Executive Team

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§1 Introduction

While there are examples of organizations that are led by a single individual exercising what appears to be dictatorial control over day-to-day activities and long-term strategy the realities of an increasingly complex business environment, even for smaller companies, generally dictate the creation of teams of top managers to coordinate the activities of the business units that are part of the organizational structure of the company. These teams are commonly referred to as "executive teams" since they are composed of the CEO officer of the entire company (i.e., the "CEO") and the CEOs of key functional departments—research and development, manufacturing, sales and marketing, finance and human resources—and any major business units with a non-functional focus such as divisions formed to concentration on specific products or markets. While the formal role of the members of the executive team, as officers of the company, is to act as agents for the directors and shareholders of the company, as a practical matter the executive team exerts substantial authority over the acquisition and use of the company's resources and the decisions made by the members of the executive team are the determining factors in the success or failure of the strategies pursued to increase shareholder value.

Each business unit, particularly those formed with a product- or market-based focus, has its own senior management team. For example, a division created to market and sell a company's products in Europe will be led by its own CEO, typically designated as a senior vice president of the company, who will report to the CEO of the company and have various vice presidents and general managers who report to him or her and who oversee operational activities necessary to support the sales efforts in Europe. The focus of this Guide is on the executive team that operates at the top of the pyramid shaped organizational structure and which is led by the CEO. The size and composition of the executive team evolves with the growth of the company, changes in its key operational activities and decisions about which products and markets should be pursued using the company's scarce resources. In most cases executive team members wear multiple hats—they are responsible for overseeing the activities of various key business units (i.e., departments or divisions) and looking out for their interests while simultaneously working to create and execute integrating mechanisms and lateral processes to ensure that all of the groups, including their own, collaborate effectively to achieve the overall goals for the entire company. Members of the executive team must have the deep experience and knowledge necessary to lead the company toward development of a core competency in their area of specialization as well as the personal skills to positively interact with other team members and the ability to think strategically on behalf of the company and all of its stakeholders.

This chapter discusses the roles and responsibilities of the members of the company's executive team. The first part of this chapter focuses on describing the importance of the executive team—the impact of the team on the performance of the organization—and the evolution of the size and composition of the team as the organization grows, matures and becomes involved in increasingly complex activities. The next part of the chapter is an extensive discussion of the duties and responsibilities of each of the members of the executive team including analysis of specific issues such as interaction with other members of the executive team, establishing strategic goals and objectives, compensation arrangements and performance evaluation. In addition to the CEO, the chapter covers other positions on the executive team including the president/chief operating officer, vice president-sales, vice president-human resources, vice president-marketing and the chief financing officer. Optional additions to the core management team are also suggested in the chapter including executives overseeing legal/compliance, communications, product marketing, information technology, manufacturing, product development, research and development, customer support, strategic partnerships, competitive intelligence and sustainability. The chapter also includes case studies of required collaboration among executive team members with respect to key activities such as product development, sales and marketing, finance and budgeting and human resources. Finally, suggestions are provided regarding the importance issue of succession planning and continuous development of a pool of talented candidates to assume executive level responsibilities.

§2 Organizational authority and chain of command

The role and effectiveness of the executive team in the organizational structure depends largely, although not completely, on how authority is allocated to persons at various levels within the organizational hierarchy. A person vested with "authority" has the legitimate power to hold the people reporting to him or her accountable for their actions and performance and the ability to directly influence, or control, the scope of the duties and responsibilities of such persons and the manner in which they discharge those duties and responsibilities. Authority within a company is typically described through a "chain of command," which is the system of hierarchical reporting relationships within the company's organizational structure that also identifies where people rank in relation to one another and their formal scope of authority within the company. For example, a large corporation with multiple business units may have five levels in the organizational hierarchy ranging vertically from top to bottom as follows:

- The shareholders, who are the owners of the corporation;
- The board of directors and the various committees thereof, all of which serve as trustees of the interests of the shareholders in overseeing the activities of the managers of the corporation;
- The senior, or executive, management of the corporation including the CEO, the president or chief operating officer ("COO"), and the various executive and senior vice presidents responsible for oversight of major functional and business units;
- The divisional managers, who perform the day-to-day management functions within each of the business units (i.e., units focusing on products or markets); and

- The functional managers, who perform the day-to-day management functions within each of the functional units (i.e., units focusing on functional activities such as research and development, manufacturing, sales and marketing or finance).

The five-level hierarchy described above is certainly correct from an ideal perspective as well as a matter of corporate law; however, it does not represent the typical system of reporting relationships for an operations viewpoint. For example, while the shareholders are at the top of the pyramid they are not directly involved in issuing orders to, and exercising control and authority over the day-to-day activities of, the employees of the company. Instead, the key reporting decisions that must be made relate to the senior executives and the divisional and functional managers. Similarly, the members of the board of directors do not expect to be able to walk into the company's facilities and give instructions to the employees. The directors look out for the interests of the shareholders and carry out their duties and responsibilities by selecting the CEO and the other members of the executive team and evaluating their performance. The relevance of this model is limited in the case of large public corporations given the large number of shareholders and the practical limitations that exist on their ability to quickly and directly influence the composition of the board of directors in spite of recent shareholder activism. However, in the case of emerging companies the outside shareholders—generally venture capitalists and other professional investors—are very involved in the designation of directors and in the selection and evaluation of each of the members of the executive team.

§3 The legal framework

The legal framework relating to the composition of the executive team and the duties of each of the members is laid out in the applicable state corporation law statute and common law as well as in the articles of incorporation and bylaws of the company and in any agreements among the shareholders and/or special resolutions of the board of directors regulating the duties and powers of the officers. A majority of the states have adopted statutory provisions based wholly or in part on guidelines laid out in the Model Business Corporations Act ("MBCA"). While the MBCA provisions are discussed in detail below it is always necessary to review the specific statutory language in the corporation's state of incorporation and the case law on officer duties and conduct that has been developed by the judiciary in that state.

MBCA Section 8.40(a) provides that a corporation will have the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws. Officers will be appointed by resolution, which may also include a description of the duties of the office (e.g., chief executive officer). The board of directors may elect individuals to fill one or more offices of the corporation (i.e., the same individual may simultaneously hold more than one office in a corporation) and a duly appointed officer may appoint one or more officers (including assistant officers) if authorized by the bylaws or the board of directors. MBCA Section 8.40(c) requires that the bylaws or the board of directors assign to one of the officers, generally the "secretary", the responsibility for preparing the minutes of the directors' and shareholders' meetings and for maintaining and authenticating the records of the corporation.

MBCA Section 8.41 provides that each officer will have the authority and shall perform the functions set forth in the bylaws or, to the extent consistent with the bylaws, the functions prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the functions of other officers. In general, officers may take such actions that fall within the scope of their actual or apparent authority. In cases where the actions of an officer have not been authorized by the board or by the bylaws of the corporation, a separate board resolution approving the action should be passed by the board and placed in the minute book.

MBCA Section 8.42(a) sets out certain standards of conduct for officers by providing that officers, when performing in such capacity, have the duty to act in good faith; with the care that a person in a like position would reasonably exercise under similar circumstances; and in a manner the officer reasonably believes to be in the best interests of the corporation. MBCA 8.42(b) goes on to specify that the duties of an officer include the obligation to inform the superior officer to whom, or the board of directors or the committee thereof to which, the officer reports of information about the affairs of the corporation known to the officer, within the scope of the officer's functions, and known to the officer to be material to such superior officer, board or committee; and to inform his or her superior officer, or another appropriate person within the corporation, or the board of directors, or a committee thereof, of any actual or probable material violation of law involving the corporation or material breach of duty to the corporation by an officer, employee, or agent of the corporation, that the officer believes has occurred or is likely to occur.

MBCA Section 8.42(c) provides that in discharging his or her duties, an officer who does not have knowledge that makes reliance unwarranted is entitled to rely on either: (1) the performance of properly delegated responsibilities by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in performing the responsibilities delegated; or (2) information, opinions, reports or statements, including financial statements and other financial data, prepared or presented by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented or by legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the officer reasonably believes are matters (i) within the particular person's professional or expert competence or (ii) as to which the particular person merits confidence.

An officer’s understanding of his or her duties as described in MBCA Section 8.42 is important since MBCA Section 8.42(d) provides that an officer shall not be liable to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, as an officer, if the duties of the office are performed in compliance with MBCA Section 8.42. If an officer fails to comply with MBCA Section 8.42, the question of whether or not he or she will have liability to the corporation or its shareholders will depend in such instance on applicable law, including the principles related to the standards of liability for directors that have relevance.

MBCA Section 8.43(a) provides that an officer may resign at any time by delivering notice to the corporation, and a resignation is effective when the notice is delivered unless the notice specifies a later effective time. If a resignation is made effective at a later time and the board or the appointing officer accepts the future effective time, the board or the appointing officer may fill the pending vacancy before the effective time if the board or the appointing officer provides that the successor does not take office until the effective time. The form of resignation should, of course, specifically identify the office(s) from which the person intends to resign (e.g., president or chief financial officer). MBCA Section 8.42(b) provides that an officer may be removed at any time with or without cause by: (i) the board of directors; (ii) the officer (including any successor to that officer) who appointed such officer, unless the bylaws or the board of directors provide otherwise; or (iii) any other officer if authorized by the bylaws or the board of directors.

MBCA Section 8.44(a) provides that the appointment of an officer does not itself create contract rights. MBCA Section 8.44(b) provides that an officer's removal does not affect the officer's contract rights, if any, with the corporation, and that an officer's resignation does not affect the corporation's contract rights, if any, with the officer.

Since officers are essentially agents of the corporation, agency law provides another source for defining the duties of officers to the corporation and those responsible for actions taken on behalf of the corporation (i.e., superior officers and the board of directors and its committees). In fact, agency law often serves as a guide for the development of both the common law on officer's duties and statutory provisions included in state corporation laws. Chapter 8 of the Restatement (Third) Agency ("Restatement"), titled "Duties of Agent and Principal to Each Other", provides a useful and topic resource to better understand the specific conduct expected of officers as they discharge their duties to the corporation and represent the corporation in interactions with third parties. Section 8.01 of the Restatement sets out the "general fiduciary principle", which is that an agent has a fiduciary duty to act loyally for the principal's benefit in all matters connected with the agency relationship. Sections 8.02 through 8.05 of the Restatement describe an agent's specific duties of loyalty including the following:

- An agent has a duty not to acquire a material benefit from a third party in connection with transactions conducted or other actions taken on behalf of the principal or otherwise through the agent's use of the agent's position.
- An agent has a duty not to deal with the principal as or on behalf of an adverse party in a transaction connected with the agency relationship.
- Throughout the duration of an agency relationship, an agent has a duty to refrain from competing with the principal and from taking action on behalf of or otherwise assisting the principal's competitors. During that time, an agent may take action, not otherwise wrongful, to prepare for competition following termination of the agency relationship.

- An agent has a duty (1) not to use property of the principal for the agent's own purposes or those of a third party; and (2) not to use or communicate confidential information of the principal for the agent's own purposes or those of a third party

Section 8.06(1) of the Restatement lays out the procedures and standards for seeking and obtaining the principals rightful consent to conduct of the agent that would other constitute a breach of any of the agent’s duties to the principal described above. Specifically, conduct by an agent that would otherwise constitute a breach of duty does not constitute a breach of duty if the principal consents to the conduct, provided that:

- In obtaining the principal's consent, the agent (i) acts in good faith, (ii) discloses all material facts that the agent knows, has reason to know, or should know would reasonably affect the principal's judgment unless the principal has manifested that such facts are already known by the principal or that the principal does not wish to know them, and (iii) otherwise deals fairly with the principal; and
- The principal's consent concerns either a specific act or transaction, or acts or transactions of a specified type that could reasonably be expected to occur in the ordinary course of the agency relationship.

The Restatement also sets out a list of specific duties of performance to guide the actions of agents. Restatement Sections 8.07 through 8.11 provide as follows:

- An agent has a duty to act in accordance with the express and implied terms of any contract between the agent and the principal.
- Subject to any agreement with the principal, an agent has a duty to the principal to act with the care, competence, and diligence normally exercised by agents in similar circumstances. Special skills or knowledge possessed by an agent are circumstances to be taken into account in determining whether the agent acted with due care and diligence. If an agent claims to possess special skills or knowledge, the agent has a duty to the principal to act with the care, competence, and diligence normally exercised by agents with such skills or knowledge.
- An agent has a duty to take action only within the scope of the agent's actual authority and has a duty to comply with all lawful instructions received from the principal and persons designated by the principal concerning the agent's actions on behalf of the principal.
- An agent has a duty, within the scope of the agency relationship, to act reasonably and to refrain from conduct that is likely to damage the principal's enterprise.
- An agent has a duty to use reasonable effort to provide the principal with facts that the agent knows, has reason to know, or should know when (1) subject to any manifestation by the principal, the agent knows or has reason to know that the principal would wish to have the facts or the facts are material to the agent's duties to the principal; and (2) the facts can be provided to the principal without violating a superior duty owed by the agent to another person.

There is extensive case law and detailed statutory provisions pertaining to the fiduciary duties of members of the board of directors and directors of public companies, as well as directors of private companies that have received substantial amounts of funding from venture capitalists and institutional investors, regularly attend in-person and online educational institutes and programs that focus on specific legal and ethical issues that they are likely to encounter during their work on the board and its various committees. In contrast, relatively little attention has been paid to the fiduciary duties of those persons who are charged with carrying out the directives of the board and managing the business on a "day-to-day basis": the officers of the corporation. Case law regarding the duties and obligations of corporate officers is meager and there is no consensus on the applicability of well-known guidelines that are frequently cited when assessing director behavior, such as the "business judgement rule". Moreover, attorneys purporting to specialize in corporate governance often concentrate their counseling on board members and spend relatively little time working with officers and providing them with guidelines that can be used for them to understand the potential legal ramifications of their conduct and the duties that might be imposed upon them outside of any specific employment-related agreement they might have with the corporation.

Recently scholars and governance commentators have come forward to offer several good reasons for taking specific steps to educate officers regarding their fiduciary obligations to the corporations that they serve. First, it can be expected that the conduct of officers will be subject to increasing scrutiny in a manner similar to the attention that has been focused on directors and thus it is in the interests of both the corporation and its individual officers for officers to understand the legal standards associated with their performance before a lawsuit is filed. Second, it is has been argued that formalized efforts to inform officers of their duties and obligations, and the resources available to them to discharge their duties in a proper and lawful manner, will increase the likelihood that officers will act properly, engage in positive conduct and refrain from actions that further their own interests at the expense of the corporation and its shareholders. Third, investing time and effort in educating officers provides a platform for explaining legal principles and concepts (e.g., duties of loyalty and care) that would otherwise remain vague and uncertain to officers. Experienced attorneys can and should provide officers with examples of how familiar legal principles work in practice and help officers determine when they should stop and seek the guidance of their superiors and counsel. Education fosters a sense of personal responsibility among officers and recognition that they, rather than the corporation's lawyers, must ultimately be comfortable that their actions are consistent with their fiduciary duties to the corporation. Another byproduct of the attorney involvement in the education process is building a bridge between the officer and the attorney which makes the officer to be more comfortable approaching the attorney for advice and allows the attorney to proactively work with officers to spot and manage potential problems in a way that reduces the risk and potential liabilities for both the officer and the corporation.

Johnson was one of the first to offer guidance on counseling officers regarding their unique corporate governance responsibilities and did so by combining and integrating guidelines and processes from both the Model Business Corporations Act ("MBCA") and the Restatement of Agency. Combining advice from both sources, which differ in significant ways, assures that officers are given a comprehensive set of basic principles to rely upon when carrying out their duties. For example, while there is no broad duty to act in good faith in the Restatement, such a duty can be found in MBCA Section 8.42 and it is reasonable to assume that some sort of duty of good faith will be imposed on officers in future litigation pertaining to officer liability. Reliance on experts by officers is another area where the MBCA and Restatement differ: MBCA Section 8.42(e) includes a specific safe harbor for reliance on others that is not included in the Restatement; however, the Restatement does appears to provide implicit support for reliance as a means for ensuring that an officer, as an agent of the corporation, is acting with the requisite care and competence. The bottom line is that the most prudent advice for officers starts with the basic assumption that they should expect to be held to the standards of both the MBCA and the Restatement. As for the specific topics for discussion with officers, the following list touches on all of the key areas:

Duty of Loyalty. An officer of a corporation is a fiduciary of the corporation and, as such, has a fiduciary duty to act loyally for the corporation's benefit in all matters connected with the officer's relationship with the corporation. Officers must act reasonably and in a manner that they reasonably believe to be in the best interests of the corporation and must refrain from conduct that is likely to damage the corporation or from placing their own interests or those of a third party above the well-being of the corporation.

Authority. Officers have the authority and shall perform the functions set forth in the bylaws or, to the extent consistent with the bylaws, the functions prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the functions of other officers. An officer has a duty to take action only within the scope of the officer's actual authority and has a duty to comply with all lawful instructions received from the board of directors or an officer authorized by the board of directors to prescribe the functions of other officers concerning the officer's actions on behalf of the corporation. An officer also has a duty to act in accordance with the express and implied terms of any contract between the corporation and the officer.

Duty of Care. Officers have the duty to act in good faith and with the care that a person in a like position would reasonably exercise under similar circumstances. Subject to any agreement with the corporation, an officer has a duty to the corporation to act honestly and lawfully and with the care, competence, and diligence normally exercised by officers in similar circumstances. Special skills or knowledge possessed by an agent are circumstances to be taken into account in determining whether the officer acted with due care and diligence. If an officer claims to possess special skills or knowledge, the officer has a duty to the corporation to act with the care, competence, and diligence normally exercised by officers with such skills or knowledge.

Reliance on Others. In performing his or her duties, an officer who does not have knowledge that makes reliance unwarranted is entitled to rely on either the performance of properly delegated responsibilities by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in performing the responsibilities delegated; or information, opinions, reports or statements, including financial statements and other financial data, prepared or presented by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented or by legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the officer reasonably believes are matters within the particular person's professional or expert competence or as to which the particular person merits confidence.

Duty to Inform Superior Officers, Board or Committees. Officers have an obligation to inform the superior officer to whom, or the board of directors or the committee thereof to which, the officer reports of information about the affairs of the corporation known to the officer, within the scope of the officer's functions, and known to the officer to be material to such superior officer, board or committee. In addition, officers have a duty to use reasonable effort to provide a superior officer, board or committee with facts that the officer knows, has reason to know, or should know when the officer knows or has reason to know that the superior officer, board or committee would wish to have the facts or the facts are material to the officer's duties to the corporation; and the facts can be provided without violating a superior duty owed by the officer to another person. Finally, officers have a duty to inform their superior officer, or another appropriate person within the corporation, or the board of directors, or a committee thereof, of any actual or probable material violation of law involving the corporation or material breach of duty to the corporation by an officer, employee, or agent of the corporation, that the officer believes has occurred or is likely to occur.

Duties While Engaged in Transactions. An officer has a duty not to acquire a material benefit from a third party (e.g., gifts or business opportunities) in connection with transactions conducted or other actions taken on behalf of the corporation or otherwise through the officer's use of his or her position, even in situations where the officer believes that there will be no harm to the corporation. Absent knowing consent from the board of directors following proper disclosures by the officer, an officer has a duty not to deal with the corporation as or on behalf of an adverse party in a transaction connected with the officer’s relationship with the corporation.

Non-Competition. Throughout the duration of his or her relationship with the corporation, an officer has a duty to refrain from competing with the corporation and from taking action on behalf of or otherwise assisting the corporation's competitors; however, during that time, an officer may take action, not otherwise wrongful, to prepare for competition following termination of his or her relationship with the corporation.

Appropriation of Property or Confidential Information. An officer has a duty not to use property of the corporation for the officer's own purposes or those of a third party; and not to use or communicate confidential information of the corporation for the officer's own purposes or those of a third party

Disclosures Relevant to Waivers and Consents. An officer should be aware of, and strictly adhere to, the procedures available for obtaining the corporation's consent to conduct by the officer that would otherwise constitute a breach of the officer's duties to the corporation including the officer's obligations to act in good faith and make disclosures of all material facts that the officer knows, has reason to know, or should know would reasonably affect the corporation's in granting or withholding its consent.

Discussions with corporate officers regarding their fiduciary duties and each of the topics covered above should be formalized and institutionalized along with briefings on other heavily regulated and fast-moving areas such as securities, antitrust, employment, environmental and trade laws. Initial training should be conducted when the person first assumes an officer position and updates should be conducted periodically, no less than annually, while the person's service as an officer continues. Additional training in specialized areas should be given when an officer is about to be involved in a significant event or transaction outside of the ordinary course of business which is heavily regulated and carries a risk of criticism from stockholders, such as a major acquisition or divestiture or a public offering of securities. All of the key principles should be explained to all officers, regardless of seniority and functional responsibilities, and additional time should be set aside to concentrate on issues and situations that are likely to arise because of the officer's particular functional role among the members of the executive team (e.g., the chief financial officers and officers who are also serving as directors). In that regard, any attorney also acting as an officer of the corporation, such as the "chief legal officer", must be required to go through the same training as other officers, a process that is particularly important given that he or she will likely be held to a higher standard with respect to care and diligence based on their special skills and knowledge as an attorney.

The advice set out above can and should be distilled into some form of written code of conduct; however, a piece of paper is no substitute for the interaction that occurs when experienced corporate counsel goes through the guidelines on a face-to-face basis with the officer. However, while attorneys should provide as much information as possible and seek to develop a trusting relationship that can be tapped into later when the officer needs advice on a specific matter, the attorney must also make it clear that he or she represents the corporation, not the individual officer, and that the goal is to educate the officer to the point where the officer is able to understand and apply the governance principles on his or her own.

Sources: L. Johnson, "Having the Fiduciary Duty Talk: Model Advice for Corporate Officers (and Other Senior Agents)", Business Lawyer, 63 (2007), 147 (includes "model fiduciary advice" for corporate officers which the author recommends should be given before officers take up their duties).

§4 Evolution of the executive team

Every company, even those that ultimately become global organizations with thousands of employees dispersed around the world, begins as a "start-up" and goes through various evolutionary stages with regard to its organizational structure and the composition of its executive team. At the very beginning there may be no more than a handful of employees including a single founder or several entrepreneurial leaders that compose a small founding group. Formal titles may be loose and scarce and the term "executive" is rarely used in what is generally an informal working atmosphere. Some sort of hierarchy generally emerges when the company begins to interact with it external environment—

potential investors, suppliers, customers and key employees. While there is no single model for organizing the management team at the start-up stage, it is common to find that the basic core group consists of a President or CEO, a Vice President for Research and Development ("R&D") or Product Development and a Vice President for Sales. While this discussion uses the formal title of Vice President, or "VP," some companies prefer to use other titles for functional leaders, such as "Director" or "General Manager." The title is relatively unimportant since the crucial action is that the company must identify the person who is to be part of the senior management team and have dedicated responsibility for a particular recognized functional activity.

Baron et al. studied the influence of founders on several facets of "bureaucratization" in a sample of California-based technology start-ups, including the proliferation of specialized managerial and administrative roles and titles.[1] Among other things, they observed that some of the firms opted for clear jurisdictional distinctions among the management team from the very beginning of operations, including a formal organizational structure and specialized managerial roles and titles that evidenced expertise and authority in areas such as finance and operations; however, other firms preferred to operate with minimal structural and functional differentiation at the top, except as mandated by law and external stakeholders such as venture capitalists, and rarely created vertical distinctions among managers through the use of "senior" and "executive" titles among the ranks of their vice presidents.[2]

As the number of employees increases beyond the initial group of founders and other key managers and the business moves out of the garage into more formal surroundings, a senior manager for human resources ("HR") and administration will be a common new addition to the team, although perhaps not at the VP level. Initial activities in areas such as manufacturing and customer support, which will generally be modest until the volume of sales expands, will be a collaborative effort among the President/CEO, the VP R&D/Product Development and the VP Sales. Members of the founding group that have not assumed any of the three roles referred to above will begin to find their own niches pursuing areas of need that match their interests and educational and professional backgrounds. For example, a founder without substantial managerial experience may gravitate toward exploration of technologies that the company will need to develop or otherwise acquire at some point in the near future. All of the founders may also have the opportunity to interact as board members until it becomes necessary for some of them to step aside to allow participation by any senior managers who are brought in from the outside and representatives of venture capitalists and other professional investors.

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[1] J. Baron, M. Burton and M. Hannan, "Engineering Bureaucracy: The Genesis of Formal Policies, Positions and Structures in High-Technology Firms", The Journal of Law, Economics and Organization, 15 (1999), 1-41, 1. The sample consisted of more than 170 young high-technology firms in California's Silicon Valley that were part of the Stanford Project on Emerging Companies. Id. at 4 (including a description of the characteristics of the study group and references to detailed discussions of sampling and data collection methods).

[2] Id. at 23-24.

As the company advances to the next stage of development, presumably after initial product development efforts are well along, the core senior management group will generally be expanded to include a VP position responsible for both marketing and communications. Initially, the VP Marketing will focus on marketing and communication strategies for the company's initial product, including launch management. However, once the first product is launched, the VP Marketing will be tasked with many other high-level duties and responsibilities, notably the creation of a long-term marketing plan and establishing the infrastructure that can support market research, advertising and promotional strategies and similar activities. At some point, the VP Marketing will need support from new senior managers with focused responsibilities for product marketing and communications. A senior manager for product marketing becomes important when the company creates and builds its own internal sales team and the holder of the position would be primarily responsible for provide selling tools and related information to the sales force. At that point, the VP Marketing would perform similar functions with respect to the company's indirect sales channels, including outside sales representatives and distributors. The VP Marketing would also be responsible for communications with trade media and industry analysts; however, another senior manager reporting to the VP Marketing might take on communications with employees, investors, and the business/public media.

At the next stage of growth, which typically is reached when the company is achieving annual sales in excess of $100 million per year or otherwise approaching a potential initial public offering ("IPO"), the most important addition to the senior management team is an experienced chief financial officer ("CFO"), who will generally join at the insistence of outside investors and/or investment bankers interested in assisting the company with the IPO. It is recommended that the CFO join the management team at least 12-24 months prior to any anticipated IPO in order for the holder of the position to implement the necessary periodic reporting systems, evaluate historical performance and results and establish relationships with investors and manage investors issues in collaboration with the senior manager for communications, a role that might eventually be elevated to VP status. In addition, this is generally the point where the CEO/President delegates responsibility for many of the day-to-day operational activities to a chief operating officer ("COO") thus allowing the CEO to focus on the complex strategic issues described below. In some cases the COO is given the title of President and reports upward to the CEO; however, the more common approach at this point is for the COO to be referred to as the VP Operations. The growth in the number of employees that usually accompanies higher sales volumes means that it is appropriate for the senior manager with responsibility for human resources to be promoted to a VP position and active membership in the deliberations of the senior management group. Finally, one or more of the optional senior management positions may be created and filled; however, the timing will vary depending on the specific needs of the company.

Obviously, the development and growth of the management team creates significant challenges for the entire company, particularly the person at the top--the CEO. Among other things, the company must establish guidelines for hiring senior team members (e.g., job descriptions, experience requirements, resource requirements for each office and criteria for measuring and rewarding performance). In addition, the company must create and follow rules with respect to interactions between the various functions covered by the management group. For example, the VP Sales and VP Marketing must have a clear understanding of the roles of their groups with respect to each product line and develop methods for regularly communicating with one another and making sure that information is also disseminated to other management team members. Another issue to consider is the need to seamlessly transfer duties and responsibilities among members of the management team as the company grows and the new members are added to manage specialized functions. In fact, it is important to actually plan for these transitions at the earliest possible stage since the information should be used to develop job descriptions and recruiting strategies.

Law Firm Executive Team Members

Like any business, law firms need a team of executives who will be responsible for setting the strategic goals for the firm and implementing the operational and tactical plans required in order to achieve those goals. The executive team will also oversee all aspects of the day-to-day operations of the firm business. The composition of the executive team and allocation of duties among the members of the team will normally be determined by the partnership, as the "owners" of the firm, following recommendations made by a subgroup of partners selected to serve as members of an executive or management committee. This committee acts as a "board of directors" and focuses on monitoring the firm's economic performance and long-range planning. The committee selects a "managing partner", who acts as the de facto chief executive officer of the firm. Most of the other members of the executive team, apart from practice group leaders, are professionals focused on their functional roles and not engaged in the active practice of law for the firm. The list of leaders identified below is suggestive and firms can obviously customize their executive teams to suit their specific situations. For example, many firms create a position of "firm general counsel" that focuses on ethical and risk management issues.

Managing Partner

- Oversee strategic planning and strategic growth
- Chair firm executive or management committee and implement decisions of such committee
- Oversee firm ethics, practice quality standards, loss prevention and risk management
- Oversee firm financial management, including managing to profit targets
- Oversee human resources policy making and enforcement, including supervising the planning and implementing significant changes in firm benefits
- Supervise the planning and implementation of significant technology initiatives
- Supervise the planning and implementation of significant marketing initiatives
- Day-to-day management and administration of the firm, with assistance from non-lawyer administrative staff
- Serve as the firm's figurehead and representing the firm in both the legal and business communities
- Intimate and outward-focused involvement in client development, community affairs and charitable events

Chief Operating Officer

- Oversight of finance/accounting, human resources, information technology, marketing and administration
- Management of executive committee meetings
- Distribution of information to partners
- Coordination of strategic planning process

- Development and implementation of evaluation and compensation policies and procedures
- Coordination of activities of firm business units and committees
- Special projects (e.g., merger due diligence and negotiations and crisis management)

Chief Financial Officer

- Bookkeeping and accounting
- Payroll
- Billing and collections
- Client credit policies and procedures
- Financial operations
- Budgeting and financial reporting

Chief Human Resources Officer

- Recruiting
- Employment law compliance
- Professional training and development
- Paralegal management
- Benefits

Chief Technology Officer

- Network management
- Project management
- Operations and support
- Application services

Chief Administrative Officer

- Facilities
- Secretarial services
- Records management
- Document processing

Chief Marketing Officer

- Coordinate preparation and implementation of overall marketing strategy
- Implement and manage marketing budget
- Develop and manage in-house marketing team
- Develop and measure key metrics around the business including acquisition, conversion rates, and growth
- Manage social media and publicity increasing viewers, supporters, and awareness
- Create and monitor marketing campaigns
- Oversee public relations and communications strategies including selection and management of outside service providers

Chief Training and Development Officer

- Coordinate with chief human resources officer and practice group heads on associate assignments
- Plan associate orientation, retreats and special events
- Participate in reviewing associate evaluations and identifying related issues
- Coordinate and oversee training and development functions, including CLE, firm-identified "critical

skills" training and mentoring programs

- Coordinate and oversee partner development programs and alumni relations programs
- Monitor attorney compliance with applicable licensing requirements
- Advise firm and practice group leaders on policies and procedures relating to training and development

Business Unit Leaders

- Leadership, direction and business planning-leading the development of a business plan and strategic direction for the unit (including marketing activities)
- Recruiting, training, mentoring and professional development of all professionals in the unit
- Lawyer motivation and morale-communicating effectively to motivate and manage the business unit, running meetings, coaching the members, participating in the compensation and performance evaluations of members and teambuilding
- Quality control and risk management-ensuring the business unit meets firm and client standards and monitoring risk management issues related to the unit's work or its people generally.
- Client intake/work acceptance and assignment and workload management
- Monitoring timekeeping and billing practices, realization and collection issues and overall client, matter and practice profitability
- Ensuring that the business unit uses the latest appropriate technology applications to support the unit's work and clients

§5 Executive team and organizational performance

Empirical studies, as well as anecdotal information, confirm that the skills, energy and judgment of the members of the executive team are important factors in determining the success or failure of any business venture. Some well-known venture capitalists, notably Arthur Rock, one of the initial backers of Apple Computers, have a decided preference for investing in strong management teams even if the associated business model is less than fully developed. On the other hand, many investors will not blindly follow executives that have been successful in the past if the proposed business model does not make sense and will insist upon a showing the company will be able to forge and maintain a competitive advantage and develop the right products for the right markets. Even in that case, however, the ultimate viability of the business model will depend on the decisions that the CEO, working with the other executives of the company, make with regard to each of the key elements of organizational design--strategy, including vision, governance and comparative advantage; organizational structure, including power and authority, information flow and organizational roles; organizational culture and values; business processes and lateral linkages, including information technology; compensation and reward systems; and human resource management, including organizational learning.[3]

§6 The chief executive officer

The main member of the executive team, and the person with the most responsibility for, and control over, the organizational design of the company, is the chief executive officer,

[3] For further discussion, see "Organizational Design: A Library of Resources for Sustainable Entrepreneurs" prepared and distributed by the Sustainable Entrepreneurship Project (www.seproject.org).

or “CEO.” While the CEO “reports” to the board of directors and the board of directors is vested with more legal authority than any officer of the company, including the CEO, it is the CEO to whom the directors turn for leadership in setting strategy and putting the assets and other resources of the company to work in order to achieve the stated goals and objectives of the company. The CEO is almost always a member of the board of directors and, until recently, the common practice among larger corporations (i.e., “public companies”) was for the CEO to also serve as the chairperson of the board of directors. While it is now the general rule that public companies, as well as many larger privately-held companies, will fill a majority of the seats on the board of directors with outsiders (i.e., non-employees and persons who do not represent a large shareholder block) it is nonetheless still true that the CEO exerts significant influence over the board of directors even in those circumstances.

It generally takes a fair amount of time from the point a company is launched for the duties and responsibilities of the company’s senior leader to expand and the focus of the leader will change dramatically as the company evolves and grows. At the time a company is launched, a President will typically emerge from among the members of the founding group. He or she may not assume the CEO title at that point, particularly if it is anticipated that an executive from outside the founding group will be brought in at some point in the near future. In any case, this initial President will almost always take on some or all of the responsibilities that will ultimately be divested to other members of the core management team, notably R&D, sales, HR and administration. Unless the company is launched with a finished product and an initial order, most of the time will be spent on the road talking to key players in the market to obtain input and feedback on the company’s initial plans. Numerous meetings will, and should, be held with prospective customers, investors and other business potential business partners. A President with an aptitude for public relations may also begin working with media sources to generate interest in the fledgling business and its proposed products and services. Based on all the information collected from these activities, the President should be the person who takes initial responsibility for determining the best way to focus the firm’s technology and R&D efforts on creation of marketable products and services. At the same time, the President must begin building the company’s employee base; however, caution must be used not to fill too many positions that ultimately will be supervised by new members of the senior management group since they may prefer to build their own teams once they come on board.

No person, regardless of talent and energy level, can continue to juggle all of these activities without assistance for a sustained period of time. Accordingly, the President should have a plan in place from the beginning for bring in new members of the core management team and outsourcing other functions until the company has reached the point where internal growth is necessary and cost-effective. The hiring sequence typically follows the functional development of the product. Accordingly, a VP R&D and/or Product Development is a top priority followed by a VP Sales to assist the President in identifying and development a customer base upon which initial revenues can be projected. With those functions covered, the President can invest more time and effort in marketing and cultivating relationships with prospective investors and business partners for other functional areas, such as manufacturing and distribution. External resources can be used to handle other key functions until senior managers are needed and identified. For example, outside accounting firms can generally assist not only with accounting and audit services, but also offer help with business and tax advisory services, selection and implementation of financial systems and internal controls and consulting services in diverse areas such as compensation, security and information technology.

As the core management team expands and external resources are deployed for interim financial and administrative functions and activities, the President can turn his or her attention toward the roles that will occupy more and more time in the future as the company expands. Among other things, the President, or CEO if someone else assumes that office, should be prepared to take primary responsibility for those activities which are essential for the company to acquire the additional resources necessary for the company to grow including development and management of the image and reputation of the firm; public and media relations; development and launch of initial marketing plan; definition and development of the initial product line; financial and legal matters, including development of relationships with commercial banks, venture capitalists, investment bankers and professional service providers; and exploration of potential strategic partnerships. Note, of course, that several of these functions will ultimately be passed on to other members of an expanded core management group. For example, financial and legal matters usually fall within the scope of responsibilities for the CFO once that position is filled and the VP Marketing will ultimately oversee marketing and public relations activities.

§7 --Duties and responsibilities

Regardless of the stage of evolution of a company the senior leader, whether he or she is referred to as the President or the CEO, has a broad, if not overwhelming, set of duties and responsibilities. Some of these duties are formal and prescribed by law and the governing documents of the company (e.g., the articles of incorporation and bylaws of a corporation); however, most of the expectations imposed on the CEO are often vague and are left to the CEO to define and execute. A CEO is confronted with challenges in a number of different areas and from various stakeholders and he or she must be able to balance and prioritize the demands on his or her time and intellectual resources. For example, at any point in time the CEO may be focusing on the timetable for launching a new product or service and establishing and testing specifications for the product or service; evaluating and responding to unforeseen actions by competitors; responding to the concerns of key customers; reviewing the suggestions of the marketing team regarding shifts in brand strategy and image of the company; and preparing for the next board meeting and a presentation to prospective new investors.

The CEO of a larger company may be able to delegate certain matters to other members of the executive team; however, person at the top of the hierarchy of an emerging company generally does not have that luxury. An emerging company CEO has several broad areas where he or she must take the lead—setting and executing company strategy; establishing and reinforcing the desired organizational culture; recruiting the other members of the core management team and making sure that they learn how to work together with a focus on the desired strategy; allocating the cash and other resources of the company among the current operational activities; and communicating with key external stakeholders including vendors, customers and investors. In general, the CEO has the primary responsibility for managing the company towards profitability and navigating through the challenges of growth, expansion and change. When the company is in its early stages, often without resources and confronted with what appear to be overwhelming challenges, the CEO has a special role in motivating other managers and employees and in selling prospective members of the executive team on the potential of the company and its business model.[4]

§8 --Interaction with other management team members

One of the first, and most important, responsibilities of the CEO is recruiting and overseeing the activities of the members of the core management team. As the company grows the CEO must necessarily become more dependent on his or her colleagues and it is essential that the CEO put together a team that is skilled, experienced and collegial. Clearly, each member of the team must satisfy the specific conditions and qualifications related to the position; however, the CEO must insist that the other senior managers be ready and able to lend support in several key areas. For example, senior managers must take their reporting responsibilities seriously and be active participants in regular management team meetings. In addition, senior managers must keep the CEO informed of all major developments, positive and negative, in their functional areas. Finally, senior managers must aggressively focus on their functional areas and related objectives and targets, yet be prepared to accept the decisions of the CEO with respect to resolution of resource conflicts in the best interests of the company as a whole.

In turn, in order for them to be effective, senior managers must be able to count on the CEO to perform certain functions and provide necessary support when necessary in order for the senior manager to carry his or her duties. The CEO must establish clear short- and long-term performance and objectives for each senior manager and the associated functional department. The CEO must then establish and maintain real channels of communication, including regular management meetings, with each senior manager. Senior managers need to be empowered to provide input and advice on all aspects of the business, including helpful and respectful criticism. The CEO must be available to meet with senior managers to discuss specific problems and to interact with customers, suppliers and other business partners who are important to the business programs of the senior managers.

§9 --Recruitment and selection

[4] For further discussion of specific duties and responsibilities that should be incorporated into a job description for any emerging company CEO, see "The Chief Executive Officer" in "Governance: A Library of Resources for Sustainable Entrepreneurs" prepared and distributed by the Sustainable Entrepreneurship Project (www.seproject.org).

When one of the members of the founder group of an emerging company assumes the role of CEO, there is really no formal recruiting process. However, when the CEO is hired from outside the founder group—either as the initial CEO or to replace a founder who has been occupying the position on an interim basis, the process should involve a number of interested parties, including the founders and each of the independent (i.e., "non-employee") members of the board of directors. Each person and company has their own specific requirements with respect to the attributes of a successful CEO candidate, but the following characteristics are consistent with the suggested job and skill description for an emerging company CEO summarized above:

- Demonstrated experience in successfully managing rapidly growing businesses, either as a CEO or a general manager of a division or subsidiary operating with the full range of functional activities;
- Aptitude for recruiting and directing the senior management team;
- Poise and confidence to act as the chief spokesman for the firm and make quick and firm decisions regarding the direction of the company's business; and
- Understanding of the importance of financial performance, budgeting and internal controls and experience with implementing appropriate procedures and systems and conveying the need for compliance throughout the company.

Some of the characteristics above can be evaluated through a review of the work history of each candidate and interviews with prior employers and others that have dealt with the candidate at various stages in his or her career. In addition, however, the interview process should be used as an opportunity for each candidate to lay out his or her plans and objectives for the CEO position. In fact, the candidate should be required to make a clear and concise presentation of the actions that he or she would take within the first few weeks after assuming the position. In fairness, the company must be prepared to provide the candidate with sufficient information to allow him or her to make a meaningful presentation and this process also allows the company to evaluate the candidate's ability to quickly digest data about the company's technology, products, markets, overall business environment and financial performance.

§10 --Motivational strategies

While hopefully the CEO will be largely self-motivated to fulfill his or her responsibilities and move the company forward, there are a variety of motivational tools and practices that are typically used at successful emerging companies. At the board level, the directors should recognize the need to provide the CEO with a compensation package that is commensurate with the duties and responsibilities and generally competitive with his or her peers in the relevant industry and market. In the Silicon Valley, for example, this has traditionally meant a competitive base salary, an ownership stake in the business and a performance bonus structure that rewards the CEO (and other senior managers) for attaining agreed objective financial, technical and market-based targets and objectives.

Beyond compensation, however, other members of the senior management team can be an important support network for the CEO through the way that they handle and manage their own duties and responsibilities. First and foremost, each member of the senior management group must keep the CEO informed about major issues, activities and problems the manager's functional area. In addition, a conscious effort should be made to involve the CEO in each of the company's key business relationships, including customers, suppliers, other business partners and the trade press and other outside parties in a position to influence market opinions regarding the firm and its products and services. Finally, the senior management group must respect, and comply with, the CEO's efforts to manage and direct the group, including participating in management meetings and compliance with reporting requirements.

§11 --Performance evaluation

One of the easiest ways to identify a CEO who is not performing effectively is to evaluate how he or she is doing in relation to the key tasks and activities that have been described above. For example, the inability of the CEO to develop a good business plan, with clearly defined targets and objectives, should be a warning sign that the company is in danger of drifting off course. A poorly performing or incomplete senior management group is also an indication that the CEO is not effectively leading and managing the business, particularly when the CEO spends a good deal of time on matters that should have been delegated to others. Also, a lack of involvement in key business relationships and in external and internal communications means that the CEO is not fulfilling his or her unique role as the chief spokesman and "cheer leader" for the firm.

§12 Other executive team members

One of the most important ways that the CEO can impact the effectiveness of the company and its organizational structure is through his or her selection of the members of the executive team. In addition to their functional skills and experience, the executives can support the vision of the CEO by communicating and practicing the attitudes and values associated with the organizational culture preferred by the CEO. In order to fulfill this role, the executives must understand culture and organizational structure of the company and the thoughts and directions of the CEO and should have a clear idea of where the company is headed and be committed to that direction. The sections that follow describe the duties and responsibilities of the key members of the executive team. Job descriptions and performance evaluation procedures are important tools for establishing expectations for executive team members and continuously measuring their contributions to the team and company.

§13 --Job descriptions

While recruiting and retaining high quality members for the executive team is obviously important for the company, development of job descriptions for executives is often neglected. One reason this occurs is because executives often view job descriptions as to restrictive or static to be of much use. Another concern that an executive might have about engaging in developing his or her own job description is that the end product might be used as the basis for a negative performance evaluation or a change in role and responsibilities that might be unacceptable to the executive. Disadvantages aside, however, it is recommended that an effort be made to write job descriptions for top managers in order to define their specific tasks and objectives. By preparing job descriptions for executives, and reviewing them periodically, the CEO can make sure that the responsibilities and objectives of the executives are properly aligned with each other and with the overall goals of the company. In addition, job descriptions can provide a direction for each executive and a basis for establishing priorities that are mutually agreed upon by the executive and the CEO. Finally, a job description for an executive position that has yet to be filled can provide a basis for discussions with prospective candidates. A job description for a member of the executive team should focus on the tasks to be done; the goals to be achieved; the challenges to be overcome; and the organizational norms that are to be emphasized. In addition, the job description should include a list of the information that will be needed in order to evaluate the performance of the manager in relation to the stated duties and responsibilities.

§14 --Performance appraisal process

A formal appraisal process for the members of the executive team can have several important influences on the relationship between the CEO and the members of his or her "inner circle." First and foremost, a performance appraisal is probably the best way to identify the strengths and weaknesses of the executive in particular situations or over the course of the executive's regular day-to-day activities. With this information, the appraisal process can be a good opportunity to develop a mutually agreed program to strengthen the weaknesses while simultaneously reinforcing the strengths and finding ways to use those strengths in other areas. The CEO is therefore able to provide support for executives based on a bond of mutual commitment and also is able to provide praise and emotional support to executives that often feel alone and unappreciated given that most of the focus is usually on areas where they need to improve. A formal appraisal process should also include ways for executives to express their own needs and ideas and therefore reduce the possibility of misunderstandings between the CEO and the executive with regard to the personal and professional goals of the executive.

When designing a formal performance appraisal process for executives, the following issues need to be considered—when and how often the appraisal should be done; what information will be gathered and how it will be gathered; the form and content of the actual evaluation; how should the results of the evaluation be recorded; and how should the results be integrated into the day-to-day activities of the executive during the period following the completion of the review. While performance and compensation are obviously closely related, it is generally recommended that performance and compensation reviews be done separately if at all possible. Studies indicate that the benefits of a performance review are often lost when participants are preoccupied with the fact that they are about to receive new information regarding their compensation. In that case, participants tend to forget that the focus of the performance review should be on their own strengths and weaknesses, and opportunities for improvement and advancement, and become preoccupied with real or perceived comparisons of their performance to others that may arise because of compensation adjustments. Another issue in the case of poor performers is the negative psychological impact of receiving bad news in the evaluation followed quickly by a disappointment in the compensation arena.

The main choices regarding timing of performance reviews is to do all of the executives at the same time or spread the reviews out over the course of the year (e.g., conduct an executive's review on his or her anniversary date of joining the company). If reviews are all done together this will impose a significant workload on the CEO and will likely increase the possibility that executives will be distracted by comparisons. On the other hand, if reviews are done throughout the year the CEO will be continuously involved in the process and special effort will need to be made to schedule compensation reviews. When evaluating and communicating information relating to the performance review, the CEO should make every attempt to be systematic, fair and consistent with the methods used for assessment and rewards. When setting goals during the performance evaluation process the CEO should be sure that the goals set for the executive align fully with the reward system established for the executive. In addition, the outcomes of the performance review should be communicated both in writing and orally.

Performance problems for executives may arise for a number of reasons including lack of the necessary skills, misunderstandings about the goals and objectives, temporary or permanent personal problems, relationships with co-workers and/or the relationship with the CEO. Solutions vary depending on the type and severity of the problem and should be discussed in detail during the performance review. For example, as appropriate the CEO may arrange for further support or additional training development or may decide to intervene to resolve issues with co-workers. In extreme situations it may be necessary to transfer the executive to other duties or even terminate the relationship if the parties mutually decide that there is no better option. Once the parties have decided on an appropriate plan to address performance weaknesses or other impediments to further improvement, the executive and the CEO should evidence their commitment to the plan both orally and in a brief written memorandum.

§15 --President/chief operating officer

The most important member of the senior executive team after the CEO is the President, or chief operating officer ("COO"), of the company. In many cases the President is the designated successor of the CEO; however, this is not mandatory and the President is often selected for specific skills and experience that the CEO lacks or because the CEO realizes that he or she must transfer certain responsibilities to the President in order to remain focused on setting and monitoring the overall organizational strategy and design for the company. While the President reports to the CEO, and thus takes direction from the CEO, the actual relationship between the CEO and President is typically a sharing of the essential managerial activities that are needed in order for the company to successfully pursue its goals and objectives. The CEO usually focuses on strategic planning for the company and its various business units and on relationships with important external stakeholders including the investment community. In turn, the

President has primary responsibility for the direction of "operational" activities within the company to ensure that the way that the company, and its employees, operates is consistent with the attainment of the company's overall strategic goals and objectives. In some cases the President may also have managerial responsibility for one or more of the most important business units or divisions within the company.

§16 --Vice president—sales

The VP Sales has the primary responsibility for generating revenues from the sale, lease or license of the company's products and services. While the sales function, particularly during the early stages of the company's development, is most concerned with closing deals and increasing the company's market share and leadership position, consideration must ultimately be given to profitability. If sales are being made because the sales force is willing and able to offer products at or below the company's cost, then the firm will eventually be overcome by cash flow problems. Accordingly, the VP Sales should also be expected to participate in, and support, company initiatives to manage manufacturing costs and minimize the direct and indirect costs of actually selling the products.

Among the key activities for the VP Sales are the following:

- Develop and implement the company's overall sales strategy, including creation of revenue forecasts and establishment of targets, schedules and milestones;
- Develop, maintain and expand customer relationships;
- Develop a channel strategy and create and manage a direct and indirect sales structure to support the strategy;
- Recruit and lead the company's internal sales team;
- Collect feedback from customers regarding the company's products and disseminate such information throughout the company, particular to the R&D and marketing functions;
- Support marketing function efforts to move information from the company to customers regarding the new products, improvements and special programs to increase interest in the company and its products; and
- Develop and support company initiatives to increase customer satisfaction and loyalty.

§17 ----Interaction with other management team members

In order to be effective, the VP Sales must have the full trust and support of the CEO and complete authority and control over the sales function. The CEO must provide the VP Sales with clear and measurable business goals and objectives and the company must establish and maintain a reliable financial reporting system that can instantly generate information that is relevant to sales activities. In turn, the VP Sales must understand and support the overriding company interest in profitability, even at the expense of gross sales revenues in certain instances. The VP Sales must be prepared to be actively involved in establishing the company's long-term business strategies and should be able to provide current reports on the progress of sales activities, the status of key customer accounts and opportunities and hurdles that have been identified in the marketplace. Finally, the VP Sales must be able to advance near-term company revenue objectives, as necessary, by motivating and leading the sales team to reduce sales cycles and close deals.

§18 ----Recruitment and selection

When evaluating prospective candidates for the VP Sales position, emphasis should be placed on prior experience and performance in a similar role with comparable companies. In particular, candidates need to demonstrate their success in increasing revenues and expanding the customer base and their ability to manage and lead a sale staff comparable in size to the one that the company intends to develop. In addition, the best candidates for VP Sales are those that have good marketing skills in addition to their background and expertise in sales. Finally, during the interview process each candidate should be asked to present his or her ideas regarding an initial action plan for the sales function, including the preferred method for organizing and motivating the sales team and implementing a reporting system.

§19 ----Motivational strategies

The VP Sales, as well as the key members of the sales team, will generally be motivated through the use of an aggressive compensation scheme that rewards performance. In addition, however, the CEO must ensure that the sales function receives support from other functional area to achieve the agreed sales targets and objectives.

§20 ----Performance evaluation

Revenues and profitability are obviously the most important performance indicators in the sales area and concerns should rightly be raised in the event that either measures falls materially below agreed targets and objectives for a sustained period of time. However, even if revenues and profits attain acceptable levels, there are other signs that may indicate that the VP Sales is not being effective. For example, substantial sales volatility may be a sign that the sales function is having difficulty controlling the customer base and forecasting and understanding market trends. In addition, the CEO must take heed of complaints from members of the sales team, customers or other business partners, particularly when there is evidence of significant turnover within the sales force or a large loss of customers. Finally, the VP Sales must be able to provide accurate and timely information on customer feedback and maintain open communications with other departments and members of the senior management group.

§21 --Vice president – human resources

The VP HR is primarily responsible for managing and overseeing various administrative activities relating to the company's human resources, meaning its employees and individual independent contractors (e.g., consultants). Authority with respect to the day-to-day management of employees and contractors is left to managers and supervisors in the various functional departments; however, the VP HR manages a wide range of essential support functions, including recruitment programs, compensation and benefits, human resources and employee relations, legal and regulatory compliance in the employment area, employee evaluation and training and educational programs. As the strategic level, the VP HR is expected to participate in the development and implementation of the company's overall human resources plan, which should take into account the anticipated growth of the business and the related work force requirements of each of the functional departments.

The VP HR is involved in every aspect of the employee relationship with the company, from recruitment through termination and even beyond in the event that the firm offers pension and retirement plans that provide for payment of benefits to ex-employees. As such, the VP HR must develop and implement programs and procedures for identifying and selecting new employees, including compliance with applicable federal, state and local laws that regulate potentially discriminatory practices. Compensation and benefits also fall within the scope of responsibility for the VP HR and he or she must be knowledgeable about current and emerging trends in these areas and able to communicate alternatives to the CEO and other members of the senior management group. The VP HR should also develop procedures for monitoring employee attitudes regarding the company and communicate this feedback to senior managers and supervisors. Finally, the VP HR is responsible for a variety of other programs that impact the work environment within the company and the development of employees, including communications and training programs and health and safety plans.

In the early stages of the company's development, before the senior management group is expanded beyond the initial core group, the VP HR will take on several other administrative functions outside of the human resources area. For example, he or she may be involved in facilities management, including lease and management of the firm's office and warehouse space, development of the company's IT infrastructure, and purchase or lease of necessary equipment and supplies. This is, however, at best a short-term solution since those functions have their own unique technical requirements.

§22 ----Interaction with other management team members

In order to be effective, the VP HR needs to be given clear guidelines regarding staffing requirements, including timetables and budgets. In addition, the VP HR needs to have an understanding of the desired image, personality and character of the firm so to as to maximize the likelihood that recruiting efforts with gather a pool of human resources that is collaborative and able to work together toward a common goal. Finally, the CEO and other members of the senior management group must determine where hiring authority will be vested within the organization and provide the VP HR with the power to make hiring decisions in most areas of the organization.

In turn, the VP HR must be prepared to assess all new proposed strategic initiatives to determine the impact on human resources requirements of the organization. In addition, the VP HR must provide the CEO and other members of the senior management group with regular reports on employee attitudes and morale and provide recommendations regarding new ideas for improving recruiting and retention of employees. Finally, the VP HR should be expected to take the lead with respect to compensation and benefits issues and the design and implementation of appropriate training and education programs.

§23 ----Recruitment and selection

The ideal candidate for VP HR should have an appropriate mix of formal professional skills and experience and the temperament and personality to deal with the personal issues that often arise when managing employees. The VP HR should have extensive experience in a senior management position with comparably sized organizations. While it may be useful for the experience to be with companies in similar markets and industries, it is not essential provided that the candidate can demonstrate an ability to develop and lead the HR infrastructure. The VP HR should have experience with compensation and benefits and development of training and education programs. Finally, the VP HR must be well versed in relevant compliance issues and prepared to continuously monitor new developments relating to employment laws and regulations. This is particularly important in light of emerging issues relating to use of technology and the like. On the personal side, the VP HR must exude enthusiasm about the company and have a personality that encourages open communication with employees.

§24 ----Motivational strategies

As with other members of the senior management group, the VP HR should be provided with an ownership interest in the firm coupled with participation in a performance-based bonus compensation program. In addition, the VP HR must be provided with the tools and authority necessary for him or her to complete all of the activities relating to the human resources of the firm, including recruiting, evaluation and training. As part of this support, the VP HR should be allocated a budget to train support staff in his or her own department and access external sources of information on key issues such as compensation and benefits. Another important factor in motivating the VP HR is the willingness of the CEO and other members of the senior management team to be actively involved in recruiting efforts and in training and education programs initiated by the HR function.

§25 ----Performance evaluation

A variety of measures may be used to evaluate the performance of the VP HR and the human resources function. First and foremost, the VP HR must develop and continuously update staffing plans for the company and establish procedures for tracking performance and identifying problems and issues relating to the human resources area. In addition, the VP HR must be an active participant in senior management group meetings and be available to meet with other senior managers to provide them with assistance in developing human resources plans for their functions. Some of the obvious indications of problems in the human resources area include poor employee morale, delays in filling open positions, unexpectedly high levels of turnover and an excessive volume of employee grievances.

§26 --Vice president—marketing

The VP – Marketing position may be filled at the time the new company is launched or a decision on this position may be deferred until activities in R&D and sales have matured to the point where a formal marketing function is warranted. Until the VP – Marketing comes on board the CEO commonly assumes responsibility for a number of key marketing and communications activities. At the other end, as the marketing function grows, the management team in this area may be supplemented by a VP Product Marketing and/or a VP Communications.

Initially, the VP Marketing will assume responsibility for coordinating and managing all aspects of the firm's marketing strategy, including creation of awareness of the company and its products in the marketplace and generation of demand that can be capitalized upon by the sales function. Among the specific tasks and activities for the VP Marketing are the following:

- Develop and direct the company's product development strategy;
- Conduct market research to define the needs of the marketplace and identify the most attractive new product development ideas;
- Develop and direct the company's strategies with respect to pricing, positioning, branding and promotion of its products and services;
- Collaborate with the R&D and sales functions to ensure that the company's products and services conform to the needs of the market; and
- Develop and deliver effective sales tools to support the company's sales channels.

§27 ----Interaction with other management team members

In order to be effective, the VP Marketing must be actively involved in the development of the company's long-term business strategy and be provided with the budget and resources necessary for effective promotion of the company and its products and services. In addition, the CEO and other members of the senior management group must be willing to seriously consider and, if appropriate, accept the recommendations of the VP Marketing regarding changes to company plans for new product development, product positioning and market segmentation. In return, the VP Marketing must be willing and able to keep the senior management group fully informed about the progress and results of marketing initiatives, including detailed and timely information on new sales opportunities and development in key market sectors.

§28 ----Recruitment and selection

When recruiting the VP Marketing, an attempt should be made to identify candidates that have been successful in senior marketing positions with other technology companies, preferably companies that have been active in the same technological area and/or with the same market segments. Specific skills necessary for the VP Marketing to be effective include understanding of the relevant technology, experience with designing and implementing effective product management and product marketing processes and familiarity with the various tools and resources commonly used to promote and sell the products and services of the company (e.g., trade shows, advertising and the Internet).

§29 ----Motivational strategies

The compensation arrangement for the VP – Marketing should be tied to attainment of specific goals and objectives set out in the overall market plan. Obviously, the more relevant indicators of performance are the number of sales leads identified and the revenues actually generated from those opportunities. Other indicators of success include objective validations of the effectiveness of particular marketing initiatives. It is important to remember that marketing is no longer just an art, instead it has become a sophisticated discipline that requires specialized expertise, particularly in situations where the relevant technologies and markets are emerging and competition is difficult to identify and predict.

§30 ----Performance evaluation

When evaluating the performance of the VP Marketing, reference should first be made to objective measures of the success of marketing initiatives, including lead generation statistics, sales revenues and market share in identified target segments. The VP Marketing must also be able to demonstrate strong and clear knowledge of the company's products, technologies and markets and identify relevant competitive factors that will impact sales performance in the future. Failure to develop and communicate a formal product development strategy, and interact effectively with other key functional areas such as R&D and Sales, is also a sign that the VP Marketing is not fulfilling the needs of the position. Finally, reference can be made to the frequency and success of specific marketing tactics, such as advertising campaigns, to determine if the marketing function is working to develop a presence and position for the company and its products and services in the market.

§31 --Chief financial officer

As the title of the position implies, the CFO is the chief financial officer of the company with authority and responsibility for the management of the financial assets of the firm. A CFO is not always a part of the core senior management group; however, an experienced CFO will certainly be required as the company grows and develops relationships with sophisticated outside financial partners, including investors and financial institutions. In fact, most venture capital and investment banking firms will refuse to conduct business with a company unless they are satisfied with the CFO or a firm plan is in place to recruit a qualified candidate within a specified period of time. Before the CFO is hired, some of the recordkeeping functions may be handled by a chief accountant or controller and the CEO will have primary responsibility for dealing with prospective investors and banks and other commercial lenders that may provide funding for the company during its earliest stages.

In collaboration with the CEO, the CFO will normally have substantial responsibility in ensuring that the company establishes and follows procedures for business planning throughout the organization. While preparation of the strategic plan should be joint effort among all members of the senior management team, the CFO is the primary architect of the firm's financial plan and budgeting process. In order to succeed with these activities, the CFO must obtain information from each of the key functional areas regarding their performance targets and objectives and anticipated resource requirements. Once the financial plans and budgets have been approved, the CFO is expected to take the lead in obtaining the financial resources necessary for the company to realize its business goals and objectives. As such, the CFO will develop relationships with commercial lenders and investors and negotiate the terms of each new financing. Finally, the CFO must develop and manage the firm's internal financial controls and make sure that reports are generated on a timely basis and made available to the senior management group, the board of directors and major shareholders.

As the company grows and the prospect of a public offering of securities becomes more realistic, the CFO will become the chief ambassador of the firm to the broader financial community. As such, the CFO must be able to communicate a sense of confidence in the company and its business plan and demonstrate full understanding of the company's products, technologies and competitive position. In turn, the CFO must collect information from the financial community regarding its perception of the company and its products and share that information with the senior management group in order to identify actions that can and should be taken to improve the company's image. Once the company has completed its initial public offering, the CFO becomes subject to almost all of the same regulatory duties and restrictions that apply to the CEO including certification of the information included in the company periodic disclosure reports filed with the federal Securities and Exchange Commission.

In many cases, the CFO will also assume responsibility for other functions relating to the protection of the company's assets. For example, the CFO may be called upon to manage the company's insurance and risk management programs. The CFO is also likely to be involved in management of the company's facilities, although day-to-day responsibility will generally be delegated to a dedicated facilities manager. Legal and regulatory compliance is another area in which the CFO will have primary responsibility among the members of the senior management team and it is common for the company's chief legal officer to report to the CFO. Finally, the CFO is a pivotal player in times of crisis, particularly when problems arise with the CEO, and is often seen as the first among equal on the senior management team when it is necessary for someone other than the CEO to represent the company to its various stakeholders.

§32 ----Interaction with management team members

First and foremost, the CFO must provide the CEO and the other members of the senior management group with clear, accurate and timely financial reporting information that covers all relevant short-term and long-term performance objectives. When providing those reports, the CFO must identify material deviations from the agreed financial plan and be prepared to provide suggestions regarding actions that can be taken in order to avert potential problems and/or deal with unexpected cash flow or profitability issues. Finally, as the company grows, the CFO must communicate information received from the investment community regarding the company and its brand and image. In return, the CEO must be actively engaged in the development of the company's financial plan and aggressively review and evaluate the information provided by the CFO. The CEO must also support the effort and activities of the CFO with respect to development of proper internal controls and ensure that the CFO, through the firm's accounting and compliance functions, has sufficient resources to effectively monitor the financial assets of the business.

§33 ----Recruitment and selection

The CFO of an emerging growth company should have experience as the senior financial officers for comparable companies, including responsibilities that extend beyond merely directing financial reporting activities. In particular, the candidate should be versed in, and able to handle, the evolving new requirements in the area of corporate governance. This qualification applies even when the firm is not yet a public company since venture capitalists and other private investors typically require that the foundation for compliance be in place when the invest, even well in advance of a proposed public offering. The CFO should also have the proper personality traits for acting as a positive and poised representative of the company in the financial community and leading the firm's relationships with outside professionals, including law and accounting firms, investment bankers and commercial banks and other financial institutions. Finally, the candidate must demonstrate an understanding to meet and communicate regularly with senior managers in other functional areas, particularly R&D, sales and marketing, in order to understand their day-to-day business activities and support their efforts to generate reasonable projections and budgets and monitor performance through the reports created by the finance function.

§34 ----Motivational strategies

As with other members of the senior management team, the CFO should receive a n ownership stake in the business and the opportunity to participate in a bonus arrangement that rewards specified performance. The challenge in designing a performance plan for the CFO and the entire accounting and finance function is identifying the actual milestones for the rewards and evaluating the impact on the company's "bottom line." The CFO can also be motivated by the attitude of the CEO and other members of the senior management team. While somewhat of a challenge in a technology-based company with senior managers with engineering and science backgrounds, the CFO must be respected as more than just a "bean counter" and encouraged to provide advice on the best ways to integrate product development strategies with careful financial planning.

Finally, assuming that the CFO has the requisite personal skills, he or she should be provided with opportunities to perform in the investment community and develop into a recognized and, hopefully, trusted spokesman for the company and its products.

§35 ----Performance evaluation

The most important indicator of a successful CFO is the timely implementation and maintenance of a sound finance planning and reporting systems for the company. Failure in these areas is a sure sign of future problems and the CEO must insist that all candidates provide a comprehensive plan for their activities in this area and a strict deadline for establishing a plan once the CFO has been hired. Another area of concern is any apparent weakness in the ability of the CFO to understand the key financial performance indicators relating to the company's specific business. Finally, problems with key investor and financial community relationships can also signal that the CFO is not effectively representing the company.

§36 Optional additions to core management team

The sections above described in detail the duties and responsibilities of the members of the typical core management team of an emerging company. The CEO is generally involved in all functional areas during the early stages of the company's development and also is responsible for setting the company's strategy and designing and implementing the various elements of the company's organizational structure and supporting business processes. Sales, HR, marketing, finance and operations naturally become more important, and demand their own "executive," as the company rolls out its initial products and services. As the company continues to grow the CEO may choose to supplement the core management team with one or more additional positions. Some of these positions represent a decision to break up the duties of one of the initial executive team members (e.g., some of the duties of the VP Marketing may be assigned to new VP positions for Communications and Product Marketing and the VP Sales may be receive assistance in post-sale services from a VP Customer Support). Other positions are necessary in order to ensure that new functional areas added in response to the growth of the company are properly managed and represented in deliberations at the top of the organizational hierarchy. For example, a VP Manufacturing is needed to oversee in-house manufacturing activities and outsourced production of the company's products and a VP Information Technology may be added as the number of company employees expands and creation of multiple remote facilities makes it imperative for the company to have a strong information sharing and communications network. Finally, as the company enters into new long-term business alliances and launches operations in new markets the CEO may look to add specialists on the management team that focus exclusively on strategic partnerships and competitive intelligence.

§37 --Vice president—legal/compliance

A VP Legal/Compliance, also typically referred to as the General Counsel, will be added to the top management group as the company grows to the point where it makes sense to have in-house expertise on the legal and regulatory issues associated with the company's specific business model. Emerging companies often defer recruitment of a full-time legal specialist and rely on input from outside law firms on relevant topics such as intellectual property, employment law and securities laws. Public companies generally do have one or more attorneys on staff to reduce the costs associated with relying on outside law firms and to provide face-to-face advice to members of the executive team and managers and employees throughout the company's departments and divisions. The VP Legal/Compliance is responsible for overseeing all of the company's efforts to comply with applicable laws and regulations and for protecting the interests of the company in its contractual relationships with third parties. In order to fulfill these responsibilities the VP Legal/Compliance must establish appropriate rules and procedures with respect to compliance and contract management and will thus need to work closely with the leaders of all involved departments and divisions. The VP Legal/Compliance is also a key figure in ensuring that the directors and the other members of the executive team fulfill their fiduciary responsibilities and the VP Legal/Compliance should provide guidance to the directors on corporate governance issues.

In many cases the duties of the VP Legal/Compliance include establishment and administration of ethics and compliance programs; however, public companies have begun to separate those responsibilities from the Office of the General Counsel in the organizational structure and place them under the direction of a newly recognized position on the public company executive team—a Chief Ethics and Compliance Officer ("CECO"). A study prepared by the Ethics Resource Center suggested that a CECO should, as a "high-level official within a corporation," take on broad and substantial responsibilities for promoting and upholding the standards of the organization; overseeing the company's ethics and compliance programs; and supporting the CEO and the board of directors in championing corporate values and standards. It is recommended that the CECO be formally recognized as having authority for a critical organizational function and that he or she be allowed to participate in major company decisions and serve as a member of the company's executive team. The CECO should be responsible for the company's risk assessment program and setting company priorities with respect to corporate values and should supervise the ethic and compliance staff embedded throughout the organization. The CECO may report either to the CEO or to the board of directors and decisions regarding the appointment of the CECO and the authority of the position should be made by the board of directors.[5]

§38 --Vice president—communications

A VP Communications may be recruited to work specifically on developing, managing and strengthening the company's brand and image through dissemination of information internally and externally. Externally, the VP Communications would be particularly focused on important stakeholders whose actions and impressions as to the company might have a significant positive or negative impact on the firm's business. For example,

[5] Based on discussion of Ethics Resource Center study in J. Nortz, "Defining the CECO's Role", ACC Docket (January/February 2008), 102-103.

the VP Communications will normally work to develop relationships with media, industry analysts, investors, regulators, governments, consumer associations, trade associations and other business partners. As part of this process, the VP Communications must identify and develop effective communication channels to make sure that each of the stakeholders receives the desired information and message. Specific programs in this area may include identification and training of appropriate spokespersons for the firm from each of the various departments. In turn, the VP Communications must ensure that feedback and information from these stakeholder relationships is quickly and clearly communicated back to other members of the senior management group and persons within each function vested with responsibility for the area's own communications activities. In particular, the VP Communications must accept responsibility for identifying issues and trends in the company's external environment that might have an impact on strategic and tactical decisions.

Internally, it is the responsibility of the VP Communications to be sure that all relevant information and market intelligence is collected, organized and disseminated to all of the appropriate departments, functions and business units. In addition, the VP Communications is responsible for making sure the company is informed about all new important initiatives launched at the senior management level and making sure that low- and mid-level managers have sufficient information and training to explain the initiative to all employees that will be involved. Also, working with the VP HR, the VP Communications should establish procedures for collecting feedback and queries from each internal audience, particularly non-management employees and others that are relatively far away from the senior management group.

The role of the VP Communications within the senior management group is developing an overall communications strategy and plan for the company that is consistent with the identified business and financial goals of the firm. In order to be effective, the VP Communications needs serious support from the CEO, include regular opportunities to meet with the entire senior management group to discuss communications issues and the current status of the company's image and brand in the eyes of external and internal constituencies. The CEO must recognize and acknowledge the importance of the varied range of outside relationships that can be important to business and the fact that good relations to regulators, trade groups, consumer associations and the like can reduce the likelihood that the company will be caught unprepared by unforeseen litigation, legislative developments, or changes in sentiment among important interest groups.

Finally, the VP Communications is the senior manager with primary responsibility for the development of a crisis plan that can be put into place in the event that the firm encounters unforeseen problems, such as a major product recall, labor dispute or an accident at the company's facilities. Any event of this type can immediately threaten the image of the firm and raise doubts in the minds of major stakeholders, such as customers that become uncertain about conducting additional business with the company. The VP Communications must manage the crisis by developing the message that the CEO and other members of the senior management group convey to outside partners and to their staff within the company.

§39 --Vice president—product marketing

A company may hire one or more persons to fill the position of VP Product Marketing. The role of this senior manage is to assume responsibility for defining and positioning a particular product or product line, manage the development and evolution of the product and establish tools and resources for accelerating the sales cycle. In effect, the VP Product Marketing is the senior product manager with responsibility for developing a unique product strategy based on information relating to market needs collected from the sales group, channels, customers and suppliers.

The activities of the VP Product Marketing typically begin well in advance of the time that the product is actually launched and, in fact, the VP Product Marketing is primarily responsible for the coordination of product release activities, including product positioning decisions, pricing determination, creation of effective sales tools and even development of ancillary products and services that can increase the potential "value added" to the customer. The well-prepared VP Product Marketing has a well-documented product strategy, extending over several years, which takes into account anticipated evolutionary changes in the product and its target markets. The VP Product Marketing should have procedures for monitoring and reporting unforeseen changes in market and competitive conditions and should be expected to provide timely reports to the senior executive regarding the status and progress of each product, including market penetration, competitive advantages and disadvantages and lifecycle status, Of course, in order to prepare such reports, the VP Product Manager must have a mastery of information key metrics, including the size of the total available market, the current market share of the company and its competitors and potential opportunities and hurdles.

The VP Product Marketing must work closely with other functional departments, notably R&D and Sales, to ensure that the products will satisfy the apparent needs of the market that begin to emerge during pre-launch testing. While the understanding of, and recognition of the need for, a dedicated product manager should be self-evident, problems often arise when adding this element of management if the CEO does not clearly support that the creation of clear boundaries among Product Development, Marketing and Product Marketing. In addition, the company must be prepared to provide each product manager with the necessary resources to conduct effective market research and create the sales tools necessary to achieve the agreed sales targets. The CEO must also be sure that the product manager receives regular and timely feedback from the sales force regarding the product and the effectiveness of any sales supports, such as advertising and other promotions. Finally, the CEO must be prepared to intervene and resolve any disputes between Product Marketing and Product Development with respect to the pace and direction of a specific new product development effort.

While many of the skills deployed by a product manager are, in many ways, generic; emerging growth firms should seek candidates that have been in successful in senior product marketing assignments with other technology-based companies. Ideally, the experience will come in the same or similar technological area as the one in which the company is active; however, shortcomings in this area can presumably be overcome by a demonstrated knowledge and understanding of the specific technology and application issues that are relevant to the company and the specific product. It is essential that the product manager be trained and knowledgeable in leading product management and product marketing processes.

§40 --Vice president—information technology

The VP IT/MIS would oversee the company's information technology and computing infrastructures. Some of the specific responsibilities and activities would include networks, software acquisition and licensing, employee training programs, internal technical support and implementation of data security programs. The VP IT/MIS would determine the staffing requirements for the IT function and make suggestions as to ways that IT can be used to improve the company's competitive position.

§41 --Vice president—manufacturing

The VP Manufacturing would assume responsibility for the manufacturing operations of the company, including facilities management, supply management, inventory management and storage and warehousing. The VP Manufacturing, working in conjunction with the VP HR, would develop strategies and programs for recruiting and training manufacturing personnel. Other important activities and responsibilities include development and management of quality assurance programs and implementation of environmental, health and safety programs.

§42 --Vice president—product development

The VP Product Development would be responsible for overseeing the company's activities with respect to identification and development of new product opportunities. The VP Product Development would need to work closely with the VP Sales and VP Marketing to ensure that the company's product development strategies are consistent with the needs and requirements of the company's current and desired customer base. The VP Product Development often discharges his or her duties through new product development managers that work with various functional departments in order to gain access to the resources necessary for development and launch of new products and scaled up production once the products have entered the marketplace and the level of demand has been identified.[6]

§43 --Vice president—technology/research and development

The VP Technology, or VP R&D, sometimes referred to as the "chief technology officer" ("CTO"), may be appointed to assume responsibility for the development and

[6] For further discussion, see "Product Development and Commercialization: A Library of Resources for Sustainable Entrepreneurs" prepared and distributed by the Sustainable Entrepreneurship Project (www.seproject.org).

management of an overall technology strategy for the company. The role of the CTO goes beyond simply managing specific R&D and product development projects to include overall planning and coordination of the company's R&D activities; coordinating the technology strategies and activities of divisions and business units; acting as the functional manager of the activities of the technology managers for each of the company's divisions and business units; overseeing technology sales, purchase and licensing activities; providing information and advice to the senior management group and other company managers regarding technology-related issues; and supporting new technology-based business initiatives launched by the company.[7]

§44 --Vice president—customer support

The VP Customer Support would be responsible training and support of customers in the use and maintenance of the company's products. This function involves creation and management of the company's technical support and service programs, including recruiting and deploying field application engineers, launching and maintaining call centers, developing and distributing training and educational programs and implementing internal product training. As the company and function develops, the VP Customer Support may also offer consulting services as a supplement to the company's products.

§45 --Vice president—strategic partnerships

The VP Strategic Partnerships provides leadership and support for the company's key relationships with outside business partners. The VP Strategic Partnerships should begin by identifying the company's existing key partners and those areas in which strategic partnerships might be necessary. Once a need is identified, the VP Strategic Partnerships should locate suitable candidates and manage the selection and negotiation process. Finally, the VP Strategic Partnerships should monitor each key relationship, manage the exchange of information to and from the partners and provide the CEO and other members of the senior management team with an assessment of the net benefits derived from each relationship.

§46 --Vice president—competitive intelligence

The VP Competitive Intelligence would be responsible for collecting, evaluating and disseminating information on the actual and potential competitors of the company. The competitive intelligence is an important element of the company's strategic efforts to identify potential opportunities and threats in the marketplace so appropriate changes can be made in product development and marketing initiatives. The VP Competitive Intelligence should work closely with the VP Sales and VP Marketing to identify key competitors and determine the type of information that each function requires in order to create and implement the most appropriate responses. Once the information is identified

[7] For further discussion, see "Technology Management: A Library of Resources for Sustainable Entrepreneurs" prepared and distributed by the Sustainable Entrepreneurship Project (www.seproject.org).

and collected, it should be packaged in a manner that is easy to understand and that allows for comparisons between different points in time.

§47 --Vice president—revenues

A number of well-known fast growing companies have created a special position on their executive focusing on management of revenue streams. The position is often referred to as the chief revenue officer ("CRO") and the CRO is charged with ensuring that the company remains focused on identifying and exploiting all potential revenue streams for the company's products, services and other core competencies (e.g., technology). In order to accomplish this task the CRO must be given authority to intervene in and oversee the activities of several different departments, each of which will also have its own executive and top management group, including product development, sales, marketing and customer service. The CRO should be involved in every major new business development project and should have a say in which customers receive top priority and when and how the company sacrifices profitability in order to increase revenues, market share and customer loyalty. For example, the CRO should commission the research necessary to determine which customers have the highest potential for long-term revenue growth and should work with various functional departments such as sales and customer service to make sure that those customers are serviced properly. The CRO should also decide whether it is worth pursuing a new sales channel through a discounting strategy that may reduce margins in the short-term yet expose the company and its products to a whole new group of customers. Obviously the CRO must be highly effective in creating and managing cross-functional teams and reconciling the divergent views of managers in different departments. It is also essential for the company to provide real incentives for senior managers of departments such as sales and marketing to follow the direction established by the CRO.

§48 Sustainability executives

The country's first chief sustainability officer was appointed in 2004, at DuPont, and since then many large companies have created a position with that title and other positions within their executive teams that focus on sustainability, environmental impact, corporate responsibility or citizenship.[8] According to the results of a study of sustainability executives from 25 global companies recognized as leading on sustainability, including 18 companies from the US, three companies from Australia and one Canada-based company, conducted by the consulting firm PWC, the responsibilities and activities of the executives (and the average percentage of their time spent on each area) broke down as follows: core business and operations (19%); external engagement (21%); internal engagement (32%) and developing strategy (28%).[9] Core business and

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[8] C. Bader, "What Do Chief Sustainability Officers Actually Do?", The Atlantic (May 6, 2015), https://www.theatlantic.com/business/archive/2015/05/what-do-chief-sustainability-officers-actually-do/392315/ [accessed February 25, 2017]

[9] A. Longsworth, H. Doran and J. Webber, "The Sustainability Executive: Profile and Progress" (PWC, September 2012), 15. Nine of 23 respondents had a background in environment and other background areas included products/operations (4), legal (4), marketing and communications (3), public affairs (2),

operations activities were further broken down into working on operational improvements (5%), supporting product and service sustainability efforts (5%) and engaging suppliers/sourcing (9%) External engagement activities were further broken down into developing partnerships with external groups (12%) and reporting externally to stakeholders (9%). Internal engagement activities were further broken down into communicating and socializing the case for change (8%), supporting senior executives/C-suite management/board of directors (10%), engaging employees and the business units in the organization (8%) and measuring progress and reporting internally (6%). Strategic development activities were further broken down into identifying and analyzing sustainability issues (12%), developing sustainability strategy (9%) and developing the business case for sustainability (7%). When asked about the future, the survey respondents indicated they expected their responsibilities to broaden from strategy development to a range of exceptional challenges including more emphasis on working internally on operational improvements and working with stakeholders outside the company to develop partnerships.[10]

§49 Other additions to senior management team

The number and responsibilities of other senior managers often expands as the company continues to expand and adds new business units that focus on different products and services and/or distinguishable geographic markets. The next layer within the top management team includes the various executive vice presidents who are responsible for the management and direction of the units executing the most important "line" and "staff" activities for the company. An executive vice president of a line activity is responsible for the management of the actual production and sale of specific goods and services. The scope of authority may be defined by products or by market segment (e.g., consumers, industrial customers or geographic region). Given that the executive vice president is near the top of the organizational hierarchy he or she will generally have responsibility for a number of specialized business units that produce related goods and services. An executive vice president of a staff activity will be responsible for specific functional activities that cut across a number of "lines" including research and development, marketing, sales and finance. A large amount of the services provided by staff departments are advisory in nature and they do not produce goods and services on their own; however, they do play an important role in determining and executing the overall strategy of the company and one of the most important, and challenging, organizational design issues for any company is integrating line and staff activities in a way that ensures collaboration and efficiency.

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policy (1) and non-profit (1). The respondents included equal numbers of men and women. 17 of the 23 had a prior internal relationship with their companies before assuming their roles as sustainability executives and average tenure with the company was 13 years. Experience with the company was considered important to success given the need for an "insider's viewpoint" that was network-driven and dependent on an understanding of the organizational culture. Id. at 9.

[10] Id. at 16. For further discussion of sustainability and corporate social responsibility, factors relating to the success of sustainability executives and challenges confronting sustainability executives, see "Corporate Social Responsibility: A Library of Resources for Sustainable Entrepreneurs" prepared and distributed by the Sustainable Entrepreneurship Project (www.seproject.org).

The executive vice presidents report directly to the CEO and President/COO and collectively this group forms the core of the top management team of the company. The President/COO and the executive vice presidents are expected to assist the CEO in his or her efforts to develop and execute the company's business strategy and ideas for the organizational design of the company. In light of these responsibilities it is not surprising that the choices that the CEO makes in putting together the top management team are among the most important determinants of the success or failure of the company. The skills and background of the persons on the top management team not only have a direct influence on the activities that they oversee, they also send a strong message within the company about what the CEO sees as being the most important challenges for the company in the future. In addition, selection as a member of the top management team is generally a prerequisite to further advancement within the company and it is common practice in large corporations for the President/COO to be tapped as the most likely successor to the CEO with the expectation that the President/COO will be actively mentored by the CEO until such time as a transition is appropriate. The composition of the top management team for an emerging company is important enough to trigger active involvement of the key investors in the recruiting process. With larger companies the CEO generally takes the lead; however, the board of directors is now expected to take a more active role in monitoring the performance of the persons selected by the CEO.

Large business organizations will often have a number of subsidiaries, operating companies and divisions that will require the creation of several other layers of management below the executive vice president level. Examples include the following:

- Senior vice presidents and vice presidents may serve as senior-level managers in many of the line and staff units within the company without necessarily being the head of that unit.
- General managers serve as the head of specific operating companies and divisions and often report directly to the CEO or president of the entire company. In many cases they are given the title of "president" of their company or division or may be given a corporate vice president title to emphasize the importance of their role within the entire company although their authority and responsibility is usually limited to their specific company or division.
- Functional managers will be appointed with each subsidiary, operating company or division to manage functional activities that are unique and specific to the particular business unit (e.g., production and marketing managers). While the primary loyalty of these functional managers is to their business unit they may join managers engaged in similar activities for other business units to assist in the development of company-wide core competencies in their functional area and the dissemination of functional-specific information and ideas across the boundaries of business units.

§50 Collaboration among executive team members

As a company grows it will ultimately evolve into an organizational structure distinguished by a number of free-standing functionally-based departments or units, such as sales, marketing, human resources, R&D/product development, or finance. It is certainly important for each department to unit to establish and maintain its own unique focus, coupled with well-defined operational goals and targets that should be consistent with the company's overall business and financial plans. However, in order for the company to be successful the CEO and the other members of the executive team must function as an effective team that collaborates well and has a shared vision of the goals and objectives of the company as a whole.

One of the chief responsibilities of the CEO is leading and managing the core management team. In order to be effective in this role, the CEO must regularly bring all team members into a single room. Each meeting should begin with a detailed explanation and evaluation of the current progress of the company against high-level goals and objectives established at the beginning of the planning period. For example, the full management team should discuss important competitive information from the marketplace that might impact pricing decisions, manufacturing conditions and success in specified sales channels. Primary responsibility for collecting and distilling such information should be clearly delegated, generally to the VP Marketing and/or VP Communications. Thereafter, the group should review progress on key projects and initiatives, including meeting overall targets and the performance of each department with respect to their allocated activities. Finally, each team member should be given an opportunity to express their own personal views on the company, its products, its markets and the challenges that they see from their own unique perspective. Each VP should be able and willing to champion his or her own cause and fight for the resources he thinks he needs; however, while the discussions may be filled with great passion it is the role of the CEO to ultimately reconcile differences and ensure that each department understands how a given compromise is best for the broader interests of the company as a whole.

In addition to the larger group meetings, the CEO must consult with, and receive regular confidential briefings from, each of the senior managers of the company's key functions in order to be sure that the CEO is fully aware of all aspects of the company's operations and activities. For example, meetings should be held with the VP Sales regarding key customer relationships and with the VP Marketing and/or VP Communications to fully understand the company's key media and industry analyst relationships. The CEO and CFO must meet regularly with one another, and with the board of directors or its audit committee, to carefully evaluate the financial results of the business and the quality and responsiveness of the firm's internal controls and overall accounting programs and procedures. Of course, CEO meetings with the VP HR are the best way for the CEO to measure the quality of employee relations and for the VP HR to make suggestions regarding changes in areas such as compensation, benefits, training and employee policies and procedures.

The ability of the CEO to run the executive team as a "real team" is important not only for organizational effectiveness but also for the overall development of the other members of the executive team and even the managers and other employees that report directly to those persons. It should not be forgotten that each of the members of the executive team are also leaders of their own management teams within their functional area or business unit and as such the styles and processes that they observe and learn within the deliberations of the executive team will necessarily be disseminated throughout the organization. The CEO must look at his or her interactions with the other members of the executive team as an opportunity to turn the entire team into a competitive advantage for the organization and a means for teaching those members how they should act as leaders of their own management teams. Among the management and interpersonal principles that should be considered are the following:

- Allowing members of the executive team to participate in decisions about the overall company goals and the strategies that will be used to achieve those goals will cause those members to identify with the goals and be more concerned about the success of the company strategies.
- Allowing members of the executive team to feel that they are valued participants whose contributions are needed reduces concerns about the arbitrary use of power by the CEO and provides the other executives with a greater sense of control and a means for achieving higher levels of self-esteem and self-actualization.
- Active participation of all members of the executive team in discussing and resolving issues that arise in particular areas allows each member to learn more about the problems and challenges confronting other members of the team and facilitates meaningful communication and collaboration across departmental and divisional boundaries.
- The quality of the decisions coming out of the executive team can be increased dramatically by encouraging honest and direct communications, without fear of retribution from the CEO, that allow the combined resources, experience and knowledge of all of the members of the executive team to be brought to bear on particular issues and problems.

It may be difficult for the CEO to objectively evaluate his or her effectiveness as the leader of the executive team. In many cases the CEO may sincerely believe that he or she treats the executive team members fairly and respects their opinion; however, the reality may be that the other team members are still not comfortable with speaking candidly to the CEO and/or calling for debate on significant decisions. Some executive team members may be reticent about speaking up for fear that it will harm their career aspirations for the future and jockeying for position in a real or perceived race to succeed the CEO at some point down the line can poison communications within the team in spite of the efforts of the CEO. The independent members of the board of directors should pay attention to the dynamics of the executive team and conduct regular evaluations of the effectiveness of the team including interviews with the CEO and other executive team members. If problems arise consideration should be given to engaging professional "coaches" who specialize in facilitating communications among executive teams.

§51 --Product development

Product development is a fundamental activity for all companies. For emerging companies, timely development of initial products and services is absolutely essential for survival and the success of those first efforts will determine whether the company will gain access to the capital and other resources necessary to expand the business. While public companies typically have an established portfolio of products and services they nonetheless must continue to innovate in order to stave off competition that can render their products and services obsolete and quickly plunge the company into disarray that can lead to reduction in shareholder value and loss of employees and customers.

The CEO should meet regularly with the company's core "new product" team, including the VP R&D, VP Marketing and/or VP Product Marketing, to be briefed on proposed new products, the status of products under development and the initial results for recently launched new products. In addition, the all of the other members of the core management team have some level of continuous involvement in product development activities including the following:

- The VP R&D must collaborate with VP Sales, VP Marketing and VP Product Marketing to develop and support new product development and advancement strategies. The VP R&D should be proactive in the efforts of the R&D function to generate a continuous flow of new product ideas based on feedback from Marketing and Product Marketing.
- The VP R&D must work closely with VP Marketing and VP Product Marketing to effective manage and allocate the R&D resources to ensure that projects with the highest opportunity are given priority within the R&D function.
- The VP R&D must collaborate with VP Marketing to create the technical content necessary for the marketing collateral and customer service and support materials. On a related note, the VP R&D check the accuracy of any technical materials prepared for use by the VP Communications.
- The VP R&D must work with the CFO to develop the most profitable approaches to pricing, procurement and manufacturing costs.
- The VP R&D, VP Product Marketing and CFO must establish the best financial reporting system for each product and product line to monitor performance against key budget milestones and the actions of competitors.
- The VP R&D, along with the CEO, is chiefly responsibility for planning and implementation of initial manufacturing activities which will ultimately be passed off to the oversight of the VP Manufacturing when warranted by scale of production.
- The VP R&D should collaborate with the VP Sales to bolster and support the company's technical support and customer services offerings. At some point a VP Customer Service will be brought in to oversee this important functional interface with the company's customers.

§52 --Sales

For an emerging company sales is the responsibility of every member of the core management team and an emerging company CEO can expect to spend a significant amount of time meeting with initial customers to close sales and just learn more about their specific requirements in relation to the proposed products and service of the company. Once a VP Sales is added to the core management team he or she will be responsible for coordinating a variety of activities with the executives in charge of other departments including the following:

- The VP Sales needs to work closely with the VP R&D and VP Marketing to share and evaluate information obtained by the sales force from interactions with customers and observation of the activities of competitors.
- The VP Sales should consult with the VP Product Marketing and CFO to understand the economics behind pricing decisions for each product.
- The VP Sales should meet regularly with the VP Marketing and VP Product Marketing to evaluate the strengths and weaknesses of the company's products and develop effective sales tools for communicating effectively with customers.
- The VP Sales should collaborate with the VP Product Marketing and the CFO to develop value-added offerings that can be used to close sales when price alone is not a distinguishing factor.
- The VP Sales should consult regularly with the VP Marketing and VP Communications to know and understand the message that is being conveyed to prospective customers in the marketplace by the company's communications and promotional efforts.
- The VP Sales and VP Product Marketing should meet regularly with the CFO to receive and review financial reports relating to sales activities and work with the CFO to develop reports that accurately measure sales activities by product line, salesperson and territory.
- The VP Sales should receive regular communications from the VP Marketing regarding qualified sales leads.
- The VP Sales should collaborate closely with the VP R&D to develop and manage that company's technical support and customer service offerings.
- The VP Sales should meet regularly with the VP HR to discuss current resources requirements for the sales function and emerging trends in compensation plans for sales personnel.
- The VP Sales should collaborate with the VP Marketing and VP Product Marketing to develop and implement appropriate incentive programs for all employees that are involved in the sale and promotion of the company's products and services.

§53 --Marketing

Companies must have a marketing strategy that not only covers its products and services but also the overall image that the company wishes to convey to all of its stakeholders including employees, investors, business partners and members of the general public. Initial responsibility for all of the marketing initiatives will be vested in the VP Marketing who should focus on the following activities:

- The VP Marketing should consult with the VP R&D, VP Sales and VP Communications to evaluate market research regarding the company and its image and develop appropriate strategies for positioning the firm in the marketplace.
- The VP Marketing should consult with the VP R&D on a regular basis to collect information about new products or product advancements, including release dates. This information can then be used to develop sales and marketing materials, including advertisements, packaging and collateral materials. The VP Marketing can then forward this information to the appropriate sales channels. The VP Communications should also be involved in order to develop a media and public relations campaign to support the launch of the new product.
- The VP Marketing should consult with the VP R&D and VP Sales to identify the key selling points for the company's products and develop strategies for effectively communicating them to customers.
- The VP Marketing should coordinate development of the company's web site with input from the VP Sales, with respect to information provided to customers; the VP Communications, with respect to content to be made available to the media and for other public relations purposes; the CFO, with respect to information prepared for dissemination in the investment community; and the VP HR, with respect to information for use in recruiting potential employees.
- The VP Marketing should collaborate with the VP Communications to develop the messaging regarding the company and its products that is disseminated through advertisements, trade shows, events and other communications methods.
- The VP Marketing should meet regularly with the VP Sales and VP Communications to evaluate the market research relating to the perceived image and position of the company in the marketplace.

The following activities will be performed by the VP Marketing during the initial stage of the company's development and then be transferred to the VP Product Marketing when that position is filled:

- The VP Product Marketing will coordinate with the VP R&D and VP Sales with respect to the development of the company's product line, including collection and evaluation of market research and customer feedback.
- The VP Product Marketing will collaborate with the VP R&D regarding management of the company's product development activities, including the resources allocated to product development and the priorities and schedules of the team.
- The VP Product Marketing should consult with the CFO regarding the appropriate pricing strategies for the company's products.

In addition, the VP Product Marketing should take on the following responsibilities upon assuming the position:

- The VP Product Marketing should collaborate with the VP R&D and VP Sales to direct the development of the company's product line based on market information, feedback, and formal research mechanisms.

- The VP Product Marketing should collaborate with the VP Sales with respect to the development of sales tools, demonstrations, presentations and training for sales personnel on how to handle objections and questions.
- The VP Product Marketing should collaborate with the VP Sales and VP Communications to develop and direct the internal pre-launch program for new product releases, including dissemination of information to sales personnel and internal staff involved in introducing the product to the marketplace.
- The VP Product Marketing should meet regularly with the VP HR to discuss current resources requirements for the marketing function.

§54 --Finance

Once hired, the CFO should immediately become a key member of the company's executive team and will eventually have a profile that rivals in many ways that of the CEO. The CFO has primary responsibility for the financial resources of the company and should work closely with other executives to ensure that those resources are expended efficiently. For example, the CFO needs to be advised of all proposed new product developments by the VP R&D to establish a budget and ensure that the company has sufficient financial resources allocated to support the development effort. In addition, the CFO should be consulted by the VP Sales and VP Product Marketing with respect to pricing decisions to be sure that the prices are consistent with the company's overall profitability targets. The CFO should also collaborate with the VP Communications in identifying the information and message that will be conveyed to the investment community regarding the company. Finally, the CFO should consult with the CEO with respect to management of the company's legal and regulatory affairs.

§55 --Human resources

Human resources management is a key determinant of success for any organization and members of the executive team must be mindful of the need for collaboration in determining the policies and procedures that will apply to the company's managers and employees. When the company is first launched and the staff is small there is generally little focus on formal HR processes and the CEO has an opportunity for face-to-face action with many employees on a regular basis. As the company grows, however, the CEO can no longer be involved in every hiring decision or in the details of setting the organizational role for each employee. At that point a director of HR, or a VP HR, should be brought in to develop work with the members of the core management team on identifying and satisfying their HR requirements and designing and implementing an HR infrastructure that complies with applicable laws and regulations and provides a foundation of motivating and nurturing the company's managers and employees.

One of the main responsibilities of the VP HR is to work closely with the CEO on those elements of the overall organizational design that are most relevant to the company's employees—HR management, including organizational learning; organizational culture and values; and creation and monitoring of business processes and lateral linkages to support communication within the organizational structure. These are key issues and the decisions made during the early stages of the company's existence will continue to have an impact for long periods into the future as studies show that it is difficult to alter personnel practices after they have been in place and employees have adapted to their advantages and disadvantages. The VP HR must also meet and collaborate with each of the executive team members to establish a HR strategy for each functional area including an inventory of skills requirements and compensation and incentive programs that are both appropriate for the functional activities and consistent with the overall rewards system established for the entire organization. In addition, the VP HR should consult with the VP Communications regarding the image of the company that is being conveyed to prospective employees. Finally, the VP HR should consult no less than annually with the CEO and the CFO to develop and implement a budget that adequately covers recruitment, pay and benefits, and training.

§56 CEO succession planning

Selection of the CEO is one of the more important responsibilities of the board of directors and since no CEO will occupy the position forever the board must establish procedures for ensuring that CEO succession issues are handled smoothly and the board makes the best choices for the overall good of the company. The pressures in this area have increased substantially as directors have been held more accountable for CEO performance by shareholders, employees and other stakeholders. CEO succession has also become more relevant as turnover in the position has increased and statistics in recent years among public companies show that roughly one in seven companies make a change at the top every year. Not all changes are due to poor performance since attrition occurs naturally as the CEO reaches retirement age or simply decides voluntarily to step aside. However, studies show that about one-quarter of the searches for a new CEO arise from non-routine circumstances.

The National Association of Corporate Directors ("NACD") commissioned a 2006 survey among directors of companies that had gone through a change of CEO and identified the following list of "10 Best Practices for Board Involvement in CEO Succession": plan three to five years out; ensure full board involvement; establish an open and ongoing dialogue and annual review; develop and agree on selection criteria; use formal assessment processes; interact with external candidates; stage the succession but avoid horse races; develop internal candidates rather than recruiting externally; have the outgoing CEO leave, or stay on as chair for only a limited period of time; and prepare a comprehensive emergency succession plan. An earlier NACD report focused on the various responsibilities of the board of directors, the incumbent CEO and other members of the executive on the succession process. Among other things, directors were urged to create a committee of the board to oversee the succession process, make sure that succession was a regular part of the board's agenda during the course of the year and stay in touch with other members of the incumbent executive team. Directors should not ignore the need to conduct a regular performance review of the CEO at least once a year and should make sure that succession planning is one of the areas with respect to which the incumbent CEO is evaluated. As for the incumbent CEO, he or she should actively participate in the succession process, consult outside models of succession and make sure that the board of directors has open access to executive team members. Finally, executive team members should be encouraged to provide advice to directors regarding the desired attributes of candidates for the CEO position.

Notice should be taken of the growing interest among various groups of public company shareholders to force companies to be more forthcoming about their succession plans for their CEOs. Historically, companies have resisted shareholder proposals on this issue and have excluded them in reliance on Rule 14a-8(i)(7) under the Securities Exchange Act of 1934 because such proposals related to termination, hiring or promotion of employees. However, in October 2009 the Securities and Exchange Commission ("SEC") published Staff Legal Bulletin No. 14E (CF) stating its view that companies may generally not rely on Rules 14a-8(i)(7) to exclude a proposal that focuses on CEO succession. The SEC observed that "one of the board's key functions is to provide for succession planning so that the company is not adversely affected due to a vacancy in leadership" and that "CEO succession planning raises a significant policy issue regarding the governance of the corporation that transcends the day-to-day business matter of managing the workforce". As a result, shareholders are now being given the opportunity to vote on proposals that their companies adopt and disclose written and detailed CEO succession planning policies with specified features, including that the board develop criteria for the CEO position, identify and develop internal candidates, and use a formal assessment process to evaluate candidates.

Developing Inside-Outside Leaders

A number of researchers, including Joseph Bower, a professor at Harvard Business School, and Jim Collins, the author of "Good to Great", have argued that companies perform better when they appoint insiders as their CEO. However, the problem that many companies face when it comes time to appoint a new CEO is that they have been managed with leadership development as an objective, which means that they often feel they have no choice but to turn to an outsider to fill the position. Bower observed that both insider and outsider CEOs have strengths and weaknesses at the start: insiders know the company and its people, but are often blind to the need for radical change; and outsiders see the need for a new approach, but are able to effectively make the necessary changes because they don't know the organization or industry sector well enough. The answer, according to Bower, is a dedicated effort by companies and aspiring leaders within those companies to nurture "inside-outside leaders", described as "internal candidates who have outside perspective.

According to Bower, companies need to have a pool of CEO candidates who have the following four core skills necessary in order to move the firm forward and produce the desired results: the ability to judge where the world and the company's markets are headed, and frame a vision of how the company should reposition itself; the ability to identify (and if needed recruit) the talent that can turn this vision into reality; an understanding, in a deep and substantive way, of the problems the company faces; and comprehensive knowledge of how the company really works, including being fully embedded into the firm's administrative inheritance and deep and trusting relationships with key players. While every CEO needs to have a clear outside perspective, three of the four skills mentioned by Bower require extensive inside knowledge that usually has been accumulated over a long span of time while performing roles and completing activities that expose a person to challenges specific to the company and its industry.

Bower argued that his research supported the proposition that:

> ". . . [T]he best leaders are … people from inside the company who have somehow maintained

> enough detachment from the local traditions, ideology, and shibboleths to maintain the objectivity of an outsider. They know the traditions and the people of the company but also know how those will have to change. They know what best-in-class looks like as well as how the class will change. They're able to look at the organization's administrative heritage as if they had just bought the company."

Companies and candidates for leadership positions have a role to play in nurturing inside-outsider leaders. From the company's side, it all begins with recruiting from a diverse pool of individuals who are both highly talented in their area of specialization and have the potential to be general managers. Hopefully, these individuals, given the right opportunities, will develop the ability to manage effectively in the context of the company's strategy, systems, and culture, which means they will become good "insider leaders". The challenge for the company is to provide these candidates with resources and support to develop an outside view, and this should be a core goal of the company's leadership development program. However, prospective leaders need to manage their own development from the beginning of their careers with the company, and Bower provided the following list of questions that aspiring CEOs should continuously consider as they move down their paths within the company and take on different roles:

At Recruitment:

- Why are you being hired? Is it just for a job today, or is there a career path?
- Is this a company where talented people stay for many years? If not, will the experience it provides make you attractive to future employers?
- How will the company help you grow? What pattern of assignments will you get? Will you have time to learn?
- What kind of mentoring will you receive?
- What kind of training is offered? What is done in-house? What is done through outside programs?
- How soon can you run a business? If you don't get general management responsibility early, you can't learn the job.
- Is this a cookie-cutter program, or are young people given the chance to try out new ideas?

Once You Are On The Job:

- Do you meet your numbers?
- Do you help others? Are you developing their talent?
- What do you do for your peers? Are you just their in-house competitor?
- When you manage up, do you bring problems—or problems with possible solutions?
- Are you transparent? Managers who get a reputation for spinning events gradually lose the trust of peers and superiors.
- Are you developing a group of senior-manager friends who know you and are willing to back your original ideas with resources?

Self-Development:

- Is your network expanding outside your division? What about outside the company? Have you visited with customers, vendors, and related organizations? If you have a union, have you ever talked with its leaders?
- Do you know individuals in your community who aren't businesspeople? You can learn more about what you don't know from them than from people just like you.
- Do you attend seminars or expand your general knowledge beyond your immediate business?
- Are you involved with the community in some way? You can develop many leadership skills by working with an outside organization.

Living a Balanced Life:

- Are you there for your family? Managing can be lonely—support of family can be invaluable.
- Have you cultivated a relationship with someone—spouse, close friend, mentor—who tells you the truths you don't want to hear? The higher you rise in your organization, the more your colleagues will tell you what they think you want to hear.

The questions above shed further light on the role that the company can play in the development process for its prospective leaders. In particular, performance evaluation, and support and feedback from experienced mentors, is essential for leadership candidates as they wind their way through a series of increasingly complex assignments over a number of years. Candidates needed to be rigorously trained in planning, budgeting, performance evaluation and compensation in order to understand how to develop and present deliverable plans and become accountable for execution of those plans. Mentors also need to work with leadership candidates to nurture, yet temper, their tendency to think "outside the box", a valuable outside trait yet one that must be managed carefully so as to not tear to quickly at the inside culture and established ways of doing things. As Bower explained: "The trick is to give the young manager the time and leeway to turn a new idea into a great business without giving him the rope to hang himself. The mentor must make sure resources are adequate but not excessive, dole them out stage by stage, and then wait and see. The mentor, in other words, is a kind of venture capitalist, teaching potential leaders how to make new ideas work."

Source: J. Bower, "Solve the Succession Crisis by Growing Inside-Outside Leaders", Harvard Business Review, 85(11) (November 2007).

§57 Succession planning for other C-level executives

A great deal of attention is properly devoted to succession planning for the CEO; however, the directors and the CEO should also be mindful of the impact of the sudden departure of unavailability of other C-level executives who oversee essential areas of the business including marketing, operations, information technology, human resources and finance. Studies among Fortune 500 companies have quantified the risk that companies may have to replace one or more of the top executives. For example, turnover among chief financial officers is increasing due, in part, to the escalating demands placed on that position by new laws and regulations pertaining to corporate governance, accounting procedures and internal controls. It is now common for larger firms to go through multiple CFOs in a relative short period of three to five years. The CEO of a Fortune 500 company can also expect that he or she will need to find new C-level executives for marketing and information technology multiple times during the typical CEO tenure.

A significant percentage of large firms—Fortune 1000 companies—do not have any formal succession plan in place for executives other than the CEO and typically plead that they simply do not have the time and budget to establish and maintain a leadership development program that will ensure that the company has a pool of qualified and informed candidates who can step easily and quickly into new roles as heads of important functional and business units. The problem is even more urgent for smaller companies since the senior executives generally have little or no staff support and therefore horde most of the knowledge about key projects relating to the departments. If they become unavailable there is no one who can quickly fill the gap. For example, if an emerging company suddenly loses its CFO in the middle of negotiations for a new round of venture capital financing or an expansion of the company's line of credit with its bank the impact may be disastrous since it will take weeks or months to recreate the knowledge and information that the departed CFO should have been able to provide easily to the funding sources. The result may be a failure to close a deal or a closing on terms much less favorable to the company than would have been the case if the CFO was still on board or a qualified replacement was readily available when the CFO left.

A sudden loss of a C-level executive followed by a long period without a replacement can have other adverse effects on a company's business. For example, studies show that a lack of a smooth transition for a key executive position, regardless of the reasons therefore, can lead to a loss of confidence in the CEO and other senior executives among the employees who would normally report to the person in that position as well as deterioration in employee morale and productivity. In addition, as with the example above regarding negotiations on financing, the lack of leadership causes ongoing projects to stall due to uncertainties about future leadership support. A correlation has also been found between loss of a C-level executive and erosion of stock prices. On the other hand, companies which are able to quickly identify qualified replacements from within are much less likely to run into serious problems if there is a need for a change in the executive team. In fact, a succession plan for C-level executives that relies on talented managers that are already working for the company can be important recruitment and retention tool.

Succession planning for C-level executives should be driven by the CEO and should involve all of the members of the executive team well before there is an urgent and immediate need for a replacement. One way to make sure that the company is not caught unprepared is to make sure that everyone on the executive team is kept abreast of important projects in other departments. The goal is to make sure that all executives know what is going on in the company and can step in to run other departments temporarily and contribute to nominations of qualified candidates from inside the company to take over departments on a permanent basis. The CEO can get others involved by soliciting their input on strategic and business initiatives that require execution across department boundaries including review of annual operating plans, new products and services, acquisitions and major IT projects. In addition, all C-level executives should be required to meet regularly with senior managers in their departments and actively serve as mentors to develop the skills of potential successors. C-level executives should be required to provide input to the human resources department on a regular basis on the performance of key subordinates and the company should launch a professional development program that not only creates a possible successor pool but also generates benefits even before participants are asked to move up in the form of lower turnover rates and great enthusiasm about working for the company.

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Dr. Alan S. Gutterman is the Founding Director of the Sustainable Entrepreneurship Project (www.seproject.org). In addition, Alan's prolific output of practical guidance and tools for legal and financial professionals, managers, entrepreneurs and investors has made him one of the best-selling individual authors in the global legal publishing marketplace. His cornerstone work, *Business Transactions Solution*, is on online-only product available and featured on Thomson Reuters' Westlaw, the world's largest legal content platform, which includes almost 200 book-length modules covering the entire lifecycle of a business. Alan has also authored or edited over 40 books on sustainable entrepreneurship, management, business law and transactions, international law business and technology management for a number of publishers including Thomson Reuters, Kluwer, Aspatore, Oxford, Quorum, ABA Press, Aspen, Sweet & Maxwell, Euromoney, CCH and BNA. Alan has over three decades of experience as a partner and senior counsel with internationally recognized law firms counseling small and large business enterprises in the areas of general corporate and securities matters, venture capital, mergers and acquisitions, international law and transactions, strategic business alliances, technology transfers and intellectual property, and has also held senior management positions with several technology-based businesses including service as the chief legal officer of a leading international distributor of IT products headquartered in Silicon Valley and as the chief operating officer of an emerging broadband media company. He has been an adjunct faculty member at several colleges and universities, including Boalt Hall, Golden Gate University, Hastings College of Law, Santa Clara University and the University of San Francisco, teaching classes on a diverse range of topics including corporate finance, venture capital, corporate law, Japanese business law and law and economic development, He received his A.B., M.B.A., and J.D. from the University of California at Berkeley, a D.B.A. from Golden Gate University, and a Ph. D. from the University of Cambridge. For more information about Alan, his publications or the Sustainable Entrepreneurship Project, please contact him directly at alangutterman@gmail.com, and follow him on LinkedIn (https://www.linkedin.com/in/alangutterman/).

About the Project

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