

# AGENDA

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## Responsibilities for Lead Directors Go Beyond Chairing Executive Sessions

By Katie Wagner

Over the past few years, lead directors' authority within their companies and their general duties have been increasing. "It's gone from where it was sort of a reactive role, presiding over the executive session and collecting comments and passing those on to the CEO, to where it's a more proactive role, making sure the board has its own agenda that may not be the management's agenda," says John Rau, lead director and chair of the nominating and governance committee of Nicor Gas, a gas utility company.

"It's a very different kind of role than it was three to five years ago," Rau adds. The role of lead director lacks a universally accepted definition but tends to refer to a nonmanagement director of a public company who provides leadership to the full board without serving as a chairman. Presiding director is another term some companies use to describe a similar and sometimes identical type of board leader. At the very least, a lead or presiding director chairs executive sessions of a board, but some companies have disclosed a long list of other duties for these board leaders.

During the past year, clarifying the lead director role has been the topic of many discussions at conferences focused on corporate governance issues, says Bonnie Hill, the lead director at Home Depot.

Sixty-nine percent, or 51, of the 74 Fortune 100 companies with a lead or presiding director disclosed that the individual has responsibilities beyond chairing executive sessions or board meetings in the absence of the chairman, according to Agenda's 2009 Board Leadership Guide.

Some of the more common of these additional duties include:

- Serving as the liaison between the CEO/chairman and other non-management directors;
- Helping to formulate the agenda for board meetings with the chairman/CEO and

distributing necessary material to other board members;

- Communicating with shareholders and the outside community if necessary;
- Having the ability to retain consultants and outside advisors;
- Determining who should attend the meeting, including management or independent advisors; and
- Chairing the governance/nominating committee.

At several companies, the lead director's interaction with the CEO/chairman and other members of management goes beyond serving as the messenger for non-management directors, says Dora Vell, CEO of Vell Executive Search.

In the midst of the economic meltdown, more lead directors have increased their involvement with crisis management oversight this past year, Vell says. A lead director may be meeting with the CEO and the management team daily or even hourly, Vell says.

Also during the past 12 months, more lead directors have engaged their boards to deal with risk management and risk assessment oversight in a more focused way, particularly those working for financial services firms, experts say.

A proposal by the SEC this month that would require greater disclosure of boards' leadership structures could lead to greater disclosure of lead and presiding directors' responsibilities, experts say.

### Momentum Toward Adoption

The prevalence of the lead director role has also increased over the past few years. In 2008, 95% of S&P 500 boards had a lead or presiding director, up from 36% in 2003, according to Spencer Stuart.

Some directors, however, say a director of their board had been carrying out what they considered to be lead director responsibilities prior to their board having incorporated the role into its governance guidelines.

Both Lowe's director Richard Lochridge and Rau, the lead director of Nicor, say the current responsibilities of the lead director at their companies had been handled by the chair of their corporate governance committees for at least a decade.

Since the full Lowe's board, with the exception of the CEO/chairman, were already meeting together as the governance committee, the governance committee chair had been acting as the lead director, Lochridge says.

Pressure from the outside world, including shareholders and shareholder activist groups ultimately led Lowe's to formalize the role of the lead director, he says.

Nicor amended its bylaws this year following a shareholder proposal requesting more information about the lead director role. Nicor's lead director had already followed a lengthy list of guidelines. The new responsibilities of Nicor's lead director include approving board meeting agendas, approving the schedule of board meetings to assure that there is sufficient time for discussion, and being available for consultation and direct communication if requested by major stockholders. Under the amended bylaws, the lead director is elected by independent board members for a two-year term with independence defined by the New York Stock Exchange standard.

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