very succinct way).

80 The need for relevance of the consequences arising from this charter amendment is inspired by the Italian regulation. Despite the absence of a rule specifically dealing with the issue arising from the conversion of an ordinary corporation to a benefit one, this charter amendment requires a modification of the corporate purpose—and a material change in the corporate purpose is required to provide minority shareholders with dissenters' rights under the rule generally applicable to corporations. C.c. art. 2437, letter a (Italy); *see also* Marco Speranzin, *Benefit Legal Entities in Italy: An Overview*, 19 EUROPEAN CO. L. 142, 149 (2022).

81 *See* Dana Brakman Reiser & Steven A. Dean, *Financing the Benefit Corporation*, 40 SEATTLE U. L. REV. 793, 794 (2017) (discussing sacrificing value for shareholders).

Corporation Legislation.[82] This approach distinguishes between these charter amendments and the events that usually trigger dissenters' rights, which involve providing cash to satisfy dissenting shareholders, known as liquidity events.[83] In the absence of such liquidity, any cash would necessarily come from the corporation, and this would result in a likely reduction of adoption of the benefit status by private and small companies, which are supposedly interested in the new status but could simultaneously find it difficult to cash out minority shareholders in this case.[84]

However, this approach is not persuasive because the conversion to a benefit corporation could permit the company to find replacement capital, consequently allowing the payment of dissenting shareholders' shares.[85] Moreover, in general terms, the dissenters' rights do not necessarily depend on a liquidity event.[86] Although dissenters' rights are increasingly utilized in cases of mergers, some state statutes continue to acknowledge it in various instances of charter amendments other than liquidity events.[87]

A proposed modification of the Model Benefit Corporation Legislation attempted to grant appraisal rights for election of the benefit status through charter amendment or mergers, but not for termination of the benefit status.[88] The proposed modification was based on the assumption that the latter would not fundamentally alter shareholders' rights.[89] Even if this proposal is not enacted, it is noteworthy to consider the disparate treatment of the election and termination of the benefit status in this context, which will be discussed further below.

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82 *See* WILLIAM H. CLARK JR. & LARRY VRANKA, THE NEED AND RATIONALE FOR THE BENEFIT CORPORATION: WHY IT IS THE LEGAL FORM THAT BEST ADDRESSES THE NEEDS OF SOCIAL ENTREPRENEURS, INVESTORS, AND, ULTIMATELY, THE PUBLIC. 27 (Jan. 18, 2013), available at https://drive.google.com/file/d/1QyMrBS9_6fC9guMYotZ5DElsTxuD16K9/view?pli=1.

83 *See id.*

84 *See id.*

85 *See* J. Haskell Murray, *Examining Tennessee's For-Profit Benefit Corporation Law*, 19 TRANSACTIONS: TENN. J. BUS. L. 325, 333 (2017) [hereinafter Murray, *Examining Tennessee's For-Profit Benefit Corporation Law*]; J. Haskell Murray, *Defending Patagonia: Mergers and Acquisitions with Benefit Corporations*, 9 HASTINGS BUS. L. J. 485, 500 (2013) [hereinafter Murray, *Defending Patagonia*].

86 *See* Wertheimer, *Purpose of the Shareholders' Appraisal Remedy*, *supra* note 6, at 683.

87 *See* Cleveland, *supra* note 1, at 926; Rutledge & Sagan, *supra* note 27, at 31; *see also* Mary Siegel, *Back to the Future: Appraisal Rights in the Twenty-First Century*, 32 HARV. J. ON LEGIS. 79, 91-92 (1995) (summarizing variation among the states as to which transactions trigger appraisal rights).

88 Corporate Laws Committee, ABA Business Law Section, *Proposed Changes to the Model Business Corporation Act - New Chapter 17 on Benefit Corporations*, 74 BUS. LAW. 819, 825 (2019).

89 *Id.*

2. Benefit Corporations Diffusion and Relevance of the Different Solutions

Obtaining a precise understanding of the widespread prevalence of benefit corporations across the United States is not a straightforward task.[90] While some data is available, it assists in identifying where these companies are primarily located and, conversely, identifying states where these companies seem to be absent despite having specific rules in place.[91] While it is anecdotal information, it is noteworthy that the number of public benefit corporations in Delaware is constantly increasing.[92] As of the beginning of 2021, there were more than 3,000 entities, compared to a possible estimate of around 1,000 in July 2018.[93] In the case of Oregon, the increase is more modest. In July 2018, the estimate was 2,028; as of November 2023, there are 2,531 benefit entities, with the majority being LLCs.[94]

It is important to note that benefit corporation statutes are widely adopted across the United States, with the most recent data covering thirty-seven states.[95] However, the rapid increase of statutes does not necessarily mean a corresponding spreading out of these companies. Of course, using the number of benefit corporations per state as a criterion to define the actual importance of such regulations can be subject to debate for at least two reasons.

First, accurate information about the dimensions of these companies is currently missing.[96] There are some publicly traded benefit corporations,[97]

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90 *See* Berrey, *supra* note 69, at 51 n.133.

91 *See* data in *id.* at 105.

92 Ruth Jin, *The Development of Delaware Public Benefit Corporations and Their Access to Capital*, ABA (Apr. 21, 2023), https://www.americanbar.org/groups/business_law/resources/newsletters/delaware-public-benefit-corporations/.

93 *Compare* the table in Berrey, *supra* note 69, at 105 *with* data obtained from the Delaware Secretary of State on March 2, 2023, referring to 3136 PBCs in the state at the end of January 2021. *see* JEFFERY W. BULLOCK, DELAWARE DIVISION ON CORPORATIONS: 2022 ANNUAL REPORT 1 (2022).

94 *Compare* the table in Berrey, *supra* note 69, at 105 *with* data obtained from the Oregon Secretary of State, referring to the mentioned total of benefit entities, and, interestingly but not surprisingly, 2145 LLCs, 378 Business Corporations, and a small number of different entities like Professional Corporations. *see Active Benefit Companies*, OREGON.GOV, https://data.oregon.gov/business/Active-Benefit-Companies/baig-8b9x (last visited Nov. 26, 2023).

95 Gargi Bohra, *Benefit Corporations: Doing Well and Doing Good*, N.Y.U. J. L. BUS. ONLINE (Feb. 28, 2022), available at https://www.nyujlb.org/single-post/benefit-corporations-doing-well-and-doing-good.

96 Berrey, *supra* note 69, at 38.

97 Alicia E. Plerhoples, *Social Enterprises and Benefit Corporations in the United States*, *in* THE INT'LHANDBOOK OF SOC. ENTER. L. 903, 908 (Henry Peter et al. eds., 2023) [hereinafter Plerhoples]; Michael R. Littenberg et al., *Delaware Public Benefit Corporations-Recent Developments*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Aug. 31, 2020), https://corpgov.law.harvard.edu/2020/08/31/delaware-public-benefit-corporations-recent-developments/; Jill E. Fisch, *Purpose Proposals*, U. PENN. INST. FOR L. & ECON., April 2022, at 1, 20.

and some big companies have adopted this form.[98] However, in general, the importance of the number of such companies could materially vary depending, for example, on their net worth and number of employees.[99]

Second, as some scholars argue, many benefit corporations do not necessarily arise from a particular social consciousness of entrepreneurs or specific protection accorded by national regulation to socially oriented businesses.[100] The outcome often hinges on the user-friendliness and simplicity of the incorporation process.[101] Conversely, it may steer towards a benefit corporation without adequately explaining the legal implications of this decision, as is potentially the case in Nevada.[102] In relation to this particular case, it is important to note the influence of Nevada in corporate law, as this could offer additional insights into this phenomenon.[103] Nevada is trying to compete with Delaware in such a field, not only in terms of substantive corporate law but also in tax regulation, excluding corporate income tax.[104]

Nevertheless, the numerical data seems reliable because it is not arbitrary like other ways of choosing relevant regulations. For example, some scholars deem the approval process of the statute to be relevant to this end.[105] Accordingly, they examine regulations that were readily adopted and, on the

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98 *See* Izi Pinho, *The Advent of Benefit Corporations in Florida*, 47 STETSON L. REV. 333, 358 (2018) [hereinafter Pinho]; Berrey, *supra* note 69, at 72.

99 *See* Berrey, *supra* note 69, at 72.

100 *See id.* at 37-38 (explaining that the bar to obtain benefit corporation status is low and lacks accountability).

101 *Id.* at 59.

102 *See* Eric Franklin Amarante, *Nudging Entrepreneurs Into Noncompliance: Why Does Nevada Have So Many Benefit Corporations? [Blog Post]*, U. TENN. COLL. L., Sept. 2016, at 1, 4. (showing that the features of the incorporation process are likely to be the origin of the big number of BCs in this state); Murray, *Social Enterprise Law Market*, *supra* note 64, at 581 (referring to the relevance of the inclusion of a benefit corporation check box on the state form).

103 *See generally* Michal Barzuza, *Market Segmentation: The Rise of Nevada as a Liability-Free Jurisdiction*, 98 VA. L. REV. 935 (2012).

104 *See id.* at 940 (describing the competition between Nevada and Delaware and its focus on liability regime); Bruce H. Kobayashi & Larry E. Ribstein, *Nevada and the Market for Corporate Law*, 35 SEATTLE U. L. REV. 1165, 1168 (2012) (commenting the race to the bottom with regard to lax fiduciary duties and deeming Nevada to be a significant competitor of Delaware). Even if tax regulation is not the focus of this article, it can be interesting to compare different states' approaches looking at the Economic Development Office websites: the Nevada approach, described in the text is one example and is clearly different from other states' approaches. *See Nevada is a One-of-a-Kind State*, NEV. GOVERNOR'S OFFICE ECON. DEV, https://goed.nv.gov/why-nevada/nevada-advantage/ (last visited Nov. 27, 2023). For a comparison of two other meaningful states in the benefit companies' market, California and Delaware, provide for tax credit provisions. *See Incentives, Grants & Financing*, CA.GOV, https://business.ca.gov/advantages/incentives-grants-and-financing/ (last visited Nov. 27, 2023); *see also Incentives & Credits*, DELAWARE.GOV, https://business.delaware.gov/incentives/(last visited Nov. 27, 2023).

105 *See generally* Scott J. Shackelford et al., *Unpacking the Rise of Benefit Corporations: A Transatlantic Comparative Case Study*, 60 VA. J. INT'L L. 697 (2020).

other hand, regulations whose adoption process was difficult.[106] This criterion is not persuasive because, generally, a legal regulation should not be influenced by the adoption process after it has been adopted. It is also worth underscoring that one of the states analyzed by scholars who utilize the method mentioned above is Virginia, which does not seem to be home to benefit corporations at all, according to some scholars.[107] However, other data differs and shows a limited number of these companies in this state.[108] Even still, the impact of a regulation never or very rarely applied in real life is at least debatable despite its history.

In accordance with the numerical criteria, this Article will closely examine the following states: Oregon, New York, Nevada, Delaware, Colorado, California, and Maryland. However, this does not imply the exclusion of other state statutes from the scope of the analysis, but rather focuses on their potential relevance. Following the clarification of how regulations pertaining to benefit corporations will be selected, some remarks are warranted regarding the significance of the topic.

The regulations that provide dissenters' rights in cases of conversion to a benefit corporation differ significantly from those that do not offer such rights. Scholars occasionally deem this difference as material.[109] Conversely, they may view the state provision regarding dissenters' rights as a minor difference compared to the Model Benefit Corporation Legislation, which does not include a similar provision.[110]

Including such a right in the mentioned case is highly significant.[111] This is not only because dissenters' rights provisions frequently exclude fundamental transactions but also due to specific charter amendments that result from the conversion to a benefit corporation. This is indeed a modification of the corporation's purpose,[112] which is altered in a way that allows a combination of profit and socially-oriented activities.[113] Against a

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106 *See id.* at 703 n.21 (analyzing Delaware for its importance in company law, Connecticut for the difficulties faced during adoption of the regulation, and Virginia for the ease of the process).

107 *See* Berrey, *supra* note 69, at 105.

108 *Benefit Corporations List*, B LAB, https://data.world/blab/benefit-corporations-list (last visited Mar. 2, 2023) (referring to data updated in 2017).

109 *See* Shackelford et al., *supra* note 105, at 712; Kathryn Acello, *Having Your Cake and Eating It, Too: Making the Benefit Corporation Work in Massachusetts*, 47 SUFFOLK U. L. REV. 91, 107 (2014) [hereinafter Acello].

110 *See* Pinho, *supra* note 98, at 348.

111 *See* J. Haskell Murray, *Choose Your Own Master: Social Enterprise, Certifications, and Benefit Corporation Statutes*, 2 AM. U. BUS. L. REV. 1, 37 (2012) [hereinafter Murray, *Choose Your Own Master*].

112 *See* Hiller & Shackelford, *supra* note 70, at 31; Emily Winston, *Benefit Corporations and the Separation of Benefit and Control*, 39 CARDOZO L. REV. 1783, 1802 (2018); Blount & Offei-Danso, *supra* note 75, at 628; Lyman Johnson, *Pluralism in Corporate Form: Corporate Law and Benefit Corps.*, 25 REGENT U. L. REV. 269, 287 (2012); Christopher Lacovara, *Strange Creatures: A Hybrid Approach to Fiduciary Duty in Benefit Corporations*, 2011 COLUM. BUS. L. REV. 815, 840 (2011).

113 *See* Clark Jr. & Babson, *supra* note 70, at 819.

background in which corporations often pursue goals beyond just profit,[114] sometimes even charity goals,[115] and are usually permitted by state statutes to engage in any lawful activity,[116] distinguishing a public benefit from the company's ordinary activities can be challenging.[117] Accordingly, even if the applicable rules provided for dissenters' rights in case of fundamental transactions or alteration of the corporate charter, the solution would not be obvious, as public benefit goals can materially vary,[118] and the same is true about their impact on the company's activity and general goal.

In conclusion, it is crucial not to overlook the significance of granting dissenters' rights when a company transitions to a benefit model. This is particularly noteworthy given the uncertain resolutions stemming from the absence of a comparable provision, which will be examined further in this Article. Moreover, many scholars argue that state statutes should include provisions for such a right despite the different approach taken by the Model Benefit Corporation Legislation.[119]

B. The Absence of a Specific Rule about Dissenters' Rights and Its Implications

1. Conversion to a Benefit Corporation and General Corporate Regulation

Adhering to the criteria delineated above and considering potential dissenters' rights stemming from conversions to a benefit corporation within the framework of general corporate regulations, this Article will first focus on Oregon, followed by New York, and then Maryland.

Under Oregon's regulation, adopting the benefit status requires a minimum status vote, but there is no provision about dissenters' rights.[120] According to the standard regulations, shareholders are granted this right if they dissent from mergers, share exchanges, sales or exchanges involving a significant portion of the corporation's property, amendments to the Articles of Incorporation that materially and adversely impact rights through

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114 *See* Michael B. Dorff et al., *The Future or Fancy? An Empirical Study of Public Benefit Corporations*, 11 HARV. BUS. L. REV. 113, 122 (2021) [hereinafter Dorff et al.] (underscoring that a benefit purpose could not concern investors); Heminway, *Corporate Purpose and Litigation Risk*, *supra* note 64, at 618; Ian Kanig, *Sustainable Capitalism Through the Benefit Corporation: Enforcing the Procedural Duty of Consideration to Protect Non-Shareholder Interests*, 64 HASTINGS L. J. 863, 893 (2013).

115 *See* Deborah J. Walker, *Please Welcome the Minnesota Public Benefit Corporation*, 11 U. SAINT THOMAS L. J. 151, 158 (2013).

116 Heminway, *Corporate Purpose and Litigation Risk*, *supra* note 64, at 618.

117 *See id.* at 621 (explaining that the purposes could be pursued by for-profits and non-profits alike).

118 *Id.* at 619.

119 *See* Murray, *Choose Your Own Master*, *supra* note 111, at 37 (underscoring the fundamental change arising from election or termination of benefit status); Callison, *supra* note 76, at 93 n.28.

120 *See* OR. REV. STAT. ANN. § 60.754 (2023).

alterations or abolishment of preemptive rights, or a reduction in the number of shares owned by the shareholder to a fraction, with the fractional share to be acquired for cash.[121] Furthermore, the right arises from any corporate action taken pursuant to a shareholder vote if the Articles of Incorporation, bylaws, or a resolution of the board of directors provide for it.[122]

The mentioned amendments to the Articles of Incorporation and the provision of dissenters' rights by the Articles of Incorporation or by a resolution of the board deserve some brief analysis. The specification of the charter amendments triggering dissenters' rights to those concerning preemptive rights or reduction of the number of shares makes them unlikely to be relevant in the analyzed case of conversion to a benefit corporation. Hypothetically, such a conversion could materially and adversely affect shareholders' rights. However, the rule provides for minority protection only in those specific cases which do not seem related to the conversion.[123]

On the contrary, the possibility of providing dissenters' rights not only through a specific clause in the Articles of Incorporation but also a resolution of the board of directors could be of great interest in cases of conversion to a benefit corporation. This option may prove advantageous when directors perceive that denying dissenters' rights to dissenting shareholders could pose long-term risks.

Under New York's regulation, dissenters' rights depend on the dissent from mergers, share exchanges, sales, or exchanges of all or substantially all of the corporation's property,[124] which differ from a conversion to a benefit corporation and are unlikely to be applicable in this case.

2. Conversion to a Benefit Corporation as a Fundamental Transaction

Analyzing rules in force in Maryland raises the question of whether a conversion to a benefit corporation could result in a fundamental transaction regarding the alteration of stockholders' rights.[125] It does not appear that scholars have given much attention to this problem, as they tend to underscore the absence of a specific provision granting dissenters' rights to

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121 *See id.* at § 60.554.

122 *See id.* at § 60.554(1)(d), (1)(e) (providing for the right to dissent, and, in particular, cases "which alter or abolish a preemptive right of the holder of the shares to acquire shares or other securities or reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under § 60.141" and "any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.").

123 *See id.*

124 *See* N.Y. BUS. CORP. Law § 910 (McKinney 2023).

125 *See generally* MD. CODE ANN. CORPS & ASS'NS § 3-202 (2014).

dissenting shareholders,[126] which is clear without questioning how rules generally applicable to dissenters' rights could affect the issue.

Unlike the statutes in Oregon and New York, Maryland regulations include dissenters' rights that arise from the alteration of the articles of organization, particularly when such changes substantially and adversely impact the rights of stockholders.[127] This is an extensive formulation, as it does not limit its scope of application by specifying which rights have to be affected to raise dissenters' rights.[128] The provision relating to such a right is not mandatory, as it expressly allows the corporation's charter to reserve the right of alteration without entailing dissenters' rights.[129] However, if this does not occur, it is plausible that the provision may be applicable when a company elects the benefit status, at least when some influential alterations of the Articles of Incorporation are determined. As mentioned, converting to a benefit corporation can involve very different impacts on shareholders' rights, depending on the benefit goal.

C. State Statutes Providing a Specific Rule about Dissenters' Rights

1. Dissenters' Rights Provided Only in Case of Conversion to a Benefit Corporation

Dissenters' rights regulations sometimes differ in cases of election and termination of the benefit status.[130] Some state statutes provide the dissenting shareholder with this protection only when an existing company becomes a benefit one, and consequently, termination of the status follows ordinarily applicable rules.[131]

This approach is not frequently enacted and is adopted by states like Connecticut, Massachusetts, and South Carolina, which are beyond the scope of this Article due to their limited number of benefit corporations.[132]

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126 *See* Steven Munch, *Improving the Benefit Corporation: How Traditional Governance Mechanisms Can Enhance the Innovative New Business Form*, 7 NW. J. L. & SOC. POL'Y 170, 184 n.118 (2012).

127 *See* MD. CODE ANN., CORPS. & ASS'NS § 3-202(a)(4) (2014).

128 *See id.*

129 *See id.*

130 *See* J. Haskell Murray, Corporate Forms of Social Enterprise: Comparing the State Statutes (Jan. 15, 2015) (unpublished chart) (on file with Belmont University), available at https://deliverypdf.ssrn.com/delivery.php?ID=396031102089030110030075083093098088058033095009026094104026114098086091111106072097029031099028051096054091121016019005127102111073000085023000112122103120084104088089039073068070084023001101008109068002064097030108127010097084004117116106082099088103&EXT=pdf&INDEX=TRUE.

131 *See id.*

132 *Id.*; Murray, *Social Enterprise Law Market*, *supra* note 64, at 558; *see also* Shackelford et al., *supra* note 105, at 712 (with regard to Connecticut); Acello, *supra* note 109, at 107, 114 (with regard to Massachusetts); J. William Callison, *Benefit Corporations, Innovation, and Statutory Design*, 26 REGENT U. L. REV. 143, 147 n.10 (2013) (with regard to Massachusetts and South Carolina).

However, this approach is also utilized by Nevada, whose peculiar role in the benefit corporation context has already been described.[133] Thus, it is worth briefly analyzing this aspect of Nevada's regulation.

Nevada's approach distinctly separates the election and termination of the benefit status.[134] It grants dissenters' rights when the company becomes a benefit corporation[135] but only requires a supermajority vote—specifically, a minimum status vote—when terminating the status or in cases of disposing of all or substantially all of the property of the benefit corporation.[136] Due to this language, there is an equivalence, as to the required majority, between formal and substantial termination of status because the disposition of all property could result in such a termination.[137] This is an interesting feature of the regulation. Eventually, the general dissenting stockholders' rights rule is not applicable in case of termination of the benefit status, as it only applies in case of acquisition of a controlling interest by an acquiring person.[138]

2. Dissenters' Rights Provided Both in Case of Conversion to a Benefit Corporation and in Case of Termination of the Status

In California, Florida, Minnesota, Tennessee, and Washington, dissenters' rights arise from conversion to a benefit corporation and termination of the benefit status.[139] Furthermore, some of these regulations encompass a more comprehensive provision, deriving such a right from an amendment of the social purpose in the corporation's Articles of Incorporation that would materially change one or more of the social purposes of the corporation.[140] Despite some potential uncertainty about what a material change is in terms of social purposes,[141] this is also an interesting provision, as it allows for the prevention of potential indirect violations of a more restrictive rule that grants dissenters' rights solely in the event of benefit status termination, thereby incorporating a criterion for assessing the significance of the modification.[142] This approach could prove helpful in

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133 Murray, *Social Enterprise Law*, *supra* note 64, at 558.

134 *See* NEV. REV. STAT. ANN. § 78B.110 (2014); NEV. REV. STAT. ANN. § 78B.120 (2014).

135 *See id.* at § 78B.110.

136 *See id.*

137 *See id.* at § 78B.120.

138 *See id.* at § 78.3793.

139 *See* Murray, *Examining Tennessee's For-Profit Benefit Corporation Law*, *supra* note 85, at 332 (with regard to Tennessee); Murray, *Social Enterprise Law*, *supra* note 64, at 558 (with regard to California, Florida, Minnesota, Washington); Walker, *supra* note 115, at 166 (with regard to Minnesota).

140 *See* WASH. REV. CODE ANN. § 23B.25.090 (2012); WASH. REV. CODE ANN. § 23B.25.120 (2012); *see also* KY. REV. STAT. ANN. § 271B.13-020(e) (2017).

141 *See* WASH. REV. CODE ANN. § 23B.25.090 (2012); WASH. REV. CODE ANN. § 23B.25.120 (2012).

142 *Compare* WASH. REV. CODE ANN. § 23B.25.090 (2012); WASH. REV. CODE ANN. § 23B.25.120 (2012) (containing no language that would help to define "material" change), *with* KY. REV. STAT.

achieving a balanced consideration of the various interests associated with the subject at hand. Interestingly, although California's benefit corporation regulation[143] provides for dissenters' rights when the corporation changes either from or to a benefit corporation, California's general dissenters' rights rule does not encompass charter amendments or purpose modifications.[144]

3. Why the Second Approach Should Be Preferred

It's worth commenting on the reasons for treating the election and termination of benefit status differently with regard to minority protection. Scholars have paid scant attention to this issue, but when they have analyzed it, they have regarded the difference between the election and termination of benefit status as noteworthy.[145] It is unclear why a shareholder should be entitled to dissenters' rights protection in one direction and not the other. This distinction does not appear justified, especially when considering the potential changes that could arise from the termination of benefit status. The sole conceivable rationale for this distinction appears to be streamlining the process for a company to relinquish its benefit status, whether transitioning from incorporation as a benefit corporation to an ordinary one or reverting to an ordinary status after a previous conversion to benefit status.

Nevertheless, irrespective of whether this goal aligns with adopting a benefit corporation statute that typically seeks to strengthen this model, the disparate treatment of two similar cases does not appear to be an appropriate solution. Moreover, it is essential to reiterate that tying dissenters' rights to the conversion to a benefit corporation (or the termination of its status) ensures legal clarity. While this linkage makes the consequences of the conversion explicit, it effectively safeguards minorities only when the amendment has a substantial impact.[146]

D. State Statutes Repealing Rules Providing for Dissenters' Rights

1. The Delaware Approach (and Its Influence)

Delaware's leading role in corporate law is well known. Analyzing the evolution of Delaware public benefit corporation (PBC) regulation is crucial. Initially, rules about acquisition and termination of benefit status used to

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ANN § 271B.13.020(e) (providing helpful explanation illustrating what would constitute a "material" change).

143 *See* CAL. CORP. CODE § 14603(a) (2012) (election of benefit status); CAL. CORP. CODE § 14604(a) (2012) (termination of benefit status).

144 Murray, *Defending Patagonia*, *supra* note 85, at 500.

145 *Id.* at 508 n.138 (expressing opinion about Massachusetts that could apply to other similar cases).

146 *See* WASH. REV. CODE ANN. § 23B.25.090 (2012); WASH. REV. CODE ANN. § 23B.25.120 (2012); *see also* KY. REV. STAT. ANN. § 271B.13-020(e) (2017).

differ regarding the required majority and dissenters' rights (namely, appraisal rights).[147] Becoming a PBC required the approval of ninety percent of the outstanding shares of each class of the stock of the corporation of which there are outstanding shares, whether voting or non-voting, and dissenters were entitled to appraisal rights.[148] Amending or deleting the public benefit purpose clause required approval of two-thirds of the outstanding shares of each class of the corporation's stock of which there are outstanding shares, whether voting or non-voting, without any specific provision about appraisal rights.[149] The initial reform in 2015 altered the required majority for converting to a PBC, lowering the threshold to two-thirds.[150] Simultaneously, it introduced the market exception to appraisal rights, exempting listed companies or those with over 2,000 holders from such rights, aligning with the generally applicable rule.[151]

The Delaware regulation currently in force—deriving from a further 2020 reform—made it easier for an ordinary company to convert to a public benefit corporation by requiring a simple majority.[152] The current regulation repealed the former provision that previously accorded dissenting shareholders an appraisal right.[153] The precise ground of this modification is to enhance the diffusion of public benefit corporations.[154]

2. The Last Reform of Colorado Public Benefit Corporations

Following a similar path, the Colorado legislature used to accord appraisal rights in case of election of benefit status in the public benefit corporations statute[155] and extended the same right in the event of terminating benefit status in the general corporation regulation.[156] A 2022 reform of the public benefit corporations statute repealed the appraisal rights provision.[157] Supporters of this modification argued that there is no requirement for appraisal rights in the event of a conversion to a public benefit corporation.[158] They asserted that since the general assembly has the authority to amend or

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147 *See* Act of July 17, 2013, ch. 122, 2013 Del. Laws, § 363(a) and (b).

148 *See id.*

149 *See* the original version of DEL. CODE ANN. tit. 8, § 363(c) (2020).

150 40 Del. Laws 9 (2015).

151 *Id*.

152 *See* the current version of DEL. CODE ANN. tit. 8, § 361 (2020), which no longer encompasses specific rules about majority and appraisal rights.

153 *See id.*

154 *See* Plerhoples, *supra* note 97, at 907-08; Dorff et al., *supra* note 114, at 153.

155 *See* the original version of Colorado Public Benefit Corporation Act, COLO. REV. STAT. ANN. § 7-101-504(3) (2022).

156 *See* COLO. REV. STAT. ANN. § 7-113-102(g) (2021).

157 *See* Herrick K. Lidstone, *Public Benefit Corporation Act – 2022 Amendments*, BURNS, FIGA & WILL, P.C. (2022), at 3 n.11, available at https://dx.doi.org/10.2139/ssrn.4065148.

158 *Id.* at 4.

repeal the relevant articles of the charter, and shareholders do not possess vested property rights derived from the Articles of Incorporation, appraisal rights are unnecessary.[159]

These grounds, even if obvious in themselves, could be debated, though, as the actual existence of a link between them and the choice of repealing a provision protecting minorities does not seem to be clear. The powers of the general assembly are clear, and appraisal rights do not affect them. Such a right is, on the contrary, a compromise between the corporation's needs and minority protection. In this case, the vested property rights theory is irrelevant, as it typically refers to veto rights rather than other rights, such as the appraisal one.[160]

Furthermore, the rule establishing appraisal rights in case of termination of benefit status is still in force.[161] Consequently, losing the benefit status appears to be more challenging than electing it.[162] However, the disparity between the two scenarios could still find its ground in the mentioned goal to enhance PBC diffusion, adding to it a further related goal to make it easier for a PBC to maintain rather than terminate its status.

3. Abolishing the Dissenters' Rights: Benefit Corporations Diffusion vs. Shareholders' Potential Dissatisfaction?

American scholars commonly advocate for state statutes to incorporate dissenters' rights in the event of electing benefit status, notwithstanding the absence of a similar provision in the Model Benefit Corporation Legislation.[163] While this approach may entail expenses for converting companies, these costs might be perceived as less risky than the potential legal uncertainty resulting from a significant alteration in investment, which could prompt objections from dissenting shareholders.[164] In essence, efforts to proliferate benefit corporations by simplifying and lowering the cost of electing the status due to the absence of dissenters' rights could introduce additional risks for companies.[165] Only time will reveal which solution is preferable. However, it is worthwhile to offer some insights into this trade-off.

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159 *Id.*

160 *See* COLO. REV. STAT. § 7-110-101(2) (2023).

161 *See id.* at § 7-113-102.

162 *See generally id.*

163 *See* Murray, *Choose Your Own Master*, *supra* note 111, at 36-37 (discussing why states should recognize dissenters' rights).

164 *See id.* at 36; Anna R. Kimbrell, *Benefit Corporation Legislation: An Opportunity for Kansas to Welcome Social Enterprises*, 62 U. KAN. L. REV. 549, 578 (2013).

165 *See* Murray, *Choose Your Own Master*, *supra* note 111, at 36 (discussing why states should recognize dissenters' rights).

Available data examined by the author does not currently show a clear relationship between the presence or absence of dissenters' rights and the diffusion of benefit companies. The Delaware case of publicly held PBCs could hold significance, as the number of such companies did rise following reforms that introduced the market exception to appraisal rights in 2015 and ultimately repealed the provision granting appraisal rights to dissenters in 2020.[166] Likely, the first reform was actually more influential than the second one, as it removed a possible obstacle to conversion, specifically for publicly held companies.[167] In addition, the data refers to a period close to the latter, and it is improbable that the market for benefit companies would react swiftly to a reform.[168] Despite this growth, the benefit phenomenon remains a niche, as we are considering extremely limited numbers.[169]

Even if assuming the absence of dissenters' rights could improve the number of benefit companies, it is also necessary to consider a long-term perspective, focusing on the risks of actions brought by members or shareholders dissatisfied with the new goals of the company.[170] Moreover, it is worth articulating the discourse from at least three different perspectives.

The first interesting connection appears when reading some institutional investors' policies related to sustainability and benefit corporations.[171] One of the main actors in this market, Blackrock, confirmed the connection between sustainability and the long-term value of the investment.[172] In its Investment Stewardship, Blackrock points out that the choice to become a benefit corporation shall be approved by shareholders, even if applicable rules do not require this.[173] The investor would share this choice only in light of adequate protection provided to minority shareholders.[174]

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166 *See* Plerhoples, *supra* note 97, at 908 (referring to an increase from three to twelve publicly held PBCs between 2020 and 2021).

167 *Id.* at 907-08 (discussing the changes in Delaware legislation).

168 *See id.* at 908 ("Practitioners have credited these amendments with an expansion in the number of Delaware PBCs.").

169 *See id.* ("At the beginning of 2020, there were three publicly traded PBCs; by the end of 2021 there were at least 12.").

170 *See id.* at 909 ("In its 2022 proxy voting guidelines, BlackRock, the world's largest asset management firm, states that it will only support shareholder proposals for PBC conversion that protect shareholder interests and specify how shareholder and stakeholder interests will be impacted; even then, it will only do so on a case-by-case basis.").

171 *See id.* ("In its 2022 proxy voting guidelines, BlackRock, the world's largest asset management firm, states that it will only support shareholder proposals for PBC conversion that protect shareholder interests and specify how shareholder and stakeholder interests will be impacted; even then, it will only do so on a case-by-case basis.").

172 *Blackrock Investment Stewardship: Proxy Voting Guidelines for U.S. Securities*, BLACKROCK, at 21 (Jan. 2023), available at https://www.blackrock.com/corporate/literature/fact-sheet/blk-responsible-investment-guidelines-us.pdf.

173 *Id.*

174 *See id.* at 14.

Even if this is not explicit, this recommendation probably arises from the need to avoid, if possible, the effect of shareholders' dissatisfaction about an important change like the conversion to a benefit corporation, which could possibly lead to a condition of instability, with potentially many minority shareholders selling their stock.[175] Given that the policy explicitly addresses conversions not subject to shareholder approval per relevant regulations,[176] it becomes evident that the requirement for broad consensus on the conversion is likely linked not to dissenters' rights but rather to the potential sale of interests.

A second possible connection, on a very different level, could be the one between dissatisfaction and dissolution statutes, of course, when these exist and are applicable in the matter in question.[177] However, while the first condition depends on the single-state statute, the second (i.e., the applicability) seems unlikely in cases of conversion to a benefit model because it does not seem to resemble oppressive misconduct.[178] Nevertheless, a dissatisfied shareholder could be keen on invoking that remedy in case of further happenings entitling him to do so.

A third potential connection, somewhat intertwined with the preceding argument, may arise in limited liability companies when members' dissatisfaction manifests through fiduciary lawsuits filed against managers by members who allege individual harm.[179] This occurs because, in numerous LLC statutes, fiduciary obligations are directly extended from managers to individual members, and such legal actions are frequently utilized instead of oppression remedies.[180] Again, the likelihood of successfully initiating a lawsuit based on misconduct is unlikely in the event of a conversion to a benefit LLC. However, as already mentioned, a dissatisfied member could be particularly sensitive and determined to bring the action in other cases, even with uncertain outcomes.

Of course, the connections mentioned are merely a subset of the potential ramifications stemming from dissatisfied shareholders or members. Legal consultants' speculations on behalf of shareholders or members are likely to extend far beyond these. Nevertheless, emphasizing even minor consequences of repealing minority protection in the event of converting to a benefit model appears to be pertinent in offsetting the significance of having a greater number of such companies.

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175 *See* Plerhoples, *supra* note 97, at 908 ("Companies like Warby Parker state on their initial registration forms with the U.S. Securities Exchange Commission that their 'duty to balance a variety of interests may result in actions that do not maximize stockholder value.'").

176 *See Blackrock Investment Stewardship: Proxy Voting Guidelines for U.S. Securities*, *supra* note 172, at 21.

177 *See generally* Heminway, *Death of an LLC*, *supra* note 59, at 2.

178 *See generally id.*

179 Moll, *supra* note 14, at 248.

180 *See id.*

IV. PURPOSE MODIFICATION IN LLCS AND WITHDRAWAL RIGHT

A. The Importance of the Choices Made in the Operating Agreement

As previously noted, Limited Liability Companies (LLCs) play a crucial role in the environment of benefit companies.[181] Given that benefit companies are often small and inclined to adopt a more straightforward and cost-effective model, LLCs serve as an important and preferred structure when feasible.[182] An ordinary LLC could be suitable for benefit purposes, at least every time the LLC statute allows one to pursue any lawful purpose.[183]

The central issue revolves around the legal implications that arise when a purpose is modified to incorporate beneficial goals.[184] Specifically, it explores whether such a change could trigger the withdrawal rights of dissenting members.[185] The answer largely depends on each LLC operating agreement, as LLC statutes often encompass only default rules, not always providing withdrawal rights.[186] Considering the approach adopted by the Revised Prototype Limited Liability Company Act, it is clear that state statutes are allowed not to encompass withdrawal right cases and to exclude the possibility for members to have such a right.[187]

B. The Implications of Withdrawal Right

Moreover, under the Revised Prototype Limited Liability Company Act regulation,[188] the primary consequence one might anticipate from the exercise of the withdrawal right—namely, the right to have the interest bought by the company—does not materialize upon exercising such a right.[189] Instead, upon exercising one's withdrawal right, the member will transition into a transferee, retaining all the financial obligations of a member but forfeiting ownership of the business.[190] As a result, the individual will no

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181 *See, e.g., Why Form a Public Benefit LLC?*, INCNOW (Sept. 24, 2021), https://www.incnow.com/blog/2021/09/24/public-benefit-llc/.

182 *See* Kimbrell, *supra* note 164, at 560.

183 *See* for example DEL. CODE ANN. tit. 6, § 18-106(a).

184 *See* Mario Stella Richter Jr. et al., *Benefit Corporations: Trends and Perspectives*, *in* THE INT'L HANDBOOK OF SOC. ENTER. L. 213, 223 (Henry Peter et al. eds., 2023) (discussing issues with benefit corporation regulation).

185 *See id.*

186 For example, New York and Texas regulations do not provide this right, that could be accorded by the operating agreement: *see* N.Y. LTD. LIAB. CO. LAW, § 606(a) (2021); TEXAS BUS. ORGS. CODE tit. 3, § 101.107, which could be modified under §101.054.

187 *See* the Revised Prototype Act Comment referring to RPLLCA§§ 601-602, in *Revised Prototype Limited Liability Company Act*, *supra* note 55, at 171.

188 *Id.*

189 *See, e.g., id.*

190 *Id.*

longer possess the right to partake in the activities and affairs of the limited liability company.[191] Adopting such an approach would be highly pertinent because it would mitigate the most significant consequence, namely the financial impact due to the buyout of minority interest.

V. CONVERSION TO BENEFIT LLC AND WITHDRAWAL RIGHT

Just as corporations may convert to benefit corporations, LLCs can convert to benefit LLCs when a state statute encompasses this model.[192] In examining pertinent benefit LLC statutes, it is prudent to scrutinize Oregon and Maryland, given the notable presence of these companies in those states, while also considering the prospective significance of the Delaware statute.[193]

In Oregon, the election of the benefit status only requires a minimum status vote.[194] However, there is no provision for withdrawal rights for dissenting members.[195] Thus, it becomes necessary to consider the withdrawal right regime under the LLC statute. Freedom of contract plays a fundamental role.[196] The operating agreement can provide for specific cases of the withdrawal right and, simultaneously, exclude or limit the otherwise existing member's power to withdraw voluntarily from the company.[197] In the absence of such exclusion, the member could be entitled to withdrawal by giving written notice to the LLC without needing to comply with other specific provisions about this right.[198]

The same result occurs under Maryland's regulation.[199] Despite the absence of a rule regarding the withdrawal right in case of election or termination of the benefit LLC status, the general rule allows the member to withdraw by giving prior written notice unless the operating agreement excludes or limits such a right.[200]

The situation slightly varies under Delaware's regulations.[201] Like in Oregon and Maryland, there is no specific withdrawal right provision related to the election or termination of the benefit LLC status.[202] However, a member does not possess the withdrawal right under the default regulations

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191 *See id.*

192 *See* OR. REV. STAT., § 60.754 (2014).

193 *Id.*; MD. CODE ANN. CORPS. & ASS'NS § 4A-1203 (2013); DEL. CODE ANN. tit. 6, § 18-1201 (2021).

194 OR. REV. STAT., § 60.754 (2014).

195 *See id.* (specifying subsection (2)(b)).

196 *See* generally Jens Damman & Matthias Schündeln, *Where Are Limited Liability Companies Formed? An Empirical Analysis*, 55 J. L. & ECON. 741, 754 (2012).

197 *See* OR. REV. STAT. § 63.205 (2023).

198 *Id.* at § 63.205(1)(b).

199 MD. CODE ANN. CORPS. & ASS'NS § 4A-1203 (2013).

200 *See id.*; MD. CODE ANN. CORP. & ASS'NS § 4A-1205; MD. CODE ANN. CORP. & ASS'NS § 4A-605.

201 *See* DEL. CODE ANN. tit. 6, § 18-1201 (2021).

202 *See id.*

unless stipulated otherwise in the operating agreement.[203] This suggests that members who initially forgo the withdrawal right during the company's formation will not enjoy this protection in conversion scenarios.[204] This protection could be conferred not only through the operating agreement but also through a merger or consolidation agreement or a plan of merger or division.[205]

VI. TERMINATION OF LOW-PROFIT LLC STATUS AND WITHDRAWAL RIGHT

The low-profit Limited Liability Company is another model potentially suitable for social and benefit purposes, even with its legal constraints—particularly concerning the distribution of profits and the permitted activities.[206] Similar to LLCs' conversions and corporations' conversions to a benefit company, some remarks are now due about the possible connections between the termination of low-profit LLC status and the withdrawal right.

Despite a moderate diffusion of this legal entity, it is still possible to focus on some state statutes based on the numbers of this type of company. Thus, this Article will analyze Michigan, Illinois, Louisiana, and Vermont statutes.[207] As previously outlined regarding benefit LLCs, it is unsurprising that if a Low-Profit Limited Liability Company fails to pursue its designated objectives and fulfill its specific legal obligations, it will forfeit its status as a low-profit LLC and continue to exist as an ordinary LLC.[208] There are no provisions in favor of minority members related to this situation, even if the termination of the status arises from a voluntary modification of the company's purpose.[209] Consequently, the withdrawal regime provided by LLC statutes becomes relevant to this end, and various solutions emerge.

Under Michigan's regulation, a member can withdraw from an LLC only as provided in an operating agreement,[210] so it would be possible, even

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203 *See id.* at § 18-210.

204 *See id.*

205 *Id.* at § 18-209.

206 Sandra Feldman, *What Is an L3C (Low-Profit Limited Liability Company): An Entity for Entrepreneurs Who Value Purposes and Profits*, WOLTERS KLUWER (Mar 3, 2020), https://www.wolterskluwer.com/en/expert-insights/what-is-l3c-low-profit-limited-liability-company.

207 *See* MICH. COMP. LAWS § 450.4509 (2023); 805 ILL. COMP. STAT. ANN. 180/35-45 (2020); LA. STAT. ANN. § 12:1325 (2023); VT. STATE. ANN. tit. 11, § 4081 (2023).

208 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, 283 (2010).

209 All of the considered provisions about termination of low-profit status are really similar, and they never provide for withdrawal right due to the change of purpose. *See* MICH. COMP. LAWS § 450.4509 (2023); 805 ILL. COMP. STAT. ANN. 180/35-45 (2020); LA. STAT. ANN. § 12:1325 (2023); VT. STATE. ANN. tit. 11, § 4081 (2023).

210 MICH. COMP. LAWS § 450.4509 (2023).

if probably unlikely, to expressly entitle the member to withdraw in the case of termination of low-profit status. However, the default rules do not encompass withdrawal rights in this case.[211]

Illinois's LLC statute outlines withdrawal rights based on the member's explicit decision to dissociate, encompassing a wide range of scenarios, as well as specific events stipulated in the operating agreement.[212] The member's explicit decision could be pertinent in various situations, including the aforementioned termination of a specific status.[213] This parallels Vermont's regulation, which employs nearly identical language.[214]

By implementing a more stringent regulation, the statute in Louisiana establishes a distinction in the withdrawal right based on the company's duration.[215] When there is a term of duration, the member is entitled to such a right only in the event of just cause, specified as the failure of another member to perform an obligation.[216] If a term is missing, the right to withdraw can be provided by the operating agreement or, in the absence of such rules, exercised upon prior written notice.[217]

VII. CONCLUSION

The emergence of benefit companies as relatively novel corporate models has introduced legal complexities that may not always be readily anticipated. While the issue of dissenters' rights in the context of benefit company elections or terminations is well-defined from a specific standpoint, the diverse array of approaches and solutions is contingent upon national legislative choices and general regulatory frameworks when specific benefit company regulations are silent.[218]

The potential legal ambiguity stemming from the necessity to either apply overarching corporate regulations or scrutinize each LLC operating agreement poses a conceivable deterrent to the adoption of these innovative models. Even when solutions to such problems seem clear-cut, further complications, particularly in the long term, may arise. Forcing dissenting

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211 *See id.*

212 805 ILL. COMP. STAT. ANN. 180/35-45 (2020).

213 *See id.*

214 *See* VT. STATE. ANN. tit. 11, § 4081 (2023).

215 *See* LA. STAT. ANN. § 12:1325 (2023).

216 *See id.* at § 12:1325(a).

217 *See id.* at § 12:1325(b).

218 *See* Murray, *Choose Your Own Master*, *supra* note 111, at 36; Kimbrell, *supra* note 164, at 578; *see* J. Haskell Murray, Corporate Forms of Social Enterprise: Comparing the State Statutes (Jan. 15, 2015) (unpublished chart) (on file with Belmont University), available at https://deliverypdf.ssrn.com/delivery.php?ID=396031102089030110030075083093098088058033095009026094104026114098086091111106072097029031099028051096054091121016019005127102111073000085023000112122103120084104088089039073068070084023001101008109068002064097030108127010097084004117116106082099088103&EXT=pdf&INDEX=TRUE.

shareholders, who do not align with the benefit status, to keep their interests could entail additional costs and risks for the company, underscoring the importance of safeguarding minority interests, especially within the LLC context.[219]

Thus, it is imperative to strive for an optimal equilibrium among legal certainty, safeguarding minority interests, and mitigating potential long-term risks, as these concerns are inherently significant and intersect within this framework. Moreover, minority protection constitutes a real issue when alterations resulting from the election of benefit status is relevant and can consequently impinge upon the rights of shareholders or members akin to a fundamental transaction.[220] Nonetheless, the clarity of this matter is not self-evident, as the definition of benefit goals can be substantially vague.[221] Moreover, such definitions may not impact the risk initially assumed by shareholders when investing in the company. Thus, while minority protection is indeed pertinent, the ambiguity surrounding the definition of benefit goals and their impact on shareholders' risk underscores the need for nuanced consideration.

Despite the prevailing trend towards curtailing dissenters' rights, the scope of application is evident, both generally and in the context of conversion of a benefit corporation. It is noteworthy to emphasize that substantial uncertainties remain, and the elimination of dissenters' rights to achieve legal certainty may give rise to additional consequences and risks. While further regulatory amendments abolishing dissenters' rights may seem unlikely, a compromised approach could be viable. This could involve refraining from automatically granting dissenters' rights upon conversion to a benefit company, reserving them for instances where a conversion entails relevant modifications. While this approach may introduce a degree of legal uncertainty, it could strike a more effective balance between minority protection and mitigation of long-term risks. This is far from being a ready-to-use solution. However, treating differing charter amendments in the same way leads to inefficient and potentially unfair solutions.

The impact of implementing benefit goals hinges on their definition within the articles of organization or operating agreement, as well as on the differences between the company's activities before and after conversion. Thus, recognizing the varied nature of benefit goals and their differential impacts necessitates a nuanced approach to dissenters' rights provisions. Such provisions should be tailored to the specific characteristics of benefit goals and their actual effects. In other words, it is imperative that the

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219 *See* Murray, *Choose Your Own Master*, *supra* note 111, at 36.

220 *See* Letsou, *supra* note 3, at 1150 (charter amendments triggering appraisal right are supposed to be "serious", such as those altering the corporation's purposes).

221 *See* Cetindamar, *supra* note 79, at 8 (only half the companies replying to a survey about this clearly stated in the charter the social goals, and most of them did so in a very succinct way).

provision for dissenters' rights takes into account these varying features of benefit goals and their actual impacts to effectively safeguard minorities when warranted. This protection is essential not only for equity reasons but also in light of the company's long-term viability. Simultaneously, this approach allows for circumvention of the consequences of a rigid description of the cases warranting dissenters' rights, which, while more straightforward and predictable, may result in overprotection of minorities in cases of inconsequential charter amendments.