



## Survey Highlights the Importance of Lead Directors

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In 2002, the New York Stock Exchange first mandated that listed companies have a “presiding director” to undertake the functions of presiding at meetings of the independent directors and receiving communications from shareholders. In the ensuing eight years, the prevalence of presiding directors, lead directors and non-executive board chairmen (all of which we refer to as “lead directors”) has increased significantly, so that almost all large U.S. public companies now have such an independent board leader. The powers exercised by lead directors have become more important, with many lead directors moving beyond the limited tasks required by the NYSE to exercise central roles in improving the performance of their boards and their companies.

With the increased importance of lead directors for U.S. public companies, it is timely that PricewaterhouseCoopers has undertaken a comprehensive survey of lead directors (the “Survey”). The report of the Survey, *“Lead Directors: A study of their growing influence and importance”* was published on April 22, 2010, and a series of briefings discussing the results of the survey has now been held in three cities. The Survey is available [here](#).

King & Spalding participated in the development and analysis of the Survey, as well as these briefings. This posting provides highlights from the Survey and the briefings held in Atlanta, New York City and Palo Alto. (Citations to specific questions in the Survey are indicated by the references to “Questions”.)

### Who are the Lead Directors?

Sixty lead directors of U. S. public companies participated in the Survey. The companies represented in the Survey are sizeable companies – 56% of the companies whose lead directors participated had revenues of at least \$4 billion; 82% of these companies have at least nine

directors serving on the board. (Questions 3 and 4) The lead directors responding to the survey tended to have long tenure on their boards, with 83% having served for five or more years. (Question 1) Most of these board leaders had previous experience as a CEO or chairman of a public company, with this long service and previous leadership experience likely being key factors in their selection to serve as lead director. (Question 14) With 63% of the Survey respondents having served as lead director for three or more years (Question 10), it is likely that many of the lead directors responding to the survey were the first to hold this position for their companies.

There has been a recent trend for public company directors to serve on fewer boards and to spend more time working for the boards on which they serve. Lead directors responding to the Survey confirmed this new reality of board service, with 80% of the respondents serving on two or fewer other boards. (Question 7).

### **Why Are Lead Directors Appointed?**

While there may be a perception that boards often appoint lead directors in response to a crisis that the company is facing, 82% of the lead directors responding to the Survey indicated that their appointment was a routine corporate development, rather than the result of some specific event or situation. (Question 9) The specific events or situations most likely to lead to the appointment of a lead director include the company's CEO being appointed chairman (so that the two roles would then be combined) and other types of changes in senior leadership. No lead director referred to the company facing a crisis situation as a factor leading to his or her appointment.

### **What are the Lead Directors Doing?**

The Survey confirmed that lead directors spend a considerable amount of incremental time in serving their boards, with 87% the Survey respondents spending six or more hours per month doing their work as lead directors and one-third of the respondents devoting over 10 hours per month to the task. (Question 16) In briefings, lead directors suggested that these numbers likely reflect their routine work; when the company faces a crisis, major transaction or management succession scenario, the work of the lead director will increase dramatically. The extra compensation received by lead directors for their service in this capacity showed considerable variability, with 40% of respondents receiving \$15,000 or less, 28% of lead directors receiving between \$20,000 and \$38,000, and 32% receiving compensation ranging from \$50,000 to \$150,000. (Question 17)

Lead directors believe that their most important roles include working with the CEO on behalf of the board and succession planning for the CEO. (Question 35) Accordingly, lead directors speak with their CEOs frequently between board meetings, with over half the respondents indicating that

they speak with CEO at least five times between board meetings. (Question 30) It appears that in many instances CEOs initiate these conversations, wanting to bounce an idea off the lead director or seeking input on how the independent directors might view a particular situation. Effective lead directors are cautious, however, that all directors should continue to have access to senior management and that their ongoing conversations with the CEO should not interfere with other directors' communications with the CEO or senior management. By comparison, lead directors spend considerably less time speaking with other directors between board meetings, with approximately half of the lead directors having two or fewer of these conversations between meetings.

In addition to their work with the CEO, lead directors report that their most important roles include seeking to improve board performance and helping the company address any crisis that it may face.

### **What Personal Attributes Make a Board leader Successful?**

Lead directors participating in the Survey cited "integrity" as the most important personal attribute for being a successful lead director. (Question 37) Based on conversations with lead directors, we believe that this "integrity" refers to a political neutrality or the absence of having an agenda for the company. Rather than selecting a director thought of, for example, as being overly supportive or critical of management, directors seek "neutrality" in selecting a board leader. Other key attributes considered important for a lead director include judgment and the ability to collaborate with the CEO.

### **What Do Lead Directors Expect to be Doing in the Future?**

As they continue to reflect on the causes and outcomes of the 2008 / 2009 financial crisis, lead directors suggest that a top priority over the next two years is likely to be risk management. (Question 40) In briefings in which they discussed the Survey, lead directors and their advisors suggested that an important part of this oversight of risk management will focus on ensuring that both the full board and its committees are properly focused on risk management. One lead director referred to the fact that having the three traditional committees – audit, compensation and governance – oversee the risks within their respective areas would likely leave gaps in risk oversight (for example, it is unclear which of these committees would focus on risks arising from shifts in the company's strategy). Accordingly, lead directors believe that the full board should retain responsibility for certain areas of risk oversight; a special committee to address risk may be useful in some circumstances, especially for a financial institution.

Beyond the challenges of risk management, lead directors expect that they will contribute to their companies by focusing on CEO performance, as well as succession planning for the CEO. Lead directors' focus on management succession planning is to be expected; in many instances, lead directors believe that if they don't take responsibility for this critical process, the company could be at risk. Lead directors also expect to focus on board composition and performance, and they refer to dealing with difficult or underperforming directors as an important responsibility.

While it may seem surprising that addressing executive compensation issues does not appear high on the list of lead directors' short-term priorities, this likely reflects the fact that compensation committees are well-focused on this task. Lead directors believe that they have often been effective in helping their companies address a crisis; perhaps it is their optimism that leads them to rank crisis management as only seventh highest among the challenges they expect to face over the next two years.

Survey data and conversations with lead directors also suggest that we may be seeing a shift in lead directors' focus, as they transition from addressing primarily internal company issues (such as management succession and CEO and board performance), to assisting their companies in external matters. While lead directors do not generally have a significant role in communicating with media or the general public, they are more likely to take an active role in the dialog with institutional shareholders or other key constituencies. (Question 24) Lead directors are quick to point out that they must coordinate closely with management to be effective in these types of communications.

### **How Long Should a Lead Director Serve?**

While almost half the lead directors participating in the Survey are serving indefinite terms, 68% believe that the position should be rotated over time, with the consensus being that lead directors should serve for three to five years. (Questions 18 and 36) Conversations with lead directors confirm that, having worked to develop the lead director position, many of them would like their boards to focus on finding their successors.

### **Lead Directors – Here to Stay.**

In recent years, there have been calls for U.S. companies to be required to have independent board chairs, which would likely eliminate the need for lead directors. Lead directors responding to the Survey do not believe that their companies will split the roles of chairman and CEO, with only 29% of respondents believing that their companies will make this change within the next five years. (Question 43) A significant portion of respondents (35%) believe that the powers of lead

directors will increase over this period; 65% believe that the powers will remain unchanged; none of the respondents foresee any diminution in the powers of lead directors.

**Conclusion.**

The PWC Survey includes important findings about how the lead director position has developed in recent years, and how lead directors are contributing to their boards and their companies. The Survey itself represents a milestone in the growth of the lead director position, especially as lead directors describe the matters with which they expect to be engaged over the next few years. At briefings discussing the Survey, lead directors confirmed that, as the demands on public company boards increase, the role of lead directors will become increasingly important. It will be interesting to follow the trends in the lead director position as participation in the PWC survey expands over the next several years.