



CEO Health Disclosure at Apple: A Public or Private Matter?

By David F. Larcker and Brian Tayan

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INTRODUCTION

In recent years, much attention has been paid to CEO succession planning as a risk management issue. The SEC has encouraged companies to disclose information on their succession plans so that shareholders can assess whether the company might be “adversely affected due to vacancy in leadership.”¹ While many applaud this move, the questions now are what information to include in this disclosure and how extensive should it be.²

This is particularly true when it comes to companies whose CEOs are experiencing health issues. Shareholders will value detailed disclosure on the health of the CEO because it helps them to make a reasoned assessment of whether or when a transition might occur. This information will almost certainly be relevant to the market price of the stock. At the same time, health information is a personal matter. The CEO may not wish to disclose the details of his or her condition to the public.

The sensitivity of this issue is exemplified at Apple Inc., where CEO Steve Jobs has faced numerous questions regarding his health and the impact that a sudden departure would have on the company.

STEVE JOBS (APPLE)

In October 2003, Steve Jobs was diagnosed with pancreatic cancer. No public announcement was made, although the board of directors was notified of his condition. The specific form of cancer was rare but considered treatable, with the majority of patients who undergo surgery experiencing a survival rate of more than ten years. On July 31, 2004, Jobs entered Stanford Hospital for treatment.³

The following day, Jobs sent an email to Apple employees stating that, “This weekend I underwent

a successful surgery to remove a cancerous tumor from my pancreas....I will be recuperating during the month of August, and expect to return to work in September. While I’m out, I’ve asked Tim Cook [executive vice president of sales and operations] to be responsible for Apple’s day to day operations, so we shouldn’t miss a beat.”⁴ A copy of the message was distributed to the Associated Press (see Exhibit 1). It was the first public disclosure of his condition. Given Jobs’ strategic and visionary role at Apple, it is perhaps not surprising that when trading resumed the next day, Apple stock fell 2.4 percent.⁵

The issue of Jobs’ health resurfaced in June 2008, when he appeared noticeably thin at a public appearance. A company spokeswoman responded to inquires by stating that Jobs had “a common bug. [...] He’s been on antibiotics and getting better day by day and didn’t want to miss [the event]. That’s all there is to it.”⁶ When analysts asked for more information during an earnings conference call, Apple CFO Peter Oppenheimer declined to elaborate: “Steve loves Apple. He serves as the CEO at the pleasure of Apple’s board and has no plans to leave Apple. Steve’s health is a private matter.”⁷

In January 2009, Apple released another letter from Jobs in which he explained that his recent weight loss was due to a “hormone imbalance.” According to the letter, “The remedy for this nutritional problem is relatively simple and straightforward, and I’ve already begun treatment. [...] I will continue as Apple’s CEO during my recovery.”⁸ Concurrently, the board of directors issued a statement that, “[Jobs] deserves our complete and unwavering support during his recuperation. He most certainly has that from Apple and its Board.”⁹

Ten days later, however, the company

announced that Jobs would take another leave of absence. According to Jobs, “during the past week I have learned that my health-related issues are more complex than I originally thought. In order to take myself out of the limelight and focus on my health [...] I have decided to take a medical leave of absence until the end of June.”¹⁰ No elaboration was offered. Tim Cook, then chief operating officer, resumed leadership of the company. In the two-week period surrounding these announcements, Apple stock fell 17 percent.

Jobs returned to work as scheduled six months later. Two weeks prior to his return, however, news leaked that Jobs had received a liver transplant at a Tennessee hospital the previous April. A company spokeswoman declined to comment other than to say, “Steve continues to look forward to returning at the end of June, and there’s nothing further to say.”¹¹ Doctors unaffiliated with the case explained that tumors associated with the pancreatic cancer that Jobs was originally diagnosed with often metastasize in another organ, commonly the liver. The hospital where Jobs received the transplant stated that his prognosis was “excellent.”¹²

In January 2011, Jobs took a third leave of absence. In an email to employees, he explained that he would “continue as CEO and be involved in major strategic decisions” but that Tim Cook would be responsible for “day to day operations.” Jobs would be back with the company “as soon as I can. In the meantime, my family and I would deeply appreciate respect for our privacy.”¹³ When asked for additional comment, an Apple spokeswoman replied, “We’ve said all we’re going to say.”¹⁴

PUBLIC REACTION

Experts disagree on the appropriateness of Apple’s disclosure of Steve Jobs’ health. Warren Buffett, CEO of Berkshire Hathaway who himself underwent colon surgery in 2000, believed that Steve Jobs’ health was a disclosable item: “If I have any serious illness, or something coming up of an important nature such as an operation or anything like that, I think the thing to do is just tell Berkshire shareholders about it. I work for them. Some people might think I’m important to the company. Certainly Steve Jobs is important to Apple. So it’s

a material fact. [...] Shareholders are going to find out about it anyway so I don’t see a big privacy issue.”¹⁵

Jerome York, former director of Apple, told the *Wall Street Journal* that the company’s concealment of Jobs’ health “disgusted” him and that he wished he had resigned over the matter.¹⁶

Charles Elson, director of the Center for Corporate Governance at the University of Delaware, believed that the company’s use of public capital required full disclosure: “The public should know basically what the board knows. Transparency in this situation is very important. When you go public and take public capital, one thing you agree to is you have less of an expectation of privacy than you would otherwise have.”¹⁷

Others, however, disagreed. Robert Crandall, former CEO of American Airlines, believed that the company had no obligation to disclose more than it already had: “I think the fact of the matter is that the precise nature of Steve Jobs’ illness is a matter for Steve and his family.”¹⁸

Arthur Levitt, former SEC commissioner, thought it was “insensitive” to seek additional information beyond what the company had provided: “Jobs going on medical leave sends a message to the market. An intelligent investor should know the risks of Jobs having a relapse. For the board to opine on what the extent of the illness is right now I don’t think is really necessary.”¹⁹

The law was also on the side of the company. External counsel advised Apple’s board that personal privacy trumped disclosure obligations so long as Jobs was able to continue to perform his duties.²⁰ The SEC opened inquiries into the matter in 2006 and 2009, both of which were closed without action.²¹

WHY THIS MATTERS

1. The issue of what information a company should disclose regarding the CEO’s health continues to be a controversial subject. Companies have handled this issue differently (see Exhibit 2). How extensive should this disclosure be? How should the board of directors weigh its obligations to shareholders against the protection of personal privacy?

2. The nature of Steve Jobs' condition is extreme in its nature. Should the board disclose other, less sensitive information regarding CEO behavior that might be material to the stock price? For example, what if the CEO is involved in a contentious divorce that distracts from day-to-day management of the company? What if he or she exhibits unusually high stress levels that may precipitate an early resignation?²² What if the CEO engages in hobbies (such as skydiving or private aviation) that carry above-average risk? Do shareholders have the right to know this information? Where should the board of directors "draw the line?" ■

¹ SEC Staff Legal Bulletin 14E (CF), "Shareholder Proposals," Oct. 27, 2009. Available at: <http://www.sec.gov/interp/legalslbf14e.htm>.

² For more on succession planning, see: David F. Larcker and Brian Tayan, "CEO Succession Planning: Who's Behind Door Number One?" Closer Look Series, CGRP-05, Jun. 24, 2010; and Heidrick & Struggles and the Rock Center for Corporate Governance at Stanford University, "2010 Survey on CEO Succession Planning, Jun. 2010. Available at: <http://www.gsb.stanford.edu/cldr/>.

³ According to *Fortune*, Jobs was reluctant to have surgery and at first chose to pursue alternative treatments. When this approach proved unsuccessful, Jobs elected to have surgery. Source: Doris Burke, "The Trouble with Steve," *Fortune*, Mar. 17, 2008.

⁴ "Text of Message from Steve Jobs," *The Associated Press*, Aug. 2, 2004.

⁵ Stock price information from: Center for Research in Securities Prices (University of Chicago).

⁶ Steven Russolillo, "Apple Says Bug Caused CEO's Frail Appearance; Concerns Remain," Dow Jones Newswire, Jun. 10, 2008.

⁷ Apple Inc., "Q3 2008 Apple Inc. Earnings Conference Call," Voxant FD Wire, Jul. 21, 2008.

⁸ Apple, Press Release, "Letter from Apple CEO Steve Jobs," Jan. 5, 2009, Available at: <http://www.apple.com/pr/library/2009/01/05sjletter.html>.

⁹ Apple, Press Release, "Statement by Apple's Board of Directors," Jan. 5, 2009. Available at: <http://www.apple.com/pr/library/2009/01/05bod.html>.

¹⁰ Apple, Press Release, "Apple Media Advisory," Jan. 14, 2009. Available at: <http://www.apple.com/pr/library/2009/01/14advisory.html>.

¹¹ Yukari Iwatani Kane and Joann S. Lublin, "Jobs Had Liver Transplant," *The Wall Street Journal*, Jun. 20, 2009.

¹² Yukari Iwatani Kane, "Memphis Site Of Transplant For Jobs Liver," *The Wall Street Journal*, Jun. 24, 2009.

¹³ Apple, Press Release, "Apple Media Advisory," Jan. 17, 2011. Available at: <http://www.apple.com/pr/library/2011/01/17advisory.html>.

¹⁴ Yukari Iwatani Kane and Joann S. Lublin, "Apple Chief to Take Leave," *The Wall Street Journal*, Jan. 18, 2011.

¹⁵ Alex Crippen, "Warren Buffett: Apple Withheld 'Material Fact' on Steve Jobs Health," *CNBC*, Jun. 24, 2009. Edited slightly for clarity.

¹⁶ Yukari Iwatani Kane and Joann S. Lublin, "On Apple's Board, Fewer Independent Voices," *The Wall Street Journal*, March 25, 2010.

¹⁷ Interview with Charles Elson, "Cavuto," *Fox News*, Jan. 17, 2011.

Edited slightly for clarity.

¹⁸ Interview with Robert Crandall, "Cavuto," *Fox News*, Jan. 17, 2011.

¹⁹ Adam Satariano, "Apple is Right on Jobs Disclosure, Former SEC Chair Levitt Says," *Bloomberg*, Jan. 20, 2011.

²⁰ Doris Burke, "The Trouble with Steve," loc. cit.

²¹ Yukari Iwatani Kane and Joann S. Lublin, "Apple Chief to Take Leave," loc. cit.

²² This occurred at Pfizer. See: Joann S. Lublin and Jonathan D. Rockoff, "CEO's Stress Worried Pfizer—Board Sought Lieutenant to Share Load, but Kindler Abruptly Decided to Retire," *The Wall Street Journal*, Dec. 7, 2010.

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EXHIBIT 1 — APPLE INC. : DISCLOSURE ON STEVE JOBS' HEALTH

EMAIL TO EMPLOYEES (AUG. 1, 2004)

Team,

I have some personal news that I need to share with you, and I wanted you to hear it directly from me.

This weekend I underwent a successful surgery to remove a cancerous tumor from my pancreas. I had a very rare form of pancreatic cancer called an islet cell neuroendocrine tumor, which represents about 1 percent of the total cases of pancreatic cancer diagnosed each year, and can be cured by surgical removal if diagnosed in time (mine was). I will not require any chemotherapy or radiation treatments.

The far more common form of pancreatic cancer is called adenocarcinoma, which is currently not curable and usually carries a life expectancy of around one year after diagnosis. I mention this because when one hears "pancreatic cancer" (or Googles it), one immediately encounters this far more common and deadly form, which, thank god, is not what I had.

I will be recuperating during the month of August, and expect to return to work in September. While I'm out, I've asked Tim Cook to be responsible for Apple's day to day operations, so we shouldn't miss a beat. I'm sure I'll be calling some of you way too much in August, and I look forward to seeing you in September.

Steve, PS: I'm sending this from my hospital bed using my 17-inch PowerBook and an Airport Express.

EMAIL TO EMPLOYEES (JAN. 5, 2009)

Team,

Dear Apple Community,

For the first time in a decade, I'm getting to spend the holiday season with my family, rather than intensely preparing for a Macworld keynote. Unfortunately, my decision to have Phil deliver the Macworld keynote set off another flurry of rumors about my health, with some even publishing stories of me on my deathbed.

I've decided to share something very personal with the Apple community so that we can all relax and enjoy the show tomorrow. As many of you know, I have been losing weight throughout 2008. The reason has been a mystery to me and my doctors. A few weeks ago, I decided that getting to the root cause of this and reversing it needed to become my #1 priority.

Fortunately, after further testing, my doctors think they have found the cause—a hormone imbalance that has been "robbing" me of the proteins my body needs to be healthy. Sophisticated blood tests have confirmed this diagnosis.

The remedy for this nutritional problem is relatively simple and straightforward, and I've already begun treatment. But, just like I didn't lose this much weight and body mass in a week or a month, my doctors expect it will take me until late this Spring to regain it. I will continue as Apple's CEO during my recovery.

I have given more than my all to Apple for the past 11 years now. I will be the first one to step up and tell our Board of Directors if I can no longer continue to fulfill my duties as Apple's CEO. I hope the Apple community will support me in my recovery and know that I will always put what is best for Apple first.

So now I've said more than I wanted to say, and all that I am going to say, about this.

Steve

EXHIBIT 1 — CONTINUED

STATEMENT BY APPLE'S BOARD OF DIRECTORS (JAN. 5, 2009)

It is widely recognized both inside and outside of Apple that Steve Jobs is one of the most talented and effective CEOs in the world. As we have said before, if there ever comes a day when Steve wants to retire or for other reasons cannot continue to fulfill his duties as Apple's CEO, you will know it. Apple is very lucky to have Steve as its leader and CEO, and he deserves our complete and unwavering support during his recuperation. He most certainly has that from Apple and its Board.

EMAIL TO EMPLOYEES (JAN. 14, 2009)

Team,

I am sure all of you saw my letter last week sharing something very personal with the Apple community. Unfortunately, the curiosity over my personal health continues to be a distraction not only for me and my family, but everyone else at Apple as well. In addition, during the past week I have learned that my health-related issues are more complex than I originally thought.

In order to take myself out of the limelight and focus on my health, and to allow everyone at Apple to focus on delivering extraordinary products, I have decided to take a medical leave of absence until the end of June. I have asked Tim Cook to be responsible for Apple's day to day operations, and I know he and the rest of the executive management team will do a great job. As CEO, I plan to remain involved in major strategic decisions while I am out. Our board of directors fully supports this plan.

I look forward to seeing all of you this summer.

Steve

EMAIL TO EMPLOYEES (JAN. 17, 2011)

Team,

At my request, the board of directors has granted me a medical leave of absence so I can focus on my health. I will continue as CEO and be involved in major strategic decisions for the company. I have asked Tim Cook to be responsible for all of Apple's day to day operations. I have great confidence that Tim and the rest of the executive management team will do a terrific job executing the exciting plans we have in place for 2011. I love Apple so much and hope to be back as soon as I can. In the meantime, my family and I would deeply appreciate respect for our privacy.

Steve

FORM 10-K: RISK FACTORS

The Company's success depends largely on the continued service and availability of key personnel.

Much of the Company's future success depends on the continued availability and service of key personnel, including its CEO, its executive team and highly skilled employees in technical, marketing and staff positions. Experienced personnel in the technology industry are in high demand and competition for their talents is intense, especially in the Silicon Valley, where most of the Company's key personnel are located. There can be no assurance that the Company will continue to attract and retain key personnel.

Source: Apple Inc. Press Releases; and Form 10-K, Oct. 27, 2010.

EXHIBIT 2 — CEO HEALTH DISCLOSURES: AIG, PACIFIC BIOSCIENCES, AND BERKSHIRE HATHAWAY

ROBERT BENMOSCHE, AIG
FORM 8-K

American International Group, Inc. (AIG) today announced that its President and Chief Executive Officer, Robert H. Benmosche, has been diagnosed with cancer and is undergoing aggressive chemotherapy.

“The good news is that I feel fine, and I continue to work according to my normal schedule. As for my long-term prognosis—I will have a better idea over the next couple of months of what that will look like as I continue to undergo treatment and my doctors refine their diagnosis. All that said, I remain absolutely committed to my job, to AIG, and to all of our stakeholders,” Mr. Benmosche said. “AIG is executing on an established, clear roadmap to repay taxpayers. Just in the last week we have made extraordinary progress on a key asset divestiture. I am confident in our momentum, and, with our employees, fully committed to delivering on AIG’s core priorities: repaying taxpayers, meeting all of the company’s obligations to its various stakeholders, and restructuring the company so that it emerges as a smaller, more focused enterprise worthy of investor confidence.”

Robert S. “Steve” Miller, Chairman of the AIG Board of Directors, said, “Our thoughts and prayers are with Bob and his family at this time. In the last year, Bob has made a profound impact on AIG, and under his leadership, AIG has built a very strong management team that is working hard to repay taxpayers. Speaking for the Board, we have every confidence that we will all continue to work together smoothly and without interruption as AIG executes its repayment roadmap. At the same time, we will make sure that we engage in appropriate contingency planning to ensure management continuity.”

ROBERT BENMOSCHE, AIG
INTERVIEW WITH NEIL CAVUTO

Benmosche: First of all, I’m feeling fine. I continue to go through my normal days. I have not had any symptoms of the disease, so I’m lucky [it was detected] in a routine test. [...] But I do now have a serious problem. I have wonderful doctors who are working with me on it. We’ll see how the chemotherapy works over the next few weeks, in particular. And then I can get a prognosis for the AIG board to see whether I stay healthy enough to continue in my job over the next 12 to 18 months before I go into the retirement I had previously planned.”

Cavuto: [...] What kind of cancer do you have?

Benmosche: I’m not going to discuss that [...] because I think it is something that will give reporters an opportunity to call every expert in the world and decide when I’m going to die. [...] I feel that telling what my disease is just opens the door for more speculation. [...]

Cavuto: Still, is it one for which you can be cured?

Benmosche: No, I will not be cured but I can be treated and treatment can be of various durations. And they’re determining now what kind of duration I would have based on current treatments. [...]

Cavuto: You’re running one of the most important financial concerns on the planet. [...] What do you tell shareholders?

Benmosche: That I’m strong so far. And unless my doctors give me a prognosis other than the fact that I can continue to be strong during this next 12 to 18 months, then I will step down. And I’ve told the board that I would step down. [...] If I can’t do this job the right way, we’re going to find a CEO who is the right person to lead this company and continue to take it to the next level. That is the commitment the board has and that is the commitment we make for our existing shareholders.”

Source: AIG, Form 8-K, Oct. 25, 2010; Interview with Robert Benmosche, “Cavuto,” *Fox News*, Jan. 14, 2011.

EXHIBIT 2 — CONTINUED

HUGH MARTIN, PACIFIC BIOSCIENCES
FORM S-1: RISK FACTORS

Hugh Martin, our Chief Executive Officer, has been diagnosed with a form of cancer, and the impact of this condition on his ability to lead the company in the future may be uncertain.

Mr. Martin has informed us that he has been diagnosed with multiple myeloma, a form of cancer. Although his condition has not had any impact on Mr. Martin's performance in his role as Chief Executive Officer or on the overall management of the company, we can provide no assurance that his condition will not affect his ability to perform the role of Chief Executive Officer in the future. If Mr. Martin becomes unable to continue to perform his role as Chief Executive Officer, we would need to select a new Chief Executive Officer which we may not be able to do easily, and may require other senior management to divert part of their attention from their primary duties, which could have a material adverse effect on our business or operations.

Source: Pacific Biosciences, Form S-1, Filed Aug. 16, 2010 with the SEC.

WARREN BUFFETT, BERKSHIRE HATHAWAY
PRESS RELEASE (JUN. 21, 2000)

Warren E. Buffett, Chairman of Berkshire Hathaway Inc., expects to enter an Omaha hospital in the next month to undergo surgery to remove several benign polyps in his colon. The polyps were discovered on Monday when Mr. Buffett underwent a routine physical examination, which otherwise found him to be in excellent health. The surgery is expected to keep Mr. Buffett in the hospital for several days after which he expects to return quickly to work.

Berkshire Hathaway is releasing these facts to forestall the kind of false rumors about Mr. Buffett's health that disrupted the market for its stock earlier this year.

WARREN BUFFETT, BERKSHIRE HATHAWAY
PRESS RELEASE (JUL. 25, 2000)

Warren E. Buffett, Chairman of Berkshire Hathaway Inc., returned home from the hospital today after surgery to remove a section of the colon containing polyps which were confirmed to be benign. No further treatment is required for Mr. Buffett and he will conduct business from his home for a short period, pending return to the office after his strength has been restored.

WARREN BUFFETT, BERKSHIRE HATHAWAY
FORM 10-K: RISK FACTORS

We are dependent on a few key people for our major investment and capital allocation decisions.

Major investment decisions and all major capital allocation decisions are made by Warren E. Buffett, Chairman of the Board of Directors and CEO, age 79, in consultation with Charles T. Munger, Vice Chairman of the Board of Directors, age 86. If for any reason the services of our key personnel, particularly Mr. Buffett, were to become unavailable, there could be a material adverse effect on our operations. However, Berkshire's Board of Directors has identified three current Berkshire subsidiary managers who are capable of being CEO. Berkshire's Board has agreed on a replacement for Mr. Buffett should a replacement be needed currently. The Board continually monitors this risk and could alter its current view regarding a replacement for Mr. Buffett in the future. We believe that the Board's succession plan, together with the outstanding managers running our numerous and highly diversified operating units helps to mitigate this risk.

Sources: Berkshire Hathaway, Press Releases; Form 10-K, Mar. 1, 2010.