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## How to Be a Good Lead Director

by Thomas P. Conaghan and Meera V. Popat

Perhaps the leading “lightning rod” issue in corporate governance these days is the governance risk associated with combining the CEO and Chairman titles in the same person. Stockholder activists have railed against this board structure for years on the grounds that it flies in the face of the board’s primary role – to oversee and provide a “check” against a misguided management team. Over the past five years, most large U.S. public companies have either split the roles of CEO and Chairman, or, to the extent the CEO also carried the Chairman title, appointed one of the independent (non-management) directors to the role of Lead Director. The New York Stock Exchange and Nasdaq adopted rules effectively requiring listed companies with non-independent Chairmen to install a Lead Director among its required independent directors and communicate the identity of this person to the company’s stakeholders so that they may communicate to the independent members of the board about their concerns.

In July 2009, the SEC proposed new proxy disclosure rules that will require public companies with a combined CEO/Chairman to disclose why the company believes such a leadership structure is appropriate and what specific role the Lead Director plays in the leadership of the company.

Apart from being the contact person for stockholder grievances, the role of the Lead Director has never been officially defined. Best practices have evolved, helped in part by the proxy voting guidelines established by institutional investor advocates such as RiskMetrics Group, but, by and large, companies with combined CEO/Chairman board structures are left largely to their own devices in designing the roles and responsibilities of the Lead Director. To the extent such companies have never formally defined the Lead Director role, the new SEC disclosure rules will surely provide the catalyst to do so.

Board members who are asked to take on the role of Lead Director should take an active role in defining the scope of their duties and responsibilities so as to decrease the likelihood of unproductive power clashes with the Chairman/CEO and increase the ability of the Lead Director to provide the desired “check” on management.

Here are some helpful tips for future Lead Directors in successfully discharging their role:

- *Focus on governance.* The Chairman/CEO is a manager first, and a board member second. The Lead Director should focus on board mechanics (meeting calendars, committee membership, board recruitment, dealing with underperforming directors) so that the Chairman/CEO can focus on running the business, strategy and the “big picture.”
- *Be the point person for the independent directors and the consensus builder for the whole board.* The Lead Director is the voice of the independent directors. If the independent directors

think that the CEO/Chairman is headed down the wrong road, the Lead Director will be the one to communicate those concerns to the CEO/Chairman. Conversely, there will be times when the proposals of the CEO/Chairman receive mixed reviews at the board level. The Lead Director will often be called upon to poll the directors to build some consensus one way or the other so that the deadlock can be resolved.

- *Review carefully the agendas for board meetings.* It has been said that “He who controls the meeting agenda, controls the board.” While the CEO/Chairman will likely take the lead in proposing an agenda, it should be shared and discussed with the Lead Director before it is finalized.
- *Clearly delineate the division of responsibilities with the CEO/Chairman and communicate this division to the board and to management.* The chief complaint against Lead Directors is that they often create “Who’s in charge?” confusion at board meetings. To combat this perceived flaw, the Lead Director and the CEO/Chairman should clearly delineate their respective duties and responsibilities and abide by this division of labor consistently.

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