Workshop #3
Summary Report

May 16 – 18, 2005

Boston, MA

Contact:

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June 2005

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INTRODUCTION

What would a corporation look like that was designed to seamlessly integrate both social and financial purpose? Corporation 2020 (C2020) is a new multi-stakeholder initiative that seeks to answer this question. Its goal is to create corporate designs where social purpose moves from the periphery to the heart of future organizations.

Most debates about corporate responsibility narrowly define a stark choice between government regulation and free markets. C2020 posits a third path: system redesign. This path is grounded in the premise that the existing corporate form – from charters to board duties, capitalization, ownership, liability and other key attributes – need to be scrutinized in light of 21st century needs and expectations. While the corporate responsibility and governance movements have achieved some notable progress, a more systemic, integrated transformation is both needed and plausible at this moment in history. Redesign aims at such transformation by shifting the focus from the "what" and "how" of production to the nature and purpose of the corporation itself.

C2020 strives to chart a course that embeds social purpose in corporate “genetics” while maintaining a focus on long-term wealth creation. In so doing, the initiative acts as:

- A forum of leading thinkers, practitioners, and activists
- A visionary building long-term, coherent pictures of the future corporation
- An advocate for attaining such visions

Since the second workshop in San Francisco in November 2004, C2020 has seen growing activity, energy and enthusiasm. The initiative continued to progress toward a set of design principles; launched a new wave of discussions on issues such as directors’ duties, state law reform, and the commons sector; and continued outreach to new participants. All of these activities have helped build momentum and, even at this early stage, begun to demonstrate the impact of the initiative in the real world.

The Boston Workshop #3 was designed to build on these achievements. Participants sought to reach interim consensus on a number of design principles; delve deeper into state law reform, governance, capital markets and the commons; and explore the idea of organizing a corporate constitutional convention.
SUMMARY OF DISCUSSIONS

The agenda for the May 2005 workshop (Annex A) delved deeper into key topics that surfaced in C2020 electronic dialogue, working groups, and previous workshops. As discussions have moved from overviews of design elements to more specific, crosscutting issues, focus is beginning to shift toward integrated designs built on core principles. Highlights of each discussion session are presented below.

Introductions

On Monday evening, approximately 30 participants gathered for an informal dinner and introductory session. Representing a mix of returnees and newcomers, the group comprised academics and practitioners from corporations, civil society, finance, journalism, labor, and law. Participants contribute in their capacity as individuals, not as representatives of their respective organizations (see Annex B).

Dialogue 1: Principles for Corporate Design

In this session, participants worked toward consensus on a set of principles for future corporate forms (see the Agenda in Annex A for scope and discussants of this and subsequent sessions). The Principles Working Group (PWG) described their process of refining a set of principles over the previous six months, building on insights from the previous two workshops, C2020 Issue Briefs, papers1 and electronic dialogue. The PWG presented their final draft for discussion in the larger group (see box below).

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NEW PRINCIPLES FOR CORPORATE DESIGN

Final Working Group Draft - May 5, 2005

1. The purpose of the corporation is to harness private interests in service of the public interest.

2. Corporations shall accrue fair profits for shareholders, but not at the expense of the legitimate interests of other stakeholders.

3. Corporations shall operate sustainably, helping to meet the needs of the present generation without compromising the ability of future generations to meet theirs.

4. Corporations shall distribute their wealth equitably among those who contribute to its creation.

5. Corporations shall be governed in a manner that is participatory, transparent, and accountable.

Principle #1 describes the overarching purpose of the corporation. Principles #2 and #3 delineate the boundaries for pursuing its wealth creation activities, i.e. not at the expense of stakeholders, including future generations. Principle #4 addresses distribution of the wealth once created and Principle #5 specifies guidelines for governing the wealth creation process.

The discussion revealed widespread agreement on Principle #1, due to its potential appeal to a broad spectrum of stakeholders. No consensus emerged for Principle #2, with the following among key issues:

- The term “fair” is too vague. Does it mean, for example, single digit return on assets? 2% above treasury bills?
- “Profit” implies growth and inherent undermining of the environment. Perhaps “return” would be better? How should corporations appropriately reward risk, not only shareholder, but to other “investors” in the companies such as employees and communities?
- Since there are always trade-offs, how could “not at the expense of” stakeholders be implemented?
- The principle seems to be giving away too much; it does not fully question shareholder primacy.

Participants were generally satisfied with Principle #3, except several mentioned that the word “sustainably” is vague and perhaps ambivalent in terms of reference to either the entity or to the broader socio-economic environment in which the entity operates. Some argued for deletion. Principle #4 also received general support, although one participant
suggested rewording it in terms of returns to multiple investors, instead of “distributing” wealth. For Principle #5, participants suggested including the word “democratic”, since participation does not necessarily imply a substantive role in decision-making.

Discussion turned to whether the “commons” (see Dialogue 5) should explicitly be included in the Principles. One participant offered a 6th principle: “Corporations shall not take from the Commons without giving back.” This would provide for active protection of the commons, and require corporations to internalize all costs. Concerns about adding a principle to protect the commons included:

- The concept of the commons may not be widely understood.
- Protecting the commons is captured sufficiently in Principles #2 and #3.
- The Principle, as suggested, does not account for aspects of the commons that may not be replaceable, i.e. the collapse of an ecosystem once a threshold of “taking” has been passed.

Participants also discussed the scope of what the principles apply to. Do they apply to private as well as public corporations? Small as well as large? Should they address broader economic concerns, such as the role of capital markets and government? Though wider societal concerns are clearly relevant, there was agreement that the “corporation” provides a manageable focus with broad resonance.

Moving forward, the PWG will incorporate the comments from this discussion into the next version of the Principles. The goal is to finalize a set of principles that is elegant, memorable, complete and self-evident. Once finalized, these principles can be widely circulated, and they can serve as a touchstone for corporate vision statements, legislative initiatives, civil society activities, labor standards and other contexts in which corporate purpose is under discussion.

Dialogue 2: State Corporate Law Reform

States law plays a pivotal role in issues such as directors' duties and corporate charters. Initiatives in various states such as California, Minnesota and Maine are seeking to redefine directors' duties to elevate the interests of non-shareholders and to create special "socially responsible corporations." Following months of active e-dialogue, this session reported on the content, status and prospects for various state efforts.

A UK participant compared state corporate law reform in the US with efforts in the UK to reform company law. Over the past seven years, the debate on company law reform in the UK has focused on an enlightened shareholder value (ESV) versus a pluralist (a.k.a. "stakeholder") approach. The ESV model is, in essence, based on the "business case for CSR". Coupled with increased reporting requirements, the ESV approach would enable directors to act in line with their understanding of 'business case' arguments. Alternatively, the pluralist approach would incorporate the interests of multiple stakeholders into the governance of corporations. By 2000, ESV in the UK had emerged as the leading approach to reform of directors' duties due to fears that the pluralist approach would harm competitiveness and grant too much power either to courts or to
directors. In 2005, the underlying support for an ESV approach was also reflected in complementary Operating and Financial Review legislation, which requires social and environmental reporting for large companies to the extent that such issues are "material" to shareholder interests. Efforts continue among civil society-based actors to build potential for a pluralist model.

Participants discussed what would be necessary to continue corporate law reform, particularly, how could a pluralist model might be operationalized? Would expanding directors' duties to include fiduciary or other responsibilities to multiple stakeholders be plausible and desirable? Would an open-ended right to sue directors' duties make managing the corporation impossible? Narrowing the scope of litigation might solve this problem. Another solution would be to have direct representation of various stakeholders on the Board, thus giving each interest an active voice for negotiation.

In order to build on the energy behind state corporate law reform, participants decided to form a C2020 "laboratory" on the subject.² Possible outcomes could be draft model public policies, focusing on language as well as strategy, and a conference for actors involved in ongoing state law reform.

Dialogue 3: Corporate Governance

Corporate governance touches various prior issues covered by C2020, including directors’ duties, ownership and charters. The discussion in Workshop #3 focused on two key elements of corporate governance: shareholder activism and internal leadership. Shareholders, given their broad ownership via pension funds and other institutional investments, may exert powerful pressure on boards and management to focus on long-term wealth creation versus short-term financial returns. Through grassroots organizing, shareholders could be motivated to vote their proxies and otherwise exert pressure on corporations to fulfill social and environmental goals. Mechanisms for asserting the voice of shareholders await fuller development before achieving their full potential as forces to elevate the social and environmental and social purpose of the corporations in which they hold equity.

The limitations of shareholder activism surfaced in the discussion. First, though shareholders may be interested in social purpose in other contexts (as consumers, workers, community residents) as shareholders they are primarily interested in returns to capital. Second, a large segment of the population does not own shares (roughly 50% of US workers, for example). Relying on shareholders to govern the corporation merely reinforces the old frame of shareholder primacy instead of creating more direct accountability mechanisms such as direct representation of various stakeholders on corporate boards. Regardless of its limitations, there was widespread agreement that shareholder activism, empowered by something akin to a “MoveOn.org for pension-fund beneficiaries,” could be instrumental in elevating social purpose in corporations. The

² C2020 laboratories are experiments in applying interim corporate design principles and concepts to real world situations.
separate but linked question of employee, community and other stakeholder participation in corporate governance was not addressed in this discussion.

Participants also focused on the role of leadership as part of the “governance triangle.” Several participants described what they viewed as a crisis of leadership in the business community, while also acknowledging that CEOs are often held most accountable to shareholder demands. Even in situations where opportunities for financial and social enhancement seem evident, e.g. addressing the health care burdens of American corporations, proactive and collective CEO engagement is rare. Recognizing and promoting leadership at lower levels of management, plus targeting business education and retired CEOs, could be an effective way to leverage business leadership for social purpose.

"Systems can’t function without good leadership."

Governance is about who decides what actions will occur. Decisions are made because of legal requirements, pressure from the public, civil society, and consumers, or voluntarily if it is viewed as in the best interests of the company. Accordingly, participants agreed that it is important to use a combination of “hard” and “soft” power to direct decision-making toward social purpose.

**Dialogue 4. Enlarging the Market for Patient Capital**

Capital providers exert powerful pressure on corporations to produce short-term returns in both start-up, intermediate and mature companies. Such pressures profoundly affect the behavior of boards, managers, and employees, limiting their ability to align with a long-term, socially-purposeful vision.

In the capital session, participants discussed the drivers (Table 1) that tend to encourage or discourage patient capital, defined as both reduced churning and volatility in securities markets as well as “taming” the expectations of returns to capital owners relative to others stakeholders entitled to partake in the corporate returns, e.g. employees and communities.
### Table 1. Selected Drivers of Patient Capital

**A force field analysis**

<table>
<thead>
<tr>
<th>Forces driving towards Patient Capital</th>
<th>Forces driving against Patient Capital</th>
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<tr>
<td>Quarterly reporting requirements</td>
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<td>Pension fund investment horizons</td>
<td>Market expectations, analyst behavior</td>
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<td>Business cycles in some sectors (NB R&amp;D)</td>
<td>Analyst/money manager compensation</td>
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<td>Climate change risk and policy</td>
<td>CEO compensation (&amp; disclosure)</td>
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<td>Sustainability as core business principles</td>
<td>Accountants’ “going concern” concept</td>
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<td>Concept of corporation (v. J-V or project)</td>
<td>Turnover of mutual fund portfolios</td>
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<tr>
<td>Enlightened corporate vision, values &amp; leadership</td>
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<tr>
<td>Institutional Investor pressure</td>
<td>Mutual fund performance evaluation</td>
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<td>Tiered capital gains tax structures.</td>
<td>Mutual fund manager compensation</td>
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<tr>
<td>Increased transaction tax</td>
<td>Composition of boards of directors</td>
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<tr>
<td>Etc.</td>
<td>Turnover in typical mutual fund composition</td>
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<td></td>
<td>Media coverage (focus on S/T performance)</td>
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<td></td>
<td>CEO and top management paid with stock option</td>
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<tr>
<td></td>
<td>Etc.</td>
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</tbody>
</table>

Source: Alan Willis

Participants assessed the role that socially responsible investing (SRI) could have in facilitating patient capital by virtue of its focus on long-term social and environmental performance alongside competitive financial returns. Is SRI potentially influential enough to diffuse this investment perspective to the mainstream, or do we need another and/or different mechanisms to create patient capital? Traditionally, SRI has focused on screening out “bad” companies, though recently focus has shifted toward investing companies with “high social investment,” e.g. dedicated to addressing critical global
needs such as health, energy, shelter, and mobility. Some participants optimistically asserted that once investors see the value-added of investing in responsible companies—still not widely accepted by the mainstream financial community—then SRI will move into the mainstream. Others were more skeptical, seeing that the power of SRI is contingent on external campaigns in tandem with shareholder resolutions. For example, divestment from South Africa was only effective because NGOs laid the groundwork. Thus, the power in SRI is to complement and accelerate movements triggered by non-SRI interests.

The connection between capital and reporting was mentioned several times. In order for capital to reach socially purposeful companies at a scale far greater than is currently the case, companies have to provide rigorous reporting on social, environmental, and economic indicators. The lack of capacity to analyze the large amount of reported data that currently exists was cited as a barrier. The creation of a Social Return on Investment indicator (SORI) would help direct capital toward socially purposeful companies.

The question of shareholder democracy emerged again in this session. How much power should shareholders exercise in the conduct of corporations in relation to advancing long term wealth creation and overall advancing social performance? Table 2 suggests that shareholder power should vary according to the time horizon of the investment fund, i.e. shareholders with longer-term investments (pensioners) should have a greater interest in achieving these objectives. However, this is complicated by the unwieldiness of large pension funds as leaders of corporate campaigns. They can, however, however, follow more agile SRI funds.

**Table 2. Capital Time Horizon and Shareholder Power in Advancing Social Purpose**

<table>
<thead>
<tr>
<th></th>
<th>Long Term</th>
<th>Actively Managed Equity Funds</th>
<th>Short Term</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Index Funds</td>
<td>Actively Managed Equity Funds</td>
<td>Hedge Funds</td>
</tr>
<tr>
<td>Pricing Power (Exec. Comp./Takeovers)</td>
<td>N/A (don’t trade)</td>
<td>Reduce</td>
<td>Reduce</td>
</tr>
<tr>
<td>Voting Power (Electing Directors)</td>
<td>Increase</td>
<td>Reduce</td>
<td>N/A (holding too short to vote)</td>
</tr>
<tr>
<td>Litigation Power (Breach of fiduciary duty claims)</td>
<td>Reduce or Change</td>
<td>Reduce</td>
<td>Reduce</td>
</tr>
</tbody>
</table>

Source: Damon Silvers

Participants agreed that divestment or withholding capital in the current climate of rapid and highly transient capital transactions (as in hedge funds) can only be effective at influencing corporate behavior if coupled with political action. Retaining capital and voting proxies are more effective ways to influence corporate behavior.
Returning to the original premise, is patient capital always necessary to achieve social objectives? If capital from the outset is aligned with solving societal problems (i.e. C.K. Prahalad’s *Fortune at the Bottom of the Pyramid*), then patience is not necessarily an asset.

**Commons Working Group**

The Commons Working Group (CWG), since the November 2004 San Francisco Workshop, has sought specific examples of how to organize the commons—physical, intellectual, cultural assets—so they can be preserved for future generations. Participants agreed that the boundary between corporations and the commons is crucial—what mechanisms can restrain undue incursions into the commons, and how should they be governed? A range of views persisted regarding how the commons should be protected, and how much C2020 should focus on the issue.

The CWG presented a potential sixth principle for C2020’s Principles for Corporate Design: “Corporations should fairly compensate any takings from the commons.” According to this principle, corporations would internalize all costs that might be imposed on the commons. Participants agreed that this is an important concept. One concern, however, is the principle as stated assumes that everything in the commons is compensable (such as tradable CO₂ emissions), and does not address takings that would cause irreparable degradation (such as genetic material in plants or animals). In addition, the term “takings” does not account for parts of the commons that are spoiled by adding (e.g. pollution in water) or preventing access (e.g. seeds, radio bandwidths).

Is protecting the commons more an interim strategy than an aspirational principle at a level equivalent to the other five principles? Or should it be explicitly referenced to underscore that corporations are entities enabled by public assent that must be obligated to steward, not deplete, commons assets on which they depend for production of goods and services? In addition, there were concerns that the principle, as currently stated, would not have broad resonance outside the US. In addressing property rights and the commons, it is important to reflect deeply on language, reference points, and examples from other regions and cultures that do not share the American legal and cultural traditions.

Participants discussed the trust as one mechanism to protect the commons. In a trust, a donor grants property a trustee, who owns property for the benefit of a beneficiary. Trustees can use “reasonable judgment” to balance competing interests, but are held to high standards of loyalty to the beneficiary. In a land trust, property is land that is held for the public benefit.

Concerns about the trust model included that it is a very rigid form of ownership; the trust can only be altered through the courts if it is deemed no longer feasible, and not solely if new developments make it irrational. In addition, since there is no stakeholder control,
trusts could be an invitation to corruption and professional arrogance. These issues raise the question of the desirability of trusts versus more traditional governmental or quasi-governmental regulatory bodies versus trusts as stewards of the commons.

Land banks and the “Fair Exchange” concept are mechanisms to protect the commons. In a land bank, fees are levied on exchanges of private land in order to protect public land. Such a bank is self-generating, and can become a powerful force in the real estate market. The Fair Exchange model offers equity to citizens and communities that invest in corporations through tax breaks, natural resources, labor or otherwise. The dividends can contribute to a community trust or can be paid out to individuals. Examples are the Tennessee Valley Authority and the Alaska Permanent Fund.

An international governance regime, such as the “World Commons Organization” (WCO) was suggested as a potential counterpoint to the World Trade Organization (WTO). Such an organization could have multi-stakeholder representation in governing corporations’ interactions with the commons. Questions emerged as to how such an organization would overcome different legal frameworks and cultural perceptions of property rights and human relationships to the commons.

The richness and depth of the commons discussion illustrated that this is an important concept in C2020’s corporate redesign efforts. However, how to best position the issue in relation C2020’s mission, principles, and future activities remains a work in progress.

**Corporate Constitutional Convention**

A proposed major milestone for C2020 is a Corporate Constitutional Convention to codify new visions for the corporation rooted in certain principles, obligations, and rights. In this session, participants explored the possible purpose, timing, structure, participants, venue and funding for this seminal event. After much debate and progress toward developing new visions of the corporate form, participants unanimously endorsed the idea of a high profile event as a way to “pop” corporate redesign into the corporate responsibility, investment, legal/regulatory, and overall intellectual debates that shape corporate futures. The Convention could mobilize business and civic leaders, help galvanize new norms of corporate behavior, and focus a diverse array of groups on fundamental corporate reform.

Participants agreed that a Convention would only be effective as part of a groundswell of related activities. For example, in the years leading up to the event – currently planned for late 2007 or early 2008 – there might be educational and activist campaigns for corporations to adopt C2020 Principles, and for states to adopt variations of C2020 model corporate codes. In addition, C2020 might link to other events, actions, and initiatives, and proliferate ideas through white papers and the media. Participants agreed that the principles could be an effective organizing tool, though they would also need corresponding metrics and operational guidance.
WAY FORWARD

Through the course of the workshop, the outlines of a work agenda for the next six months took shape. The PWG will incorporate comments from workshop discussions into a final set of Principles, which will then be ready for wide dissemination. Ideas that surfaced at the workshop will continue to be explored through Working Groups and Laboratories. Suggested Laboratories include developing model state corporate codes, refining mechanisms for the protection of the commons, and exploring sector-specific corporate forms, such as for the pharmaceutical sector. In addition, C2020 will develop a workplan for outreach activities in connection with the proposed Constitutional Convention in 2007. Continued exploration and action will require sizeable inputs of time and expertise from participants, as well as substantial financial resources from donors. In the June-July time frame, specific actions based on this work agenda will evolve under the leadership of various participants with guidance and support from the Boston office.

Workshop #4 is tentatively planned for late November-early December 2005.
ANNEX A: AGENDA

Workshop #3
May 16-18, 2005
Boston

OBJECTIVES
- To reach interim consensus on principles for corporate design
- To deepen exploration of Corporation 2020 in relation to corporate governance, capital markets, and the commons sector
- To initiate discussion of a proposed Corporate Constitutional Convention

DAY 1: MONDAY, MAY 16

5:00 Steering Committee meeting
6:15 Informal buffet dinner
7:00 Welcome and introductions
   John Weiser, Facilitator
8:45 Workshop Overview
   Allen White, Marjorie Kelly
9:00 Adjourn

DAY 2: TUESDAY, MAY 17

8:15 Breakfast
9:00 Welcome

9:15 Dialogue 1: Principles for Corporate Design

*Responding to the document drafted by the Principles Working Group, we will aim to reach interim consensus on principles for corporate design as the foundation for going forward. Please review the draft Principles document, available in your binders and at [http://forums.seib.org/corporation2020/documents/Papers/WG_Papers/Principles_4.pdf](http://forums.seib.org/corporation2020/documents/Papers/WG_Papers/Principles_4.pdf).*

Discussion leaders: Marjorie Kelly, Kent Greenfield
10:45 Break

11:15 Dialogue 2: State Corporate Law Reform
States law plays a pivotal role in issues such as directors’ duties and corporate charters. Initiatives in various states such as CA, MN and ME are seeking to redefine directors’ duties to elevate the interests of non-shareholders, create special “socially responsible corporations”, and introduce other innovations. Corporation 2020 participants will report on their roles and perspectives in these ongoing debates.
Discussion leaders: Bill Crain, Halina Ward

12:30 Lunch
Commons Working Group meeting

1:30 Dialogue 3: Corporate Governance
Corporate governance embraces various prior issues covered by Corporation 2020, including directors’ duties, ownership and charters. Looking ahead, and in light of current corporate governance trends, what are the key elements of corporate governance that will ensure social purpose is embedded in future corporations? How should Corporation 2020 align with/contribute to various streams (e.g. shareholder activism, stakeholder-based boards), within the corporate governance movement?
Discussion leaders: Steve Davis, Jim Post

3:00 Break

3:30 Dialogue 4: Capital—Enlarging the Market for Patient Capital
Capital providers exert powerful pressure on corporations to produce short-term returns in both start-up, intermediate and mature companies. Such pressures profoundly affect the behavior of boards, managers, and employees. Building on the earlier discussions of capital, what options exist for aligning capital sources, cost and expected returns with embedding social purpose in future corporations?
Discussion leaders: John Desantis, Alan Willis

5:00 Open discussion

5:45 Wrap-up

6:00 Adjourn

7:00 Dinner (participants cover cost)
SkipJack’s
199 Clarendon Street
Tel: 617/536-3500
DAY 3: WEDNESDAY, MAY 18

8:15 Breakfast

9:00 Recap Day 1

9:15 Dialogue 5: Commons Working Group

Continuing discussion from Workshop #2, further exploration of the nature, types and boundaries of future “third sector” (non-governmental, non-corporate) entities created to inherit, protect and steward common assets, with focus on case studies examined by the Working Group. Please review The Commons Working Group report in your binders and at http://forums.seib.org/corporation2020/documents/Papers/WG_Papers/Commons_Report.pdf.

Discussion leader: Peter Barnes

10:30 Break

11:00 Corporate Constitutional Convention

A proposed major milestone for Corporation 2020 is a Corporate Constitutional Convention to codify new visions for the corporation rooted in certain principles, obligations, and rights. This discussion will explore the possible purpose, timing, structure, participants, venue and funding for this seminal event. How do we move forward?

12:15 Miscellaneous

- Steering Committee Report
- Status of Corporation 2020 Laboratories
- Next workshop

12:45 Wrap-Up

1:00 Lunch

2:00 Adjourn
ANNEX B: PARTICIPANTS

Workshop #3
May 16-18, 2005
Boston

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<th>Name</th>
<th>Affiliation*</th>
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<td>John Abrams</td>
<td>South Mountain Company</td>
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<tr>
<td>Stuart Auchincloss</td>
<td>Sierra Club, CERES Board member</td>
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<td>Peter Barnes</td>
<td>Formerly Working Assets, Tomales Bay Institute</td>
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<td>Bill Crain</td>
<td>Selectman, Town of Pownal, ME</td>
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<td>Domini Investments</td>
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<td>The Wal-Mart Project, Corporate Ethics International</td>
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<td>Michael Marx</td>
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<td>Erica Mintzer</td>
<td>Tellus Institute</td>
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<td>Terry Mollner</td>
<td>Trusteeship Institute</td>
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<td>Lee Morgan</td>
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<td>Deborah Olson</td>
<td>Capital Ownership Group</td>
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<td>James Post</td>
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<td>Carolyn Raffensperger</td>
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<td>International Institute for Environment and Development (UK)</td>
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<td>Alan Willis</td>
<td>Consultant, Chartered Accountant (Canada)</td>
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<tr>
<td>Alison Wise</td>
<td>Sea Change Sustainable Business Interest Group</td>
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*Affiliations are for identification purposes only