

CORPORATE MINUTES:

A MONOGRAPH

FOR THE CORPORATE SECRETARY



**SOCIETY OF CORPORATE SECRETARIES
& GOVERNANCE PROFESSIONALS**

The Society of Corporate Secretaries and Governance Professionals, Inc. (the Society) is a professional association founded in 1946 as the American Society of Corporate Secretaries.

Our name was changed in 2005 to reflect the corporate governance role that so many of our members ~~—~~more than 3,800 corporate attorneys and governance and business executives representing more than 2,500 companies ~~—~~play in their organizations. The job responsibilities of our members include working with corporate boards of directors and senior management regarding corporate governance, ethics and compliance; assuring issuer compliance with securities regulations and listing requirements; and coordinating activities with shareholders, including proxy voting for the annual meeting of shareholders and negotiation of shareholder proposals.

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SOCIETY OF CORPORATE SECRETARIES
& GOVERNANCE PROFESSIONALS

October 2006

Dear Reader,

The Corporate Practices Committee is pleased to issue the enclosed updated edition of our *Corporate Minutes* monograph. We hope it will serve as a useful tool for both new and experienced corporate secretaries in documenting the activities of the board and its committees.

I would like to thank Dennis Codon, Bob Lamm, and Michael Geilbelson for their help in updating and revising it. Thanks also to the members who provided sample documents from their own companies for the appendices – these additions will certainly make *Corporate Minutes* even more valuable as a resource and benchmark.

We would like to make it clear that this monograph is not a legal treatise. Not all applicable laws are referenced and cited, and those that have been cited may not apply to your company. You should always research the legal requirements applicable to your company in preparing board and committee minutes. Additionally, this manual does not attempt to set forth an “ideal” procedure for taking and keeping minutes. Rather, it represents the general practices widely employed by members of the Society of Corporate Secretaries and Governance Professionals.

The Committee hopes that this publication will be a “living” document open to new ideas and experiences that readers may wish to share. Please direct any comments to Geoff Loftus at the Society’s National Office.

Sincerely,

Rhonda Brauer
Chairman
Corporate Practices Committee

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Prologue

At a council held at Princeton on the 12th Day of November, 1777.

His Excellency was pleased [to] lay before the Board a Resolution from the Honourable the Continental Congress, recommending it to the Executive Powers of the several United States to appoint the 18th Day of December next as a Day of Publick Thanksgiving, for the Reasons set forth in the said Resolution.

Whereupon the Council advised His Excellency to appoint the said 18th Day of December next at a Day of Publick Thanksgiving, and to publish the same by Proclamation,—which was accordingly done, and the said Proclamation was issued in the Words following, viz.¹

At a Council held at the House of John Ringo in Amwell on the 30th of December, 1777.

(Margin Note: “A Blank of two Pages was left here for the Proclamation respecting the thanksgiving and by Mistakes those Entries of 30th December were inserted in it, by which Means they appear before those of the 16th of November and 9th of December, which must be regulated in engrossing the Minutes in the Bound Book.”)

PRESENT

His Excellency the Governor
The Vice-President
Mr. Condict
Mr. Linn...²

Introduction

The prologue, an example of minutes from U.S. history, illustrates how constant the procedure for minute-taking has been — in terms of what this Secretary chose to include, if not his spelling and tone, little has changed in the past 225 years. And we can appreciate how he strived in several particulars related to his job:

- To be consistent;
- To be complete; and
- To reconcile variation or error before finalizing the minutes for preservation.

In many ways, minutes are a convention. However, for a corporation, they fulfill a legal objective, and this is where the role of the Corporate Secretary is especially

sensitive, as litigation, securities and other laws and regulations affecting corporate businesses proliferate, and corporate minutes comprise critical records in documenting the diligence (or lack thereof) of directors and officers.

While there are few hard and fast rules about minute writing, there is a wealth of knowledge based on the efforts of experienced corporate secretaries, such as those represented in the membership of the Society of Corporate Secretaries and Governance Professionals (the Society). Using a combination of experience, judgment, and tradition — and some statutory and other legal guidance — they regularly prepare minutes of board and committee meetings.

This monograph examines the purpose and necessity of corporate minutes, their style and content, the role of the Corporate Secretary as minute taker, and the processes for filing, retaining, and indexing minutes for future reference.

I. Why Are Minutes Necessary?

A. Corporate Function

Corporate minutes serve many purposes, including the following:

- To provide an official record of all decisions reached and actions taken by the corporation's governing body;
- As a resource for identifying or communicating to outside parties the fact that a particular action was taken by the board;
- As a record of board or committee diligence in addressing particular issues;
- As evidence of the separate corporate existence of the company; and
- To preserve company history.

B. Statutory Requirements

Corporate minutes serve as the permanent, official record of the business transacted and action taken at meetings of the board of directors, board committees, and shareholders. The Model Business Corporation Act provides that: “A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors. . . .” and “A

corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.”³ In addition, many state statutes require, directly or indirectly, that minutes be kept. Delaware General Corporation Law, for example, provides in part that: “One of the officers [of a Delaware corporation] shall have the duty to record the proceedings of the meetings of the stockholders and directors in a book to be kept for that purpose.”⁴ In the absence of a statutory requirement, the lack of written minutes does not affect the validity of the board or committee action taken. But as a practical matter, minutes are almost always prepared and permanently retained.

II. Preparing The Minutes

A. Points To Remember

As noted, minutes constitute a company’s history of the collective action of its board of directors and its committees, and therefore serve as vital legal records. It is important, especially in a time of increasing litigation by shareholder activists and others scrutinizing the corporate business community that minutes accurately reflect the various items presented at the meeting, and the actions taken. Just as the minutes show what actions are taken at a meeting, they also may be used to infer what actions were *not* taken at the meeting and what matters were *not* considered. For this reason, the rule of “less is more” does not necessarily apply.

For example, minutes that include information about the way directors exercised their business judgment can often be more helpful than hurtful when that judgment is questioned. Delaware law presumes that directors act honestly, on an informed basis, and in the best interests of the company in making a business judgment. However, that presumption can be rebutted in a number of ways, including by showing that the board acted without informing itself of all reasonably available, material information. The minutes create an opportunity to demonstrate not only the completeness of the information considered by the board, but also the thoroughness of the process by which the directors reached their conclusions.

Therefore, corporate secretaries should make sure that minutes clearly set forth exactly what action or other matters occurred at the meeting, and if action was taken on a

particular matter, that the minutes reflect that action. If documents are incorporated by reference or attached to the minutes, they should be specifically identified in the minutes themselves. If any limitations were placed on the action taken or authority granted, such limitations need to be explicit.

Additionally, although the minutes are the official record of the actions taken by the corporation, all of the records created before the meeting, in the meeting and after the meeting, including drafts of the minutes, *are business records of the company subject to discovery in litigation*. This includes not only hard copies of documents, but also electronic “documents” – including e-mails – prepared on computers, PDAs, and other electronic devices. The disclosure, discovery, and use of electronic documents in litigation is no different than paper documents despite the fact the fact that the documents may be kept only in an electronic form. *Accordingly, all such documents should be retained and discarded in compliance with the company’s approved document retention policy.* (See Section X, starting on page 27. A sample retention policy is in Appendix H on page 49.)

B. The Meeting Agenda

There is little statutory, regulatory, or case law guidance on what should be included in corporate minutes, or the form they should take. In practice, minutes typically cover each item set forth on a final agenda for the board or committee meeting, as well as any significant or substantive discussion of other items related to the performance by the board of committee of its duties.

In preparing for an upcoming meeting, the Corporate Secretary may refer to the final meeting agenda to prepare an outline, or “skeleton,” of the board or committee minutes. The skeleton can be very brief, or can be written out and contain information provided to directors in advance⁵ that describes a proposed action, with blank space for summaries of the discussion and the final action.

C. A Checklist

There are a number of items which corporate secretaries should include in their minutes. The following checklist is a starting point for reference:

- Date and location of board or committee meeting;
- Whether the meeting is a regular, organizational or special meeting;
- Whether the meeting is held by telephone conference call or in person;
- Beginning and ending times;
- Attendance by directors or committee members;
- Names and titles of attendees and presenters;
- Indication of action taken (e.g., discussion, approved, deferred, noted receipt of information, etc.);
- Comings and goings of directors or committee members after start of meeting if a vote is taken or sensitive issues are discussed while one or more directors are absent;
- Resolutions adopted; and
- Reference to briefing materials disseminated in advance or material discussed or presented at the meeting.

Depending on the nature and culture of the company, the Corporate Secretary may determine to include more standard items, or to exclude some of the items listed above. For example, some corporate secretaries prefer not to note the ending time of a meeting, as doing so can be used to support a claim that the directors did not devote sufficient time to a particular matter.

III. Taking The Minutes

A. Methodology

Corporate minutes are the record of what ultimately occurred at a particular meeting of a board or a committee, and not a transcript of everything said or done. In fact, attempting to produce a verbatim transcript, or audiotaping a board meeting, *are not recommended practices*.

As noted, many corporate secretaries find it efficient to edit and add to skeleton minutes prepared before the meeting. Whether using such an outline or not, however, notes are written either in longhand or shorthand, or entered directly on a computer. Within the membership of the Society, many corporate secretaries still write out notes longhand.

Although they have access to computers, they find that they can more easily control the retention and disclosure of a single paper copy of their notes. In addition, data recorded on a computer can be retrieved in litigation and used to impeach directors' testimony or even the minutes themselves; this can be a significant risk, since the wording of notes prepared during the meeting may differ significantly from the wording of final minutes, which are given considerably more thought and review. (Of course, some also refrain from using computers during the meeting because of the keyboard noise or because they find that keyboarding distracts some directors.) Others, however, do use a computer and enter the minutes in near-final form during the meeting. In the end, each individual will adopt the method most comfortable and useful for him or her, and which facilitates compliance with the document retention policy.

Regardless of the method used, it is important always to use care in note-taking, since any notes of the meeting may be discoverable in litigation. Avoid writing personal or irrelevant notes among the meeting notes, and write neatly if using pen and paper — poor handwriting or sloppy shorthand will not exempt notes from discovery. Document retention practices, discussed more fully beginning on page 27, should cover the routine retention and disposal of any notes taken by the Corporate Secretary, as well as any notes made by individual directors, including marginal notations on briefing materials or other documents distributed at the meeting. (While it is not the primary focus of this monograph, the taking and disposition of directors' notes is a matter of concern to many corporate secretaries. Ideally, directors should be advised to refrain from taking notes, that any notes they take belong to the company, and that all such notes will be collected at the end of meetings. This is because individual directors' records do not reflect the official acts of the company, and because, if there is more than one official set of the company's records, the company cannot properly control their retention and limit their disclosure to persons entitled to review them. The failure to control documents properly and to limit their disclosure could result in the inadvertent waivers of privileges and privacy rights. As a practical matter, however, it is difficult to prevent directors from taking notes, and there are legitimate reasons why a director may choose to do so.)

As indicated above, if a computer is used, deleting a document will not remove it irretrievably from the computer's hard drive nor erase the metadata which, potentially, shows

the authors, editors, and reviewers of a particular document, and the work done by each of them on a particular document. Accordingly, special consideration should be given to the retention of documents saved in electronic form.

B. Dealing With Issues of Content

Depending upon the topics at hand and the personalities of the participants, each board or committee meeting has its own atmosphere, and its outcome can never be fully predicted. But in any meeting, the Corporate Secretary has the responsibility for deciding what to record and what parts of the discussions are relevant. There is added pressure when a significant transaction, such as a merger, is considered at the meeting, or when any other matter addressed at the meeting becomes the subject of dispute or litigation. In cases like these, the Corporate Secretary must be alert to capture the substance of the discussions, as well as key words in formulating motions, if resolutions have not been drafted in advance of the meeting. Particularly in an era when an ever-increasing number of subjects can be the subject of litigation or shareholder activism, the Corporate Secretary must always be alert to the risks associated with board action and, consequently, at the top of his or her “game.” One other important note is that the Corporate Secretary should obtain a copy of any material distributed for consideration at the meeting, for later destroying or filing with the minutes.

Another factor to appreciate, especially in crisis situations, is the difficulty of keeping track at board meetings of all matters being discussed and of various directors’ views on these matters. Complicating the problem may be the fact that multiple “side conversations” may be taking place among directors. It may be advisable for the Corporate Secretary to check with others as to what was stated, and it may be wise to have more than one person’s impressions considered in these types of situations — *e.g.*, the Corporate Secretary and the General Counsel or a member of the board. All notes taken at the meeting should be turned over to the Corporate Secretary afterwards, so that he or she can synthesize the notes into regular minutes, and ensure that they are retained and disposed of in accordance with the company’s policy.

C. Exposure Risk

In drafting minutes, the Corporate Secretary should always keep in mind the fact that

minutes are generally discoverable in litigation and enforcement actions, and therefore, special care should be taken to ensure that they are not only accurate and complete and contain no unnecessary information, but also that they correspond to an evidentiary record appropriate for public disclosure. Care should be taken to edit minutes to make certain no future traps or waivers of privileges or privacy rights are created. The tax area may create particularly sensitive problems. Privileged matters, such as advice of counsel regarding litigation should likewise be dealt with appropriately. The Caterpillar enforcement action (see below), provides an example of how minutes need to be considered carefully in the context of securities filings, particularly in terms of consistency with the Management's Discussion and Analysis (MD&A) in periodic filings on Forms 10-Q, 10-K, or the Annual Report.

In March 1992, Caterpillar Inc. entered into a consent decree with the Securities and Exchange Commission (SEC) in which the company agreed to comply with the SEC's MD&A requirements and to establish new procedures to prevent future violations.

The Caterpillar decision⁶ noted discrepancies between the company's board minutes — which showed that the board was apprised of a volatile situation involving a major foreign subsidiary that could have “significant [negative] impact” on Caterpillar's “overall results for 1990” — and the company's MD&A discussion in its 1989 Form 10-K filing, which failed to focus on the company's potential problems with its subsidiary. One key lesson to be learned from Caterpillar is that a review of board minutes should be incorporated in the due diligence process for preparing a company's MD&A disclosure and other securities filings.

What is not recorded in the minutes can also present an exposure risk, since just because something is not included in the minutes does not mean it did not happen or cannot be discovered in litigation. For example, when someone says, “This is off the record” or “Don't put that in the minutes,” the Corporate Secretary should – subject to ethical obligations – generally keep the remark out of the minutes, but that does not mean that it was not said, nor that someone will not remember it and have to testify that it was said. In such an instance, the fact that a meeting attendee asked for a statement to be omitted from the

minutes may demonstrate his or her knowledge that what was said was a problem. Accordingly, corporate secretaries need to be prepared to explain to officers and directors that off the record requests should be made only about matters that are irrelevant, not about comments that are germane to the board's or committee's business.

In a legal proceeding, the minutes are ordinarily considered *prima facie* evidence of what occurred at the meeting. The more incomplete or ambiguous the minutes of a meeting are, the broader the extrinsic evidence a court *will likely allow* to clarify the matter or to explain the intent of a motion or other action. For example, oral testimony concerning the circumstances of a meeting may be used to explain the purpose of a recorded transaction or to interpret a resolution, and if the minutes are, in fact, erroneous, the presumption that the minutes are correct may be rebutted.

D. Choosing Words Carefully

Minutes serve to confirm participants' common perceptions of and consensus on events that took place at the meeting, and keeping language as clear as possible furthers this goal. The evidentiary function of minutes is particularly well served by simple, unambiguous language, without color or unnecessary adjectives. Care should be taken that descriptive terms are not value judgments, and that the Corporate Secretary remains a neutral recorder of the proceedings. Experienced corporate secretaries usually find it advisable to avoid internal company or industry terminology or usage, unless it is essential to accuracy. Avoiding undefined acronyms also helps facilitate understanding of minutes years later, when the common understanding of particular acronyms may have disappeared. See the following for additional considerations about phrasing and meaning in minutes.

How You Say It Can Make a Difference

Consider the nuances and risks of the following different phrasings in minutes:

“The Chairman noted that the committee had not been diligent in its efforts to...”

“The Chairman requested each member of the committee to increase efforts to...”

and consider the “clarity factor” in the following alternative descriptions of a board action:

“The board approved the proposed changes in authority.”

“The board approved the proposed changes in authority specified in the memorandum re "Purchasing Authority" dated October 10, 1995, reviewed at this meeting, a copy of which was placed in the meeting file.”

“The board approved the following changes in authority:

Previous Authority
(old authority listed)

Revised Authority
(new authority listed)”

IV. Style

A. Consistency vs. Flexibility

The style of minutes is determined in large part by the personal preferences of the Chairman of the Board, the Corporate Secretary, other senior officers of the corporation, and the directors, as well as by tradition within the company. Certain forms of minutes may be provided by the corporation’s outside counsel and the form of certain resolutions may accommodate requirements of external stakeholders, such as financial institutions. One of the most important points about the style of minutes is that it should remain consistent. Changes in the style or format of the minutes are very noticeable and should be carefully considered in any situation, because changes might appear to be more significant than they really are. Following a consistent approach from one set of minutes to the next — at least per committee or board, if not within the entire corporate family — will minimize questions as to why certain sets of minutes are more detailed than others, and will avert confusion arising from any stylistic variation.

B. Special Circumstance

Although it is good practice for minutes to be consistent, special circumstances such as an impending merger or acquisition; the approval of stock buy-back plans; or other events that may be considered material for the corporation will often necessitate greater detail — in cases like these, more detail will help demonstrate application of the business judgment rule, and will demonstrate that directors met their duty of care. In these circumstances, reference to the exercise of judgment can be included in the minutes expressly. However, the

Secretary should state facts rather than trying to draw conclusions from the facts. For instance, the minutes may identify categories of facts considered by the Board and its decision that the specified action would be the most prudent way to proceed.

There is now a fair amount of case law guidance on which matters to include in minutes in order to protect directors. Much of this guidance comes from cases arising out of takeover situations; however, as noted earlier, the number of subjects that can lead to shareholder activism or litigation has grown significantly in recent years, so this guidance may be relevant in many other areas. For example, as a result of Delaware Supreme Court's decision in *Smith v. Van Gorkum*⁷, in a corporate control battle, most corporate secretaries now make sure that corporate minutes document:

- An indication that the board consulted with members of senior management and other knowledgeable individuals, particularly in-house counsel;
- An indication that the board consulted with experts, such as an investment banker, together with the report of the financial adviser and any inquiry or discussions regarding the banker's report;
- An indication of other studies made and the fact that such studies were distributed to directors with ample time for review and discussion;
- An indication that documents were considered and notation of the fact that such documents were distributed to directors with adequate time for review and discussion;
- An indication of efforts made by the board and by experts retained by the board to find the highest stockholder value (if, indeed, a sale is considered appropriate and in best interests of the company and its stockholders); and
- An indication that the board acted in a business-like manner and that ample time was given for the consideration of the offer or all alternatives, in addition to all reports and documents.

Again, many of these topics need to be considered by the board (or a committee), and documented in the minutes, in areas other than merger and acquisition activity.

C. Choosing the Form of Minutes

1. Long and Short Form Minutes

In general, there are two alternative styles for writing minutes: The abbreviated, or short-form, style, and the narrative, detailed, or long-form style. Historically, the preference in writing minutes has been for an abbreviated style. However, in recent years, in response to various factors – including increased litigation challenging board actions – some practitioners have departed from the short-form model in order to demonstrate that the board has acted appropriately and is eligible for the protections afforded by the “business judgment” rule. The following chart points out some of the advantages and disadvantages of short- vs. long-form minutes.

Short-Form Minutes	
Advantages	Disadvantages
Concise, easy way to determine action taken by the board or committee	Does not spell out reasoning for action taken by the board or committee
Helps avoid ambiguity	Does not demonstrate the board’s diligence in dealing with specific matters
Presents less language to be misconstrued in a litigation context	Case law may require more detail for certain kinds of transactions
Long-Form Minutes	
Advantages	Disadvantages
Spells out reasons board has taken action and provides evidence of the board’s diligence in dealing with specific matters	Provides greater opportunity for misinterpretation of language, particularly in a litigation context
Presents clearer picture of total deliberation process	May include extraneous information which may be confusing
More in tune with recent case law for material transactions	Not as direct in explaining action taken by the board or committee

2. The Hybrid Form

The Corporate Secretary has flexibility to select the style and form of minutes that may be appropriate in a particular instance. When taking minutes of a meeting where directors are considering matters that are material to the corporation or that may be challenged, some corporate secretaries find it useful to build a more robust record of diligence by the Board by adding more to the minutes than the short-form method calls for. But at the same time, these secretaries may want to avoid the dangers of the long form, so they compromise by creating a “hybrid” form – fuller disclosure of the action taken on important items, and spare disclosure on the routine. Of course, one risk in this approach is that a matter that may seem routine at the time can become significant in hindsight, and the contrast as to how different matters are treated in the same set of minutes could prove disadvantageous. Thus, careful consideration needs to be given to the style of the minutes in the context of the matters addressed by the board or committee, and the corporate secretary should seek to use a “Goldilocks” approach – not too long and not too short, but “just right.”

V. Writing Resolutions

A. When Are Resolutions Required?

The purpose of a properly drafted resolution is to accurately and completely describe an action by the Board. A clear, concise statement of the action of the board of directors in a formal resolution minimizes ambiguities or misunderstandings, but the adoption of a formal resolution is not the only way to bind the corporation or to give authority to bind the corporation. Evidence can be introduced that the board took the necessary or appropriate action, even if no formal resolution was recorded in the minutes. Also, if the Corporate Secretary is convinced that in the particular circumstances a formal resolution will not be required, he or she may merely indicate in the minutes that after discussion of the matter, the directors decided to take whatever action or make whatever decision was agreed on by them. However, while there are no absolute rules, formal resolutions are generally considered to be either required or appropriate with respect to the following matters:

1. When required by statute, charter or the company’s by-laws;

2. When the Secretary is required to furnish evidence that the board or appropriate committee of the board performed a certain act;
3. Establishment of board committees and their authority and responsibilities;
4. Dividend declarations;
5. Matters in excess of management's authority, such as real estate matters, mergers or acquisitions, or large capital transactions;
6. When the matter pertains to an amendment to either the charter or the by-laws of the corporation;
7. When a third party requests that the action taken be evidenced by a formal resolution.

Resolutions are generally drafted by the Corporate Secretary; however, if the matter is of a complex or technical nature, the resolution may be drafted by outside counsel or other persons with knowledge of the form or content required. Also, certain action may require the adoption of resolutions in a form required by a third party. In such a case, the draft resolution would generally be submitted to the third party prior to submission to the board.

Because the purpose of resolutions is to prevent ambiguity, their language cannot always be concise, simple, or easily readable. Many resolutions look like bond indentures, but if done properly, they leave no doubt as to what was intended.

B. Simplification

When not required by a third party, traditional preambles to resolutions, such as "Thereupon, after discussion, upon motion duly made and seconded, the following resolution(s) was/were duly adopted:" are used less and less. For many, it is enough to simply say":

RESOLVED, . . ."

While "Whereas" clauses may be utilized to introduce complicated resolutions, or where background information may help to convey fully the basis for the board's action, lengthy and numerous "Whereas" clauses are not always recommended. The resolutions themselves should contain all the vital facts. As with other aspects of the minutes, consistency in the use of "Whereas" clauses will prevent unintended inferences from being

drawn from the presence or absence of “whereas” clauses in a particular matter.

C. Plain English Resolutions

Resolutions can also be written in “plain English,” without use of the traditional “Resolved” format. For example:

The board of directors of [ABC Corporation] authorizes and determines:

1. It is in the best interest of the Company to [insert whatever action is proposed] in order to [insert reason as appropriate].
2. Each of the officers listed below is authorized to effectuate the [describe transaction]:

The Chairman

The President

Any Executive Vice President

D. Incorporation by Reference

Resolutions frequently refer to indentures, loan agreements, registration statements, prospectuses, contracts and other bulky documents presented to the board for approval. To avoid lengthy minutes, the resolutions may specifically identify and incorporate these documents by reference or otherwise refer to them or to brief memoranda explaining them, with documents themselves and any supporting papers retained as part of the record of the meeting. Many corporate secretaries prepare resolutions, and clear them with counsel or other third parties, well in advance of the meeting so that they can be included with the materials for the meeting.

VI. Noting Reports, Dissents, Approvals, etc.

A. Reports

On occasion, if a report made or given to the directors is especially important and not too lengthy, or if it perhaps contains some crucial financial or other technical information,

management may wish to have it recorded permanently in the minute book. In such a case, the Corporate Secretary should mark the report as, for example, “Appendix A” or “Exhibit A” to the minutes, refer to it in the body of the minutes, and physically attach it to the minutes. The incorporated document is then part of the minutes, and a copy of the document should accompany the draft of minutes when reviewed by directors and others within the company. In addition, a copy of the incorporated document should be made available to anyone who, subsequent to approval of the minutes, is given the opportunity to read the minutes. Secretaries should exercise great caution in selecting documents to be incorporated because those documents become part of the permanent record. By the approval of the minutes, the content of documents attached to them are also ratified in their entirety unless explained to have been attached for a limited purpose. Without such an explanation, the attachment of a document which is later argued (or proven) to be wrong or misleading could result in unintended consequences.

B. Committee Reports

The manner in which board minutes have dealt with reports on meetings of board committees has evolved in recent years. In the past, board minutes frequently contained little or no detail concerning committee reports, other than matters requiring board action. However, in recent years, because of the increasing importance of committees under the Sarbanes-Oxley Act and otherwise, more and more companies describe committee reports in the same amount of detail as the description of any other important report made to the board.

C. Dissents

Most Board resolutions are adopted unanimously. In the case of a non-unanimous vote or in the case of abstention, the name of the abstainer or the dissenting voter should be listed in the minutes. Dissenting directors often insist on having their dissents recorded in the minutes, especially if they believe the majority’s actions are in any way improper.

D. Conflicts of Interest

Directors have an obligation under most state laws to declare any interest that they or their relatives or associates have in a matter being brought before the board for action. Where a

director or his affiliates or associates is personally interested in a matter, the Corporate Secretary should first determine how the conflict of interest should be handled under state law. Some states permit the interested director to vote on the matter, as long as the actual or potential conflict of interest is disclosed to the full board; in other cases, the director may need to abstain. In addition, depending upon the nature of the subject, it may be advisable for the director to leave the room during the discussion. In addition, the minutes should state the nature of the matter discussed and, if required or appropriate, that the interested director abstained, depending upon the nature of the conflict, it may also be advisable to describe it in the minutes. (In that regard, the Securities and Exchange Commission has proposed rules that would require disclosure of the process used to review and approve related party transactions. If these rules are adopted as proposed, the approach to preparing minutes relating to such transactions may need to be revised.)

E. Seconders

The names of proposers and seconders of board and committee resolutions are generally omitted in the minutes.

F. Informal Approvals

When no vote is taken on a certain question and the Chairman obtains the consensus of the directors in an informal manner, it is sufficient to note this consensus in the minutes with a general phrase such as: “The directors concurred in . . .”, or “The directors expressed their approval of . . .”, or “The board approved . . .”, and to follow this language with a statement of the facts.

VII. Committee Minutes

A. Points To Remember

Minutes of meetings of board committees may provide greater specificity than board minutes, since committees carry out more focused reviews of matters within their charters than does the board as a whole. Nonetheless, committee minutes are also discoverable, and

should be written with the understanding that they may become evidence to be used by or against the corporation and its directors in litigation.

As indicated above, committee actions are typically reported to the full board on the next regular board meeting following the date of the committee's meeting. While minutes of committee meetings are generally approved by the committee itself and are rarely presented to the full board for approval, many companies have implemented the practice of submitting all committee minutes to the full board for information. Some companies also include copies of committee agendas in the materials for contemporaneous board meetings, so that all directors have an understanding of the matters being addressed by the committees. These practices have developed due to the increased responsibilities placed upon committees in recent years and to assure that the board is aware of what its committees are doing.

For those reasons, and because the board frequently relies upon the recommendations of its committees, an appropriate level of detail should be used to demonstrate that the committees, like the board, has exercised sound business judgment and their diligent exercise of the discretion granted to them by the board. To that end, minutes of committee meetings should identify reports and other materials considered and state the activities conducted.

In addition, the minutes of all three major board committees need to reflect that the committees have carried out their responsibilities, as outlined in the committee charters and in applicable SEC regulations and exchange listing standards.

While all of the key committees share these common characteristics, some particular issues for the minutes of each committee are discussed below:

1. Compensation Committee

The Compensation Committee deals with perhaps the most sensitive issues of all — who gets paid what and who among managers is performing well. As a result, Compensation Committee minutes have traditionally been kept under lock and key. However, with executive compensation under increasing scrutiny by the SEC and the plaintiffs' bar alike, minutes of meetings of the compensation committee need to be at least as detailed as board minutes in terms of demonstrating that compensation decisions are made in good faith, using sound business judgment, and that appropriate decision-making processes are employed. Further, as shown by the Disney case (*In re The Walt Disney Company Derivative Litigation*

C.A. No. 15452), decisions as to termination arrangements must be similarly documented. At the same time, compensation committees routinely consider confidential information about senior individuals; consequently, the person responsible for drafting minutes of compensation committee meetings must perform a delicate balancing act in which appropriately detailed minutes do not overwhelm valid concerns as to confidentiality.

2. Audit Committee

As a result of various factors – including the Sarbanes-Oxley Act and related regulations as well as new standards imposed by securities exchanges – the audit committee is sometimes perceived as the guarantor of the integrity of the corporation’s financial reporting and internal controls. This can be problematic when a corporation experiences financial reporting, internal control or related issues, particularly if those issues occur – as they can – despite appropriate audit committee oversight. Thus, the minutes of the audit committee not only need to make clear what the committee has done; they also need to support the committee’s role as overseers and monitors, and not as preparers of the financial statements or as managers responsible for day-to-day internal control matters.

3. Nominating or Corporate Governance Committee

In the not too distant past, the nominating or corporate governance committee often met once or twice each year, generally to do no more than nominate the current slate of directors for another term. Of course, as noted above with respect to the compensation and audit committees, regulation and exchange listing standards have significantly expanded the responsibilities of this committee. The new responsibilities include assessments of the board and its committee (and sometimes the individual directors themselves), evaluating the independence of nominees, and overseeing compliance with ever-changing corporate governance standards. Because of the importance of these functions and the fact that they often involve information of a personal or private nature, the minutes of nominating or corporate governance committee meetings must reflect the same level of care and discretion as those of audit and compensation committees

B. The Corporate Secretary’s Role in Committee Meetings

The skills and experience that enable the Corporate Secretary to keep the minutes of board meetings also qualify the Corporate Secretary to act as Secretary of committee meetings. The Corporate Secretary can bring a comprehensive, uniform approach to the style and content of minutes and a special capacity for facilitating information flow among committee members and between a committee and the board. But in some companies, the Secretary to one or more committees is a person other than the Corporate Secretary because of company custom or because committee meetings are scheduled concurrently. If the Corporate Secretary is not the secretary of a particular board committee, he or she should work with the person designated to take notes and write the minutes of that committee's meetings.

VIII. Reviewing and Finalizing

A. Reviewing Drafts

Every Corporate Secretary needs to do certain things immediately following a board or committee meeting. Certified resolutions may be required immediately for the closing of a financing; notices to stock exchanges re dividend declarations or stock splits must be issued promptly; letters to newly elected directors and officers explaining their obligations or restrictions must be prepared, Form 3s must be filed promptly with the Securities and Exchange Commission, other staff members require confirmation of action taken by the board, and the meeting minutes must be drafted.

Various organizations have different procedures for reviewing drafts of minutes. It is common practice for them to be reviewed initially by the General Counsel (if that is a person other than the Corporate Secretary) and possibly the Chief Financial Officer. Once their comments are incorporated, the minutes should be circulated to a broader group of management, possibly (but not necessarily) including all others who made presentations at the meeting, and then to the Chief Executive Officer. At that point, the minutes should be distributed to the full board, although some companies send them to the Chairman (if other than the CEO) or the lead or presiding director before full board distribution.

Even within one organization, the review process may not be the same for all meetings. For example, minutes of a meeting at a significant acquisition or other matter is

considered should probably be reviewed by outside counsel or other third parties that attended the meeting. Substantially the same process should be followed for meetings of the board committees.

Increasingly, the Corporate Secretary is asked to produce draft minutes of the board and committees as promptly as possible after their meetings are over, to assure that memories of the matters discussed and actions taken at the meeting are fresh when the minutes are reviewed. The pressure to produce minutes promptly can be even greater when a company is involved in merger or acquisition activity, or takes any action that may become subject to litigation — times when there is increased interest in the deliberations of the board and the written record of its meetings.

B. Retention of Drafts

Because a Corporate Secretary's minute-keeping practices could become an important issue in litigation, it is wise for the Corporate Secretary to develop, well in advance of a significant nonroutine meeting, a policy for keeping and disposing of draft minutes and related documents. The purpose of destroying notes and drafts is not to obscure the record or subvert legal process. It is to ensure that there is one final and official record of the considerations and actions of the company. It is necessary to unify the minutes so that the notes or preliminary thoughts of a single director, or incomplete materials considered by the board, are neither taken out of context nor misconstrued to have been ratified by the company in some way not appearing in the minutes themselves. Among the elements of such a policy could be:

1. An established sequential order for review of the drafted minutes, and destruction of previous drafts as each revision is made.
2. A procedure for limiting the circulation and disclosure of drafts of minutes.
3. A procedure for handling and destroying all prior drafts and notes of the meeting, once the final minutes are approved.
4. Consistency in following the established procedures, so that notes and preliminary drafts are retained and destroyed in accordance with the document retention policy. Remember that backup materials on computers or servers are also subject to discovery.

Well-established procedures for the routine retention and destruction of drafts of minutes and related documents are critical, both in the ordinary conduct of the business and in periods of heightened litigation risk. A regular review process for examining minutes should be followed, to make sure that drafts are not only distributed to the right parties, but also in the right order, to avoid the problem of multiple versions of minutes in circulation.

C. Formal Review and Approval of Minutes

Following the completion of the review process (including the distribution of draft minutes to the full board), it is the usual practice to distribute final drafts of the minutes with the materials for the next meeting of the board so that the minutes can be formally approved at that meeting.

Absent anything to the contrary in state law or the company's charter or bylaws, there is no requirement that the minutes of a preceding board or committee meeting be subsequently approved by the board or the committee. Such approval is recommended, however, because of the evidentiary value of the minutes and to assure consensus of all who participated. Approval of the minutes by the directors is an acknowledgment that the minutes constitute an appropriate record of the proceedings of the meeting.

If there is any problem with a particular set of minutes, a director will typically raise a problem with the minutes at the next meeting of the board. The Corporate Secretary can normally resolve the problem on the spot, but if a controversial change to the draft minutes is proposed, the approval of the minutes should be tabled until the requested change can be resolved.

D. Circulating Committee Meeting Minutes

Many corporate secretaries furnish minutes of meetings of all committee meetings to all members of the full board of directors. This practice serves at least two principal purposes. First, it keeps members of the board updated on the activities of each of the board's committees, more fully than from the oral reports heard at board meetings. Directors have an oversight responsibility with respect to board committees, and reviewing the minutes enables them to be reasonably assured that all board committees are functioning properly and that the issues being addressed are appropriate. Secondly, considerable time is saved at meetings of

the full board; committee chairmen are not required to elaborate in detail concerning committee activities but rather can simply present a brief summary or a recapitulation to the board and then respond to questions. As noted above, some companies are also including committee agendas to the full board as well.

E. Circulating Minutes Outside the Company

Although it may sometimes be desirable or appropriate for third parties to review minutes, many corporate secretaries follow a policy not to allow final copies of minutes to be provided to anyone outside the company. This may be important in preserving the attorney-client privilege or the regulatory privilege applicable to some industries. Outside counsel or auditors are frequently granted on-site access to review minutes retained by the company – or even copies of the minutes – but care must still be taken to avoid a waiver of privileges and the disclosure of private business information. This is because for some documents, and some disclosures, once a privilege or a right of privacy is waived, it may be waived as to all parties and forever. To protect such information, it should be clearly labeled and segregated from other non-privileged, and non-private portions of the minutes. Indeed, when minutes refer to privileged matter (*i.e.*, a consultation with general counsel), they should not disclose the topic of the attorney-client consultation. This is because the greater the disclosure, the more likely a court is to find that the attorney-client privilege has been waived.

F. Correcting the Minutes After Approval

The substance of minutes should not be changed after approval. However, it may become necessary to make a typographical or spelling correction to the minutes after they have been approved by the directors. If such a minor change needs to be made, it can be done without calling attention to it in any formal way in the minutes themselves or in a subsequent set of minutes. However, if a change of any substance whatsoever is being made after the minutes have been approved and signed, the appropriate procedure is to raise the matter at a subsequent meeting of the board and to request authority to make the change.

G. Signing the Minutes

Although it is customary, the Corporate Secretary is not always the person who signs the

minutes, or the only person who signs. It may be the company's practice for the Chairman to also sign the minutes, or indeed minutes may not be signed at all. But even when required by by-law or by custom, a failure of the proper officer to sign the minutes does not invalidate the action taken at the meeting.

The time of signing the minutes may also vary from company to company. In some situations, the minutes are signed as soon as drafted by the Corporate Secretary, and in others, after comments have been received by the Secretary from management and incorporated in a revised draft (thus prior to being sent to the directors in these two instances). The most common practice is to sign the minutes after approval by the directors at a subsequent board meeting. In general, it is advisable to sign minutes only at that time, since the existence of duplicate signed minutes may lead to confusion as to which set is actually the final version.

H. Certification by the Secretary

Often the Corporate Secretary is requested to present a signed certificate, sometimes under the corporate seal, evidencing that certain action was duly taken or authorized by the board of directors. In almost all instances the best evidence of this action is the resolution adopted by the board.

The Certificate of the Secretary generally states that the resolution in or attached to the certificate (including all preambles) is a true, correct and complete excerpt from the minutes of a meeting of the board of directors of the corporation duly convened and held on the date specified at which a quorum was present and acting throughout. The certificate should also indicate that the resolution has not been modified, amended, rescinded or repealed and is in full force and effect as of the date of the certificate. If a period of time has elapsed since the adoption of the resolution or resolutions to be certified, it will be necessary for the Corporate Secretary to search through the minutes to ensure that no modifications, amendments, or rescissions have been made. Whether the resolution is included in the body of the certificate or attached to the certificate is a matter of style and may be influenced by the length of the resolution and the purpose for which the certificate is intended.

IX. Storing Minutes

A. Points To Remember

Developing standard procedures with respect to review and approval of minutes, retention of handwritten notes, filing and retention of approved minutes and supporting documents, distribution of copies, access to minute books by auditors and other parties, handling of attorney-client privileged discussions in minutes, and similar types of issues, helps promote consistency and may avoid potentially embarrassing situations, such as an inadvertent waiver of attorney-client privilege or a failure to document a particular action.

Practical issues related to storing minutes books should bridge a company's document retention policies and disaster recovery plans. After developing a comprehensive disaster recovery plan, the company should address its policies for document retention.

B. Minute Books and Meeting Files

Traditionally, minutes have been maintained in minute books that were relatively sturdy and could withstand frequent use. Minutes of the board and minutes of board committees were kept in separate minute books to facilitate research, and an alternative practice was to file together in the same book minutes of all meetings that occurred on the same day. Today, however, especially after the events of September 11, 2001, in which some New York City corporations lost their minute books, many companies are re-examining their storage procedures and facilities in light of their disaster recovery plans, and are storing and filing minutes and records electronically. For very old records, some companies are putting their minutes on microfiche or microfilm, or are simply copying each page on a photocopier and moving those copies to an off-site location.

Most corporate secretaries maintain separate official meeting files for each board and committee meeting for all the material related to the meeting and for any materials referenced in the minutes. These files typically include a copy of the notice of meeting, the meeting agenda, each report, contract, agreement, memorandum or other document provided to the directors, and copies of any slides, charts, graphs or other presentations made to the directors at the meeting.

Organizing meeting files in a consistent format can also help counsel, auditors, or the

Corporate Secretary's staff review the files when necessary. This kind of organization applies also to electronic filing systems, such as file folders on a computer.

C. Intranets

As some companies begin to use secure intranets to disseminate and archive board materials, including briefing materials, minutes, and other reference materials which may be used by directors, they will need to consider conventional record-keeping or technology-based board support systems.

D. Indexing the Minutes

Since minutes are now often created and stored electronically, it has become easier to quickly find information, because of built-in electronic search functions. An additional step may be an index of matters considered and action taken at all meetings of the board and its committees. This is a helpful tool for the Corporate Secretary and management since it saves valuable time. This index, usually kept on a computer database, may be particularly useful for keeping track of standing resolutions or resolutions of general authority. To be fully effective, an index system should include the following components:

1. A continuously uniform pattern of assignment of primary and secondary (cross reference) subjects;
2. Adequate cross references, since resolutions and other decisions taken by the board usually have a specific context but relate to other matters;
3. A basic procedure for selecting and recording the primary and cross reference subjects to ensure continuity in the maintenance of the system as personnel change, and to ensure that all cross references to a particular item are located at the time of any rescinding action; and
4. Verification of the indexing work to prevent inadequate and incomplete indexing.

One way to index older paper-form minutes is to scan them into a full-text database. The minutes can then be searched by entering a key word or a series of key words to find the action taken by the board. Storing a set of minutes on a full-text database may eliminate

problems created by possible inconsistent cross-referencing.

Minutes are not the only meeting papers which can be made more accessible by indexing. Consideration should also be given to indexing documents incorporated by reference in the minutes and exhibits thereto. In addition, many companies maintain an abstract or index of resolutions adopted by the board to facilitate searches for board pronouncements on various subjects with respect to certified copies of resolutions that are frequently requested.

There are probably as many different types of indexing procedures as there are methods for filing correspondence. The right solution depends on the circumstances and custom of the company.

X. Retention of Minutes and Other Board Materials

A. Creating a Policy

Usually, it is the responsibility of the Corporate Secretary to establish a retention policy for material related to board and committee meetings. This broad category of materials may include meeting notices and related correspondence, meeting agendas, materials distributed to directors in advance of or at a meeting, reports and presentations made at the meeting (including documents and scripts, films, pictures, transparencies and other audiovisual materials), minutes in approved form, and postmeeting communications, if any.

A retention policy should establish criteria for determining what materials are subject to it, in terms of which of the meeting-related materials are subject to retention schedules, what materials are to be retained on a permanent basis, and the criteria for determining the retention periods for materials not subject to permanent retention.

A retention policy should also account for future transitions to new document management software, so that when the computer systems used by the company are updated, the permanent records of the company are also updated, or are archived in a way that allows their economical and expeditious retrieval.

B. What Should Be Retained?

The basic task in establishing the retention policy and procedure is to identify why each item is being retained, including being in compliance with legal requirements, responding to legal or other professional advice, and meeting historic or archival objectives.

Legal considerations have an important bearing on retention policies, particularly the applications of statutory provisions, administrative regulations, and rules of evidence and laws relating to the conduct of persons in anticipation of or during the pendency of legal proceedings. Therefore, outside counsel should be consulted when establishing retention periods to obtain an independent opinion that will aid the company in demonstrating that the retention periods selected are neither arbitrary, nor created to evade discovery obligations. Once litigation has begun, or is likely to begin, the otherwise routine destruction of documents should stop immediately, and steps should be taken to preserve documents related to the matter at issue.

An example of a simple document retention policy is attached as Appendix “H.” Of course, the content of each company’s document retention policy will depend upon the kinds of records kept, and so there is no one right way to retain documents. A company’s custom and practices over the years may also have an important bearing on the current retention policy, particularly with respect to materials designated for permanent retention. The decision as to whether a particular kind of document is to be retained in the future will probably be influenced by whether the document has been consistently retained in the past, or whether there will be continuity between the cumulative past retention and future retention.

C. A Recap

As we have seen, minutes of board and committee meetings should be retained on a permanent basis, whether because of legal reasons, company custom or archival considerations. Documents incorporated into and made part of the minutes by reference are considered a part of the minutes for retention purposes. Corporate secretaries should not consider notes of the meeting taken in anticipation of minutes drafting to be subject to retention policy; any notes should be destroyed as soon as the minutes are approved to reflect the policy that minutes, when subjected to the review and approval process, are to be the only record of the meeting.

Retention practices with regard to minutes-related materials vary widely. Agendas are sometimes kept, if the minutes do not actually reflect the items of the agenda, and it remains important to record how the meeting was actually planned.

D. Additional Concerns

While the selection of the means of retention is important, such considerations will not differ from those applicable to other important corporate documents and records. In Appendix G, some corporate record and disaster recovery guidelines from the Federal Emergency Management Agency (FEMA) are included. The National Archives and Records Administration can also provide some guidance on corporate materials — their Web site address is listed on page 31, in “Some Useful References.”

ENDNOTES

¹ *By his excellency William Livingston, Esq. Governor, Captain-General and Commander in Chief, in and over the State of New-Jersey, and the Territories therunto belonging, Chancellor and Ordinary in the same.*

PROCLAMATION

Whereas the Honorable the Congress did, on the first day of this present month of November, pass a resolution in the words following, to wit, Forasmuch as it is the indispensable duty of all men, to adore the superintending providence of Almighty God: to acknowledge with gratitude their obligation to him for benefits received, and to implore such farther blessings as they stand in need of: and it having pleased him in his abundant mercy, not only to continue to us the innumerable bounties of his common providence; but also to smile upon us, in the prosecution of a just and necessary war for the defense and establishment of our unalienable rights and liberties: particularly in that he hath been pleased in so great a measure, to prosper the means used for the support of our troops, and to crown our arms with most signal success: It is therefore recommended to the legislature or executive powers of these United States, to set apart THURSDAY, THE 18th day of December next, for Solemn thanksgiving and Praise...

And it is further recommended, That servile labour, and such recreation, as though at other times innocent, may be unbecoming the purpose of this appointment, may be omitted on so solemn an occasion. I have therefore thought fit, by and with the advice of the Privy Council, to appoint the said Eighteenth day of December next, to be set apart and observed throughout this State as a day of public thanksgiving and praise to Almighty God on the occasion, and in the manner by the before recited resolution recommended...

Given under my Hand and Seal at Arms, at Princeton, the 12th day of November, in the year of our Lord one thousand seven hundred and seventy-seven.

*WIL. LIVINGSTON,
By His Excellency's command,
CHA. Pettit, Secretary*

Stryker, William S., ed. Documents Relating to the Revolutionary History of the State of New Jersey, Volume I. Trenton: The John L. Murphy Publishing Co., 1901

² Bernstein, David A., ed. New Jersey Archives, 3rd Series, Volume I: Minutes of the Governor's Privy Council 1777-1789. Trenton: New Jersey State Library Archives and History Bureau, 1974

³ Model Business Corporation Act, §16.01

⁴ 8 Del. C. §142(a) See also §224 – “Any records maintained by a corporation in the regular course of business, including its stock ledger, books of account, and *minute books*, may be kept on, or by means of, or be in the form of, any information storage device, or method provided that the records so kept can be converted into clearly legible paper form within a reasonable time.” (italics added)

⁵ It is usually the Corporate Secretary's responsibility to provide briefing materials to directors for their review. Sometimes it may be necessary for the Corporate Secretary to provide written documents at the meeting, and to fax (or e-mail) copies to any directors participating in the meeting by telephone. Sending copies of proposed resolutions in advance assists the development of a common understanding of proposals under consideration, and can prove useful to the Corporate Secretary in drafting the minutes. The written information supporting the proposal, filed as a supplement to the minutes, also can help document the matters considered by the Board in reaching its decision.

⁶ SEC Release No. 34-30532, March 31, 1992

⁷ *Smith v. Van Gorkom*, 488 A.2d 858 (Del. 1985)

Some Useful References

Doris, Lillian, and Edith J. Friedman. Encyclopedia of Corporate Meetings, Minutes, and Resolutions. Revisor William Sardell. ^{3rd} Ed. Englewood Cliffs: Prentice-Hall, 1986.

Dochterman, Delores. The Art of Taking Minutes. Santa Rosa, California: Snyder Publishing Company, 1981.

Veasey, E. Norman. "Reflections on *Smith v. Van Gorkom*." The Corporate Board. September/October 2001: 18-23.

National Archives and Records Administration — <http://www.nara.gov>

Selected Cases

In re Staples, Inc. S'holders Litig., C.A. No. 18784

Grace Bros. v. UniHolding Corp., C.A. No. 17612

Smith v. Van Gorkom, 488 A.2d 858 (Del. 1985)

In re The Walt Disney Company Derivative Litigation C.A. No. 15452

Appendix A

Long and Short-Form, Hybrid-Form Minutes: A Discussion

It is not the purpose of this monograph to set forth which form of minutes is appropriate in all situations. The practice in this area varies, and specific situations may dictate a more or less extensive style. In general, corporate secretaries follow their corporation's established style, but in all situations, the minutes should be sufficiently detailed to relate the substance of deliberations and the decision reached — documenting the process, the relevant issues considered, and any dissenters or abstainers. The following discussion summarizes some of the arguments for and in opposition to the use of the long form or short form of minutes, or a hybrid of the two. In choosing one form or the other, a Corporate Secretary should be mindful that there are significant advantages and disadvantages to each. A selection should be made only after careful consideration.

The most concise style for drafting minutes simply records actions taken at the meeting. An intermediate or hybrid approach will include a summary of issues discussed and actions taken. The most complete style includes an expanded description of the discussion.

Many corporate secretaries feel that a longer or hybrid form of minutes for board and committee meetings is more desirable than the more traditional short form. Among the reasons given for this point of view are:

1. The board of directors wants a record that reflects the information received and discussions held with respect to a particular matter as an administrative check list and in order to record its due diligence;
2. Management wants a record that reflects the information provided to the board of directors concerning the status of the business and operations of the company and information presented in support of the recommendations of management; and
3. Lawyers, accountants and auditors recommend levels of detail sufficient to evidence compliance with law, good faith, due diligence, and a rational basis of action which will provide a business judgment defense.

Evidence of due diligence is helpful when supporting the contention that the director has done enough to earn protection of the business judgment rule. A court ordinarily will not upset the decisions made by directors when they have acted in good faith and made their decisions in some rational way.

Thus, for a corporation in a crisis or other unusual situation, utilization of a long or narrative form of minutes may be appropriate. In such situations, the Corporate Secretary, with the advice of counsel if he or she is not also Counsel, should carefully consider a longer form of minutes if such form is not followed as a matter of course. For example, when the Chairman and Chief Executive Officer is being changed in other than an anticipated manner, when there is a takeover bid, or when the company is embarking upon a corporate acquisition, consideration should be given as to whether a longer form of minutes should be employed.

But other experienced corporate secretaries continue to favor short form minutes. On

this subject, one experienced Corporate Secretary has noted:

“If only a brief description of action taken by the directors on the agenda items is mentioned in the minutes without any elaboration, there is less risk of embarrassment in any possible future litigation. Also, ambiguous language may be misconstrued at some future time to the disadvantage of the company. And, as far as documentation of due diligence goes, there are sound arguments to be made that the purpose of minutes is only to show the action taken. If the directors have properly met their responsibility when taking an action, this fact can be shown in other ways, and it is not the purpose of minutes to perform this function.”

In addition, short form minutes minimize the problem of saying too much, which can often cause problems. More importantly, this style minimizes the burden in developing long form minutes of ensuring that all the important points made during the discussion at a meeting are covered and are factually and properly set forth.

To sum up, at a minimum, the minutes should indicate the action taken by the directors at the meeting. For the protection of the director or directors involved, the minutes should also show any dissents from the action of the majority. This is, of course, especially true if the recording of such dissents is specifically requested by the dissenter(s). Whether the minutes should contain statements as to the reasons why action was or was not taken is a matter of judgment for the corporate secretary. Whichever choice is made should be followed consistently. Generally, the specifics of who said what in the discussion at the meeting are not included in the minutes unless a director specifically requests that his or her view be made a matter of record.

Appendix B

Society Information Resource Center FAQs

The following are some of the often-heard questions that come in to the Information Resource Center at the National Office of the Society.

1. What should be included in the minutes of a board meeting? Our board of directors disagrees about content — some say there is too much detail in the minutes, and some say there is too little.

As discussed in this monograph, short form vs. long form minutes has been and continues to be a debate within companies. The form and style of minutes is a choice, and both short form and long form minutes have merit. However, many corporate secretaries within the Society now use a hybrid form which includes more detail only when necessary — this may be a workable compromise for your board. Appendix E contains an example of such hybrid minutes, and Appendix G contains a memo to a board regarding hybrid minutes.

2. What happens when there are board conflicts/disagreements about something in the draft minutes? How does one handle it?

Work to obtain consensus without compromising your own memory of what actually occurred at a meeting. Ask for guidance from Counsel if necessary and appropriate.

3. When the Corporate Secretary is not present at a board meeting and someone else acts as Secretary, but the Corporate Secretary prepares minutes from the acting Secretary's notes, who signs the final approved version? The Secretary or the person who acted as Secretary?

The Acting Secretary should sign, as Secretary of the Meeting

4. Regarding board minutes that are the last of an existing board (i.e., when a company is being taken private and/or is being acquired) — should the Secretary sign these final minutes without board approval, or should the minutes go unsigned until the first meeting of the new board?

Depending on statute and company practice, an alternative would be to use the process of Unanimous Written Consent, where the minutes are sent to each director for review and approval. Or, if consistent with practice at the company, the Chairman could sign the minutes.

5. What happens when the Corporate Secretary is asked to change something in the minutes, and that change would be at odds with their personal code of ethics?

Similar to the challenge that a General Counsel may experience (if the Corporate Secretary is not also General Counsel). One must do what one feels is right in all instances.

6. If the Chairman of the Board is absent and someone else will be conducting the meeting, how should this be noted in the minutes?

It might read as follows: Mr/Ms _____, title, is chairing the meeting in the absence of Mr/Ms _____, Chairman, in accordance with our bylaws.

7. How should the minutes reflect meetings held by teleconference?

Minutes should reflect the ability or inability of participants to communicate with other board members.

8. Should minutes reflect directors who refrain from voting or participating in a discussion?

Minutes should reflect any director who refrained from voting or discussion due to conflict of interest.

9. Should directors take notes during the board or committee meeting for future reference when reviewing the draft minutes?

It is the practices for most companies that all notes are left after the meeting and are collected by the Secretary.

10. Should the chairman make an announcement at the meeting regarding the policy so that all directors know exactly what's happening with their notes and materials?

Since this subject is part of any good director orientation program, an announcement should not be necessary at each meeting. A periodic reminder of this policy is prudent and certainly if first time directors are at their first meeting such an announcement is a good idea.

11. Should the announcement be at the beginning of the meeting, or as it adjourns?

Suggest only at the beginning.

12. How should the Secretary handle the destruction of meeting notes, etc.?

Directors notes should be destroyed immediately. It is recommended that as soon as the draft minutes are approved at the next Board or Committee meeting. All notes or correspondence relating to points to include or exclude in the minutes are discarded. The objective is to let the approved minutes be the only written record of the meeting.

13. Should a tape recorder be used for taking minutes?

No.

14. Can minutes be changed?

Draft minutes should be produced and circulated for review by others (CEO, CFO, GC, outside counsel) as promptly as possible after the meeting while memories are fresh. This will minimize or eliminate the need for later corrections or changes. Matters not discussed or acted upon at the meeting should never be added to the minutes after the meeting has ended.

Changes to the final draft of the minutes, if they are minor (e.g. a typographical error or immaterial omission) are made before their approval at the next board meeting. However, if a material or controversial change is suggested, a full discussion of the issue must take place with the final approval of the minutes delayed until the minutes, as changed, are resubmitted to the board at its next meeting.

In all cases, after a board's final approval, the minutes should never be changed.

Appendix C

_____ CORPORATION

Board of Directors Meeting
October 3, 2001
9:30 a.m.

A G E N D A

1. Roll Call and Determination of Quorum
2. Approval of Minutes of August 1, 2001
3. Committee Report – Benefit Plans and Investment 4. Financial Report
5. Report of Chairman and Chief Executive Officer
6. Report on Operations (a) (Business unit) (b) (Business unit) (c) (Business unit)
7. Election of Additional Officers
8. Other Business
9. Date and Place of Next Meeting (Wednesday, (date), (location))
10. Adjournment

Appendix D — Short Form Minutes

P R I V A T E

_____ CORPORATION

Meeting of the Board of Directors

October 3, 2001

The regular meeting of the Board of Directors of _____ Corporation was held, commencing at 9:15 a.m. (Eastern time) on Wednesday, October 3, 2001, at the offices of the Corporation, _____ (address) _____, pursuant to notice given in accordance with the By-Laws.

_____, Chairman of the Board and Chief Executive Officer of the Corporation, acted as Chairman of the meeting. _____, Secretary of the Corporation, acted as Secretary of the meeting.

1. Roll Call and Determination of Quorum

The following Directors were present:

The following Director was not present:

_____, *Senior Vice President and Chief Financial Officer of the Corporation, was present throughout the meeting.* _____ (names and titles) of the Corporation, *were present for portions of the meeting as indicated herein.*

2. Approval of the Minutes of August 1, 2001

Mr. _____ stated that the minutes of the meeting of the Board of Directors held on August 1, 2001, had been circulated to the Directors prior to the meeting. He proposed that they be approved.

After discussion, on motion seconded and carried, the Board approved the minutes.

3. Committee Report – Benefit Plans and Investment

Mr. _____, Chairman of the Benefit Plans and Investment Committee, gave a report of the meeting held on October 3, 2001.

After discussion, the report was accepted and ordered filed with the records of the meeting.

4. Financial Report

Using a series of charts, Mr. _____ reported to the Board on the Corporation's forecasted results for the third quarter in 2001.

5. Report of the Chairman and Chief Executive Officer

The Chairman...

At this point, Messrs. _____ entered the meeting.

6. Report on Operations

(a) (business segment)
Mr. _____ presented an update on the _____ operations of the Corporation.

Using a series of charts, he reviewed...

At this point, Mr. _____ left the meeting.

(b) (segment)

Mr. _____ discussed the 2001 highlights and issues at the business units of the _____ group.

(c) (segment)

Mr. _____ discussed the...

7. Election of Officers

Mr. _____ stated that it was in order to consider a resolution electing...

After discussion, on motion seconded and unanimously carried, it was

RESOLVED, that in accordance with Article IV of the By-Laws of the Corporation and effective (date) _____ , _____ and _____ are elected as Vice Presidents of the Corporation, to hold office until the organizational meeting of the Board of Directors following the next Annual Meeting of Shareholders of the Corporation and until their successors are elected and qualified, all subject to the By-Laws of the Corporation.

8. Other Business

9. Date and Place of Next Meeting

Mr. _____ stated that the next meeting of the Board of Directors would be held at _____ (address) _____ , on _____ (date) _____.

10. Adjournment

There being no further business to come before the meeting, it was, on motion made and seconded, adjourned.

Secretary

Appendix E — Hybrid Form Minutes

**XXX CORPORATION
BOARD OF DIRECTORS'
MEETING**

JUNE 8, 2001

TOWN, USA

MINUTES

NOTICE Pursuant to notice given, Mr. John Smith, Chair of the XXX Corporation Board of Directors, called the meeting to order at 2:10 p.m., in the Room, Building, Town, USA. Ms. Jane Doe, VP & Corporate Secretary, recorded the minutes of the meeting.

ROLL CALL Present at the call of the Chair were:

Director	Director
Director	Director
Director	Director
Director	Director

Absent was Director (travel problem).

Also present at the invitation of the Chair were:

XXX, President & CEO

XXX, CFO

Others officers, staff and other

AGENDA A motion was made, seconded and carried to adopt the agenda as presented.

ELECTION REPORT Ms. Doe, title, distributed her final election report and voting results, incorporated herein by reference. Mr. XX, title, made a recommendation concerning election procedures. He advised the proxy holders to meet with him approximately 2:30 p.m. the following day.

ANNUAL MEETING UPDATE Mr. XX went over the details of the annual meeting events and stated that 80% of the setup was done for the annual meeting. He explained the latest updates to the Q&A. The CEO was asked to explain in his report to shareholders how the xxx industry is impacted by the xxx industry.

**RESOLUTION: XX.
RES. 2001.17,
Approving XXX
Selection Survey
with the Bureau of
Land Management**

Mr. Xx, title, explained the resolution and that this was the third and final year of the survey project. Without objection, the resolution below was unanimously adopted:

WHEREAS, XX Corporation is established and organized pursuant to the XX as amended, and pursuant to xx state law; and

WHEREAS, XX Corporation desires to provide the following contract services for the XX Selection Survey under contract from the Bureau of Land Management (“ BLM”):

All surveys of XX lands located within the BLM’ s Group No. xxx, which defines the survey of portions of three townships on xx and xx Islands; now therefore be it

RESOLVED, The Board of Directors of XX Corporation authorizes the President, and his designee, to negotiate, enter into a contract with the BLM, and administer the same, for the purposes of conducting the XX Selection Survey authorized by said contract;

and be it further

RESOLVED, That no part of this resolution be construed by the BLM in its negotiation with XX Corporation as authorizing the reduction of any services to be contracted;

and be it further

RESOLVED, That the duration of this contract is authorized unless rescinded by resolution and received by the BLM;

and be it further

RESOLVED, That any amendments or modifications altering the scope of the contract for XX Selection Survey shall be reviewed by the Board of Directors and shall not become effective until specifically approved by an authorized resolution.

xx AYES x NAYS 1 ABSENT

ABC SALE REPORT	Mr. xx distributed the XX XX XX Presentation Regarding ABC and dated June 8, 2001. He summarized the potential buyer short list status that included one offer for X. Mr. X described several issues that affect the company's efforts to sell ABC. Mr. xx distributed and discussed the Review of ABC Alternatives Based on Current Information Base as of June 2001 (in millions). He advised management continues to remain focused on a sale while looking at other possibilities. He suggested that unless the Board objects, that they continue looking at a sale and to also look at a joint venture or merger alternative.
MOTION	Following discussion, a motion was made, seconded and carried to proceed to implement one or more of the alternatives presented by the President & CEO.
	xx AYES x NAYS 1 ABSENT
MOTION: REVISED 2001 BOARD CALENDAR	Ms. Doe reviewed the 2001 Proposed Calendar- July through December 2001. Without objection, the Directors agreed to the proposed calendar with their first meeting August 17-18, 2001. The Corporate Secretary was directed to check the dates for the September 14-15 retreat to make sure it didn't conflict with XXX hearings.
EXECUTIVE SESSION	The meeting convened into executive session at 2:50 p.m. and reconvened into regular session at 3:15 p.m.
ADJOURNMENT	A motion was made, seconded and carried to adjourn the meeting at 3:15 p.m.

CORPORATE SECRETARY

Appendix F- Long Form Minutes

ABC Corporation

Minutes of _____ ,

Regular Meeting of the Board of Directors

The ABC Corporation board of directors' regular quarterly meeting on _____, _____ was called to order by the Chairman at _____ p.m. at _____, _____. [List attendees] were present. [_____] attended portions of the meeting via teleconference. [_____] was absent. Guests attending the meeting included: [list guests]. _____ acted as secretary of the meeting. The Chairman reviewed the agenda and then requested the Secretary to introduce administrative items requiring action by the board.

1. Administrative Items. The Secretary directed the board's attention to approving recent minutes of board and committee meetings, updating the meeting calendar, and approving other administrative items. After discussion, and upon motion duly made and seconded, it was unanimously

RESOLVED, to approve the minutes of the _____ meetings of the Audit Committee and the _____ meetings of Board of Directors;

RESOLVED FURTHER, to update the meeting calendar as follows: the regular _____ meetings of the Board and committees will be held on _____ .

RESOLVED, that the Record Date for the Annual Meeting is _____ ; and

RESOLVED, that the proposed form of Notice of Annual Meeting of Shareholders to be held _____ , and Proxy Statement as submitted to the Board are hereby approved, subject to such changes as deemed necessary or appropriate by the Company's officers and compliance with any requests for amendment by the Securities and Exchange Commission staff.

The Secretary provided an update to the board regarding the status of pending litigation, including a non-binding mediation process in the _____ case. After discussion, upon motion duly made and seconded, it was unanimously

RESOLVED, to appoint _____ and _____ as an ad hoc oversight

committee to work with management on the _____ mediation.

2. Audit Committee Report. The Committee Chairman reported on matters considered by the Audit Committee at its _____ meeting. This included significant treasury matters, such as share repurchase authorization and activities, foreign exchange hedging, line of credit for vendor leasing, recent internal audits, compliance with the Investment Company Act of 1940, auditor independence, and the audit committee charter. After discussion, upon motion duly made and seconded, it was unanimously

RESOLVED, to approve the Audit Committee Charter, as amended.

Equity Risk Management Policy

RESOLVED, that, whereas there is an outstanding authorization for the Company to engage in open market or privately negotiated transactions to repurchase shares or sell puts on the Company's common stock with a tenor not to exceed one year, such authorization is now amended to also include the use of collars, and the maximum tenor of all such equity derivative transactions is hereby extended to two years;

RESOLVED FURTHER, that the use of derivative securities shall not exceed the number of shares or aggregate purchase price authorized at any time for repurchase, and that the sale of one put or purchase of one call (or whichever has the possible greatest share repurchase impact in the case of exercise of a nonstandard collar) is regarded as a commitment to repurchase one share of common stock for purposes of calculating the total number of shares authorized for repurchase, and that the sale of one put or purchase of one call (or whichever has the possible greatest purchase price in the case of a collar) is regarded as a commitment of funds for purposes of calculating the aggregate purchase price authorized for repurchase;

RESOLVED FURTHER, that all such transactions shall be reported to the Board on a quarterly basis, and that all equity derivative transactions conducted are to be within program parameters approved in advance by the S.V.P and Chief Financial Officer, and executed by the V.P. and Treasurer and/or the Treasury Operations Manager; and

RESOLVED FURTHER, that the proper officers of the Company, including the S.V.P. and Chief Financial Officer and the V.P. and Treasurer, and each of them individually, are hereby authorized, directed and empowered to execute all such documents deemed necessary to administer the Equity Risk Management Program.

3. CEO Update. The CEO summarized efforts to transform the Company by refining its strategy, changing its growth profile and maximizing shareholder value. This enables the Company to focus on two key business models, concentrating investments on strategic focus, and leveraging the balance sheet. He described the key business focus of the principal operating businesses. The CEO presented key elements of the Company's operating plan, transformation milestones, and key objectives.

4. Business Update. The General Manager of the _____ business reported on its performance and significant recent developments, initiatives and events. S/he reviewed

performance in the current year versus the prior year. S/he reviewed growth trends in the various business segments and described details of the operating plans, concluding with a list of key objectives and initiatives. The Board posed various questions concerning the business and an extensive discussion ensued.

5. Operating Plan. The Chief Operating Officer presented details of the fiscal year operating plan, with particular emphasis on the growth portion of the business. Initiatives underway include increased revenue from high-growth product segments, networking solutions, E-Commerce, supply chain improvements, marketing and brand promotion. The Chief Financial Officer then reviewed the financial elements of the operating plan, including the income statement, revenue from high-growth emerging technologies, operating expense trend, balance sheet and cash flow, non-operating asset values, and enterprise and operating values. Management responded to questions from directors regarding the Operating Plan and acknowledgement comments regarding priorities and execution of the operating plan.

6. Compensation Committee Report. The Committee Chairman presented recommendations from the Compensation Committee regarding executive compensation. After extensive discussion and upon motion duly made and seconded, it was

RESOLVED, to approve the recommendations submitted by the Compensation Committee with respect to executive compensation for the coming year, including: (1) executive base compensation, (2) short-term cash incentive plan and performance targets, (3) one-time transformational "trigger" (i.e., cash bonus), and (4) executive equity plan and individual grants.

There being no further business to conduct, upon motion duly made and seconded, it was resolved to adjourn the meeting at _____ p.m.

Respectfully submitted,

Secretary

Appendix G

From:

EMERGENCY MANAGEMENT GUIDE FOR BUSINESS & INDUSTRY

<http://www.fema.gov/library/bizindst.pdf>

Records Preservation

Vital records may include:

- Financial and insurance information
- Engineering plans and drawings
- Product lists and specifications
- Employee, customer and supplier databases
- Formulas and trade secrets
- Personnel files

Preserving vital records is essential to the quick restoration of operations. Analyzing vital records involves:

1. Classifying operations into functional categories, e.g., finance, production, sales, administration
2. Determining essential functions for keeping the business up and running, such as finance, production, sales, etc.
3. Identifying the minimum information that must be readily accessible to perform essential functions, e.g., maintaining customer collections may require access to account statements
4. Identifying the records that contain the essential information and where they are located
5. Identifying the equipment and materials needed to access and use the information

Next, establish procedures for protecting and accessing vital records. Among the many approaches to consider are:

- Labeling vital records
- Backing up computer systems
- Making copies of records
- Storing tapes and disks in insulated containers
- Storing data off-site where they would not likely be damaged by an event affecting your facility
- Increasing security of computer facilities
- Arranging for evacuation of records to backup facilities
- Backing up systems handled by service bureaus
- Arranging for backup power

Appendix H

Sample Records Retention Policy (follows this page)

CORPORATION AND SUBSIDIARIES
POLICIES AND PROCEDURES

RECORDS MANAGEMENT PROGRAM

I. OBJECTIVES

The objectives of the Records Management Program (hereinafter, the "Program") are: (a) to lower the costs associated with the storage and retrieval of Records (defined in Section V(b)) by reducing the volume of Records maintained by Corporation; (b) to assure that those Records which are required to be generated and maintained under state and federal laws and regulations are maintained in compliance therewith; (c) to assure that Records necessary to the conduct of business are maintained in an efficient manner so that they can be readily accessed when necessary; and (d) to provide for the identification and preservation of Records relevant to pending or reasonably foreseeable judicial, administrative or congressional investigations or proceedings.

II. POLICY

Consistent with these objectives, it is corporate policy for employees to:

(a) retain all Records which fulfill a Legal Purpose, Auditing Requirement or Management Requirement, as those terms are defined in Section V;

(b) regularly purge routine correspondence received in the ordinary course of business consistent with (a) above;

(c) at least annually, purge files of routine correspondence generated in the ordinary course of business consistent with (a) above;

(d) regularly destroy all non-current drafts of documents;
and

(e) otherwise to retain or destroy Records in accordance with the terms of the Program and the Records Retention Schedule.

III. APPLICABILITY

This policy applies to all Departments and Remote Offices (as those terms are defined in Section V) of Corporation and its subsidiaries (hereinafter, collectively, the "Company").

IV. DEFINITIONS

(a) "Company Records Administrator" shall mean the individual, appointed by and serving in the discretion of the President, responsible for the administration of the Program and executing the duties described in Section V(b).

(b) "Records" refers to communications from all types of information storage methods, including hard copies of documents, machine sensitive items (magnetic tapes, computer discs, etc.), machine readable items (microfilm, microfiche, etc.) and electronic mail, provided, however, that the definition of Records shall exclude non-material administrative and other communications generated or received in the ordinary course of an employee's office routine.

(c) "Records Retention Schedule" refers to the schedule attached hereto and to any subsequent versions of the Records Retention Schedule.

(d) "Department" refers to the organizational subdivisions of the Company.

(e) "Department Head" refers to the senior Company staff member of each Department. The Department Heads shall be responsible for their Department's compliance with the Program, and their specific responsibilities are described in Section V(a).

(f) "Remote Office" refers to any Company office other than the corporate headquarters, including sites and regional offices.

(g) "Senior Employee" refers to the senior Company staff member at each Remote Office. The Senior Employees shall be responsible for their Remote Office's compliance with the Program, and their specific responsibilities are described in Section V(a).

(h) "Storage Location" refers to a specific location for the storage of Records which shall be established at each Department and Remote Office by the Department Head or the Senior Employee.

(i) A "Legal Purpose" means that: (i) the Company is required to keep the record pursuant to federal or state law, or (ii) contract or property rights of the Company are involved. The mere fact that a record might be potentially useful or

relevant in the event of a lawsuit in the future does not constitute a legal purpose. Each month the Company executes many transactions involving voluminous Records most of which would have to be saved indefinitely if the Company were to anticipate every possible legal problem that could arise. As a practical matter, the retention of Records must be based upon the requirements of sound business procedure. Records are retained for a sufficient time period to verify performance, to make or receive payment, or to furnish support for the audit of accounts.

(j) "Auditing Requirements" refer to state and federal tax audits. All Records needed for the federal tax audit are retained for the current year and for 6 years thereafter ("C plus 6 years"), a period long enough to cover the statutory three-year limitation on the audit plus extensions which are often arranged by separate agreement.

(k) "Management Requirements" refer to the needs of the Company to execute its business in an efficient and appropriate manner, including Records of a proprietary, technical, or economic value to future operations of the Company (e.g., technological research and development, market research and analysis, facilities engineering, etc.). The mere fact that individuals at higher levels of management "might ask for certain Records" does not in and of itself constitute a Management Requirement nor an acceptable reason for saving Records that are otherwise disposable.

V. ADMINISTRATION

(a) Department Heads and Senior Employees. Department Heads and Senior Employees shall have the following responsibilities:

(i) Assuming the ultimate responsibility for the Company's compliance with the Program in their Department or Remote Office;

(ii) Communicating the content of the Program to the employees of their Department or Remote Office;

(iii) Working in conjunction with the Company Records Administrator to train the employees of their Department or Remote Office to implement the program;

(iv) Supervising the implementation of the Program at their Department or Remote Office;

(v) Creating and maintaining a Storage Location;

(vi) Identifying, packaging and transferring those Records not being utilized in the ordinary course of business to the Storage Location;

(vii) Confirming their Department or Remote Office's compliance with the Program and the Records Retention Schedule; and

(viii) Confirming their Department or Remote Office's compliance with the notices distributed by the General Counsel pursuant to Section V(c)(i) regarding the retention of documents scheduled for destruction.

If any Department Head or Senior Employee has any doubts as to whether a particular Record should be retained, he or she shall present the issue to the Company Records Administrator, who shall determine whether the Record should be retained or destroyed after consultation with the General Counsel and/or the Director of Taxation, if necessary.

(b) Company Records Administrator. The Company Records Administrator shall be the officer responsible for the administration of the Program. The Company Records Administrator's responsibilities shall include the following:

(i) Monitoring the actual implementation of the Program by all Departments and Remote Offices;

(ii) Monitoring compliance with the notices distributed by the General Counsel pursuant to Section V(c)(i) regarding the retention of documents scheduled for destruction;

(iii) Reviewing the Program and the Records Retention Schedule to assure compliance with the Legal Purposes, Auditing Requirements and Management Requirements;

(iv) Coordinating the annual training seminar of Company personnel pursuant to Section VI(d);

(v) Interpreting any portions of the Program or the Records Retention Schedule as they may apply to specific situations;

(vi) Answering questions of the Department Heads and Senior Employees regarding interpretation or application of the Program or the Records Retention Schedule; and

(vii) Amending the Records Retention Schedule as needed to reflect changes in the Legal Purposes, Auditing Requirements, or Management Requirements.

As necessary, the Company Records Administrator shall consult with the General Counsel and the Director of Taxation to resolve issues that may arise in the course of his or her duties and regarding amendments to the Records Retention Schedule.

(c) General Counsel. The General Counsel's responsibilities shall include the following:

(i) As may be necessary or appropriate from time to time, notifying the Company Records Administrator, Department Heads and Senior Employees of Records that shall not be destroyed because they would be relevant to any pending or reasonably foreseeable judicial, administrative or other investigation or proceeding;

(ii) Advising the Company Records Administrator regarding material changes in the laws and regulations governing the retention or destruction of Records;

(iii) Counseling the Company Records Administrator regarding amendments to the Records Retention Schedule; and

(iv) Counseling the Company Records Administrator regarding issues that arise in the course of his or her duties, as necessary.

(d) Director of Taxation. The Director of Taxation's responsibilities shall include the following:

(i) Advising the Company Records Administrator regarding all tax and regulatory developments governing the retention or destruction of Records;

(ii) Counseling the Company Records Administrator regarding amendments to the Records Retention Schedule; and

(iii) Counseling the Company Records Administrator regarding issues that arise in the course of his or her duties, as necessary.

VI. IMPLEMENTATION

(a) Annual Review of Records. Each Department and Remote Office shall conduct an annual review of all of the Records maintained at the Department or Remote Office. The annual review shall take place between March 1 and May 1 each year. During, or as a result of this process:

(i) Records which require retention are to be identified, grouped, labeled, and transferred to the Storage Location for appropriate storage;

(ii) Records which have exceeded their required retention period are to be identified, segregated and handled pursuant to Section VI(c); and

(iii) Unnecessary duplicate and multiple copies of Records are to be identified and destroyed.

(b) Storage of Records. Since the Company is an international enterprise with numerous offices located within the United States and abroad, Records shall be stored and monitored by each Remote Office. Furthermore, to promote efficient access and organization, Records kept at the Company corporate headquarters will be stored and monitored by each Department located within the corporate headquarters. Notwithstanding the foregoing, the execution original of every material contract to which the Company is a party shall be stored at a central archive maintained by the Legal Department at the Company's corporate headquarters.

(c) Handling of Obsolete Records. During the annual review of Records which shall be completed between March 1 and May 1 pursuant to Section VI(a), those Records requiring destruction are to be handled in the following manner:

(i) Each Department and Remote Office shall identify and index all Records in its possession which have exceeded their required retention period as designated in the Record Retention Schedule;

(ii) Each Department and Remote Office shall confirm that none of the Records Scheduled for destruction should be retained pursuant to any notice distributed by the General Counsel pursuant to Section V(c)(i);

(iii) Each Department and Remote Office shall destroy all Records that have exceeded their required retention period as designated in the Record Retention Schedule and that are not required to be retained under any notice distributed by the General Counsel pursuant to Section V(c)(i); and

(iv) Each Department and Remote Office will submit to the Company Records Administrator the index prepared as identified above and shall indicate which of those Records have been retained under any notice distributed by the General Counsel pursuant to Section V(c)(i).

(d) Training. All employees involved in or responsible for Records management activities shall be trained and kept current in all aspects of their responsibilities. Training shall include the attendance of each Department Head and Senior Employee at an annual seminar regarding compliance with the Program. In addition, each Department Head and Senior Employee shall be

responsible for informing the employees in his or her Department or Remote Office of the policies and procedures established by the Program and devising the appropriate training to assure implementation.

(e) **Inquiries.** Any inquiries regarding the Program or the Record Retention Schedule should be referred to the Company Records Administrator.

VII. PROCEDURE FOR AMENDING THE RECORDS RETENTION SCHEDULE

In order to assist the Company Records Administrator to keep abreast of developments that warrant issuing amendments or changes to the Records schedule, any Company employee who believes that the retention period governing Records in his or her possession should be amended to reflect a change in a Legal Purpose, Auditing Requirement, or Management Requirement, or who believes that a new item should be added to the Records Retention Schedule; should submit the following information to the Company Records Administrator:

(a) Remote Office, Department, or other location that maintains the Record;

(b) Name and present Record Retention Schedule description of the Record, or simply a brief description if it is a proposed new item for the Records Retention Schedule;

(c) Proposed retention period;

(d) Reason for the proposed retention including specific citation to the law or regulation (if known), or the business reason for the change, and an explanation of the need for the Record, who uses it and for what purposes, going into enough detail to give the Company Records Administrator a clear picture of the value of the record; and

(e) The General Counsel of the Legal Department or the Director of Taxation shall review the proposal and make recommendations to the Company Records Administrator, who shall adopt or reject the proposed amendment.

RECORDS RETENTION SCHEDULE

The Records Schedule. Retention periods are expressed in terms of the number of calendar years plus the current calendar year. If a record is classified as "C plus 2 years," first determine the year the document was created and then add two years to that year: this figure will be the period during which the document shall be retained. For example, if a document was created in 1993, it should be retained through and including 1995, which means it will not be destroyed until 1996. In other words, the document will be kept during the remainder of 1993, 1994, and 1995 and will only be destroyed during the annual review of Records (pursuant to Section VI(a)) in 1996. "Active" means that the record should be kept as long as it is actively used, is pertinent or in effect, and has not been superseded by receipt of more up-to-date material. In a few instances the meaning of "Active" has been slightly changed for a particular record and the modified definition shown in a footnote. It should also be noted that ancillary but material records which relate to the categories identified below shall be retained for identical time periods. For example, correspondence of a material nature which relates to a specific contract shall be treated the same for retention purposes.

Abbreviations:

P - Permanent
 AT - After Termination
 C+ - Creation Year plus the
 designated number of years

TYPE OF RECORDS	RETENTION PERIOD
I. General Corporate Records	
Records of Incorporation and Bylaws	P
Corporate Minute Books	P
Annual Report (glossy)	P
SEC Filings and Reports	P
Stock Transfer Register	P
Stock Certificates and Records	P
Stock Certificates - Cancelled	C+3
Director and Committee Meetings	P
Director, Committee, and Shareholder Resolutions Passed by Unanimous Consent	P
Employee Benefit Documents	P
Stock Awards	P
Shareholder Meeting Minutes	P

II. Contracts

Customer (Lottery, Benefits Transfer, Parimutuel Wagering)	P
Financing	P
Merger Agreements	P
Real Property Deeds, Titles and Associated Documents	P
Leases (whether governing Real or Personal Property)	AT+3
Requests for a Proposal (ultimately accepted)	P
Requests for a Proposal (ultimately rejected)	3
Proposals (Accepted)	P
Proposals (Rejected)	3
Awards	P
Contracts with Consultants	AT+3
Employment Contracts	AT+3
Acquisition/Sale Agreements	AT+3
Purchases	3
Joint Ventures	AT+3
Suppliers	AT+3
Licenses	AT+3

III. Sales and Marketing

Customer File	Active + 5
Sales Invoices	1 After Payment
Market Investigations and Reports	5
Presentations and Proposals	5
Sales Analysis Reports	3
Sales Expenses	3
Market Research Data	5
Advertising Report	3
Sales Meetings	3
Sales Reports	3
Monthly Sales Analysis	3
Research of Competitors	5
Research of Competing Products	5

IV. Manufacturing

Drafting Records	P
Reliability Records	P
Inventory Reports	4
Shipping	4
Purchase Requisitions	4

V. Quality Control and Inspection

Customer Service Records	10
Equipment and Instrument Calibration Records	10
Inspection and Test Records	10
Material Substitution Records	10
Supplier Quality Data	10

VI. Legal

Government Disclosures, Reports, and Filings	P
Accident Reports, Settlement	30
Patent and Trademark related documents	Life of Patent or Trademark plus 5 years 7 years after resolution
Litigation Files	
Legal Proceedings (Company as a Party)	10
Legal Proceedings (Company as Non-party)	5
Investigation Files	10
Employee Lawsuits	10
Subpoenas	5

VII. Accounting and Payroll

Accounts Payable Vouchers	6
Accounts Receivable	6
Allowance Report	5
Audit Work Papers	P
Cash Receipts & Disbursements	3
Checks (cancelled, copies, payroll)	4
Cost Comparison Files	Not over Two Years When Obsolete
Cost of Production Report	3
Daily Cash Reports	4
Deposit Slips	2 months
General Ledgers	P
Monthly Accounting Report	4
Payroll Check Requests	3
Payroll & Deduction Ledger	20
Payroll Tax Register	6
Selling Expense	5
Wage Reports	6

VIII. Personnel

Time Cards	3
Personnel Files	5 years after termination

IX. Tax

Income Tax Returns	P
Tax Return Supporting Workpapers	P
I.R.S. and State Audit Reports	P
Federal Unemployment Forms	6
Property Tax Returns	P
Sales and Use Tax Work Papers	P

X. Finance

Financial Statements

Credit and Loan Agreements

Miscellaneous Financial Documents

P

AT+3

AT+3