

Overview of the SU2 Foundation

Thomas D. Economon
4th Annual SU2 Developers Meeting
Villa Monastero, Varenna, Italy
May 8, 2019

SU2

Outline

- Recap of Foundation Planning
- Details of the SU2 Foundation
- Latest Status
- Motivation for Today's Discussion
- Next Steps + Wrap-up

Recap of Foundation Planning

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Reminder: The Need for an SU2 Foundation

There are multiple reasons why setting up an SU2 Foundation makes sense:

- Maintain open-source nature of SU2 ad-infinitum.
- Ensure longevity of the code base.
- Maintain/improve overall quality of software, documentation, tutorials, etc.
- Transition new research capabilities quickly into industrial use.
- Grow the SU2 community.
- Ensure certain activities are done in a volunteer organization.

The Path to Today

- Discussion at 1st and 2nd Developers Meetings set skeleton (conceptual design):
 - Discussed potential mission, organization, and responsibilities as a group.
 - Broad agreement and commitment to move forward.
- Discussion at 3rd Developers Meeting set many specifics (detailed design):
 - A first draft of necessary legal documents for a US non-profit were presented and discussed
 - Agreement by attendees and clear directive from community to legally form the foundation.
- Today at the 4th Developers Meeting: **meet the SU2 Foundation!**
 - We'll overview the details of our newly created US non-profit entity.

Outcome of 3rd SU2 Developers Meeting

- Discussed bylaws and articles of incorporation in detail
 - Proposed as a non-profit entity in California pursuing 501(c)(3) status.
 - Discussed board composition, roles, and other important governance topics
 - Collected lists of questions and comments about formation that needed legal input/guidance.



Outcome of 3rd SU2 Developers Meeting

- Conclusion: move to incorporate the foundation, with legal guidance, with the following initial board members (pending approval from their organizations):
 - Executive Director: Thomas D. Economon
 - Developer Director: Tim Albring
 - User Director: Ruben Sanchez
 - Academic Director: Juan J. Alonso
 - Industry Director: Eran Arad

After the 3rd SU2 Developers Meeting...

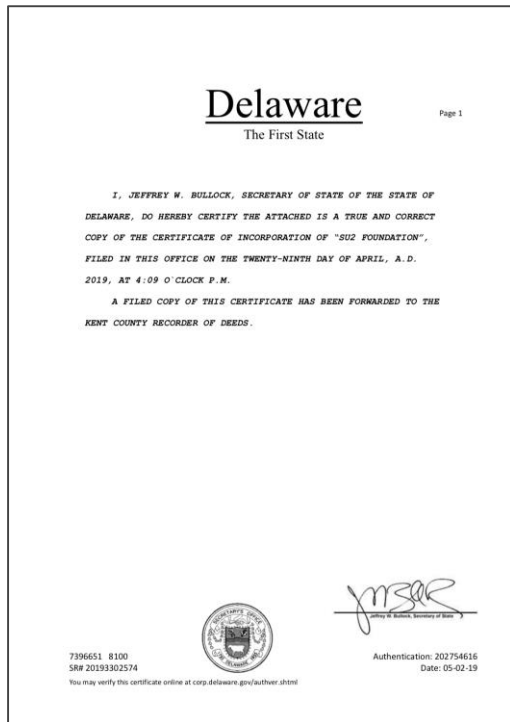
- Signed an engagement letter with the law firm Fenwick & West to proceed with incorporation in Feb.
- Our original concept needed some iteration:
 - Stance toward open-source organizations has been evolving in the US during the last 10+ years or so.
 - Our rough drafts have been modified to highlight our educational/research mission and public benefit
 - Recommended read: “Challenges & Opportunities Concerning Corporate Formation, Nonprofit Status, & Governance For Open-Source Projects”



Process Basics*

- To incorporate as a US not-for-profit, the organization should file incorporation paperwork in a US state to create a legal entity
 - Typically articles of incorporation/certificate of incorporation is filed publicly and accompanying bylaws are drafted that govern the operation of the organization.
- Obtaining 501(c)(3) federal tax exempt status is an optional separate step for an organization:
 - 501(c)(3) is a desirable tax exempt status, therefore there are additional requirements and public inspection.
 - Apply by submitting 1023 application to the US Internal Revenue Service (IRS) and they decide whether your organization meets the criteria (i.e., your purpose is determined to be exempt).

May 2, 2019: The SU2 Foundation is born!



- Worked through process with legal team with feedback from SU2 stakeholders from February – April.
- On April 26th, the directors signed the final paperwork in order to file for incorporation.
- Law firm acts as the incorporator: files the paperwork, sets the board and bylaws in place, and immediately steps down.
- On May 2, the SU2 Foundation was officially incorporated and recorded in the state of Delaware.

Details of the SU2 Foundation

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Key Documents

- Primary documents for discussion:
 - **Certificate of Incorporation** - a public filing
 - **Bylaws** - typically made public by non-profits for transparency/credibility purposes
- Supporting documents:
 - Conflict of Interest Policy
 - Indemnification Agreement
 - Form documents for Mutual NDAs, Consulting Agreements, Invention Assignment Agreements, Advisor Agreements (don't intend to use immediately, not discussed today)

Certificate of Incorporation

SU2 FOUNDATION

State of Delaware
Secretary of State
Division of Corporations
Delivered: 04:09 PM 04/29/2019
FILED: 04:09 PM 04/29/2019
SR 20193302574 - File Number 7396651

CERTIFICATE OF INCORPORATION

SU2 Foundation, a not-for-profit corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "*General Corporation Law*"),

ARTICLE I: NAME

The name of the corporation is SU2 Foundation (the "*Corporation*").

ARTICLE II: AGENT FOR SERVICE OF PROCESS

The address of the registered office of the Corporation in the State of Delaware is 3500 South Dupont Highway, City of Dover, County of Kent, Delaware 19901. The name of its registered agent at that address is Incorporating Services, Ltd.

ARTICLE III: PURPOSE

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware (the "DGCL"). This Corporation shall be a not-for-profit corporation. Initially, the specific purposes of the Corporation are to:

- (a) promote global software development and education to increase the pace of innovation in the engineering sciences for the public benefit of all society;
- (b) provide a trusted, neutral forum for community collaboration by offering an efficient, compliant collaboration infrastructure and transparent, community-driven technical governance; and
- (c) undertake such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above.

Notwithstanding the foregoing, if the Board of Directors elects to seek and obtains an exemption from Federal taxation for the Corporation pursuant to Section 501(a) of the Internal Revenue Code of 1986, as amended (hereinafter, the "Code"), and until such time, if ever, as such exemption is denied or lost, the Corporation shall not be empowered to knowingly engage directly or indirectly in any activity that it believes would be likely to invalidate its status as an organization exempt from federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code.

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Certificate of Incorporation

- SU2 Foundation is incorporated in the state of Delaware.
 - Our agent of service in Delaware is at address: 3500 South Dupont Highway, City of Dover, County of Kent, Delaware 19901.
 - As you will see in the bylaws, our principal office is located at: 1225 4th St. #333, San Francisco, CA 94158. We will register as a charity in California.
 - Bylaws also state: *"One or more branch or other subordinate offices may at any time be fixed and located by the Board at such place where the Corporation is qualified to conduct its activities"*
 - See here for info about locations: <https://corp.delaware.gov/faqs/>
 - Note that we will need to become qualified to do business in other locations we desire to operate, with legal guidance.

Certificate of Incorporation

- ARTICLE I: NAME
- ARTICLE II: AGENT FOR SERVICE OF PROCESS
- ARTICLE III: PURPOSE
- ARTICLE IV: EARNINGS AND DISTRIBUTIONS
- ARTICLE V: NONSTOCK
- ARTICLE VI: VOTE BY BALLOT
- ARTICLE VII: DIRECTOR LIABILITY
- ARTICLE VIII: ACTION BY WRITTEN CONSENT
- ARTICLE IX: AMENDMENT OF BYLAWS
- ARTICLE X: ALTERNATE DIRECTORS

Certificate of Incorporation

ARTICLE III: PURPOSE

- We are a mission-driven organization. All actions are in pursuit of our mission, not for profit.
- “(a) promote global software development and education to increase the pace of innovation in the engineering sciences for the public benefit of all society;*
- (b) provide a trusted, neutral forum for community collaboration by offering an efficient, compliant collaboration infrastructure and transparent, community-driven technical governance; and*
- (c) undertake such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above.”*

Certificate of Incorporation

ARTICLE IV: EARNINGS AND DISTRIBUTIONS

“Except as provided in this Article, no part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to its members of its Board of directors, officers or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes herein set forth, but only in a manner permitted by its tax exempt status at such times as the Corporation shall be so qualified.”

Certificate of Incorporation

ARTICLE V: NONSTOCK

“The Corporation shall not have any capital stock. The Board of directors of the Corporation shall be, and shall (except as provided below) possess all of the powers of, the “Governing Body” of the Corporation as a Delaware not-for-profit corporation under DGCL.”

Certificate of Incorporation

ARTICLE VII: DIRECTOR LIABILITY

“To the fullest extent permitted by law, no director of the Corporation shall be personally liable for monetary damages for breach of fiduciary duty as a director...”

Certificate of Incorporation

ARTICLE IX: AMENDMENT OF BYLAWS

“In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of directors of the Corporation is expressly authorized to adopt, amend or repeal the bylaws of the Corporation, in the manner provided for in the Bylaws and subject to any limitation set forth in the Bylaws, including the supermajority voting requirements set forth in Section 4.1(d).”

SU2 Foundation Bylaws

SU2 FOUNDATION
a Delaware Not-for-Profit Corporation
BYLAWS
As Adopted May 3, 2019

35855.00001/FW/10676187.3A9053/00001/DOCS/814469.1

SU2 Foundation Bylaws

- ARTICLE I: NAME
- ARTICLE II: OFFICES
- ARTICLE III: PURPOSES
- ARTICLE IV: DIRECTORS
- ARTICLE V: MEMBERSHIP
- ARTICLE VI: COMMITTEES
- ARTICLE VII: OFFICERS
- ARTICLE VIII: INDEMNIFICATION
- ARTICLE IX: INSURANCE
- ARTICLE X: RECORDS AND INSPECTION RIGHTS
- ARTICLE XI: REPORTS
- ARTICLE XII: CONSTRUCTION AND DEFINITIONS
- ARTICLE XIII: AMENDMENTS
- ARTICLE XIV: GENERAL

SU2 Foundation Bylaws

ARTICLE IV: DIRECTORS

- Longest section. See document for details, this is just key overview
- 4.1 Powers of Board: including actions requiring unanimous, supermajority, or simple majority vote.
- 4.2 Board Size: *“The authorized number of directors shall initially be five (5), but may be increased or decreased by resolution of the Board in accordance with Section 4.1(d)(iv) or Section 4.3; provided that the authorized size of the Board shall in no event be less than five (5).”*
- 4.3-4.4 Director Election and Terms: directors serve until successors elected by supermajority vote. No term limits, no prohibition on re-election or re-designation. Executive director sits on the board at the discretion of the board.
- 4.10 Directors’ Meetings
- 4.12 Conflict of Interest: directors also agree to a longer conflict of interest policy

SU2 Foundation Bylaws

ARTICLE V: MEMBERSHIP

“The corporation shall not have any members. The management of affairs of the corporation shall be vested in the Board, as defined in these Bylaws.”

- Note that “member” here is narrowly defined as a voting member of the foundation (a “membership board” where entities pay membership dues for voting seats on the board), which we agreed not to have.

SU2 Foundation Bylaws

ARTICLE VI: COMMITTEES

- Section 6.1 Committee Establishment

“The Board, by resolution adopted by a majority of the directors then in office, provided a quorum is present, may create one or more committees of the Board, each consisting of two or more individuals who may be directors or non-directors.”

- Section 6.2 Program Steering Committees

SU2 Foundation Bylaws

ARTICLE VII: OFFICERS

“The officers of the Foundation shall be an Executive Officer, a secretary, and a chief financial officer ... The Foundation may also have, at the Board’s discretion, a chairman of the Board, one or more vice presidents, one or more assistant secretaries, one or more assistant treasurers, and such other officers as may be appointed in accordance with Section 7.3 of these Bylaws. Any number of offices may be held by the same person.”

- Section 7.2-7.8 covers policies for electing / adding / removing officers
- Section 7.7 covers officer responsibilities
- Section 7.8 covers officer conduct

Notes of interest

- In general, docs were drafted to avoid complexity and allow flexibility.
 - Board can amend the bylaws with a supermajority vote.
- No mention of copyright/IP -> this is a business decision for us (with legal guidance) that is not set forth in the bylaws deliberately. We'll come back to this today.
- There are specific provisions for maintaining records (minutes, legal documents, reports, etc.) and allowing for inspection.
- Fiscal year set to last day of **August**.
- Clear limitations imposed on political / lobbying activities.

Latest Status

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Open Points - Legal

- We are pursuing 501(c)(3) status...
 - 1023 application will be submitted soon. Allow 180 days for response (or longer).
- OSS compliance: OSS specialist available to help us with license/copyright questions.
- Data privacy: We take this very seriously!
 - We are using a service to ensure our website and email lists are compliant with GDPR regulations and other regional issues.
- Liability: bylaws contain provisions to protect directors and officers, but we will pursue D&O liability insurance

Open Points - Legal

- Internationalization: important topic that will be ongoing.
 - Need to research how to register/become qualified to do business in new regions as we go*
- For example: US government puts out general guidelines for charities. See “U.S. DEPARTMENT OF THE TREASURY ANTI-TERRORIST FINANCING GUIDELINES: VOLUNTARY BEST PRACTICES FOR U.S.-BASED CHARITIES”*

U.S. DEPARTMENT OF THE TREASURY ANTI-TERRORIST FINANCING GUIDELINES: VOLUNTARY BEST PRACTICES FOR U.S.-BASED CHARITIES¹

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¹ This document is a revised version of the original *Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities* released by the U.S. Department of the Treasury in November 2002. This revised version incorporates comments received in response to the issuance of the draft revised Guidelines released for public comment in December 2005.

These Guidelines are designed to assist charities that attempt in good faith to protect themselves from terrorist abuse and are not intended to address the problem of organizations that use the cover of charitable work, whether real or perceived, to provide support to terrorist groups or fronts operating on behalf of terrorist groups. Non-adherence to these Guidelines, in and of itself, does not constitute a violation of existing U.S. law. Conversely, adherence to these Guidelines does not excuse any person (individual or entity) from compliance with any local, state, or federal law or regulation, nor does it release any person from or constitute a legal defense against any civil or criminal liability for violating any such law or regulation. In particular, adherence to these Guidelines shall not be construed to preclude any criminal charge, civil fine, or other action by Treasury or the Department of Justice against persons who engage in prohibited transactions with persons designated pursuant to the Antiterrorism and Effective Death Penalty Act of 1996, as amended, or with those that are designated under the criteria defining prohibited persons in the relevant Executive orders issued pursuant to statute, such as the International Emergency Economic Powers Act, as amended. Please see Footnote 12 for an explanation of the master list of Specially Designated Nationals (the “SDN List”), which includes all such designated persons. These Guidelines are also separate and apart from requirements that apply to charitable organizations under the Internal Revenue Code (“IRC”).

SU2 Foundation Infrastructure

- Bank account will be set up immediately after meeting.
 - Typically requires incorporation docs and director details
- Physical address:
 - **1225 4th St. #333, San Francisco, CA 94158**
- Phone number is live (US country code, SF area code)

SU2 Foundation Infrastructure

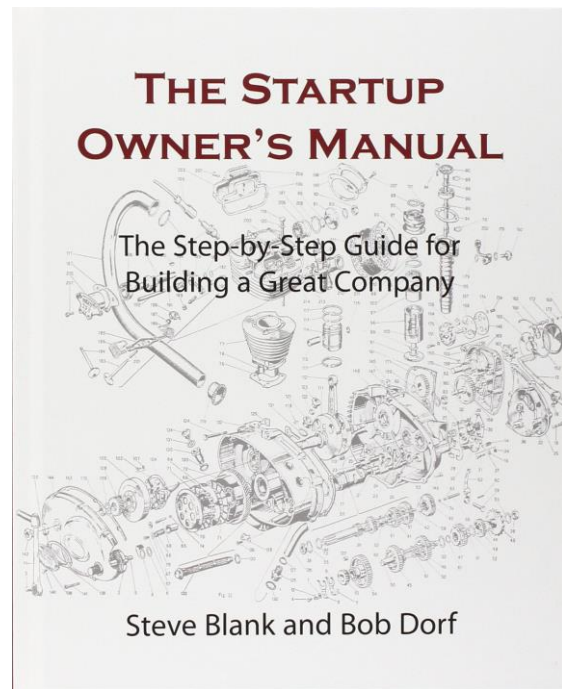
- Email addresses are live, e.g., info@su2foundation.org
- Foundation Website
 - We have the domains su2foundation.org, su2foundation.com, su2foundation.net, and su2.foundation.
 - Site is hosted at su2foundation.org, others forward to it.
- Lightweight Constituent Relationship Manager (CRM) software integrated.
 - Helps with email lists and general relationship management with all constituents (donors, partners, etc.)
- Logos: we're playing with some new ideas and will ask input.

Motivation for Today's Discussion

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How do we get started? (I/IV)

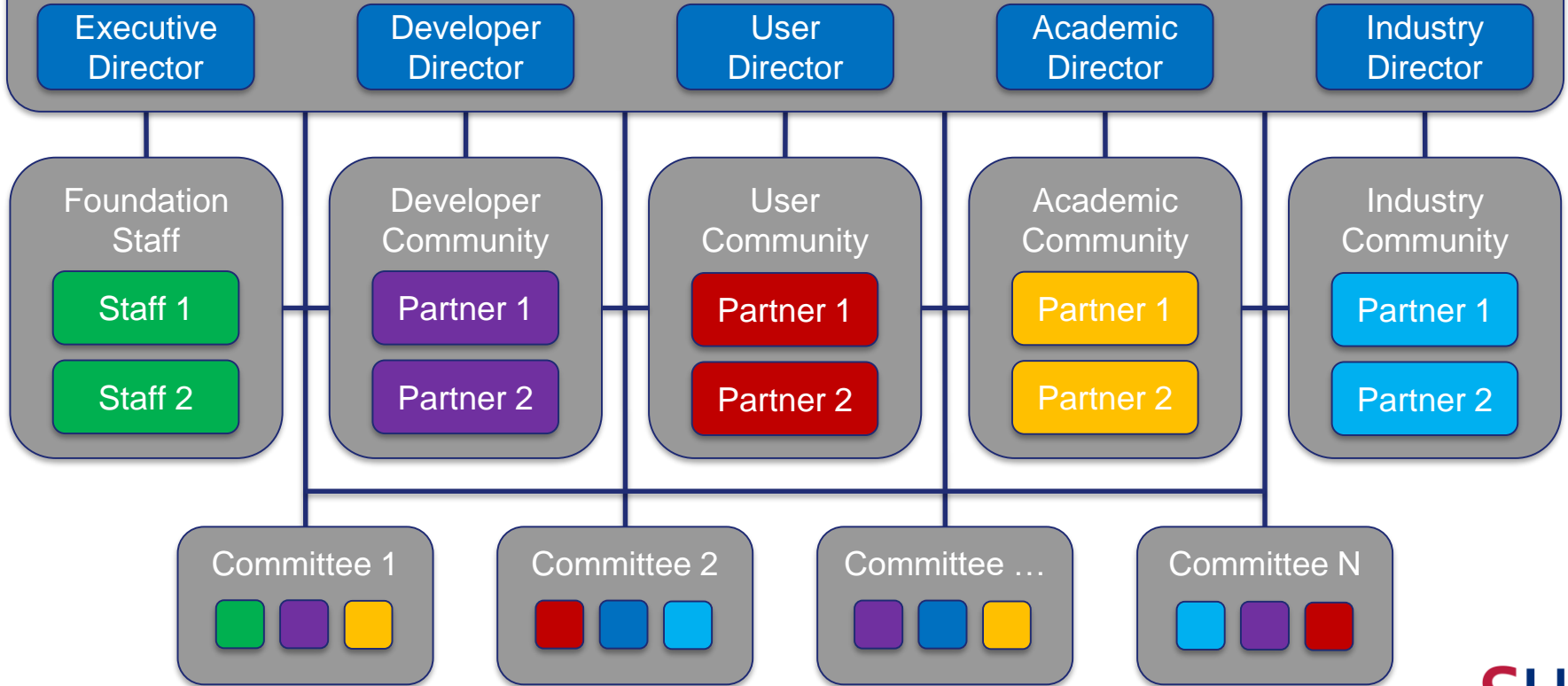
- Traditionally: create a business model, develop product to spec (waterfall), release, then finally get feedback.
- I recommend a focus on the Customer Development process:
 - “No business model survives first contact with customers.” –Steve Blank
 - Create a Minimum Viable Product (MVP), then get out of the building and talk to your customers.
 - We have a bunch of hypotheses, and they should be tested -> iterate quickly
 - Choose key metrics and use to drive validated learning of experiments
 - Business model canvas as a dynamic, living document



How do we get started? (II/IV)

- Startups should “get out of the building” to meet customers and understand their needs.
- Luckily, everyone in the room is an early adopter of SU2 and has been using our high-fidelity MVP for years.
- So, you are our customers, and we are “out of the building” to hear from you!
- With direct feedback you can understand what customers truly want and develop a sustainable business model...
 - Creating customer archetypes can be a useful tool for this.

SU2 Foundation Board of Directors



How do we get started? (IV/IV)

- I have asked the other four directors to gather input from the groups and answer the following:
 - How are the members of the pillar defined
 - What are the current strengths and weaknesses of the project
 - Proposals for how each group supports the foundation and vice versa
 - Concrete recommendations for action (programs, services, committees)
- We will hear these 4 perspectives today with plenty of time for discussion.
- From this process, we will create roadmaps to aid the board in building programs, services, and committees.
- We'll discuss this in the wrap up at the end of the day.

Executive Director: Proposal for Action

The following foundation programs/services/committees are recommended by the executive director:

- Develop a concrete policy/plan for promoting diversity & inclusion and educational programs
- Establish an External Affairs Committee
 - Fundraising (individual/corporate giving, grants, research grants and contracts, etc.), marketing, public relations, etc. -> these go hand in hand. We need materials to fundraise with!
- Establish an Internal Affairs Committee
 - Finance, HR, facilities, operations in general, etc.
- Establish a Governance Committee
 - Cares for how the foundation itself is running (board member training and recruitment, evaluates performance, generates board materials)

Executive Director: Proposal for Action

The following foundation programs/services/committees are recommended by the executive director:

- Define actionable metrics that validate learning about our business model
 - “What gets measured gets improved” – but make sure we’re measuring the right thing!
 - Stop wasting time building things people don’t want – use every action as an experiment to test a hypothesis’ effect on core metrics
 - Reduce the time of the build-measure-learn feedback loop and use it to drive the organization

Next Steps + Wrap-up

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Next Steps

- Board has ability to create committees / program steering committees
 - Delegate and hold accountable! Next year, this meeting should be an opportunity for the committees to tell us all about what has been accomplished.
- Board views proposals through following lens:
 - Whether the proposals serve the mission (always priority #1).
 - Cost / effort involved and available personnel.
 - Find the right number of committees to balance management overhead with amount of work.
 - Experiments/metrics should also be ready to measure impact of each proposal.

Points to Seed Discussion

- Any lingering questions about the foundation setup and structure?

Points to Seed Discussion

- So, what did you hear from the 4 perspectives?
 - General comments?
 - What resonated with you?
 - Notice any themes? Obvious needs? Any outliers?

Points to Seed Discussion

- Any requests for programs / committees with unanimous consent?
- We need volunteers -> who is interested in particular tasks?