The Resignation of David Sokol: Mountain or Molehill for Berkshire Hathaway?

By David F. Larcker and Brian Tayan
April 21, 2011

GOVERNANCE AT BERKSHIRE HATHAWAY
Berkshire Hathaway has many organizational and governance features that make it unique. First, the company operates under a highly decentralized business model. Executives who run the company’s subsidiaries—which include a diverse mix of insurance, railroads, utilities, wholesalers, retailers, and suppliers—are afforded considerable autonomy to make short- and long-term business decisions largely without the approval of headquarters. Second, the company operates with low levels of internal controls. Managers are given general instructions to grow their businesses with a focus on improving competitive position, but they are not required to submit strategic plans or operating budgets that project how they will achieve results. Finally, all capital allocation decisions at the parent level—those involving the acquisition of new businesses or the purchase of publicly traded securities—are made exclusively by Chairman and CEO Warren Buffett, in consultation with Vice Chairman Charlie Munger. The company does not employ analytical staff nor does an investment committee review or approve investment decisions.

The success of this system is predicated on the expectation that Berkshire Hathaway managers operate with high levels of integrity. In evaluating management, Buffett has said that he looks for “integrity, intelligence, and energy,” with an emphasis on the former. In making decisions, he asks managers to consider what he calls the newspaper test: “How would they feel about any given action if they knew it was to be written up the next day in their local paper to be read by their family, by their friends, by their neighbors, written by a smart but unfriendly reporter?” Perhaps his most famous public statement regarding integrity came in 1991 when he said, “Lose money for the firm and I will be understanding. Lose a shred of reputation for the firm and I will be ruthless.” Munger describes the governance system of Berkshire as “a seamless web of deserved trust,” and credits it as instrumental in helping the company grow from a market capitalization of $10 million in 1965 to $200 billion in 2011.

DAVID SOKOL AND LUBRIZOL
David Sokol came to Berkshire Hathaway through the company’s acquisition of MidAmerican Energy in 1999, where he served as CEO. Over the years, Sokol distinguished himself through his managerial performance and, in the process, earned considerable praise from Buffett. For example, in 2008, Buffett wrote in the annual letter to shareholders that Sokol’s results were “unmatched elsewhere in the utility industry.” In 2009, he described Sokol as an “enormously talented builder and operator.” Sokol also distinguished himself for his contributions to Berkshire beyond his role at MidAmerican. In 2008, he flew to China to facilitate a $230 million investment in Chinese automobile and battery manufacturer BYD. That same year, he negotiated a $4.7 billion investment in Constellation Energy. Buffett also expanded Sokol’s operating responsibilities by naming him CEO of Johns Manville (2007) and CEO of NetJets (2009). These were unusual moves in that Berkshire managers rarely assumed responsibility for more than one business unit. Because of his high profile within the company, many observers speculated that Sokol was the front-runner on a short list of potential successors to one day replace Warren Buffett as CEO.
For these reasons, it came as a shock to many when Buffett announced the sudden resignation of Sokol in a March 2011 press release. Buffett explained that the decision was made for personal reasons and unrelated to Sokol’s performance at Berkshire. He noted that “I had not asked for his resignation, and it came as a surprise to me.” He also noted that Sokol had discussed stepping down from his roles at Berkshire twice before in prior years and “both times, I and other board members persuaded him to stay.”

More bizarre were the circumstances surrounding the announcement. Just two weeks before Sokol’s resignation, Berkshire had agreed to acquire specialty chemical company Lubrizol in a deal valued at $9.7 billion. Sokol had been instrumental in arranging the discussion between Buffett and Lubrizol CEO James Hambrick that lead to the deal. What was bizarre was that in the same press release that Buffett announced Sokol’s resignation, he also disclosed that, unbeknownst to him at the time, Sokol had personally purchased $10 million in Lubrizol stock just days before proposing the acquisition to Buffett.

Buffett did not condemn Sokol for his actions. Instead, he simply stated that Sokol’s “purchases were made before he had discussed Lubrizol with me and with no knowledge of how I might react to his idea…. Furthermore, he knew he would have no voice in Berkshire’s decision once he suggested the idea.” For these reasons, “neither Dave nor I feel his Lubrizol purchases were in any way unlawful. He has told me that they were not a factor in his decision to resign.”

Buffett concluded the press release by returning to the topic of Sokol’s resignation:

Dave’s letter was a total surprise to me, despite the two earlier resignation talks. I had spoken with him the previous day about various operating matters and received no hint of his intention to resign. This time, however, I did not attempt to talk him out of his decision and accepted his resignation.

He ended by stating, “I have held back nothing in this statement. Therefore, if questioned about this matter in the future, I will simply refer the questioner back to this release.”

True to his word, Buffett did not make public comment on the matter in the weeks that followed. If he believed that Sokol’s actions were wrong, he expressed that sentiment more by what he did not write in the press release than what he did (see Exhibit 1).

Sokol, however, was vocal in defending his actions. In a lengthy interview on CNBC, he said, “I don’t believe I did anything wrong.” He explained that he “never had any authority at Berkshire to invest a dollar in stocks.” He also said that he didn’t think there was “even a five percent chance” that Buffett would agree to the deal. He concluded, “I guess, knowing today what I know, what I would do differently is I just would never have mentioned it to Warren, and just made my own investment and left it alone.” When asked about the implication of his resignation on Berkshire Hathaway’s succession plan, he stated, “It’s just not a job I would aspire to, because nobody is going to do it as well as Warren does. And there’s going to be a lot of change that comes with that. But the reality is Warren’s not going anywhere…. I admire enormously what he’s done. But whoever replaces Warren will not get to do it the way he does it (see Exhibit 2).”

**REACTION AND IMPLICATIONS**

There was considerable public reaction to the news. Although legal experts expected an SEC investigation, there was some doubt whether Sokol’s actions constituted insider trading because he did not have access to material nonpublic information at the time of his purchases. It was also unclear that Sokol breached a fiduciary duty to Berkshire, given that he was not involved in the decision to acquire Lubrizol or the negotiation of purchase price. While some speculated that Sokol might have violated Berkshire’s insider trading policy, which prohibits trading in securities that Berkshire is “actively considering” taking a public position in, subsequent reports revealed that Lubrizol was not on the list of restricted securities that Buffett circulated among management (see Exhibit 3).

The criticism of Warren Buffett, however, tended to be stronger than the criticism of Sokol. Experts contended that he should have asked for more
details about Sokol's holdings in Lubrizol when Sokol first brought up the matter. Others criticized Buffett for not taking a harder line against Sokol's actions. According to one commentator:

*Even if the SEC concludes that Sokol did nothing illegal, the known facts suggest that what Sokol did was wrong.... Instead of condemning Sokol, Buffett gave him a pat on the back on the way out the door.... Buffett missed an opportunity to show moral courage, stand up for principle, reinforce to his employees what he expects from them, and, not least of all, to live up to his own public reputation.*

Another commentator was more blunt: “Mr. Buffett whitewashed Mr. Sokol’s blazingly obvious ethical lapse.” A third asked, “Why hasn’t Mr. Buffett been ruthless?”

Some blamed the corporate governance system of Berkshire Hathaway for having lax internal controls. According to one journalist, “the unfolding events are raising questions about controls and governance at the highest levels of his business.”

Another questioned whether, “Berkshire needs more compliance programs and people to manage them.” A third contended that Berkshire Hathaway’s board was in part to blame: “The Berkshire Hathaway board is full of independence issues. It’s just that no one seems to care.” She accused the audit committee of being “passive” with regard to Buffett and not “proactively probing management, internal auditors and external auditors to gain insight and to make oversight decisions that will hold up, if necessary, in court.”

Finally, Sokol’s resignation highlighted the succession challenges at Berkshire. While Buffett had assured investors in the past that “the directors and I have thought through the succession question carefully and that we are well prepared,” Sokol’s sudden resignation and in particular the comments he made regarding the challenges of succeeding Buffett were troubling.

**WHY THIS MATTERS**

1. Given its size, Berkshire Hathaway has had a relatively clean record on governance-related matters. This track record speaks to the quality of corporate governance and the ability of its “trust-based” model to work. Still, the Sokol matter raises significant issues for the board:

   • How much has the reputation of the firm suffered from Sokol’s actions? Is this a flash in the pan, or will there be long-term ramifications?
   • Did Sokol violate the company’s insider trading policy?
   • Did Sokol’s actions reveal shortcomings in the company’s governance system that need to be addressed? Or were they instead an isolated incident?
   • Should the company add additional controls to prevent similar events from recurring? If so, what would be the cost of these controls in terms of decision making, performance, and culture?
   • Do potential successors need to be held to a higher standard of conduct so that their actions do not negatively impact the reputation of the firm?

2. The Sokol matter also raises questions that are general to all organizations. What events must occur before a company decides that changes to the overall governance system are required? How significant must these events be, and how will the board determine if they constitute a “systemic failure” or a “one-time event”? If the board determines that changes are required, how should it weigh the extent and cost of those changes against future performance?

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2 As with all publicly traded companies, the acquisition of businesses requires the approval of the board of directors. Acquisitions involving the issuance of Berkshire shares require the approval of shareholders.


6 Wesco Financial, 2007 Annual Meeting, cited in: *Outstanding*
MidAmerican owns utilities, natural gas pipelines, and other energy assets in the United States and United Kingdom. David Sokol (chairman and CEO), Greg Abel (president), and Walter Scott (director) have continued to hold a minority ownership position in MidAmerican since the acquisition. Scott, who recommended the deal to Buffett, has been a director of Berkshire Hathaway since 1988 and was on the board at the time of the purchase.

Although the deal was terminated when Berkshire was outbid by the French utility EDF, Berkshire earned a $1.2 billion profit from interest, common stock conversion, and termination fees for its commitment. See: Brian Dumaine, “Buffett’s Mr. Fix-It,” Fortune, Aug. 16, 2010.


However, he was expected to face shareholder questions at the company’s annual meeting one month later.


According to some, his actions appeared closer to “front running” than insider trading. Front running occurs when a stock broker purchases (or sells) public securities in advance of a customer order to purchase (or sell) those same securities. Front running is illegal in a brokerage setting because it reduces the profitability of the trade for the client and constitutes self-dealing by the broker. It is not clear how front running applies in a private setting.


Andrew Ross Sorkin, loc. cit.

Francine McKenna, “Corporate Governance at Berkshire Hathaway: Maybe It’s Not All That,” Forbes, Apr. 11, 2011.

EXHIBIT 1 — BERKSHIRE HATHAWAY: PRESS RELEASE ANNOUNCING SOKOL’S RESIGNATION

OMAHA, NE—This press release will be unusual. First, I will write it almost as if it were a letter. Second, it will contain two sets of facts, both about Dave Sokol, Chairman of several Berkshire subsidiaries.

Late in the day on March 28, I received a letter of resignation from Dave, delivered by his assistant. His reasons were as follows: “As I have mentioned to you in the past, it is my goal to utilize the time remaining in my career to invest my family’s resources in such a way as to create enduring equity value and hopefully an enterprise which will provide opportunity for my descendents and funding for my philanthropic interests. I have no more detailed plan than this because my obligations from Berkshire Hathaway have been my first and only business priority.”

I had not asked for his resignation, and it came as a surprise to me. Twice before, most recently two or so years ago, Dave had talked to me of resigning. In each case he had given me the same reasons that he laid out in his Monday letter. Both times, I and other Board members persuaded him to stay. Berkshire is far more valuable today because we were successful in those efforts. Dave’s contributions have been extraordinary. At MidAmerican, he and Greg Abel have delivered the best performance of any managers in the public utility field. At NetJets, Dave resurrected an operation that was destined for bankruptcy, absent Berkshire’s deep pockets. He has been of enormous help in the operation of Johns Manville, where he installed new management some years ago and oversaw major change.

Finally, Dave brought the idea for purchasing Lubrizol to me on either January 14 or 15. Initially, I was unimpressed, but after his report of a January 25 talk with its CEO, James Hambrick, I quickly warmed to the idea. Though the offer to purchase was entirely my decision, supported by Berkshire’s Board on March 13, it would not have occurred without Dave’s early efforts. That brings us to our second set of facts. In our first talk about Lubrizol, Dave mentioned that he owned stock in the company. It was a passing remark and I did not ask him about the date of his purchase or the extent of his holdings.

Shortly before I left for Asia on March 19, I learned that Dave first purchased 2,300 shares of Lubrizol on December 14, which he then sold on December 21. Subsequently, on January 5, 6 and 7, he bought 96,060 shares pursuant to a 100,000-share order he had placed with a $104 per share limit price.

Dave’s purchases were made before he had discussed Lubrizol with me and with no knowledge of how I might react to his idea. In addition, of course, he did not know what Lubrizol’s reaction would be if I developed an interest. Furthermore, he knew he would have no voice in Berkshire’s decision once he suggested the idea; it would be up to me and Charlie Munger, subject to ratification by the Berkshire Board of which Dave is not a member.

As late as January 24, I sent Dave a short note indicating my skepticism about making an offer for Lubrizol and my preference for another substantial acquisition for which MidAmerican had made a bid. Only after Dave reported on the January 25 dinner conversation with James Hambrick did I get interested in the acquisition of Lubrizol.

Neither Dave nor I feel his Lubrizol purchases were in any way unlawful. He has told me that they were not a factor in his decision to resign. Dave’s letter was a total surprise to me, despite the two earlier resignation talks. I had spoken with him the previous day about various operating matters and received no hint of his intention to resign. This time, however, I did not attempt to talk him out of his decision and accepted his resignation.

* * *

Effective with Dave’s resignation, Greg Abel, presently President and CEO of MidAmerican Holding Company, will become its Chairman; Todd Raba, President and CEO of Johns Manville, will become its Chairman; and Jordan Hansell, President of NetJets, will become its Chairman and CEO.

I have held back nothing in this statement. Therefore, if questioned about this matter in the future, I will simply refer the questioner back to this release.

EXHIBIT 2 — DAVID SOKOL: INTERVIEW ON CNBC SQUAWK BOX (EXCERPTED COMMENTS)

BECKY: I guess the question that some people have asked is, why create your own mini-Berkshire when you could be running the actual Berkshire?

SOKOL: Well, there are two reasons really. One is—to be honest—Warren’s not going anywhere. And by the way, it’s just not a job I would aspire to, because nobody is going to do it as well as Warren does. And there’s going to be a lot of change that comes with that. But the reality is Warren’s not going anywhere. He’s in great shape. He’s every bit as sharp today as he was when I first met him eleven or twelve years ago. I actually think in some ways he’s gotten better because he seems to have an even broader perspective than he did before. He’s incredibly intelligent and insightful. And frankly, Berkshire is very fortunate to have him. But I’d like to do kind of like what he did in 1965, which is invest my own money, control a significant piece of it and control my own schedule. I admire enormously what he’s done. But whoever replaces Warren will not get to do it the way he does it. He owns 34 percent of the company. And again, none of that is a criticism. I actually—if I could be a thousandth as successful as he is when I am done and when I’m 75 or 80, I’ll be real pleased.

[...]

BECKY: You know, the questions come out of this though, revolving your ownership in Lubrizol shares, and the timing on that as you were bringing this deal to Berkshire as a potential acquisition.

SOKOL: Let me hit two things there. One is, first of all, it was in the press release in an effort to be a hundred percent transparent. The goal, which is a little interesting given some of the comments I’ve read and that — I thought full disclosure was a good thing. And the purpose there was those shares, my ownership there, would come out 30 or 60 days from now when the voting takes place [by Lubrizol shareholder], etc., on that transaction. And we did not want people to look back and say, ‘Why didn’t they tell us that?’ So it’s out there.

The thing people need to understand is, I have never had any authority at Berkshire to invest a dollar in stocks. I have a lot of authority within MidAmerican, Johns Manville, NetJets. But I’ve always been looking for transactions, both to invest in personally, and then if I thought a company was something that Warren might have an interest in, I would forward it to him. Lubrizol is exactly that. I got interested in Lubrizol — frankly I can’t tell you where I first heard the name — sometime last fall. I pulled their 10-K. Found what they’ve been doing the past couple of years interesting. I made a decision to buy some shares. When I mentioned to Warren that I thought there was an opportunity, perhaps, for Berkshire, I told him that I owned some shares. And frankly, I didn’t think he had any interest. Most of the ideas that I’ve forwarded to Warren over the years just were not companies that he had an interest in.

[...]

BECKY: December 14th is when you bought the first shares of the company: 2,300 shares?

SOKOL: I put an offer in, actually, to buy 50,000 shares with a limit price —

JOE: But we’re under the impression that on the 13th you told Citigroup to set up a meeting with Lubrizol’s board, that Berkshire might be interested in —

SOKOL: No, no.

JOE: That’s not true? It’s not that Berkshire might be interested in acquiring Lubrizol?

SOKOL: We had a broad conversation where one of the bankers who was in the meeting said he knew the CEO of Lubrizol, and I said, ‘Gee, if you know him well enough to set up a meeting, that would be great, I’d love to meet him.’

JOE: But not about Berkshire buying Lubrizol at that point?

SOKOL: Well, we didn’t even — I mean, he would have certainly have inferred since I worked for Berkshire, you know, that Berkshire would have an interest.
EXHIBIT 2 — CONTINUED

JOE: Although you didn’t, you said already, you didn’t usually decide what Berkshire was going to buy?

SOKOL: I can’t decide. I have no — but I work for Berkshire so I’m just saying that it certainly would, I think he would have assumed my interest was in some way for Berkshire.

BECKY: Why did you sell that stake seven days later?

SOKOL: Well, I put a bid, or an offer in for 50,000 shares at, I believe it was at $104 dollars limit. And they only got 2,300, if I remember the number right. And then the stock had gone up from there. About a week later I was doing some tax planning and I had some short-term losses and some short-term gains. It looked like that’s all the shares I was going to get, and you know, it’s not worth my time to try to manage 2,300 shares in our portfolio. And so I figured I’d take the gain and put it against the losses.

BECKY: So why did you buy back in, I guess, on January 5th, 6th, and 7th, was when you were buying in. That was about 96,000 shares?

SOKOL: Right. First of all, I liked Lubrizol. I thought it was a good company, a company I’d be happy to be invested in long-term. The stock came back down. Actually, don’t hold me to these numbers exactly, but I’d put in […] an offer in to buy a 100,000 shares if I remember right, to my broker. And he got a certain amount of them at just under $104 and then the stock actually came down some more. Bought the remainder at $102, thereabouts, and then the stock went up and we weren’t able to get any more. That’s how I tend to buy stocks, is determine what I think is a price that I want to buy a certain block. I don’t have time to trade or do any of those kinds of things. If I can get it great, if I can’t — And so anyways, 96,000 shares. The next thing that happened is, I think it was January 12th, the banker from Citibank called me and said, ‘Hey, I think Jim Hambrick is going to give you a call to see if you want to, want to get together for dinner.’

JOE: Had you spoken to Buffett yet and said that this is a company we, that Berkshire should look at? When was the very first time you said that?

SOKOL: I believe the first time was either, either just before Mr. Hambrick called me or just after. I don’t recall.

BECKY: Would that be before or after you bought the second tranche of shares?

SOKOL: Oh, it was after.

BECKY: After.

SOKOL: After. That would have been the 14th because Mr. Hambrick called me on the 14th, so I either called Warren just before that call or just after it. And we had a pleasant conversation. Mr. Hambrick told me about a health issue he had recently had and talked about my son, who has a similar health issue historically. And then I called Warren and said, ‘You know, there’s an opportunity here either for you or I to have dinner with James. And I told Warren I purchased shares in the company. And frankly, at that time Warren was pretty cool to the idea. He says, ‘Yeah, I know the company. It’s interesting, but I’m not sure it economically makes sense.’ But hadn’t looked at it for awhile. ‘But, you know what, why don’t you do ahead and have a meeting and see if there’s anything there.’ And subsequently had dinner with James up in Cleveland. I believe it was the 25th.

BECKY: OK. And then after that dinner, when you talked to Buffett again and explained what had happened at that dinner, he was more interested based on those conversations?

SOKOL: Well, just before that dinner he had sent me an email, actually with, I think it was a Standard & Poor’s tear sheet, circling their margins saying, ‘The real question is, you know, can they sustain this margin growth, you know, that they’ve had the last couple of years.’ And that is the, frankly, that is the element of, I think, Lubrizol that you have to get comfortable with, that they do have the ability to sustain their margins. That was the primary conversation then that I had with James. And James offered that if Warren had an interest in continuing the discussion, he’d love to come and meet Warren.
EXHIBIT 2 — CONTINUED

And so, talked to Warren the next day and from that point on I had no more conversations with —

**JOE:** You knew at that point you had almost a hundred-thousand shares and the wheels were starting to turn for a possible acquisition by Berkshire. At that point did that seem to you that this doesn’t smell right and maybe I should sell this right now before —

**SOKOL:** Not at all. Actually, I think it would have been wrong for me to do anything. Once I mentioned to Warren that James had an interest, to me then it was a Berkshire opportunity, whether Berkshire would want to do it or not was up to Berkshire. I would certainly help them, if Warren wanted me to, as he has in other transactions, but it’s 100 percent his decision. I made the decision to buy the shares because I thought it was a good investment for my, my family, and I would do it again tomorrow.

**JOE:** But it had already entered your mind that maybe it would be good for Berkshire to acquire it, might be an attractive —

**SOKOL:** Sure. Yeah. But that’s up to Berkshire. That’s why when I mentioned to Warren that I had either talked to, or was talking to James on the phone, that I owned shares. You know, Warren certainly needed, deserved to know that. Berkshire should know that. But I, I also knew that the decision going forward would be theirs and they should know any conflicts I have.

**BECKY:** But some people have raised the question on timing around that. If it was a stake that you had held for, let’s say, six months, a year, two years, we’ve had other people who have been on who have said that wouldn’t concern them at all. The idea that this came in such close connection with the idea being brought to Berkshire, to Warren’s attention, that’s where they have a conflict. Do you understand that that could give the appearance of impropriety?

**SOKOL:** I, I can understand the appearance issue, and that’s why we made it public in the press release, is that we want people to know there is nothing there. The reality is, I have no control over a deal ever happening. And so to — I mean, the alternative would be for me to only invest my family assets and if I think there’s a good deal for Berkshire, not give it to them. I mean, that, to me, makes no sense. It’s ultimately their decision.

[...]

**SOKOL:** I disclosed to Warren that I owned the shares. The reason he learned of it at that time was Marc Hamburg, the CFO, had called me and said, ‘Hey, Warren had told me you owned some shares of Lubrizol. We’ll need to disclose those ultimately. Can you give me the details?’ And I —

**BECKY:** So he knew you had a stake but he didn’t know, necessarily, how much you owned or when you bought it?

**SOKOL:** That’s right. He didn’t ask, and — but ultimately, obviously, when Marc called and said, ‘Hey, I just need the details of that,’ he got them.

[...]

**JOE:** You know, David, Warren is, and Berkshire, has such a squeaky clean reputation and I know there’s a lot that goes into your decision to resign. But you can see that someone might say that Warren accepted your resignation this time because of what happened and the way that it might look or the way that it might smell to people? As much as he protects his reputation and Berkshire’s, you don’t think there’s anything to that?

**SOKOL:** Well, I think, you know, I, you have to ask Warren why he ultimately accepted it. [...] 

[...]

**BECKY:** If you had to do it over, seeing the hoopla that’s broken out, if you had to do it over, would you change your mind
EXHIBIT 2 — CONTINUED

SOKOL: Ah, you know, I guess, knowing today what I know, what I would do differently is I just would never have mentioned it to Warren, and just made my own investment and left it alone. I think that’s a disservice to Berkshire, but if that’s what people want in the future, that’s fine. You can’t, or at least I don’t think you can, ask executives to not invest their own family’s capital in a company that Berkshire had no interest, or even knowledge of, and somehow police that. The only thing you can do is just say if you invest your own money, don’t ever mention it to anybody at Berkshire. That doesn’t make sense to me either, but, but that’s certainly what it sounds like.

EXHIBIT 3 — BERKSHIRE HATHAWAY: INSIDER TRADING POLICY (EXCERPTED TEXT)

In order to ensure that these policies are adhered to, the following procedures are to be followed with respect to securities transactions by directors of Berkshire (“Directors”) and by executive officers and key employees of Berkshire and executive officers and key employees of its subsidiaries (collectively, “Covered Employees”), as well as by members of the households or dependents of, and any trust or other entity controlled by, any Directors or Covered Employees (collectively, “Family Members”):

1. For all Covered Employees (and their Family Members) other than executive officers of Berkshire and others designated by Berkshire (and their Family Members), trading in Berkshire securities may be done without preclearance during the 45 day periods following the posting of Berkshire’s annual and quarterly reports on the Internet. Trading in Berkshire securities by such Covered Employees (and their Family Members) during other periods, and all trading by Directors and executive officers of Berkshire and others designated by Berkshire (and their Family Members), should be pre-cleared with [CFO] Marc Hamburg before entering into any transaction.

2. If a Director or Covered Employee is aware that Berkshire has taken or altered a position in a public company’s securities or that Berkshire is actively considering such action, trading in any securities of such public company by such Director or Covered Employee or any of his or her Family Members is expressly prohibited prior to the public disclosure by Berkshire of its actions with respect to such public company’s securities (or until the Director or Covered Employee becomes aware that Berkshire did not take and is no longer actively considering such action).

3. For all Covered Employees (and their Family Members), subsequent to the public disclosure of Berkshire taking a position in or altering its position in a public company’s securities, all trading in the securities of such public company must be precleared with Marc Hamburg until such time as Berkshire announces that it no longer holds a position in such company. At the current time, Berkshire has publicly disclosed ownership of securities in the following public companies:

UPDATED AS OF MARCH 31, 2010

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<th>American Express Co.</th>
<th>Gannett Inc.</th>
<th>Munich Re</th>
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<td>Ingersoll Rand Company</td>
<td>Nike Inc.</td>
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<td>The Coca-Cola Company</td>
<td>Iron Mountain Inc.</td>
<td>POSCO</td>
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<td>Sanofi Aventis</td>
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4. Annually all Directors and Covered Employees will be required to certify that they have complied with these procedures. It will be to the benefit of all employees and our shareholders to have the procedures outlined above in place. Please sign the accompanying certification and return it to Marc Hamburg. If you have any questions or concerns regarding the policies or procedures, feel free to discuss them with me.