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Samples of Proxy Statement Disclosure Relating to Board Leadership and Risk Oversight

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On December 16, 2009, the Securities and Exchange Commission adopted rule amendments designed to “enhance the compensation and corporate governance disclosure” required of public companies. The new rules, which will be in effect for the 2010 proxy statements issued by calendar year companies:

- change the disclosure required for executive and director compensation,
- require additional biographical and background information for director nominees,
- call for new information about the use of compensation consultants, and
- require more timely disclosure relating to shareholder voting.

In addition, the new rules call for express disclosure about the company’s board leadership structure and the board’s role in the oversight of risk, under new Item 407(h) of Regulation S-K.

King & Spalding is particularly focused on the subject of board leadership, and we are pleased to share our experiences and insights on effective board leadership models. Through the formation of our Lead Director Network in 2008 and Southeast Board Leadership Network in 2009, we have drawn upon the experiences of respected lead directors and independent board chairs who meet regularly to discuss how to improve the performance of their corporations through more effective board leadership. Through these networks and our other work in the corporate governance area, we have developed significant thought leadership on how boards are addressing today’s most important issues, particularly in the wake of the financial crisis.

Based on insights afforded by our meetings with board leaders and our other corporate governance initiatives this Client Alert will provide samples of how public companies might respond to the new



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disclosure requirements of Item 407(h) of Regulation S-K—board leadership structure and risk oversight. These Disclosure Samples consist of (a) three Scenarios, describing the backgrounds and current situations of three different companies, with (b) samples of disclosure for each of the Scenarios.

We present these Disclosure Samples, not as models that would be used by any particular company, but in order to spur discussion of the different approaches that a company might take in responding to the new requirements of S-K Item 407(h). Accordingly, we also include questions for discussion, as consideration of these questions may help focus the discussion on an approach that may be most appropriate for the corporation.

If you have any questions about these Disclosure Samples, or would like to discuss the new SEC disclosure requirements, please contact any of the authors of this memorandum or the partner at King & Spalding who advises your company.

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The New SEC Regulation

Item 407(h) of Regulation S-K provides, in relevant part, as follows:

Board leadership structure and role in risk oversight.

Briefly describe the leadership structure of the registrant's board, such as whether the same person serves as both principal executive officer and chairman of the board, or whether two individuals serve in those positions...If one person serves as both principal executive officer and chairman of the board...disclose whether the registrant has a lead independent director and what specific role the lead independent director plays in the leadership of the board. This disclosure should indicate why the registrant has determined that its leadership structure is appropriate given the specific characteristics or circumstances of the registrant. In addition, disclose the extent of the board's role in the risk oversight of the registrant, such as how the board administers its oversight function, and the effect that this has on the board's leadership structure.



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Scenario I: Fortune 100 Company with Combined Chairman/CEO and Long-Serving Lead Director

- Has always had combined chairman/CEO
- In connection with the appointment of a new chairman/CEO, created the lead director role
- Has an experienced, institutional-style board
- The lead director has broad responsibilities and works closely with the chairman/CEO

The Situation

Company A is a Fortune 100 manufacturing company with complex, global operations, founded over 50 years ago. Since its founding, the company has had only six CEOs, and each of these CEOs also served as chairman of the board. The company has a well-developed, institutional-style board of directors, comprised of the chairman/CEO and 10 independent directors. All 10 of the independent directors are experienced leaders of industry and finance. The board has four standing committees—audit, compensation, nominating and corporate governance, and strategic planning—each comprised of four independent directors, with four different chairs of these committees. The company has excellent management at all levels and a well-developed succession plan, has performed steadily over the long-term, and has experienced relatively few serious problems or disruptive events over the years (other than the troubled acquisition described in the following paragraph).

Company A has made relatively few acquisitions in its history, with most of them being small “fill-in” acquisitions in the United States. However, in 2003, the company made a significant acquisition of a foreign target. Shortly after completion of the acquisition, key foreign operations of the acquired company were involved in investigations relating to bribery, there were internal control problems that caused a restatement of the target’s (and the company’s) financial statements, and the company’s stock lost 30% of its value as these events were publicly disclosed.

In response to concerns about how the acquisition had been handled and pressure from two large institutional shareholders, in 2003: (a) the chairman/CEO resigned from his position, (b) the board promoted the president (COO) to the chairman/CEO position, (c) two new independent directors who had prior experience in foreign manufacturing joined the board, and (d) the board appointed the company’s longest serving independent director as the board’s first lead director. The chairman/CEO appointed in 2003 has been very successful, and the lead director has developed an excellent working relationship with the chairman/CEO, with the two of them often meeting together with institutional investors and appearing at major corporate events. Company A has performed well since taking these steps and has completed two successful acquisitions over the past four years.



Sample Proxy Statement Disclosure – Version A (longer disclosure):

Board Leadership Structure and Risk Oversight

We have been operating for over 50 years using the traditional U.S. board leadership structure, under which our chief executive officer also serves as chairman of the board of directors. Over this period, we have had six persons serve as chief executive officer. Each CEO has also held the position of chairman of the board throughout his or her tenure as chief executive officer. We believe that our company, like many U.S. companies, has been well-served by this leadership structure. Having one person serve as both chief executive officer and chairman of the board demonstrates for our employees, suppliers, customers and other stakeholders that the company is under strong leadership, with a single person setting the tone and having primary responsibility for managing our operations. Having a single leader for both the company and the board of directors eliminates the potential for confusion or duplication of efforts, and provides clear leadership for our company. We believe having one person serve as CEO and chairman of the board is best for our company and our shareholders.

Of the 10 independent directors currently serving on our board, seven are currently serving or have served as a chief executive officers of other public companies (and five of the seven are currently serving or have served as chairman of the board while in the chief executive officer position). Of our three independent directors who have not served as chief executive officer of a public company, one director serves as chief financial officer of a Fortune 50 manufacturing company, one has recently retired after serving as managing partner of a leading global law firm, and one was founder and has been the chairman/CEO of a large investment management firm. Accordingly, we believe that all our independent directors have demonstrated leadership in large enterprises and all are familiar with board processes. For additional information about the backgrounds and qualifications of our directors, see “Election of Directors – Directors and Nominees” in this proxy statement.

Our board has four standing committees—audit, compensation, nominating and corporate governance and strategic planning—and each of these committees is comprised solely of independent directors, with each of the four committees having a separate chair. Among various other duties set forth in the committee charters, (a) the compensation committee oversees the annual performance evaluation of our chairman/CEO and is responsible for succession planning, (b) the nominating and corporate governance committee monitors matters such as the composition of the board, board performance and best practices in corporate governance, (c) the audit committee oversees the accounting and financial reporting processes, as well as legal and compliance matters and risk management, and (d) the strategic planning committee ensures that the board of directors has appropriate input into the development and monitoring of our long-term strategy. The chair of each of these committees is responsible for directing the work of the committee in fulfilling these responsibilities.

In accordance with NYSE requirements, our audit committee charter provides that the audit committee is responsible for overseeing the risk management function in the company. On at least a quarterly basis, the company’s vice president–risk management provides a comprehensive report to the audit committee. While



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the audit committee has primary responsibility for overseeing risk management, our entire board of directors is actively involved in overseeing risk management for the company. For example, on an annual basis, the board receives a report from the company's vice president–risk management and discusses the most significant risks that the company is facing. The full board also engages in periodic discussions with our vice president–risk management, CEO, CFO, and other company officers as the board may deem appropriate. In addition, each of our board committees considers the risks within its area of responsibilities. For example, our compensation committee considers the risks that may be implicated by our executive compensation programs, and our strategic planning committee focuses on risks that may result from changes in our corporate strategy. We believe that the leadership structure of our board supports the board's effective oversight of the company's risk management.

In accordance with our bylaws and governance guidelines, the board is responsible for selecting the chief executive officer and the chairman of the board, and both of these positions may be held by the same person or they may be held by two persons. Since 2003, our corporate governance guidelines have also required the election, by the independent directors, of an independent lead director to serve during any period when there is no independent chairman of the board. Because Mr. Smith has served as chief executive officer and chairman of the board since 2003, we have had an independent lead director since that time (Mr. Jones from 2003 to 2006, and Mr. Johnson since 2006).

Under our bylaws and governance guidelines, the chairman of the board is responsible for (a) chairing board meetings and the annual meeting, (b) setting the agendas for these meetings and (c) providing information to board members in advance of each board meeting and between board meetings. Under these documents, the lead director is responsible for (a) chairing executive sessions of the independent directors and communicating with management relating to these sessions, and presiding at all meetings of the board at which the Chairman is not present, (b) approving agendas and schedules for board meetings and the information that is provided to directors, (c) if requested by major shareholders, being available for consultations and direct communication, and (d) serving as a liaison between the chairman and the independent directors. The lead director also has the authority to call meetings of the independent directors. Our corporate governance guidelines provide that our non-management directors will meet in executive session at each board meeting and that our independent lead director will preside at these sessions. We note that the responsibilities assigned to our lead independent director are consistent with generally accepted requirements for a "countervailing governance structure" where a company does not have an independent board chairman (so that RiskMetrics Group would not support a shareholder proposal calling for an independent board chairman so long as this structure is in place).

We believe that, in addition to fulfilling our lead director responsibilities, the two directors who have served as lead director since 2003 have made valuable contributions to the company. The following have been among the most important contributions of our lead directors: (a) monitoring the performance of the board and seeking to develop a high-performing board, for example, by helping the directors reach consensus, keeping the board focused on strategic decisions, taking steps to ensure that all the directors are contributing to the work of the board, and coordinating the work of the four board committees, (b) developing a productive relationship with our chief executive officer and ensuring effective communication between the



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chief executive officer and the board, and (c) ensuring and supporting effective shareholder communications. Accordingly, we believe that our company has benefited from having the chairman/CEO as the leader of the company, and having the lead director serving as the leader of the independent directors.

On an annual basis, as part of our review of corporate governance and succession planning, the board (led by the nominating and governance committee) evaluates our board leadership structure, to ensure that it remains the optimal structure for our company and our shareholders. We recognize that different board leadership structures may be appropriate for companies with different histories and cultures, as well as companies with varying sizes and performance characteristics. We believe our current leadership structure—under which our chief executive officer serves as chairman of the board, our board committees are chaired by independent directors and a lead director assumes specified responsibilities on behalf of the independent directors—remains the optimal board leadership structure for our company and our shareholders.

Questions to consider:

- Is it useful to try to “prove” the leadership experience of each of the 10 independent directors? In attempting this style of proof, might some companies raise questions about the leadership skills of individual directors who have not been CEOs?
- Does the disclosure need to “prove” the strong leadership of its directors and the leadership provided by its committee chairs, or is this less important with a lead director in place?
- Is it useful to describe the primary (most important) roles of the committee chairs in order to prove that they have leadership roles in the company or can the company describe its “board leadership structure” without this amount of detail?
- Is it useful to describe the “contributions” of the lead director or should the disclosure only cover the “responsibilities” of the lead director position? Note that Item 407(h) asks about the specific role that the lead director plays in the leadership of the board.
- Has the disclosure adequately supported the statement that the leadership structure of the board supports the board’s effective oversight of risk management? Has the disclosure adequately addressed the effect of overseeing risk management on the board’s leadership structure?
- Is this disclosure too long and detailed? Is it realistic to expect investors to read and appreciate this disclosure?



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Sample Proxy Statement Disclosure – Version B (shorter disclosure):

Board Leadership Structure and Risk Oversight

Our company is led by Mr. John Jones, who has served as chief executive officer and chairman of the board of directors since 2003. Our board of directors is comprised of Mr. Jones and 10 independent directors. Since 2003, our corporate governance guidelines have required the election, by the independent directors, of an independent lead director to serve during any period when there is no independent chairman of the board. The board has four standing committees—audit, compensation, nominating and corporate governance and strategic planning. Each of the board committees is comprised solely of independent directors, with each of the four committees having a separate chair. In accordance with NYSE requirements, our audit committee is responsible for overseeing risk management, and our full board receives a report from our vice president – risk management, at least quarterly. Our corporate governance guidelines provide that our non-management directors will meet in executive session at each board meeting and that our independent lead director will preside at these sessions.

Our board leadership structure is commonly utilized by other public companies in the United States, and we believe that this leadership structure has been effective for the company. We believe that having a combined chairman/CEO, independent chairs for each of our board committees and an independent lead director provides the right form of leadership for our company. We have a single leader for our company and oversight of company operations by experienced independent directors who have appointed a lead director and four committee chairs. We believe that our directors provide effective oversight of the risk management function, especially through the work of the audit committee and the dialogue between the full board and our executive vice president – risk management.

Questions to consider:

- Has the company adequately disclosed why it has determined that this leadership structure is appropriate given its circumstances? Is it useful to say that this model is “commonly utilized by other public companies” in the United States? What will the company do if prevailing practices change (for example, if the majority of companies have an independent chairman)?
- Does this disclosure adequately address the risk oversight questions and specifically how the board’s role in risk oversight affects the board’s leadership structure?
- Is this disclosure too short and cursory? Are there any benefits in providing more extensive disclosure?
- How might the staff of the SEC respond to this disclosure, in reviewing the company’s proxy statement? Will institutional investors want to see more or is this disclosure adequate for their purposes?



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Scenario II: Mid-Cap Company with Recently Separated CEO and Chairman Roles

- Traditionally employed the combined chairman/CEO model
- Separated the chairman/CEO roles in connection with the departure of the prior CEO
- Long-serving independent director was appointed non-executive chairman
- Foresees potential transition back to combined chairman/CEO position after the new CEO gains experience

The Situation:

Company B is a middle-market financial services company with a regional footprint. Founded 40 years ago, the company has always been led by a combined chairman/CEO. The board of directors consists primarily of local and regional business leaders, as well as two industry experts who have excellent national reputations. The board has three committees—audit, compensation and nominating and corporate governance—each comprised of three independent directors, with three different chairs of these committees. The audit committee chair has served as lead director for the past four years, though his activities have been limited to presiding at executive sessions, conferring with the chairman/CEO about agendas for board meetings and facilitating the board’s annual self-assessment. Still, the lead director has mentored the chief executive officer and is regarded as the director most likely to challenge the chairman/CEO and to organize the independent directors if the company faces difficult decisions.

The company has solid senior management (though the team is not deep) and is regarded as a well-operated company, but the company did encounter some difficulties over the past year. The Company’s industry has been hit hard by the 2008/2009 recession, its stock has lost 60% of its value over the last 18 months, and in April 2009 the long-serving chairman/CEO left the company on relatively short notice due to some personal issues.

When the chairman/CEO left the company in April 2009, the company brought in a new chief executive officer from outside the company. She is thought of as a rising star in the industry but has had limited experience with public companies. Accordingly, the board was uncomfortable giving her the title of “chairman” and the directors appointed a long-serving, independent director (who was not the lead director) as the independent chairman of the board. Since his appointment, the chairman has mentored the new CEO and has been active in communicating with institutional investors. With the appointment of an independent chairman, the board determined that it will no longer have a lead director. Though there is no agreement or understanding on the point, the directors hope that the new CEO would receive the “chairman” title in the next two or three years if she demonstrates she is ready to assume the chair responsibilities. At this time, the current chairman might become the lead director of the company.



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Sample Proxy Statement Disclosure:

Board Leadership Structure and Risk Oversight

Until April 2009, we operated under the traditional U.S. board leadership structure with our chief executive officer serving as chairman of the board. Over our 40 years as a public company, we have had only three CEOs, and each has served concurrently as chairman of the board. However, upon the retirement of Mr. Smith, who had served as our chairman/CEO for almost 10 years, our board re-evaluated its leadership structure. Beginning in April 2009 with the appointment of Ms. Jones as our new CEO, the board determined that it would be preferable for one of our independent directors to serve as chairman of the board. The person our board elected as chairman, Mr. Johnson, has over 10 years experience serving on our board, was previously chairman/CEO of a Fortune 500 company and has served on several other public company boards. We believe this board leadership structure is best for our company and our shareholders as Ms. Jones begins her service as CEO of our company.

We believe it is the chief executive officer's responsibility to run the company and the chairman's responsibility to run the board. As directors continue to have more oversight responsibilities than ever before, we believe it is beneficial to have an independent chairman whose sole job is leading the board. In making its decision to change the leadership structure and appoint an independent chairman, the board considered the time that Ms. Jones will be required to devote to the CEO position in the current economic environment. By having another director serve as chairman of the board, Ms. Jones will be able to focus her entire energy on running the company.

In connection with the recent change in our board leadership structure, we amended our bylaws and our corporate governance guidelines to allow the board to choose whether to keep the roles of CEO and chairman of the board separate or whether to have one person serve in both capacities. Pursuant to our corporate governance guidelines, if the board determines to separate the roles and names an independent chairman, the chairman is responsible for:

- providing leadership to the board and facilitating communication among the directors;
- setting the board meeting agendas in consultation with the chief executive officer;
- presiding at board meetings, executive sessions and shareholder meetings;
- facilitating the flow of information between management and the directors on a regular basis; and
- serving as an ex-officio member of each board committee.

Our governance guidelines require that if, in the future, the chief executive officer is serving as chairman of the board, then the board would also name a lead director who would, among other specified responsibilities, serve as the leader of the independent directors and facilitate communication between the chairman/CEO and the other directors.



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We believe our chief executive officer and our chairman have an excellent working relationship that has allowed Ms. Jones to make a good transition into the role of chief executive officer and will allow her to focus on the challenges that the company is facing in the current business environment. By clearly delineating the role of the chairman position in our governance guidelines, we ensure there is no duplication of effort between the chief executive officer and the chairman. We believe this provides strong leadership for our board, while also positioning our CEO as the leader of the company in the eyes of our customers, employees and other stakeholders.

Our board has seven independent members and only one non-independent member, the chief executive officer. A number of our independent board members are currently serving or have served as members of senior management of other public companies and have served as directors of other public companies. We have three board committees comprised solely of independent directors, each with a different independent director serving as chair of the committee. We believe that the number of independent, experienced directors that make up our board, along with the independent oversight of the board by the non-executive chairman, benefits our company and our shareholders.

Our audit committee is primarily responsible for overseeing the company's risk management processes on behalf of the full board. The audit committee receives reports from management at least quarterly regarding the company's assessment of risks. In addition, the audit committee reports regularly to the full board of directors, which also considers the company's risk profile. The audit committee and the full board of directors focus on the most significant risks facing the company and the company's general risk management strategy, and also ensure that risks undertaken by the company are consistent with the board's appetite for risk. While the board oversees the company's risk management, company management is responsible for day-to-day risk management processes. We believe this division of responsibilities is the most effective approach for addressing the risks facing our company and that our board leadership structure supports this approach.

Pursuant to our bylaws and our governance guidelines, our board determines the best board leadership structure for our company from time to time. As part of our annual board self-evaluation process, we evaluate our leadership structure to ensure that the board continues to believe that it provides the optimal structure for our company and shareholders. We recognize that different board leadership structures may be appropriate for companies in different situations. We believe our current leadership structure, with Ms. Jones serving as chief executive officer and Mr. Johnson serving as chairman of the board, is the optimal structure for our company at this time.

Questions to consider:

- Has the board raised questions by not appointing the long-serving lead director to serve as chairman? Is there an implication that the lead director was in the previous CEO's camp or not up to the task of serving as chairman? Should this issue be addressed in the disclosure?



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- Is the disclosure too strong on the need for separation of CEO and chairman roles, and the need for Ms. Jones to be fully occupied with her CEO position? Will the board be able to combine the roles in two or three years? If the roles are not combined within that timeframe, will investors be concerned that Ms. Jones is still in transition?
- Consider whether a more definitive statement about combining the roles of chairman/CEO would be appropriate if the board contemplates making that change in the next two to three years.
- Does the disclosure adequately address “the extent of the board’s role in the risk oversight of the registrant . . . and the effect that this has on the board’s leadership structure”?



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Scenario III: Fortune 100 Company with Combined Chairman/CEO and “Rotating” Director Who Presides at Executive Sessions

- Traditionally employed the combined chairman/CEO model
- Has an experienced, institutional-style board
- Does not have a lead director, but employs a rotating, presiding director role for executive sessions
- Board has recently established a risk committee

The Situation:

Company C is a large (Fortune 100) technology company founded 30 years ago. The company has complex international operations and is thought of as the dominant player in its industry. Since its founding, the company has had only three CEOs, and each of these CEOs was appointed as chairman of the board of directors when he was named CEO. The company has a well-developed, institutional-style board of directors, comprised of the chairman/CEO and 10 independent directors. All 10 of the independent directors are experienced leaders of industry and finance. The board has four standing committees—audit, compensation, nominating and corporate governance, and risk—each comprised of four independent directors, with four different chairs. The risk committee was created in 2009. The company is thought to have excellent management at all levels and thorough succession planning, has performed steadily over the long-term, and has experienced relatively few disruptive events over the years (no major litigation, investigations, troubled operations, etc.). All three of the company’s CEOs have been charismatic, visionary leaders, who set the cultural tone for the company and have been leaders in the company’s industry.

After a strong rise during the technology boom of the 1990’s, the company’s stock has been a “market” performer over the last decade. However investors have been very supportive of management and the board and the chairman/CEO viewed as an exceptional leader. The board’s director nominees receive strong support every year and there have never been any campaigns by activists or shareholder proposals.

Historically, the board of directors has taken the “minimalist” approach to independent board leadership—the company has never had an independent chairman of the board or a “lead” or “presiding” director. In response to NYSE corporate governance listing requirements, in 2003 the company amended its corporate governance guidelines so that a rotating independent director presides at executive sessions of the independent directors. The directors discuss their own performance and their approach to board leadership annually. The directors believe the board has performed well, and there are no intentions or plans to change the model of board leadership.

Sample Proxy Statement Disclosure — Version A (longer disclosure):

Board Leadership Structure and Risk Oversight

Since the company was founded in 1979, we have employed a traditional board leadership model, with our chief executive officer also serving as chairman of our board of directors. We believe this traditional

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leadership structure benefits our company. A combined chairman/CEO role helps provide strong, unified leadership for our management team and board of directors. Our customers, suppliers and other business partners have always viewed the chairman/CEO of Company C as a visionary leader in our industry, and we believe that having a single leader for the company is good for our business. Accordingly, we believe a combined chairman/CEO position is the best governance model for our company and our shareholders.

Of the 10 independent directors currently serving on our board, seven currently serve or have served as CEOs of other public companies (and five of the seven currently serve or have served as chairman of the board while acting as CEO). Of our three independent directors who have not been CEOs of public companies, two serve or have served as CFOs of public companies and one was founder and has been the chairman/CEO of a large investment management firm. We believe all our independent directors have demonstrated leadership in large enterprises and are familiar with board processes.

Our board committees, each comprised solely of independent directors and each with a separate chair, are the audit, compensation, nominating and corporate governance and risk committees. The chair of the audit committee oversees the accounting and financial reporting processes, as well as legal and compliance matters. The chair of the compensation committee oversees the annual performance evaluation of our chairman/CEO and is also responsible for overseeing succession planning. The chair of the nominating and corporate governance committee monitors matters such as the composition of the board and its committees, board performance and “best practices” in corporate governance. She also makes suggestions to the chairman of the board about board agendas and evaluates all director candidates. The chair of the risk committee oversees the company’s risk management processes.

Our board’s risk committee was formed in 2009 and its charter provides that the committee is responsible for overseeing the risk management function. While the risk committee discharges this responsibility, our entire board of directors is also actively involved in overseeing our risk management. For example, at each of its meetings, the board receives a report from the company’s executive vice president of risk management and discusses the risks that we are currently facing. In addition, each of our board committees considers the risks within its area of responsibilities. For example, our compensation committee considers risks that may be implicated by our executive compensation programs and, consistent with NYSE listing standards, our audit committee considers the impact of risk on our financial position and the adequacy of our risk-related internal controls. We believe, however, that employing a committee specifically focused on our company’s risk profile is beneficial, given the increased importance of monitoring risks in the current economic and business climate.

Our directors bring a broad range of leadership experience to the boardroom and regularly contribute to the thoughtful discussion involved in effectively overseeing the business and affairs of the company. We believe the atmosphere of our board is collegial, that all board members are well engaged in their responsibilities, and that all board members express their views and consider the opinions expressed by other directors. We do not believe that appointing an independent board chairman, or a lead or presiding director, would improve the performance of the board. We are concerned, however, that appointing such a leader of the independent directors might create confusion about the leadership of our chairman/CEO, for example in the eyes of our customers and business partners.



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Our bylaws and governance guidelines contemplate that we have a CEO that also serves as chairman. The board is responsible for selecting the chairman/CEO. The chairman/CEO establishes the agendas for each board meeting and presides at board and shareholder meetings. Although we do not have a lead independent director, pursuant to our governance guidelines, non-management directors hold executive sessions without management present as frequently as they deem appropriate, and generally at the time of each regular board meeting. In 2009, our board held six meetings and the independent directors held eight executive sessions. The chairmen of the four independent board committees rotate as presiding director for each executive session. The presiding director determines the agenda for the session and, after the session, acts as a liaison between the non-management directors and the chairman/CEO. This regular rotation of the presiding director role allows a number of our independent directors to play a leadership role on our board, but prevents any one director from being viewed as a second head of the company and avoids confusion about the leadership of our chairman/CEO. We also have a mechanism for shareholders to communicate directly with non-management directors as a group or with any individual director.

On an annual basis, as part of our governance review and succession planning, the board (led by the nominating and governance committee) evaluates our leadership structure to ensure that it remains the optimal structure for our company and our shareholders. We recognize that different board leadership structures may be appropriate for companies with different histories and cultures, as well as companies with varying sizes and performance characteristics. We believe our current leadership structure—where our CEO serves as chairman of the board, our board is comprised of experienced independent directors, our board committees are led by independent directors and our independent directors hold regular meetings in executive session—remains the optimal structure for our company and our shareholders.

Questions to consider:

- Is it useful to try to “prove” the leadership experience of each independent director? In attempting this style of proof, might some companies raise questions about the qualifications of individual directors? Does the company seem “defensive” about not having one lead director to provide independent leadership?
- Should the disclosure note that the committee chairs provide the same type of leadership as would a lead director?
- Is the justification for rotating the presiding director role convincing or is there a better explanation for not wanting to name a presiding director?
- Is this disclosure too long and detailed? Is it realistic to expect investors to read and appreciate this disclosure?
- Does the company seem overly committed to its current board leadership model? What if the board wanted to appoint a lead director or an independent chairman in the future?



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Sample Proxy Statement Disclosure — Version B (shorter disclosure):

Board Leadership Structure and Risk Oversight

Our company is led by Mr. John Smith, who has served as our chairman and CEO since May 2002. Our board of directors is comprised of Mr. Smith and 10 independent directors. The board has four standing independent committees with separate chairs—the audit, compensation, nominating and corporate governance and risk committees. Our risk committee is responsible for overseeing risk management, and our full board regularly engages in discussions of risk management and receives reports on risk management from our executive vice president of risk management, other company officers and the chair of the risk committee. Each of our other board committees also considers the risk within its area of responsibilities. We do not have a lead director, but our corporate governance guidelines provide that our non-management directors will meet in executive session at each board meeting and that the four chairs of our board committees will rotate in presiding at these executive sessions.

We have employed this same basic leadership structure since the company was founded in 1979, except that the risk committee was established in 2009 and, prior to the adoption of the NYSE’s corporate governance listing standards in 2003, non-independent directors served on some board committees. We believe that this leadership structure has been effective for the company. Our corporate leadership structure is commonly utilized by other public companies in the United States. We believe that having a combined chairman/CEO and independent chairs for each of our board committees provides the right form of leadership for the company. We have a single leader for our company and he is seen by our customers, business partners, investors and other stakeholders as providing strong leadership for the company and in our industry. We believe that our chairman/CEO together with the risk committee, the audit committee and the full board of directors, provide effective oversight of the risk management function.

Questions to consider:

- Has the company adequately disclosed why it has determined that this leadership structure is appropriate given its circumstances? Is it useful to say that this model is “commonly utilized by other public companies”? What will the company do if prevailing practices change?
- Is this disclosure too short and cursory?
- How might the staff of the SEC respond to this disclosure, in reviewing the company’s proxy statement? Will institutional investors want to see more or is this disclosure adequate for their purposes?

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