



## B Lab Controversial Issues Statement - Marketing of Breastmilk Substitutes

### B Lab's Approach to Controversial Issues and B Corp Certification

As for-profit companies that meet the most rigorous standards of overall social and environmental performance, accountability, and transparency, Certified B Corporations are leaders in the movement to use business as a force for good.

Whether through information a company provides in its [Disclosure Questionnaire](#), an issue raised by a third-party through B Lab's formal [Complaints Process](#), or public discourse on B Corp certification requirements and standards, difficult and complex questions regularly arise as to how controversial issues in the world of business should affect a company's eligibility for B Corp certification. Judgments on these issues are then determined by B Lab's independent [Standards Advisory Council](#) as part of a disclosure review process.

B Lab's Disclosure Questionnaire forms the basis of the disclosure review process, which covers sensitive industries, practices, outcomes, and penalties and is based on third party screenings and standards like the IFC Excluded Industries List and International Labor Organization Conventions. Recognizing that any list of sensitive issues may be incomplete, however, B Lab also reserves the right to conduct similar reviews on issues that are not currently featured in the Disclosure Questionnaire but are deemed subject to material stakeholder concern and a potential violation of the B Corp movement's Declaration of Interdependence.

When new industries or issues where a decision making model has not already been developed arise, B Lab conducts research into the issue in order to guide the Standards Advisory Council's decision. Research is based on secondary sources compiled by B Lab staff, with the overall intent of identifying and understanding the different concerns related to the industry or issue and the different perspectives of stakeholders. This includes a review of press related to the industry and its impact, how the issue is covered by other standards, existing public policy and public policy recommendations from non-profit organizations and other topical experts, examples - potentially both good and bad - of actors within the industry, and other public commentary and perspectives. This content is in turn used to develop the framework for Standards Advisory Council review, and determines the types of questions that individual companies are required to answer as part of their review.

Particularly when it comes to industries that are controversial, there is a natural and healthy tension between the inclination to exclude all companies in those industries from eligibility for B Corp Certification, and *the need for leadership* that has the potential to transform the culture, behavior, and impact of those industries. While B Lab and its [Standards Advisory Council](#) may determine that an industry as a whole is ineligible for certification because of its negative



impacts or practices, they also recognize that in controversial industries it may be possible for companies to be meaningfully managing those potential negative impacts or controversies. In these circumstances, the need may be greatest to distinguish between good and bad actors, as well as good, better, and best performance by using rigorous standards of verified social and environmental performance, legal accountability, and public transparency. All stakeholders are best served by the existence of credible and transparent standards that facilitate improved policy, investment, purchasing, and employment decisions.

Along with the recognition that there are many diverse and reasonable perspectives as to what contributes to a shared and durable prosperity for all, B Lab and its Standards Advisory Council will make determinations regarding eligibility for B Corp Certification and, if eligible, will require companies in controversial industries, with controversial policies, or engaged in controversial practices to be transparent about their practices and how they work to manage and mitigate concerns. B Lab will also document and share these positions publicly in order to enable all stakeholders, including citizens and policymakers, to make their own judgments about a company's performance, as well as further thoughtful, constructive public discussion about important issues. Existing B Lab statements and frameworks on controversial issues are available [here](#).

These frameworks, like B Lab's standards generally, are works in progress, and we look forward to improving upon them in the future. B Lab invites other perspectives as it continues to refine its views and, hopefully, contribute to a constructive conversation about the role of business in society.

Independent of eligibility for B Corp Certification, all companies in any industry are able to use the [B Impact Assessment](#) as an internal impact management tool to assess and improve their overall practices, and/or adopt a stakeholder governance legal structure (such as [benefit corporation](#)) appropriate to the company's current corporate structure and jurisdiction.

If you have questions or comments about B Lab's approach to the below issues, please email B Lab's Director of Standards Dan Osusky at [dosusky@bcorporation.net](mailto:dosusky@bcorporation.net).

## Marketing of Breastmilk Substitutes And B Corp Certification

The marketing practices of companies involved in the production and sale of breastmilk substitutes (defined by the WHO as products for infants aged 36 months and under), are controversial because of the risk that certain marketing practices may create an undue influence on a mother's choice to breastfeed, which could in turn negatively impact the health of infants.

In response to these concerns, the World Health Organization adopted the [International Code of Marketing Breastmilk Substitutes](#) that recommends a series of restrictions on “the marketing of breastmilk substitutes to ensure that mothers are not discouraged from breastfeeding and that substitutes are used safely if needed.” An independent non-profit, the Access to Nutrition Foundation, produces an [index](#) measuring the performance of the top breastmilk substitute providers specifically as they relate to the WHO Code and subsequent resolutions.

Based on these third party standards, B Lab and its independent [Standards Advisory Council](#) have rendered the following decisions regarding eligibility for B Corp Certification:

*For companies who market breastmilk substitutes and are not individually featured in the Access to Nutrition Index Breastmilk Substitutes Scorecard:*

To be eligible for B Corp Certification, the company must (1) have a formal policy committed to the WHO's International Code of Marketing of Breast-milk Substitutes (“Code”), and subsequent WHA resolutions, (2) disclose how the company manages compliance to the Code, and (3) be transparent about potential areas of non-alignment.

*For subsidiaries who market breastmilk substitutes and whose parent company is featured in the Access to Nutrition Index Breastmilk Substitutes Scorecard:*

To be eligible for B Corp Certification, the company must (1) have a formal policy endorsing the WHO's International Code of Marketing of Breast-milk Substitutes (“Code”), and subsequent WHA resolutions, (2) disclose how the company manages compliance to the Code, and (3) be transparent about potential areas of non-alignment.

In order to maintain the certification of the subsidiary company's B Corp Certification over time, the parent company is required to make progress to and achieve the requirements of B Corp Certification for the entire company, including meeting the specific requirements set forth by the Standards Advisory Council regarding minimum scores on the Access to Nutrition Index.

*For companies who market breastmilk substitutes that are featured in the Access to Nutrition Index Breastmilk Substitutes Scorecard:*

Companies are eligible for B Corp Certification only if the company has achieved a minimum score threshold on the Access to Nutrition BMS Index, and are able to demonstrate material progress to a higher performance threshold over time. The details of these two performance thresholds are still to be determined in conjunction with key stakeholders (see below). No company listed on the ATNI will be able to finalize their B Corp Certification until they have been determined and the company has achieved compliance.

## Overview of Issues Related to the Marketing of Breastmilk Substitutes

Controversy surrounding the impact of breastmilk substitutes (or “infant formula”) has existed since the 1970’s. The criticism is, in short, as follows:

1. Breastmilk is the best and healthiest option for all infants.
2. Any breastmilk substitute is inherently less healthy and introduces additional risks that can negatively affect infant health.<sup>1</sup>
3. Companies who produce and sell breast milk substitutes engage in marketing that may create an undue influence on mothers to use infant formula rather than choosing to breastfeed.<sup>2</sup>
4. As a result of these three claims, it is argued that companies who market breastmilk substitutes irresponsibly are negatively impacting the health of infants and increasing risks of infant mortality.<sup>3</sup>

Importantly, in some circumstances the use of infant formula is medically or economically necessary (as in cases where mothers cannot produce breast milk or in some circumstances where mothers are financially required to work). Even beyond cases where it may be necessary, the choice between breast feeding or using formula is up to the individual mother. For those reasons, the controversy is not necessarily tied to the nature of the product itself (breast milk substitutes as a product category are not inherently bad), but rather whether the marketing of it may subvert the ability for an individual mother to make an independent, well-informed decision in hers and her child’s best interest. While the controversy has been most intense when related to emerging market contexts, many argue that the same issues persist in developed markets as well.

To address these concerns about the industry, in 1981 the World Health Assembly (WHA), on

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<sup>1</sup>Additional risks include the possibility that because of high costs, breastmilk substitutes are likely to be diluted and thus even less nutritious, as well as the need to use unsafe drinking water that can introduce the infant to other illnesses.

<sup>2</sup>Historically, these cases of marketing have ranged in severity from aggressive print advertising campaigns all the way to allegedly having company staff members dress in nursing uniforms to give out free samples of formula to new mothers in maternity wards.

<sup>3</sup><https://journals.sagepub.com/doi/full/10.1177/0379572115602174>

behalf of the World Health Organization (WHO), adopted the [International Code of Marketing Breastmilk Substitutes](#) that recommends a series of restrictions on “the marketing of breastmilk substitutes to ensure that mothers are not discouraged from breastfeeding and that substitutes are used safely if needed.” This non-binding agreement was ratified by all countries except the United States, but has been adopted in government policy to varying degrees around the world: some have not enacted any policy, others have enacted parts of the Code but not all, and still others have enacted all parts but have not necessarily created proper enforcement mechanisms to ensure compliance. Since the development of the Code, the WHA has also issued several resolutions in order to clarify and expand on the original Code.

Aside from adoption of the Code at the country policy level, the Code itself also calls upon private sector companies to support the adoption of the Code and abide by its requirements. Many companies have acknowledged the authority of the Code, although critics argue that they do not comply with it. The Access to Nutrition Foundation, a non-profit organization that produces indexes to measure the performance of global food companies in addressing global nutrition problems and related diseases, produces a [Breastmilk Substitute \(BMS\) specific index](#) designed to measure the performance of the top BMS providers in the world specifically as they comply to the WHO Code and subsequent resolutions.

### **Rationale:**

The rationale for the Standards Advisory Council’s decision is as follows:

- The health risks associated with breastmilk substitutes are scientifically founded and companies involved in marketing them should manage those risks.
- The WHO Code and the subsequent WHA resolutions that clarify and expand it are credible, globally recognized recommendations regarding how a company should manage the risks associated with marketing breastmilk substitutes. Furthermore, the ATNI BMS scorecard provides the most direct measure of a company’s alignment to those recommendations.<sup>4</sup>
- While the ATNI BMS scorecard focuses on assessing the performance of the largest producers of breastmilk substitutes (and thus the companies with the most potential influence and impact through their marketing), the risks associated with marketing breastmilk substitutes are not limited to those companies only. In the absence of a third party assessment of those companies adherence to the WHO Code, it is appropriate to require a commitment to the Code and comprehensive transparency about potential non-alignment.
- This transparency is intended to allow interested stakeholders the opportunity to arrive at their own judgment about the company’s compliance, as well as to allow those stakeholders the opportunity to evaluate and share potential misrepresentation by the company in its disclosure through B Lab’s public complaint mechanism. B Lab’s

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<sup>4</sup> Whenever possible, B Lab relies on established credible third party standards.

Standards Advisory Council retains the right to prohibit, revoke certification, or require remediation due to misrepresentation or insufficient management for any company marketing breastmilk substitutes, and may revise this policy if it is determined that transparency and a public complaint mechanism are deemed insufficient.

When determining the required performance thresholds on the ATNI BMS Scorecard for ATNI listed companies, B Lab recognizes that, as a credible third party standard, the ideal aspirational objective for all companies marketing breastmilk substitutes should be to achieve 100% compliance with the Code. Nonetheless, when determining the required performance thresholds for the purposes of B Corp Certification, B Lab and its Standards Advisory Council believe it is important to take into account the following factors:

- A reasonable allowance for non-systemic margins of error when a company is applying the Code
- The need to adopt policies and practices to achieve and/or maintain compliance over time, particularly in the event of relevant new WHA Resolutions
- The possibility of reasonable disagreement of how the WHO Code should be interpreted (including by ATNI), or in some circumstances, the possibility for reasonable disagreement about the relevance and impact of particular provisions within the code itself, in limited instances

For the purposes of B Corp Certification, it is anticipated that both the minimum score requirement for initial certification, and the aspirational required score a company is required to make material progress to over time, will not be 100% according to the ATNI BMS scorecard, but should still signal an overall minimum and aspirational commitment to the WHO Code to be determined with the support of key stakeholders. Furthermore, these requirements may also be subject to change over time to recognize overall changes in market practices and adoption of the Code.

The creation of these requirements, along with the potential of companies involved in the marketing of breastmilk substitutes to pursue and potentially achieve B Corp Certification over time, B Lab believes, creates the opportunity to incentivize and drive performance improvements related to compliance with the Code over time, and thus help achieve important positive impacts on global infant health. To that end, while 100% compliance with the Code may be the ideal aspirational performance of companies according to many stakeholders, it is also appropriate to acknowledge companies who have made substantial and meaningful progress towards doing so, and to require transparency of places where there is a risk of non-alignment in order to advance public conversation on the topic and allow interested stakeholders the opportunity to arrive at their own independent judgment.

**Next Steps for Determining ATNI Based Score Thresholds for B Corp Certification:**



As a result of this decision, B Lab and its Standards Advisory Council intend to consult stakeholders in order to determine answers to the following questions:

- What should the minimum score threshold on the ATNI BMS Index necessary to be achieve eligibility for B Corp Certification?
- What is the aspirational score threshold on the ATNI BMS Index that a Certified B Corp listed must demonstrate progress towards over time in order to maintain their B Corp Certification?
- What are appropriate timelines and measures by which to ensure progress towards that aspirational score threshold is happening?
- How should adjustments to ATNI scoring methodologies and the incorporation of new WHA Resolutions affect the above score threshold requirements? More specifically, what remediation processes are necessary should one of these changes reduce a Certified B Corporation's score below the minimum threshold?
- At what point should failure to progress on the above requirements put a subsidiary of a company listed on the ATNI BMS Index at risk of losing their B Corp Certification?

In line with its procedures for multi-stakeholder standards development, B Lab plans to engage stakeholders including expert individuals, organizations, and industry leaders to receive input on these questions before presenting final recommendations to its Standards Advisory Council for approval. The details of that process are still under development and B Lab is currently seeking funding for it.

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The decision of the Standards Advisory Council has been informed by independent research conducted by B Lab and stakeholder consultations with standards organizations, companies, and other experts involved in the marketing of breastmilk substitutes.

This disclosure is intended to recognize that reasonable people may disagree with the position outlined by the Standards Advisory Council and should have the relevant information to make their own judgment regarding the company's social and environmental performance.

This statement is effective as of March 2019 until further judgment from the Standards Advisory Council. It will be updated once specific performance requirements for ANTI listed companies have been determined.

Please send your feedback or questions to B Lab's Director of Standards Dan Osusky at [dosusky@bcorporation.net](mailto:dosusky@bcorporation.net).