General Overview of Delaware Public Benefit Corporations[1] v. Non-Profit Corporations

	Delaware Public Benefit Corporation	Non Profit Corporation (501(c)(3))
Ownership & Oversight	• Owned by shareholders • Shareholders are entitled to profit distributions, annual reports and voting rights on major decisions (e.g., approving the election of directors), similar to a conventional corporation • Shareholders do not exercise day-to-day oversight, which is delegated to management, overseen by the board of directors	• Most non-profits are entirely run by the board of directors. In that case, there are no owners ("members"), or the members have extremely limited rights. • Another option is to have members who are entitled to vote on major decisions (e.g., approving the election of directors) • Members do not, however, own a financial stake in the business
Goals	Company pursues 3 goals: 1. Generating a competitive return for shareholders AND 2. Pursuing a stated public benefit (e.g., advancing accessibility of academic literature in the social sciences) AND 3. Promoting the best interests of those materially affected by its conduct (e.g., employees, investors, customers)	Company pursues its stated charitable goals only

1 Although many states, including New York, allow public benefit corporations ("PBCs"), we strongly encourage you to form in Delaware if you are forming as a PBC. Delaware was the first state to permit PBCs, and the Delaware PBC laws remain the most developed, robust and predictable in the country.

A non-profit, by contrast, is a well-established business form across all of the states. Both Delaware and New York are viable options to consider, but we can address this question if you decide to pursue the non-profit route.

	Delaware Public Benefit Corporation	Non Profit Corporation (501(c)(3))
Governance & Accountability	• Directors have a fiduciary duty to balance the 3 objectives listed above • Shareholders could sue directors over failure to promote/pursue a particular objective	• Even if the company has members, the directors do not owe any fiduciary duties to the members • Rather, the directors' sole duty is to promote the charitable goals of the organization
Distribution of Profits	Profits may be distributed as dividends to shareholders	Profits must be used to further charitable purposes (can pay reasonable compensation, but cannot distribute profits to members, directors, employees or 3rd parties (e.g., service providers) beyond paying reasonable compensation)
Reporting Requirements	Required to provide to shareholders, at least biennially, a report that assesses the company's performance at meeting the 3 objectives noted above	Required to file Form 990 with IRS (made available to public) with detailed information on programs and finances
Taxation	Taxed like any other for-profit corporation (may elect to operate as "C corp" or "S corp")[2]	• Exempt from federal and state income taxation provided entity obtains 501(c)(3) determination by IRS, and possibly additional approval from state tax authorities • Federal application is due 27 months from formation • *Note:* Violating the rules regarding donations and use of funds may jeopardize tax-exempt status

[2] C corporations are normally subject to "Double Taxation:" the corporation itself pays tax on the income earned each year, and the corporation's shareholders pay tax on any portion of that income that they receive as a dividend.

A corporation can, however, elect to be treated as an "S Corporation," which has "pass-through" taxation. In this case, the entity's profits are taxed only once at the shareholder level.

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Raising Capital	• May be an attractive investment vehicle for “impact investors” • Because PBC’s have only been in existence for less than a decade, a PBC is still not widely understood. So some investors may be skeptical about a PBC and/or unwilling to invest in a company that does not have the singular purpose of maximizing shareholder returns.	May attract donors interested in claiming tax exemption for contributions; may also be eligible for some public and private grants.
Certification & Rating Agencies	Not mandatory but may provide additional credibility (“B Corp” certification from B Labs (similar to Fair Trade or LEED certification)).	• There are numerous charity watchdogs in the U.S. – e.g., Charity Navigator, CharityWatch & BBB Wise Giving Alliance • They use a non-profit’s tax filings, website, annual reports and other public information to rate the business’s governance structure, transparency and accountability • The ratings can help attract (or deter) donations
Dissolution	Assets are distributed to stockholders	• Assets can only be distributed to another Section 501(c)(3) entity in a manner consistent with the organization’s stated goals • Because members do not own a financial interest in the business, they are not entitled to receive assets in the dissolution