The Social Enterprise Life Cycle

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Objectives

- Respond to social enterprise diversity
- Identify law as an ally, not an obstacle
- Analyze trajectory of social enterprise law
The Social Enterprise Life Cycle

- Several broad phases of the life of a social enterprise
- Risks to dual mission vary in these different phases
- Not every social enterprise will pass through each
- Not always linear
- Assistance law can provide will vary as well
Key Challenge = Legitimacy

Legal Forms of Organization

- Nonprofit forms unsuitable because of nondistribution constraint
- For-profit forms usable, BUT
  - Incorporation risks social mission prioritization
  - LLC forms communicate little
- Hybrid forms broadcast dual mission and empower fiduciaries
  - Expressly dual purpose
  - Require fiduciaries to consider non-shareholder constituencies and protects them when doing so
- Benefit corporation, L3C, Delaware PBC, other state-specific forms
Growth

- **Key Challenge = Trust**
  - Scaling requires entrepreneurs and sources of financial and human capital to assure one another their commitments to social mission can be trusted

- **Creative legal instruments**
  - Reassure investors, employees, consumers and entrepreneurs
    - FLY Paper uses concessionary terms and conversion rights
    - Options use compensation structure and vesting triggers
    - Loyalty programs can empower consumers to protect mission
  - Securities law, including crowdfunding regulation, may apply

- **Certification programs can also generate trust**
  - Importance of metrics network effect
Decline

- Key Challenge = Preservation
- Deal terms and governance mechanisms can steward mission post-sale
  - Reclaiming the Ben & Jerry’s example
  - Value unlocks flexibility even for smaller and less successful sellers
- Contract and governance can also preserve mission in dissolutions that avoid insolvency
  - Committed owners and investors can negotiate mission-preserving distributions
  - BUT, insolvency elevates creditor interests
    - Inside and outside of bankruptcy
    - Choose creditors carefully
    - Face decline head-on and plan while you can
Thank you.
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