



**B Lab Controversial Issues Statement -
Marketing of Breastmilk Substitutes
Updated as of April 2022**

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, interviews with expert stakeholders 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 Standards Management team at standardsmanagement@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.¹

¹ The Code applies to the marketing and related practices of the following products: breast-milk substitutes, including infant formula. This should be understood to include any milks (or products that

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 the Access to Nutrition [Index](#) (ATNI) which measures the performance of the top breastmilk substitute and complementary food providers specifically as they relate to the WHO Code and subsequent resolutions.²

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:

1. For all Access to Nutrition Index (ATNI) listed companies³

Initial Minimum Score (To Achieve Certification):

In order to be eligible for B Corp certification, companies are required to achieve an initial minimum score of 55% on the ATNI Index.

If there are significant changes to the scores as a result of changes to the ATNI scoring methodology or countries selected for BMS/CF 2 assessment, consequently leading to a company falling below the 55% score threshold, if the company remains in the top 20% of companies on the index, they would retain their eligibility for B Corp certification.⁴

***Advanced Minimum Score (To Maintain Certification):* While all B Corps, and other companies, should aspire to achieve full code compliance as would be demonstrated by a score of 100%, to demonstrate this aspiration they must achieve and maintain a minimum score of at least 75% on the ATNI Index by no later than 2030.**

If a company temporarily falls below the threshold after achieving the aspirational score, to maintain certification they will be required to have a time bound remediation plan, and is able to achieve the 75% threshold in the next instance of the ATNI index.

could be used to replace milk) that are specifically marketed for feeding infants and young children up to the age of 3 years, including follow-up formula and growing-up milks; other foods and beverages promoted to be suitable for feeding a baby during the first six months of life when exclusive breastfeeding is recommended. This would include baby teas, juices and waters; feeding bottles and teats.

²All references to the ‘Code’ in this document denote the WHO Code and subsequent WHA resolutions unless otherwise stated. At the time of writing this memo, this includes WHA resolutions up to and including WHA 69.9.

³ Note: Reference and usage of the ATNI Index has been determined based on engagement with ATNI, among other stakeholders, but as an independent rating organization ATNI does not officially endorse the specific thresholds involved.

⁴ Based on the most recent index, only two of the nine companies included would meet the minimum threshold. Based on the previous index in 2018, no companies would have met the threshold at that time.

More details about the scoring methodology, and the rationale for these specific thresholds, is included below.

2. For all Subsidiaries of ATNI listed companies

Subsidiaries of ATNI listed companies are eligible to certify if:

- a) The parent company meets the eligibility requirements above, the subsidiary has applied the parent company's policy and adheres to national law when those laws are more stringent than the parent company's policy (OR)
- b) The parent company does not meet the eligibility requirements above, but the subsidiary meets the immediate expectations of the BMS Call to Action (listed under 3 below) at the time of certification, and achieves full Code compliance by 2030.

3. For all Non-ATNI listed companies

Non-ATNI listed companies are required to meet the immediate expectations of the BMS Call to Action (listed below), at a minimum, at the time of certification, to be eligible to certify, and achieve full Code compliance by 2030 in order to maintain the certification.

The immediate expectations of the BMS Call to Action are as follows:

Have a policy in place that at minimum meets the following criteria:

- Covers products designed for use 0-12 months after birth
- Is applied globally
- Is upheld in jurisdictions with less stringent or no regulations, and adheres to national law when those laws are more stringent than the policy.

4. Lobbying Practices:

In addition to the above requirements, all manufacturers of BMS/CF are required to support legislation fully aligned with the Code as well as disclose their policies on lobbying, specific lobbying practices as they relate to BMS/CF, and areas of non-compliance with the Responsible Lobbying Framework (RLF). Areas of non-compliance with the Responsible Lobbying Framework will be evaluated on a case to case basis and if deemed material, referred to the Standards Advisory Council to determine if they represent grounds for ineligibility.

5. Distributors:

Wholesalers and retailers with >1% of the revenues from the sale of BMS/CF are required to meet the same eligibility requirements as non-ATNI listed companies with respect to the elements of the Code that apply to distributors.

6. Disclosure requirements

All manufacturers of BMS/CF and wholesalers and retailers with >1% of their revenues from the sale of BMS/CF that meet the above eligibility requirements, are required to disclose their marketing practices and ATNI index score (in the case of ATNI listed companies) and areas of non-compliance with the Code. Manufacturers of BMS/CF should additionally disclose their lobbying policies and practices in reference to the RLF, including industry association affiliations, in the specific context of BMS/CF.

The proposed eligibility criteria will be revisited in 2030 to incorporate any significant developments in the market and/or with regard to the ATNI index, as well as define further expectations of companies involved in the marketing of BMS/CF.

Existing B Corps that have been certified based on the previous standards set forth by the Standards Advisory Council, will continue to maintain their certification through their next recertification in order to allow them sufficient time to meet these more stringent eligibility criteria, which will then be applied in their second recertification.

Industry Overview and Material Issues

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.⁵
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.⁶
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.⁷

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

⁵Additional 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.

⁶Historically, 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.

⁷<https://journals.sagepub.com/doi/full/10.1177/0379572115602174>

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 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 fully 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 largest BMS/CF providers in the world specifically as they comply to the WHO Code and subsequent resolutions. The BMS specific index is organized into two modules (BMS/CF 1 and BMS/CF 2), with the first focused on a review of a company's global marketing policies, and the second focused on "in market" assessments of companies' practices in two selected "high risk" countries.

For the BMS/CF 1 module, company policies are analyzed against the the code, with various weightings applied to different categories of BMS products weighted in the following ways:

Infant Formula (for use by infants 0-6 months of age)	35%
Complementary Foods for Infants (0-6 months)	25%
Follow on Foods (6+ months)	20%
Growing Up Milks (12+ months)	20%
Complementary Foods (6+ months)	*An additional 'addenda' module that itself is weighted at 5% of the whole for BMS/CF1

In addition to the weightings for each of the product categories above, a 25% penalty is applied to the score if the company applies their policy only in higher risk countries, and a 36.25% penalty is applied if the company only applies their policy in countries where no regulations exist.

For the BMS/CF 2 module, verifiers assess product marketing within markets at places like health facilities, retail outlets, and via media monitoring. Scores are determined as follows:

Complete Compliance	100%
High Relative Level of Compliance	66%
Medium Relative Level of Compliance	33%
Low Relative Level of Compliance	0%

The overall score is the equally weighted average of the score on BMS/CF 1 and BMS/CF 2. For more information about the ATNI methodology, see [here](#). More details are included below to explain how the methodology was used to determine the specific thresholds for B Corp Certification.

Several other recent developments on the topic of Marketing of Breastmilk Substitutes/ Complementary foods (BMS/CF) and the Code, have also occurred and informed the Standards Advisory Council Decision, a summary of which are provided below:

Responsible Lobbying Framework

The [Responsible Lobbying Framework](#) was developed initially as a part of dialogue between Civil Society Organisations and companies involved in the marketing of BMS/CF, particularly as it relates to how companies may or may not be engaged in lobbying activities that could hinder regulatory adoption of the Code (separate from company declarations or practices that relate to a company's adoption of the Code regardless of regulation).

The Framework is however not specific to BMS/CF lobbying, and can be used both as a set of globally applicable principles and standards, outlining what responsible lobbying would look like, and as an evaluation tool of a specific organisation's lobbying activities. In 2021, ATNI published its baseline benchmark of major BMS/CF manufacturers' lobbying policies, management systems and disclosure in reference to the RLF. The report however does not provide insight into how these companies have lobbied or on which topics they have lobbied in relation to BMS/CF.

BMS Call to Action and Results

Civil Society Organizations including WHO, UNICEF, BRAC, Helen Keller International, 1000 Days, Save the Children, and FHI 360, issued the [BMS Call to Action](#) to all companies involved in the marketing of breastmilk substitutes. The call to action included the following:

- For companies to commit to full compliance with the WHO BMS Code and all subsequent WHA resolutions by 2030, along with a roadmap on how it will be achieved.
- For companies to have policies in place by the end of 2020 that at minimum meets the following criteria:
 - Covers products designed for use 0-12 months after birth
 - Is applied globally
 - Is upheld in jurisdictions with less stringent or no regulations, and adheres to national law when those laws are more stringent than the policy
- Commit to support legislation fully aligned with the Code and all subsequent WHA resolutions to create a level playing field for all companies
- Agree to provide info on company policies and practices to ATNI

The Call to Action was directly sent to 21 companies, including those listed on the ATNI Index as well as other large companies. Company responses were then analyzed by the signatories of the Call to Action and evaluated by ATNI. According to this analysis, 17 of the 21 companies submitted some form of a response, 2 fully committed to code compliance by 2030 but the roadmaps submitted by these companies failed to provide the requested details as to how they plan to implement their pledge. Other companies implemented or made other commitments related to the Code that were not deemed fully compliant. Company responses and this analysis are available [here](#).

Updated ATNI Index

An updated methodology and scoring of the Access to Nutrition BMS/CF Marketing Index was launched in the summer of 2021, which is an independent assessment of overall compliance with the WHO Code, including all relevant subsequent WHA resolutions up to and including WHA 69.9. The updated ATNI Scorecard expanded to include 9 companies and incorporated an assessment of the marketing of CF products (complementary foods intended for older infants and young children 6-36 months of age) and the recommendations of the guidance associated with WHA resolution 69.9 in its assessment BMS/CF methodology.

In alignment with previous years, it was organized into two modules (BMS 1 and BMS 2), with the first focused on a review of a company's global BMS/CF marketing policies, and the second focused on "in market" assessments of companies' practices in two selected "high risk" countries, the Philippines and Mexico.

Of the 6 companies that have been previously assessed, 4 experienced an increase in score, while the 3 new companies all received a score of zero (the assessment was only based on publicly available information since the 3 new companies did not submit any supporting

documentation). Overall scores ranged from 68% to 0%. More detailed results are available [here](#).

ATNI is in the process of revising its scoring methodology through a multi-stakeholder consultation process, and is also considering expanding the scope of the index to 20 companies and the BMS/CF 2 assessment to potentially 5-7 countries. These developments are likely to have an impact on the scores when the ATNI index is next published in 2023.

Rationale for the Standards Advisory Council Decision

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.
- While the ATNI BMS/CF 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 nonetheless appropriate to require a commitment to the Code and minimum practices aligned with the BMS Call to Action, 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 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 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

Stakeholder feedback, while varying between industry stakeholders and civil society organizations, has indicated that the initial minimum score for ATNI listed companies should align with existing best practice and create a meaningful as well as achievable target for other companies to work towards. In addition to this, there are two other considerations that are taken into account for the minimum score:

- (1) The fact that BMS/CF 2 scores can and would fluctuate over time, not necessarily based on performance changes, but on the countries where an assessment occurred. The scoring of which would also be affected by the level of regulation and enforcement that exists within that market, though ATNI attempts to minimize these fluctuations through a consistent mechanism to select countries for the assessment.
- (2) While there will likely be the need to adjust the minimum score over time to continue to reflect best practice, it is practical to minimize those adjustments to be only when necessary, and thus if possible a minimum score should be established that to some degree is designed not only for the present but the future (and taking into consideration that more companies will be scored in the future).

There was general consensus among the stakeholders that it would be appropriate to align the timeline to achieve the advanced score with the proposed timing of the BMS Call to Action, hence requirements are set for 2030. While there was more variation in the feedback provided on the possible advanced score to be achieved within that time frame, the specific thresholds were based on previous guidance from the Standards Advisory Council, stakeholder input, and the recent developments shared above. More specifically:

- (1) Based on the ATNI methodology, any divergence from a perfect score in the BMS/CF 1 Module is likely to result in non-compliance in the BMS/CF 2 Module. Furthermore, allowing for some instances where any non-systemic error in application is identified through the “in market” assessments of BMS/CF 2, an expectation of “high compliance” on the BMS/CF 2 score methodology should be expected.
- (2) Achievement of “high compliance” based on the BMS/CF 2 ATNI methodology would mean that a company would achieve at most ~83% on their overall score, even if their BMS/CF 1 Score is perfect.
- (3) Allowing for limited divergence on a company’s BMS/CF 1 Module would therefore lead to an even lower score threshold. The 75% requirement therefore allows for some, but not a substantial, divergence in the BMS/CF1 Module as well.

Importantly, neither the establishment of the minimum or advanced score is intended to undermine the overarching expectation of achieving 100% compliance with the Code. It is instead intended to create minimum expectations now and over time to both identify leading companies taking meaningful steps towards that compliance, and to incentivize companies to do so over time. With that in mind, these requirements are able to be updated and improved as necessary over time. Recognizing that ATNI scoring is itself dynamic and subject to improvement over time, it will also be necessary to review how any material ATNI BMS/CF methodology changes should affect the thresholds in the future.

While feedback from stakeholders points to the fact that most companies on the ATNI index, including the leaders, do not yet fully meet this requirement, the eligibility requirements proposed for non-ATNI listed companies align with the immediate expectations outlined in the BMS Call to Action. The rationale is that in the absence of a measurable and verifiable framework to evaluate the level of compliance of non-ATNI listed companies (as well as the lack of on the ground in country assessments of compliance), it would be prudent to apply a more stringent requirement for them as compared to ATNI listed companies.

Verifiable frameworks are still evolving as they relate to lobbying specifically in the context of the marketing of BMS/CF, making it difficult to set a quantitative threshold and measure it through time. Some stakeholders therefore recommended against setting an eligibility threshold based on a measure of companies' performance specifically in relation to lobbying in order to avoid further complexity. However all stakeholders acknowledge that in order to address concerns about the need for collective, rather than individual, action towards achievement of the Code, the performance expectations on lobbying is important.

While the ATNI index assesses the largest manufacturers of BMS/CF with respect to their marketing practices and the practices of their distributors that have a direct relationship with the manufacturers, the Code applies more broadly to distributors, including wholesalers and retailers who are directly or indirectly engaged in the marketing of BMS/CF, some of whom may not be primary distributors of the manufacturer. Considering their responsibilities and despite their limited influence, the eligibility criteria for wholesalers and retailers with a material share of revenue from BMS/CF, must include the alignment of their marketing practices with the specific elements of the Code that apply to distributors.

Given the overarching expectation of achieving 100% compliance with the Code and that none of the companies have achieved this at this point, B Lab recognizes the increased importance of transparency about companies' BMS/CF marketing practices, areas of non-compliance with the Code and lobbying policies and practices in reference to the Responsible Lobbying Framework, in the specific context of BMS/CF. Such transparency would help advance public conversation on the topic and allow interested stakeholders the opportunity to arrive at their own independent judgment.

This statement is effective as of April 2022 until further judgment from the Standards Advisory Council.

The decision of the Standards Advisory Council is an extension of a previous Standards Advisory Council decision from 2018, and has been informed by independent research conducted by B Lab, two rounds of stakeholder consultations including input from third party standards organizations, civil society organizations, and companies. More details about the process are outlined below.

In 2018, B Lab's Standards Advisory Council rendered a decision regarding eligibility for B Corp Certification for companies involved in the marketing of breastmilk substitutes, including a set of requirements regarding policy commitments and transparency for companies not listed on the Access to Nutrition Breastmilk Substitutes / Complementary Foods (BMS/CF) Marketing Index that was made effective immediately, as well as the need for further work to establish specific minimum score requirements - an initial minimum score to achieve the certification, and an advanced minimum score for companies to maintain certification over time - for companies who are listed on the ATNI BMS/CF Index.

Following the Standards Advisory Council's decision, B Lab developed a survey, with supplemental explanatory materials, in early 2020 to gather input on what ATNI score requirements could be for ATNI listed companies. These inputs were used to inform a set of proposals that were re-distributed to stakeholders in 2021 for further feedback, also informed by the ongoing developments in the ATNI methodology, BMS Call to Action, and Responsible Lobbying Framework.

The inputs from this final round were used to inform the updated requirements outlined above, including specific score requirements for ATNI companies as well as revised requirements for all BMS companies.

Please send your feedback or questions to B Lab's Standards Management team at standardsmanagement@bcorporation.net.