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PUTTING POVERTY IN MUSEUMS: STRATEGIES TO ENCOURAGE THE CREATION OF THE FOR-PROFIT SOCIAL BUSINESS

Leslie Dougherty*

Abstract: In Creating a World Without Poverty, Muhammad Yunus introduces the social business model which aims to provide a social benefit, not just a monetary profit. This model is distinct from a typical non-profit charity because investors expect to eventually recover their financial contributions to the social business. Yunus describes the Danone Communities mutual fund’s ability to protect the company from liability to shareholders for lack of a monetary profit while simultaneously providing food to malnourished children in Bangladesh. This Comment examines two different successful social business structures and argues that companies have yet to embrace this innovative model due to a lack of clear guidelines for this type of business in United States corporate law. The enactment of mutual fund regulations encouraging the creation of this for-profit sustainable social business would allow it to be very successful in reducing poverty.

Introduction

I firmly believe that we can create a poverty-free world if we collectively believe in it. In a poverty-free world, the only place you would be able to see poverty is in the poverty museums. When school children take a tour of the poverty museums, they would be horrified to see the misery and indignity that some human beings had to go through.

—Muhammad Yunus1

The traditional capitalist business model is often criticized because of its over-emphasis on profit maximization.2 Even before the 2008 re-

2 See, e.g., Martin Wolf, The Mortality of the Market, 138 FOREIGN POL’Y 47, 47 (explaining that the market economy is criticized for its encouragement of greedy behavior which arguably results in global inequality); Sheridan Prasso, Saving the World with a Cup of Yogurt, FORTUNE, Feb. 19, 2007, at 98 (explaining Yunus’s belief that “[m]any of the problems in
cession, over thirty-seven million people in the United States were living below the poverty line. Some argue that this is a direct result of business’ obsession with profits. Recognizing a social duty, various organizations are embracing a business model that focuses on a social benefit, instead of the wealth of a few. Thus, it is time to embrace a new model that works within the capitalist system, but also addresses the pitfalls of the standard business model which exacerbates poverty.

Muhammad Yunus, winner of the 2006 Nobel Peace Prize and founder of Grameen Bank, introduces such a business model in his book, Creating a World Without Poverty. In 1976, Yunus established Grameen Bank with the goal of alleviating poverty by extending credit to the poor through microcredit financing. His belief that poverty is a threat to peace and human rights inspired him to pioneer this new type of banking. In 2000, world leaders pledged to reduce poverty by half by 2015; nonetheless, most observers do not believe this goal will be met. Yunus argues, however, that if the typical models of capitalist

4 See, e.g., Frederic L. Pryor, The Future of U.S. Capitalism 82–111 (2002) (discussing capitalism’s role in the increasing income inequality in the United States); Prasso, supra note 2, at 98 (explaining Yunus’s view that poverty exists because of the focus on profitability and wealth in the current capitalist system); Ghalib & Hossain, supra note 2, at 5 (arguing that capitalism’s obsession with wealth has created economic inequality worldwide).
7 See id.; Yunus, supra note 1, at 267.
8 See Yunus, supra note 6, at 49; Hadley Rose, The Social Business: The Viability of a New Business Entity Type, 44 Willamette L. Rev. 131, 131 (2007). His bank has been self-reliant since 1995. Yunus, supra note 6, at 51. This can be attributed in part to the 98.5% payback rate. See id.
9 See Yunus, supra note 1, at 268. Yunus believes that his Nobel Peace Prize proves the link between poverty and peace. Interview by Darren Gersh with Muhammad Yunus, Nightly Business Report (PBS television broadcast Nov. 20, 2006), available at www.pbs.org/nbr/site/onair/transcripts/061120f/ [hereinafter Interview with Muhammad Yunus].
10 Yunus, supra note 6, at 4. The UN partially attributes this lack of progress to war and high food prices. See Dep’t of Econ. & Soc. Affairs, The Millennium Development Goals Report 2008, at 6–9 (2008). Nonetheless, Bangladesh, where Yunus has focused his efforts, is on track to reduce poverty by half or more by 2015. See Yunus, supra note 6, at 4.
banking and business evolve to fit the social needs of society, this goal will be achieved.\textsuperscript{11}

Through Grameen, Yunus spearheaded the microcredit movement, which provides small collateral-free loans to poor villagers.\textsuperscript{12} Yunus founded the bank and began giving these loans primarily to poor women, which remains Grameen’s primary project.\textsuperscript{13} To ensure that it produces desired social results, each of these debtors is required to adhere to Grameen’s “Sixteen Decisions.”\textsuperscript{14} Although still offering these loans, Grameen has significantly evolved while maintaining its

\textsuperscript{11} See Yunus, supra note 6, at 48–52. Yunus argues that proper oversight can cause globalization to help, not hinder, the alleviation of poverty. Yunus, supra note 1, at 273–74.

\textsuperscript{12} See Yunus, supra note 1, at 268–69. Microcredit describes small, low-interest, collateral-free loans that are given to the poor in order for them to start for-profit businesses. Yunus, supra note 6, at 68.

\textsuperscript{13} Rose, supra note 8, at 131. These villagers are required to form small groups for support and help with business decisions. Yunus, supra note 6, at 57. Additionally, the Bank requires borrowers to attend weekly meetings where they handle repayments and applications and receive business guidance. Id. at 58.

\textsuperscript{14} See Yunus, supra note 6, at 58–59. The Sixteen Decisions:

1. The four principles of Grameen Bank—Discipline, Unity, Courage, and Hard Work—we shall follow and advance in all walks of our lives.
2. We shall bring prosperity to our families.
3. We shall not live in dilapidated houses. We shall repair our houses and work towards constructing new houses as soon as possible.
4. We shall grow vegetables all the year round. We shall eat plenty of them and sell the surplus.
5. During the plantation season, we shall plant as many seedlings as possible.
6. We shall plan to keep our families small. We shall minimize our expenditures. We shall look after our health.
7. We shall educate our children and ensure that they can earn to pay for their education.
8. We shall always keep our children and the environment clean.
9. We shall build and use pit latrines.
10. We shall boil water before drinking or use alum to purify it. We shall use pitcher filters to remove arsenic.
11. We shall not take any dowry at our sons’ weddings; neither shall we give any dowry in our daughters’ weddings. We shall keep the center free from the curse of dowry. We shall not practice child marriage.
12. We shall not inflict any injustice on anyone; neither shall we allow anyone to do so.
13. For higher income we shall collectively undertake bigger investments.
14. We shall always be ready to help each other. If anyone is in difficulty, we shall all help.
15. If we come to know of any breach of discipline in any center, we shall all go there and help restore discipline.
16. We shall take part in all social activities collectively.

Id. at 58–59. While requiring adherence to the Sixteen Decisions may seem coercive, it has helped fulfill the goals of the bank and expand its social benefit. See id. at 58–60.
success; sixty-four percent of borrowers that have been with the bank for more than five years have emerged from poverty.\textsuperscript{15}

Yunus has expanded on his success with microcredit to explore how business can benefit society as a whole.\textsuperscript{16} The model of a social business, which Yunus focuses on in his book, is one which provides a social benefit, rather than just a monetary profit.\textsuperscript{17} In this model, the poor will not necessarily own the company, but a social benefit will arise from the nature of the business.\textsuperscript{18} Investors will not make a donation, nor will they financially profit.\textsuperscript{19} Instead, they will eventually recoup their initial investment.\textsuperscript{20} This allows any other profit to contribute to the expansion of the business to make it self-sustaining and increase the positive social results.\textsuperscript{21} Consequently, Yunus’s social business model is distinct from a charity because there is full cost recovery for investors.\textsuperscript{22} He argues that society will embrace these social businesses

\begin{itemize}
\item \textsuperscript{15} See id. at 52. Grameen has adjusted to changing markets and current events. See id. at 62–63, 65. It evolved from “Grameen I” to “Grameen II” as a result of large-scale loan defaults caused by the worst flood in Bangladesh history. See id. at 62–65. This involved a significant increase in the amount of savings at Grameen Bank and an increase in flexibility with loans (such as more options with loan repayment). Id. at 62–63. First, the ordinary, income-generated loan terms (the original) is offered at twenty percent interest. Id. at 63. There is also an eight percent housing loan, and a student loan that has a zero percent interest rate during the study period and a five percent rate after degree completion. Id. at 65. Finally, there is a “struggling member” loan that is granted to the very poorest members, usually about fifteen dollars to carry small merchandise when they are begging. Id. Currently, Grameen loans to over seven million poor people in seventy-eight thousand villages in Bangladesh. Id. at 51. Additionally, ninety-seven percent of their borrowers are women. Id. Yunus claims that Grameen has achieved this success because he is not a trained banker, and thus thinks outside the normal constraints. See id. at 48, 77. Accordingly, he built a system around the poor, instead of trying to fit them into the current one. See id.
\item \textsuperscript{16} See id. at 77–82. Grameen Bank has expanded into a twenty-five unrelated for profit and not-for-profit companies that all work toward the same mission of alleviating poverty. Id. at 78–80. The most recent of these companies is Grameen Danone, a model of the new social business theory. See id. at 79, 161–62.
\item \textsuperscript{17} Id. at 28. He also introduces another social business model which is owned by the poor. See id. at 28. This creates a social benefit through its ownership because any profit gained will benefit those in need. Id. at 28–29. Grameen Bank is this second type of social business: ninety-four percent of its shares are owned by the borrowers, all of whom are below poverty level. Id. at 30.
\item \textsuperscript{18} See id. at 28–29.
\item \textsuperscript{19} See \textit{Yunus}, supra note 6, at 22–23.
\item \textsuperscript{20} Id. at 22.
\item \textsuperscript{21} See id. at 22–23.
\item \textsuperscript{22} See id. at 22. For example, the mission of Yunus’s new Grameen Health program, “is to establish \textit{sustainable} best practices in a broad range of health care services for a broad market including the poor.” Press Release, Grameen Health, New Venture Extending the Success of the Principles of Microcredit to Health Care Delivery and Medical Research
because most human beings are not only profit driven but are also motivated by their good-will and compassion. Therefore, social businesses are necessary in order to allow entrepreneurs to address all sources of motivation, such as poverty or the environment.

This social business model is distinct from all other current, common corporate philanthropic practices. It has a more specific mission than social entrepreneurship because the latter may include any "economic or non-economic, for-profit or not-for-profit" initiative to help society. Additionally, social businesses are unlike the common practice of corporate social responsibility. Frequently, corporate social responsibility initiatives have some sort of financial benefit for the business through the establishment of goodwill, as companies attract consumers and investors by demonstrating that they are providing a service to the community at large. Investors will choose to invest in a social business, however, as a result of its unique social benefits, not because of a potential profit.

In the United States, most corporations have yet to practice social businesses because of the flexible and unclear nature of corporate law. Although corporate law does not bar the creation of these types

23 See Yunus, supra note 6, at 37. According to Yunus, most of the world’s societal problems are caused by the restrictions on motivations in capitalist business, as they do not allow for any “political, emotional, social, spiritual, [or] environmental dimensions.” Yunus, supra note 1, at 271.

24 See Yunus, supra note 1, at 271; Ghalib & Hossain, supra note 2, at 2.

25 See Yunus, supra note 6, at 16–17, 32–34.

26 Id. at 32.

27 See id. at 16–17.

28 See id. at 16 (referring to corporate social responsibility as “mere window dressing”). Corporate social responsibility is viewed as good practice because “[i]t is an aspect of taking care of a company’s reputation, managing its risks and gaining a competitive edge.” Do It Right, Economist, Jan. 19, 2008, at 24. Moreover, corporations often practice the double or triple bottom line, through which they acquire a social benefit while still maximizing profits. See Yunus, supra note 6, at 170. According to Yunus, companies who practice it are either trying to satisfy corporate guilt or are attempting to create support and publicity for their company. Id. at 171.

29 See id.

of businesses, very few established companies have created them.\textsuperscript{31} This innovative business model could have a widespread, positive effect on communities affected by poverty.\textsuperscript{32} The hesitancy, however, has prevented the self-sustaining social business model from thriving.\textsuperscript{33}

This Comment will examine Yunus’s social business model and the hesitancy of companies to adopt it. Part I will provide a detailed account of Yunus’s first social business and its social objective, business model, structure, and current success. Part II will show how the flexibility in corporate law in the United States has made the social business model less attractive for companies. Specifically, it will examine the current state of directors’ liability to shareholders for duty of care and duty of loyalty claims and how the lack of social businesses results from the absence of clear standards or guidelines for this type of business in corporate law. Furthermore, Part III will discuss two successful examples of social businesses and how they are structured in response to the flexibility of corporate law in this area. Finally, Part IV will advocate for clear mutual fund regulations to encourage the creation of this type of business. The for-profit sustainable social business could be very successful at eliminating poverty; however, clear, practical guidelines are necessary before they will be successful on a grand scale.\textsuperscript{34}

\section{Grameen Danone: A Social Business Experiment}

\subsection{Grameen Danone’s Mission}

As a result of poverty, Bangladeshi children do not have access to sufficient nutrition.\textsuperscript{35} Recognizing this problem, Yunus’s first attempts to implement the social business model came in the form of Grameen Danone, whose mission is “to bring daily healthy nutrition to low income, nutritionally deprived populations in Bangladesh and alleviate poverty through the implementation of a unique proximity business

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\textsuperscript{32} See Yunus, \textit{supra} note 1, at 268.


\textsuperscript{34} See Yunus, \textit{supra} note 1, at 274–75.

\textsuperscript{35} See UNICEF, Bangladesh Statistics, http://www.unicef.org/infobycountry/bangladesh_bangladesh_statistics.html#44 (last visited Apr. 14, 2009). Forty-eight percent of children under five in Bangladesh are moderately to severely underweight. \textit{Id.} Moreover, forty-three percent suffer from moderate to severe stunting. \textit{Id.}
model.” This joint venture between Grameen Bank and Groupe Danone is not a corporate social responsibility project because it is not “a project of a profit-maximizing business with a charitable veneer.” Instead, it is a social business with the specific social objective of providing Bangladeshi children access to nutritious yogurt on a daily basis. The business maintains its financial viability in order to create new opportunities for the poor, while still selling its yogurt at a very low price for accessibility. Additionally, to adhere to the social business model, Grameen Danone operates under a “proximity business model,” which eliminates the chain of distribution as a result of local manufacturing and consequently promotes employment in the region. Accordingly, Groupe Danone’s CEO and Yunus opted to build a small localized factory because of the social benefits for the local community.

In order to maximize the social benefit, any profit beyond the cost of capital will be reinvested to allow for an expansion of the social benefit, a plan consistent with Yunus’s model. Moreover, Groupe Danone will supply half of the initial $1.1 million funding and reinvest almost all of the profits to expand the social benefit. It predicts a two

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36 Press Release, Groupe Danone, Launching of Grameen Danone Foods Social Business Enterprise (Mar. 16, 2006) (on file with author); see Yunus, supra note 1, at 273. Malnutrition and poverty contribute to each other: “[P]overty brings with it severe health consequences, trapping the poor into a vicious cycle of sickness . . . [h]igh costs of health services make the poor even poorer.” Ghalib & Hossain, supra note 2, at 8.

37 Yunus, supra note 6, at 145. Groupe Danone and Grameen Bank partnered to create this social business. See Groupe Danone, supra note 36 (“The Grameen Group and Groupe Danone entered into a 50–50 joint venture agreement effective March 16, 2006, to form a company called the Grameen Danone Foods Social Business Enterprise in Bangladesh.”).

38 See Yunus, supra note 6, at 144. Grameen Danone’s Memorandum of Understanding specifically states that it will “help children of Bangladesh grow strong, thanks to tasty, nutritious food and beverage products they can consume every day, so that they can have a better future.” Id. (quoting Grameen Danone’s Memorandum of Understanding).

39 See id.; Ghalib & Hossain, supra note 2, at 12.

40 See Yunus, supra note 6, at 133 (noting that the yogurt would be sold in neighborhoods within less than forty-eight hours of its production, thus eliminating costs of shipping and refrigeration).

41 See id. at 139. Depending on the success of this first small factory, Grameen Danone plans to construct up to fifty similar factories throughout Bangladesh. Id. The first small plant was constructed in Bogra and received its supplies from the surrounding area. Id. at 139–40, 157. Also, all employees of the factory are local villagers and the yogurt is distributed by Bangladeshi women in various villages. Id. at 149, 151, 152, 157. As a result of the local distribution model, Danone entrusts all of the management to the local factory. Rose, supra note 8, at 151.

42 See Yunus, supra note 6, at 172–73.

43 Id. at 144.
to three percent rate of return on its investment, leaving some doubt as to whether investors will receive any return from this business.\footnote{See \textit{id.}; Interview by Danone Communities with Emmanuel Faber, Executive Vice-President, Groupe Danone (Feb. 26, 2008), \textit{available at} http://www.danonecommunities.com/?p=157 [hereinafter Interview with Emmanuel Faber]. In Yunus’s ideal model, any return on an investment would go towards the growth of the social business. See \textit{YUNUS, supra} note \textit{6}, at \textit{22}. This one percent dividend shows Danone’s partial ownership of Grameen Danone through the figure on its balance sheet. See \textit{id}. In response to a question about this dividend, Danone’s Executive Vice-President stated that “[t]he one thing that is very clear is that the societal objective of all these projects supersedes any other objective.” Interview with Emmanuel Faber, \textit{supra}.}

\section*{B. \textit{Groupe Danone’s Social Business Mutual Fund}}

Groupe Danone’s CEO recognized the contradiction between this lack of return to shareholders and Groupe Danone’s profit-maximization purpose.\footnote{See Interview with Emmanuel Faber, \textit{supra} note \textit{44}. Specifically, Groupe Danone’s Articles of Association do not set out any social objective. See \textit{GROUPE DANONE, ARTICLES OF ASSOCIATION ART. 2, available at} http://media.corporate-ir.net/media_files/irol/95/95168/cg/Statuts_5MAI2008_en.pdf.} He was faced with a question of how to adhere to the stated purpose of Danone while also investing in a social business.\footnote{The purpose of the company, whether directly or indirectly, shall be: \textit{Industry and trade relating to all food products; \ The performance of all and any financial transactions and the management of all and any transferable rights and securities, listed or unlisted, French or foreign, the acquisition and the management of all and any real estate properties and rights. \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ Id.}} Accordingly, the Groupe Danone board of directors decided to legally separate Grameen Danone from Groupe Danone and create an “autonomous entity with its own specific shareholders” instead of a hybrid business model.\footnote{See \textit{YUNUS, supra} note \textit{6}, at \textit{169–70}. Danone’s Executive Vice-President stated that he was forced to grapple with the question: “[T]o what extent do I have the shareholders’ mandate to invest, to involve myself or to let my company get involved in civil society?” Interview with Emmanuel Faber, \textit{supra} note \textit{44}.} This would solve the shareholder problem while still providing for a small monetary profit for Groupe Danone.\footnote{Id.; see \textit{YUNUS, supra} note \textit{6}, at \textit{170–71}.}

To create this entity, Groupe Danone created a mutual fund with a specific social mission and gave shareholders the option to join it.\footnote{\textit{YUNUS, supra} note \textit{6}, at \textit{171}. The title of the mutual fund is \textit{Société d’Investissement à Capital Variable, SICAV danone communities}. \textit{Id.}} Thus, Groupe Danone can clearly explain to investors that the fund
only has a social benefit and no monetary dividends. To invest in the Danone Communities Fund ("Danone Communities"), Groupe Danone investors opt to receive a "social dividend," which gives them shares in the fund, instead of a cash dividend from Groupe Danone. In this model, the pure social benefit and the lack of monetary return are immediately clear to shareholders. Ninety percent of funds in Danone Communities will be invested in money market instruments and ten percent will be invested in social businesses, which provide no return. Through this method, Danone Communities shareholders will have a near market yield on their investment and consequently have the capacity to support a number of social businesses.

This new fund is popular because of its unique model and has protected the company from liability, as well as created a new role for the banker because of its social focus. Even though Yunus and the Executive Vice-President of Danone were concerned about this new and unique concept being approved by the Securities and Exchange Commission (SEC) and its French equivalent, Autorité des Marchés Financiers (AMF), it was classified as a "social business development fund" and listed on both the French and U.S. financial markets. Danone Communities is underwritten and managed by a leading French bank, Crédit Agricole, and over thirty percent of Groupe Danone’s employees have opted to partially invest in it. Additionally, by creating this separate mutual fund, Groupe Danone is protected from shareholders who do not believe that this social benefit fulfills the purpose of the company.

50 See id. at 171–72; Ghalib & Hossain, supra note 2, at 3. The Executive Vice-President describes this as saying to shareholders: "We propose, if you like, that you invest all or some of your dividend for a social and societal mission that is closely interlinked with the company’s processes." Interview with Emmanuel Faber, supra note 44.

51 See id. at 171–72. The Investment Company Act of 1940 and the Securities Act of 1933 require funds to have a prospectus to make their purpose clear to investors. See 15 U.S.C. § 77j(a) (2006); id. § 80a–24. Thus Danone Communities fulfilled this regulation by specifying this social benefit. See YUNUS, supra note 6, at 171–72.

52 YUNUS, supra note 6, at 171.

53 See id.; Interview with Emmanuel Faber, supra note 44 (explaining that Danone Communities needed to be a separate entity from Groupe Danone because of its shareholders).

54 See id.


56 YUNUS, supra note 6, at 173.

57 See Interview with Emmanuel Faber, supra note 44.
Thus, Groupe Danone created this mutual fund to adhere to its original business purpose while still working towards eliminating poverty.59

II. SOCIAL BUSINESSES AND POTENTIAL LIABILITY

Most companies considering creating a social business have the same hesitancy as Groupe Danone.60 Thus, while social businesses are not necessarily barred by law, they are not as popular as not-for-profit charities because of the unclear and flexible nature of corporate law.61 This flexibility protects directors that believe their decisions are in the best interest of their business.62 However, a lack of clear corporate law standards also causes directors to adhere to traditional business models and avoid new ideas, such as social businesses.63

A. Business Judgment Rule Protection

Although directors are nervous about possible duty of care liability because of the lack of a clear social business model, United States courts generally remove themselves from business decisions.64 Conse-

59 See Yunus, supra note 1, at 275; Prasso, supra note 2, at 101.

60 See, e.g., Kerr, supra note 31, at 667 (explaining the misconception that “current laws do not protect socially outward looking decisions”); Ghalib & Hossain, supra note 2, at 12 (stating that “[d]oubts were raised as to how long [Grameen Danone] would be able to run operations ‘for social benefit’ alone, without reaping maximum profits”); Interview with Emmanuel Faber, supra note 44 (discussing Danone’s fear of not adhering to its business purpose).

61 See Michael D. Gottesman, Comment, From Cobblestones to Pavement: The Legal Road Forward for the Creation of Hybrid Social Organizations, 26 YALE L. & POL’Y REV. 345, 346 (2007) (explaining that despite the recent interest in the social business, very few commentators have proposed solutions to current regulations to allow for this type of business).

62 See Kerr, supra note 31, at 636.

63 See Gottesman, supra note 61, at 346, 351–58 (explaining the lack of models or regulations for this type of business model to follow).

64 See Kamin v. Am. Express Co., 383 N.Y.S.2d 807, 810–11 (Sup. Ct. 1976); Yunus, supra note 6, at 169–70; Gottesman, supra note 61, at 350–51. The duty of care claim ensures that “directors exercise the care that a person in a like position would exercise under similar circumstances.” See DENIS J. BLOCK ET AL., 1 THE BUSINESS JUDGMENT RULE 109 (5th ed. 2005). Courts, however, generally adhere to the principle that “[t]he director’s room rather than the courtroom is the appropriate forum for thrashing out purely business questions which will have an impact on profits, market prices, competitive situations, or tax advantages.” Kamin, 383 N.Y.S.2d at 810–11; see also In re The Walt Disney Co. Derivative Litig., 907 A.2d 693, 698 (Del. Ch. 2005), aff’d 906 A.2d 27 (Del. 2006) (“The redress for failures that arise from faithful management must come from the markets, through the action of shareholders and the free flow of capital, and not from this Court.”). The rationale behind this principle follows that “[s]hould the court apportion liability based on the ultimate outcome of decisions taken in good faith by faithful directors or officers, those decision-makers would necessarily take decisions that minimize risk, not maximize value
quently, directors and boards have a significant amount of flexibility in their decision making process. This principle is indoctrinated in the business judgment rule, which represents “a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” It helps to ensure that directors maintain a business-centric attitude and adhere to a deliberate decision making process. Thus, the established standard to receive relief under a business judgment rule claim is gross negligence, making liability for duty of care very infrequent.

Directors who desire to create a social business will therefore be protected by the business judgment rule as long as they are informed in their decision making process. This rule only asks if there was a proper procedure followed to reach the decision and does not evaluate the decision itself. The business judgment rule furthers the policy of leaving business decisions in the boardroom. Thus, the concern of liability for a social business as a result of a breach of the director’s duty of care is unfounded unless there is some sort of gross negligence. Although the

65 See Kamin, 383 N.Y.S.2d at 810–12; Kerr, supra note 31, at 635–39 (explaining that directors have significant independence in their decisions, despite the traditional director duties). Additionally, this flexibility is important because shareholder derivatives suits against directors’ judgment are timely and pricey. See Greenbaum v. American Metal Climax, 278 N.Y.S.2d 123, 130 (Sup. Ct. 1967). As a result, “[shareholders] are required to set forth something more than vague general charges of wrongdoing . . . conclusory allegations of breaches of fiduciary duty are not enough.” Id. at 130–31.

66 Aronson v. Lewis, 473 A.2d 805, 812 (Del. 1984) (establishing this presumption as the business judgment rule in Delaware common law). “Questions of policy of management . . . are left solely to [directors’] honest and unselfish decisions, for their powers therein are without limitation and free from restraint, and the exercise of them for the common and general interests of the corporation may not be questioned, although the results show that what they did was unwise or inexpedient.” Pollitz v. Wabash R. Co., 100 N.E. 721, 724 (N.Y. 1912). As a result of the business judgment rule, to establish liability for a breach of duty of care, the plaintiff must overcome the presumption that the directors acted with due care and then the burden will shift to the directors to prove they acted in an informed manner. Block, supra note 64, at 110–11.

68 See Van Gorkom, 488 A.2d at 858, 872-73 (Del. 1985) (reaffirming the business judgment rule). Although the Van Gorkom decision has been criticized, the decision still demonstrates the limits on court intervention in the board room. See Omnicare, Inc. v. NCS Healthcare, Inc., 818 A.2d 914, 947 (Del. 2003) (Steele, J., dissenting).

69 Van Gorkom, 488 A.2d at 872, 873; Aronson, 473 A.2d at 812.

70 Block, supra note 64, at 21–22.

71 See Pollitz, 100 N.E. at 724; Kamin, 383 N.Y.S.2d at 810–11.

72 Van Gorkom, 488 A.2d at 873.
business judgment rule protects directors in their informed decisions, because of the lack of clear guidelines, directors are still nervous to stray from the traditional model, especially one that attempts to change the focus of the business away from its profit-making mission.  

B. The Business Purpose Question

While the business judgment rule can protect the directors from a duty of care violation, it will not protect them from liability in a duty of loyalty breach if they were not acting in the best interest of their shareholders—consequently, directors may hesitate to put capital towards the creation of social businesses. Business decisions are still rarely subject to judicial scrutiny as long as the corporation is “managed by its directors pursuant to a free, honest exercise of judgment uninfluenced by personal, or by any considerations other than the welfare of the corporation.” This duty of loyalty is regarded as one of the paramount responsibilities of directors, and therefore courts give it great consideration. However, in order to allow a director to make independent decisions, claims are only viable against a board of directors if fraud, dishonesty, bad faith, or self-interest are involved in the director’s decision, as well as any neglect of corporate duties.

To determine whether a board might be liable for the creation of a social business under this standard, the (generally unclear) established purpose of a corporation is an essential consideration. A.P. Smith Manufacturing Co. v. Barlow established the common law treatment of

73 See Aronson, 473 A.2d at 812; Gottesman, supra note 61, at 350–51.
74 See Bayer v. Beran, 49 N.Y.S.2d 2, 6 (Sup. Ct. 1944); Oliver Hart, An Economist’s View of Fiduciary Duty, 43 U. Toronto L.J. 299, 303 (1993); Interview with Emmanuel Faber, supra note 44. The duty of loyalty “is designed ‘to avoid the possibility of fraud and to avoid the temptation of self-interest.’” Bayer, 49 N.Y.S.2d at 6 (quoting In re Ryan’s Will, 52 N.E.2d 909, 923 (N.Y. 1943)).
75 See Bayer, 49 N.Y.S.2d at 6.
76 See id. at 5–7.
77 See N.Y. Bus. Corp. Law § 720(a)(1)(A)–(B) (McKinney 2003); Higgins v. N.Y. Stock Exch., Inc., 806 N.Y.S.2d 339, 357–58 (Sup. Ct. 2005). For example, New York’s law states that a director may be liable for actions if there was neglect or a failure to perform. See N.Y. Bus. Corp. Law § 720(a)(1)(A)–(B). The neglect used in duty of loyalty claims is not poor judgment in a business decision, but rather a neglect of a director’s duties, as set out in the corporation’s articles of incorporation. See Kamin, 383 N.Y.S.2d at 811. There will sometimes be disagreement with director decisions but that does not mean that it is actionable neglect. See id.
philanthropy in the overall purpose of a corporation.\textsuperscript{79} Generally, private profit is established to be the main objective of a corporation; thus, in the nineteenth and into the twentieth century, directors could not use corporate funds for a philanthropic purpose unless it there was a resulting benefit for the corporation.\textsuperscript{80} Nevertheless, as a result of the aggregation of wealth within corporations, corporations, not individuals, can have the most significant effect on charities.\textsuperscript{81} Therefore, corporate participation in philanthropic work is encouraged and usually viewed as furthering a business purpose because of the amount of public support it helps create.\textsuperscript{82} Additionally, the purpose of the corporation is generally established in its articles of incorporation and thus can be altered by the corporation, underscoring the flexibility of business purposes.\textsuperscript{83}

\textsuperscript{79} See Barlow, 98 A.2d at 583–86; Nancy J. Knauer, \textit{The Paradox of Corporate Giving}, 44 DePaul Law Rev. 1, 26–27 (1994). Originally, the intent of all corporations was considered to be for the benefit of the public and government. \textit{Barlow}, 98 A.2d at 583.

\textsuperscript{80} See Barlow, 98 A.2d at 583–84, 586–87; Einer Elhauge, \textit{Sacrificing Corporate Profits in the Public Interest}, 80 N.Y.U. L. Rev. 733, 830 (2005). This assumption did not harm charities in the nineteenth century because a very small amount of wealth was held by corporations. \textit{Barlow}, 98 A.2d at 585–86. The only powers that a corporation held in the nineteenth and early twentieth century were those that the state and its articles of incorporation granted. See Faith Stevelman Kahn, \textit{Pandora's Box: Managerial Discretion and the Problem of Corporate Philanthropy}, 44 UCLA L. Rev. 579, 594–95 (1997).

\textsuperscript{81} See Barlow, 98 A.2d at 584, 585–86. As a result of lucrative tax incentives for corporations, some consider it more beneficial for a corporation to make philanthropic donations rather than individual stockholders after the corporation has been taxed. See R. Franklin Balotti & James J. Hanks, Jr., \textit{Giving at the Office: A Reappraisal of Charitable Contributions by Corporations}, 54 Bus. Law. 965, 991 (1999). Additionally, some argue that corporations are better suited to make these donations; this solves a collective action problem and corporations are in a better position to monitor the use of the contribution. See Elhauge, \textit{supra} note 80, at 830–40.

\textsuperscript{82} See Barlow, 98 A.2d at 584. The benefits of corporate philanthropy are numerous, including forming a positive image for the corporation. See Balotti & Hanks, \textit{supra} note 81, at 967; Knauer, \textit{supra} note 79, at 29–30, 53–60. Additionally, even if a philanthropic contribution or venture cannot easily be linked to a business benefit, virtually all are justified that way. See Balotti & Hanks, \textit{supra} note 80, at 968. The public attitude in favor of a charitable corporation may “not be measured in accounting terms, but it apparently counts to legitimize the donation and to distinguish it from a gift for which absolutely nothing is received that would be unauthorized unless approved unanimously by the stockholders.” Victor Brudney & Allen Ferrell, \textit{Corporate Charitable Giving}, 69 U. Chi. L. Rev. 1191, 1193–94 (2002).

\textsuperscript{83} See, e.g., \textit{Cal. Corp. Code} § 202(b)(1)(i) (West 1990) (stating that “[t]he purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized”); \textit{Del. Code Ann. tit. 8 §§ 101(b), 102(a)(3) (1974)} (stating that the purpose of the corporation must be stated in the articles of incorporation and that the purpose may be any lawful activity); \textit{N.Y. Bus. Corp. Law} § 201(a) (McKinney 2003) (explaining that “[a] corporation may be formed . . . for any lawful business purpose or purposes except to do in this state any business for which formation is permitted under any other statute of this state”); \textit{Consolidated Film Indus., Inc. v. Johnson}, 197 A. 489, 493 (Del. 1937) (explaining that a company’s articles of incorporation may be amended).
As a result of this shift in the common law, many states have codified the right of business directors to contribute to philanthropic causes.\textsuperscript{84} For example, Delaware General Corporation Law section 122 allows directors to “[m]ake donations for the public welfare or for charitable, scientific or educational purposes, and in times of war or other national emergency in aid thereof.”\textsuperscript{85} This is listed among the powers of corporations, all of which are authorized in order for corporations to meet their ultimate goal, the maximization of profit.\textsuperscript{86} Likewise, California Corporations Code section 207(e) authorizes philanthropic contribution, “regardless of specific corporate benefit.”\textsuperscript{87} The statute still maintains, however, a relation to maximizing profit.\textsuperscript{88} While common law and statutory law both recognize the right of charitable giving, directors still strive to have some justification that they are furthering the purpose of the business.\textsuperscript{89}

\textsuperscript{84} See, e.g., \textit{Model Bus. Corp. Act.} § 3.02(13) (2007) (granting corporations the power “to make donations for the public welfare or for charitable . . . purposes”); \textit{Cal. Corp. Code} § 207(e) (West 1990) (granting corporations the power to “[m]ake donations, regardless of specific corporate benefit, for the public welfare or for community fund, hospital, charitable . . . purposes”); \textit{Del. Code Ann. tit. 8} § 122(9) (granting corporations the power to “[m]ake donations for the public welfare”); \textit{N.Y. Bus. Corp. Law} § 202(12) (McKinney 2003) (granting corporations the power, “[t]o make donations, irrespective of corporate benefit, for the public welfare or for community fund, hospital, charitable . . . or similar purposes”); Elhauge, \textit{supra} note 80, at 830 (explaining that states reacted to the common law change in corporate law by creating charitable contribution statutes). These statutes give significant discretionary power to directors in terms of the company’s charitable actions. See Kahn, \textit{supra} note 80, at 602–05. Some argue that the state of the law is too flexible, allowing whatever a director’s whim may be. \textit{Id.} A consequence of this lack of clear regulations is that directors may be unclear about the state of the law in regard to unique business models. Kerr, \textit{supra} note 31, at 637; Rana, \textit{supra} note 30, at 93–95.

\textsuperscript{85} \textit{Del. Code Ann. tit. 8} § 122(9).

\textsuperscript{86} See \textit{id.} In Delaware, a corporation may “promote any lawful business or purposes.” \textit{Del. Code Ann. tit. 8} § 101(b). This business or purpose must be specified in the articles of incorporation and is generally considered to exist for the benefit of stockholders. See \textit{id.} § 102(a)(3); Gottesman, \textit{supra} note 61, at 350–51. Thus, all the powers of the corporation must be considered within the scope of the corporation’s purpose. See \textit{Del. Code Ann. tit. 8} § 121(a).


\textsuperscript{88} See \textit{Cal. Corp. Code} § 207(e) (West 1990). This part of the Code begins: “[s]ubject to any limitations contained in the articles and to compliance with other provisions of this division and any other applicable laws . . . .” \textit{Id.}

\textsuperscript{89} \textit{See Balotti & Hanks, supra} note 81, at 968, 991.
Additionally, it is unclear to what extent directors may consider others over the company’s shareholders.\(^\text{90}\) The Michigan Supreme Court decision in \textit{Dodge v. Ford Motor Co.} established the rule that businesses cannot be run primarily for the benefit of others and that all decisions are to be made with the shareholders in mind.\(^\text{91}\) Nonetheless, in Illinois, the \textit{Schlensky v. Wrigley} decision determined that directors may consider others besides shareholders when making a decision, as long as the shareholders’ benefit is still of foremost importance.\(^\text{92}\) In \textit{Schlensky}, the directors may have considered the effect on the surrounding neighborhood, but that did not preclude them from also considering the benefit for or detriment of the shareholders.\(^\text{93}\) As a result of this lack of clear guidelines, a corporation will often show, unlike in Yunus’s model, that there is also a business purpose if it is aiming for a social result.\(^\text{94}\) This demonstrates that the directors consider their shareholder’s benefit along with those who benefit from the social result (for example, Bangladeshi children).\(^\text{95}\)

III. \textbf{Reactions to Corporate Law Uncertainty}

Although corporate law affords significant flexibility to directors, its uncertain nature may cause some companies to reject Yunus’s unique idea.\(^\text{96}\) Nevertheless, Grameen Danone and another corporation,

\(^{90}\text{Compare Dodge v. Ford Motor Co., 170 N.W. 668, 685 (Mich. 1919) (forbidding the consideration of the benefits of employees and the general public over those of the shareholders), and Gottesman, supra note 61, at 350, with Schlensky v. Wrigley, 237 N.E.2d 760, 780 (Ill. App. 2d 1968) (allowing the consideration of the welfare of the general public in the business decision).}\n
\(^{91}\text{Dodge, 170 N.W. at 682–85; Knauer, supra note 79, at 24–26. The Court stated that Ford Motor Company was able to take care of its own affairs; however it did not allow directors to keep profits from shareholders. Dodge, 170 N.W. at 682.}\n
\(^{92}\text{See Schlensky, 237 N.E.2d at 780. This case is distinguished from Dodge v. Ford because there was fraud or breach of good faith in the Dodge case in the eyes of the court. See id. at 779–80. Thus, there only needed to be a connection between the decision and shareholder’s interest. See id.}\n
\(^{93}\text{See id. at 780. This was a dispute over installing lights for night games at Wrigley Field; most ballparks had already installed the lights. See id. at 777–78, 780. However, the owner of Chicago Cubs chose not to because it would adversely affect the neighborhood, among other reasons. See Schlensky, 237 N.E.2d at 777–78, 780.}\n
\(^{94}\text{See YUNUS, supra note 6, at 170–71; Balotti & Hanks, supra note 81, at 968.}\n
\(^{95}\text{See YUNUS, supra note 6, at 171–72. Thus, corporate giving currently requires that directors act in what they, “reasonably believe is the corporation’s best interests . . . based on the traditional profit-maximization theory of corporate purpose.” Balotti & Hanks, supra note 81, at 980.}\n
\(^{96}\text{See Balotti & Hanks, supra note 81, at 968 (explaining that the uncertain nature of charitable contribution and fear of angry shareholders results in the veiling of philanthropy as a business purpose).}\n
Google, have embraced the social business model.\(^97\) Each reacted to the potential liability in different ways: Google by embracing the flexibility of the business purpose, and Groupe Danone by creating a completely separate legal entity.\(^98\)

A. Google.org as an Anomaly

Google’s social business, Google.org, is not legally separated from its parent company, but is structured to eliminate the uncertainties of corporate law.\(^99\) Google.org defines itself as “a hybrid philanthropy that uses a range of approaches to help advance solutions within . . . five initiatives.”\(^100\) Like Yunus’s model of a social business, Google.org is a for-profit business.\(^101\) Although Google provided the start-up capital for Google.org, it is not worried about angering shareholders because its founders Larry Page and Sergey Brin clearly stated the company’s mission of a social benefit in its infancy.\(^102\) In order to give Google.org the necessary start-up capital, Google contributed one percent of its equity


\(^98\) See Kerr, supra note 31, at 628; Rana, supra note 30, at 87–88; Interview with Emmanuel Faber, supra note 44.


\(^100\) About Google.org, supra note 97. These five initiatives are to: “1) develop renewable energy cheaper than coal, 2) rechargeIT [to accelerate the adoption of plug-in electric vehicles], 3) predict and prevent [emerging infectious diseases and environmental disasters], 4) inform and empower to improve public services, and 5) fuel the growth of small and medium-sized enterprises.” Google.org Homepage, http://www.google.org (last visited Apr. 10, 2009). These initiatives are more than charitable causes, they are meant to support economies of scale in the future. Milbrandt, supra note 30, at 427.

\(^101\) See Milbrandt, supra note 30, 427–28; Hafner, supra note 33. Google founders Larry Page and Sergey Brin felt too constrained by the requirements of a 501(c)(3) foundation. Hafner, supra note 33, at C4. Google.org’s executive director noted that “Google.org can play on the entire keyboard . . . It can start companies, build industries, pay consultants, lobby, give money to individuals and make a profit.” Hafner, supra note 33. Page and Brin believe this flexibility will significantly benefit their corporation’s reach because it essentially eliminates all possible limitations that would apply if it was a not-for-profit. See Rana, supra note 30, at 93–94.

\(^102\) See Kerr, supra note 31, at 627; About Google.org, supra note 97.
and profits. The main objective of this contribution was to produce social results. Some shareholders could disagree with the use of capital for a social purpose because Google pays no shareholder dividends at this time.

Google is an anomaly because it took advantage of the flexibility of corporate law by making its mission of working towards a social benefit clear in its infancy. Before its initial public offering, Page and Brin clearly set out their commitment to philanthropic work through directly stating their plans to put one percent stock and equal percentage of profit towards social issues. In its initial public offering letter, they also brought attention to Google’s well-known motto “don’t be evil.” Establishing this unique goal as a priority in the infancy of the company not only made Google an anomaly, but also protected it from disgruntled shareholders because social benefits are an established purpose of the company.

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103 See About Google.org, supra note 97. This capital, which originated from seed money from the Google Initial Public Offering, amounted to over one billion dollars. Kerr, supra note 31, at 627. Additionally, Google has supplied Google.org with its employees and various other resources. See About Google.org, supra note 97.

104 See Hafner, supra note 33, at A1. The executive director of Google.org noted, “[w]e’re not doing it for the profit. And if we didn’t get our capital back, so what? The emphasis is on social returns, not economic returns.” Id. Thus, like Yunus’s model of social business, all of the emphasis in Google.org is on the social benefit. See id. The issue is how to describe a profit here because it would not be monetary. See Rana, supra note 30, at 94.

105 See Rana, supra note 30, 94–95; Milbrandt, supra note 30, 428; Hafner, supra note 33.

106 See Kerr, supra note 31, at 627–28. The creation of this philanthropy is early in comparison to most companies, such as Microsoft and it’s not-for-profit foundation, the Gates Foundation. See Kerr, supra note 31, at 628; Hafner, supra note 33. Gottesman discusses an idea, similar to Yunus’s, of B corporations which are traditional corporations but spell out their social commitments in their governing documents to give investors notice. Gottesman, supra note 61, at 355.


108 See IPO Letter, supra note 107, at 32. Brin and Page use the “don’t be evil” motto to describe their attitude that Google and its shareholders, “will be better served . . . by a company that does good things for the world even if we forgo some short term gains.” Id. This motto runs through everything Google does; for example, the Google Code of Conduct is structured around it. See Google, Inc., Code of Conduct, http://investor.google.com/conduct.html (last visited Apr. 15, 2009). Additionally, the motto is one of the identifying and popular characteristics of Google in the public mind. See Adam Lashinsky, Can Google Three-Peat?, CNN.COM, Jan. 31, 2008, http://money.cnn.com/2008/01/28/news/companies/google qa.fortune/index.htm.

109 See Rana, supra note 30, at 94–95 (“Google’s founders informed potential investors of their plans to devote a certain amount of funds to a philanthropic entity before taking the company public, so the investors have little basis to complain now that the founders are ‘robbing’ them by doing so.”). Additionally, if necessary, Google could argue that there is a business purpose to this social business because it is well publicized and makes the
B. Danone’s Separate Legal Entity Model

While Google.org finds solace in the flexibility of corporate law, this lack of clarity causes other companies to shy away from creating these businesses.\textsuperscript{110} Since Danone did not establish a social goal in its infancy like Google, its foremost concern when its CEO decided to become involved in a social business was the company’s liability to the shareholders for not following the stated purposes of the company.\textsuperscript{111} Most companies, notably those with the most significant amount of capital to contribute, will be similar to Danone and will not have established a social purpose in their infancies.\textsuperscript{112} Thus, directors of a corporation established for profit maximization may also be liable to shareholders because the lack of dividends could suggest that the shareholders’ benefit is not of the foremost importance.\textsuperscript{113} Companies that desire to establish or contribute to social businesses and have not established this in their articles of incorporation will want to protect themselves from the risk of liability.\textsuperscript{114} They could take remedial steps, such as amending their charter; however, these may detract from the appeal of investing in the company.\textsuperscript{115} Therefore, these companies must find some way, like Danone, to separate this social business from their original business.\textsuperscript{116}

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\textsuperscript{111} See \textit{Yunus}, \textit{supra} note 6, at 169–70. The main question for Danone was: “How do we defend ourselves when the shareholders ask, ‘How dare you invest our money in a project that creates no profit for us? You are violating your mandate in doing so.’” \textit{See id.} at 170.

\textsuperscript{112} See Hafner, \textit{supra} note 33.

\textsuperscript{113} See A.P. Smith Mfg. Co. v. Barlow, 98 A.2d 581, 587 (N.J. 1953) (explaining the power of corporations to give to philanthropies while remaining true to their shareholders); Kerr, \textit{supra} note 31, at 636–37 (discussing the current unclear state of the corporate fiduciary duty).

\textsuperscript{114} See \textit{Yunus}, \textit{supra} note 6, at 169–70.

\textsuperscript{115} See Steen v. Modern Woodmen of Am., 129 N.E. 546, 549 (Ill. 1921) (establishing the right of those who make bylaws to amend them). This could detract from the appeal of a company to potential investors if they are interested only in the company’s original profit-maximization purpose. \textit{Yunus}, \textit{supra} note 6, at 39–40.

\textsuperscript{116} See \textit{Yunus}, \textit{supra} note 6, at 170–71.
IV. ENCOURAGING SOCIAL BUSINESSES THROUGH THE MUTUAL FUND MODEL

To encourage the creation of these social businesses and to address the uncertainty in corporate law, the United States should create incentives or guidelines for their formation. Specifically, the Securities and Exchange Commission (SEC) should enact mutual fund regulations modeled after Danone Communities Social Investment Fund given its success and popularity with investors. Because this is such a new type of business, there are not any other models, but most Grameen social businesses will likely be similar to the Danone mutual fund model. However, like corporate law, mutual fund regulations are currently unclear on the subject because while they would allow for social mutual funds, regulations do not specify how such funds would differ from the typical mutual fund which has profit as its goal. The goal of mutual fund regulations is, “to provide full and fair disclosure of the character of securities sold . . . and to prevent frauds in the sale thereof.” Therefore, to help social investment companies meet this goal, the SEC should set guidelines on how to properly disclose a social purpose.

A. The Mutual Fund Model

Generally, there are no bars to expansion or creation of new investment funds; therefore, as long as a social mutual fund follows SEC registration guidelines, it will not be barred because of its philanthropic goal. Currently, a mutual fund must register with the SEC under the

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117 See, e.g., id. (advocating for specific social business regulations); Brudney & Ferrell, supra note 82, at 1210 (arguing that a program of shareholder choice would have to be implemented at the federal level, not state level); Gottesman, supra note 61, at 351–54 (explaining the arguments that legislation for new corporate forms or new tax laws are necessary for the not-for-loss corporation).
118 See YUNUS, supra note 6, at 172–73.
119 See E-mail from Shadab Mahmud, Program Manager, Graeme Health, to author (Oct. 11, 2008, 11:59:00 EST) (on file with author).
120 See 15 U.S.C. § 77g (2006); id. § 80a–24(a); YUNUS, supra note 6, at 171–72.
123 See YUNUS, supra note 6, at 171–73 (discussing the creation of Danone Communities as a social business development fund); John C. Coates IV & R. Glenn Hubbard, Competition in the Mutual Fund Industry: Evidence and Implications for Policy, 33 J. Corp. L. 151, 168–69 (2007) (noting that the absence of the barriers to new funds creates competition in the industry);
Investment Company Act of 1940 and its issued securities under the Securities Act of 1933 by filing Form N-1A.\textsuperscript{124} This form has three specific parts to guide the investment company in disclosing the proper information to investors.\textsuperscript{125} A prospectus is required to ensure that shareholders make informed decisions on their investments.\textsuperscript{126} Additionally, the investment company must include the fund’s investment objective goals and a summary of how it intends to achieve them.\textsuperscript{127} Thus, mutual funds must ensure that the information in its registration statement meets the requirements of section 10(a) of the Securities Act of 1933 so they are not liable for a materially misleading or false statement on its prospectus.\textsuperscript{128}

To clarify the current regulations for businesses with a social purpose, there must be clear guidelines or new regulations for how to properly explain a social purpose because the current regulations do not distinguish a profit maximizing fund from this concept.\textsuperscript{129} Addi-


\textsuperscript{125} Form N–1A, supra note 124, at 6; Fortune, supra note 124, at 50.

\textsuperscript{126} See 15 U.S.C. § 77j(a)–(f) (2006); Form N–1A, supra note 124, at 6. The prospectus “is a term of art referring to a document that describes a public offering of securities by an issuer or controlling shareholder.” Gustafson v. Alloy Co., 513 U.S. 561, 584 (1995) (Thomas, J., dissenting). This prospectus must be in “plain English” so that there is no confusion or claimed misunderstanding. See 17 C.F.R. § 230.421 (2007); Warren E. Buffett, Preface to Office of Investor Educ. & Assistance, U.S. Sec. & Exch. Comm’n, A Plain English Handbook: How to Create Clear SEC Disclosure Documents 1–2 (1998) (stressing the importance of writing prospectuses so that investors, who usually do not have an accounting or finance background, can understand them).

\textsuperscript{127} 15 U.S.C. § 77j; id. § 80a–24; Form N-1A, supra note 124, at 6–8. The registration statement must also have a proper front and back cover page, fee table, shareholder information, how to purchase securities, repurchase information, financial highlights, and any additional information that the SEC has concluded is not necessary but may be helpful. Form N-1A, supra note 124, at 6–8.

\textsuperscript{128} Sec. & Exch. Comm’n v. Manor Nursing Ctrs., Inc., 458 F.2d 1082, 1098 (2d Cir. 1972); see 15 U.S.C. §§ 77j–77k.

\textsuperscript{129} See 15 U.S.C. § 77b; YUNUS, supra note 6, at 175, 178–79. For example, the statute could change by specifying that a social business must, “clearly state any social purpose
tionally, these guidelines must also explain how the fund would measure and report the social benefit, since the regulations now only refer to the reporting of a monetary profit. Thus, to facilitate the creation of new social mutual funds, more precise regulations in terms of a social business are necessary.

B. Advantages for Corporations

A mutual fund model can encourage directors to form social businesses because it gives them confidence that this business model will stand up against shareholder suits. Additionally, this model removes any uncertainty in the ever-evolving field of corporate charitable law. There would be no duty of loyalty or duty of care question because it would be clear from the outset, as in Google’s model, that there is only a social, not monetary purpose. To fulfill their duties, the directors of the fund will have a duty to be loyal to others besides their shareholders—to those who are receiving the social benefit—consequently elimi-

with specificity in its prospectus. Additionally, the social investment fund prospectus must clearly lay out a process to report and measure these social results.” See 15 U.S.C. § 77j.

130 See, e.g., 15 U.S.C. § 80a–4 (explaining the types of investment companies, all of which are based on profit maximization); id. § 80a–29(b)(2) (stating that investment companies must provide “copies of every periodic or interim report or similar communication containing financial statements”); id. § 80a–29(e) (requiring funds to provide semi-annual reports to stock holders on their finances); Rana, supra note 30, at 94 (discussing that measuring this social benefit is a potential issue for social businesses). As a result of social businesses, profit maximization is not the only way to measure business success. See Prasso, supra note 2, at 100. Currently, Yunus measures his micro-credit success not by dollars but by people who climb out of poverty. Interview with Muhammad Yunus, supra note 9. To measure its social benefit, Grameen Danone hired GAIN, a nutrition organization, and Johns Hopkins University to study the nutritional impact after the first year of the business. See Yunus, supra note 6, at 154; Interview by Danone Communities with Bérangère Magarinos, Senior Manager, Investments & Partnerships, GAIN (Feb. 26, 2008), available at http://www.danonecommunities.com/marketing-a-nutritional-product-in-a-poor-country-the-gain-foundation%E2%80%99s-business-approach. This study is important to the company because the concrete health benefits for children demonstrate the success of investments. See Yunus, supra note 6, at 153–54.

131 See Yunus, supra note 6, at 177–79.

132 See id. at 171–72; Interview with Emmanuel Faber, supra note 44.

133 See Balotti & Hanks, supra note 81, at 968 (discussing “the uncertain legal environment of charitable contributions”); Brudney & Ferrell, supra note 82, at 1191 (explaining the problem with corporate philanthropy as “whether corporations do, or should have, the power, by management decision . . . to make philanthropic gifts”); cf. Prasso, supra note 2, at 100 (explaining that “money given for philanthropy is often misused”). This type of fund will also eliminate the possibility of a misuse of philanthropic donations because of reporting requirements. See 15 U.S.C. § 80(a)(29) (2006); Prasso, supra note 2, at 100.

134 See Kerr, supra note 31, at 627–28; IPO Letter, supra note 107, at 32.
nating the uncertainty in this area of law.\textsuperscript{135} It will also allow directors to create a social business with no compromise to their original profit maximizing company.\textsuperscript{136} Therefore, they will not need to take any action that may alienate investors, such as amending their charter.\textsuperscript{137}

C. Advantages for Shareholders

The mutual fund model for social businesses will benefit shareholders because it increases their choice.\textsuperscript{138} They will have the decision as to whether or not they want to invest in a social business at all.\textsuperscript{139} This enhanced choice influenced Danone’s decision to create a mutual fund.\textsuperscript{140} Additionally, if the fund provides options, the choice of whether to invest or not could give an investor a choice as to which type of social benefit to support.\textsuperscript{141} Typically, a director will make a decision on charitable contributions without any authorization from the shareholders.\textsuperscript{142} However, shareholders, not corporations, are the individuals with morals and passions who will want to choose where their contribution is directed.\textsuperscript{143} The mutual fund model increases shareholder power

\textsuperscript{135} See Schlensky, 237 N.E.2d at 779–80; Kerr, supra note 31, at 667.

\textsuperscript{136} See Prasso, supra note 2, at 100; Interview with Emmanuel Faber, supra note 44.

\textsuperscript{137} See Consol. Film Indus., Inc. v. Johnson, 197 A. 489, 493 (Del. 1937); Yunus, supra note 6, at 170–71.

\textsuperscript{138} See Interview with Emmanuel Faber, supra note 44.

\textsuperscript{139} See, e.g., Brudney & Ferrell, supra note 82, at 1198–209 (discussing the numerous benefits of shareholder choice within corporate philanthropy); Kahn, supra note 80, at 635–36 (explaining possible solutions to the lack of shareholder choice in corporate charitable law); Yunus, supra note 1, at 273 (explaining the “Social Stock Market”, where social business investors could invest in “a social business, which has a mission of his liking”).

\textsuperscript{140} See Interview with Emmanuel Faber, supra note 44.

\textsuperscript{141} See Brudney & Ferrell, supra note 82, at 1196. Warren Buffet’s company, Berkshire Hathaway, allows for a choice in what type of company receives a donation because shareholders designate a beneficiary of corporate giving. See id. Nevertheless, there have been problems with this sort of charitable contribution scheme because “[Berkshire Hathaway] found that a large number of gifts were made to charities with a religious affiliation.” See Jill E. Fisch, Questioning Philanthropy From a Corporate Governance Perspective, N.Y.L. SCH. L. REV. 1091, 1100–01 (1997). “The contribution policies of most publicly-held corporations, however, explicitly prohibit donations that are to be used for religious purposes.” Id. at 1101.

\textsuperscript{142} See Elhauge, supra note 80, at 830–31. Elhauge argues that shareholders should have a voice in profit-sacrificing donation decisions. Id. at 830–31, 868–69. He states that there should be some sort of process under which the shareholders give approval. Id. at 830–40. Especially if corporations are allowed to make donations to solve a free rider problem, monitoring problem, or tax problem, one would assume that rational shareholders who wish to make donations would vote to approve them. Id. at 830–40.

\textsuperscript{143} See Brudney & Ferrell, supra note 82, at 1205–06, 1208; Elhauge, supra note 80, at 830–40.
and eliminates the typical corporate charitable contribution problem. Shareholders will benefit from this model because they will be able to view the social progress and sustainability of the company through required reports, which do not exist for charitable contributions.

**Conclusion**

Muhammad Yunus’s social business idea not only represents a unique development for charity and non-profit businesses but for the for-profit corporations as well. This idea could have a significant effect on marginalized groups and completely redevelop the approach to the elimination of poverty because of its self-sustaining nature. Muhammad Yunus introduces this business model as an evolution of his microcredit success. Grameen Bank has expanded its experiment in social businesses with the creation of a number of partnerships for healthcare, eye care, and nutrition. The potential success of these programs is dependant upon the public and corporate interest in them. While Grameen Danone is still experimenting with the most cost-efficient way to produce yogurt and remain self-reliant, it will have two more factories in the near future. The companies, like Grameen Danone, that have taken the risk to create them serve as examples to the rest of the corporate community.

Other companies, however, have yet to embrace social businesses as a result of the unclear state of corporate law. For Yunus’s idea to be successful on a grand scale, there must be some kind of incentives or guidelines for their creation. If Groupe Danone’s mutual fund serves as a model for creation of a social business investment fund, these social businesses could be groundbreaking. Clear regulations to encourage the creation of not-for-profit social businesses must be enacted if social businesses are to have any chance to put poverty in museums.

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144 See Balotti & Hanks, supra note 81, at 980–90 (explaining that current corporate law allows directors too much flexibility in their philanthropic decisions); Kahn, supra note 80, at 586 (arguing that the SEC should require regular disclosures of charitable contributions). Kahn argues that required disclosure of charitable contributions will eliminate misuse of philanthropic contribution, enhance the shareholder’s role in corporate social responsibility, and allow them the choice to withdraw if they do not agree with the cause. Kahn, supra note 80, at 586–87.

145 See Kahn, supra note 80, at 581–83, 586; Prasso, supra note 2, at 100 (quoting Danone’s Executive Vice President’s statement: “The strength is that it is a business, and if it is a business, it is sustainable. Your shareholders are happy.”).

146 See Ghalib & Hossain, supra note 2, at 11.

147 Yunus, supra note 1, 274–75.