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Combined and Dual Roles of Chair and CEO and Independent Governance Report

Research in Motion Limited ("RIM") filed a minimalist and non-substantive 8 page report of the Independent Governance Review Committee of its board of directors ("Independent Governance Report") dated January 30, 2012, on its website.[1] As if RIM did not wish it to be noticed, there was no customary press release announcing the publication of the Independent Governance Report, nor was the report filed on SEDAR. In fact, when it was issued, the Independent Governance Report was already mute, having been superseded by earlier decisions taken by Mike Lazaridis and Jim Balsillie over Christmas in December 2011. These decisions of Lazaridis and Balsillie were made without pressure from the RIM board, but following very strongly expressed external displeasure from shareholders and the investment community. Just before the Independent Governance Report was released, Lazaridis and Balsillie formally and publicly ceded their executive leadership roles and resigned their joint and dual offices of Co-Chairs and Co-CEOs of RIM. Actions spoke louder than words.

A year earlier, in December 2010, the independent directors had taken the unusual action of approving the appointments of Messrs. Mike Lazaridis and Jim Balsillie to the combined and double roles of Co-Chairs of the Board and as Co-CEOs of the company. Such a governance structure is at the opposite end of recognized Canadian best practices. The independent directors of RIM were, however, subsequently forced to establish the Independent Governance Review Committee in response to the adverse public reaction against these appointments by one of RIM's shareholders, Northwest & Ethical Investments L.P. ("NEI"). In April 2011, NEI filed a shareholder proposal requiring RIM to present a resolution at its July 2011 AGM to permit RIM shareholders to vote on a improved corporate governance policy to mandate that the role of the Chair of the Board be separated from the position of CEO and to require that the office of Chair of the Board be held by an independent director and not by a member of management. The NEI shareholder proposal was subsequently supported by the two largest U.S. proxy firms that advise institutions on corporate governance, Glass Lewis & Co. and Institutional Shareholder Services, and by other RIM shareholders.

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[1] "*Report of the Independent Review Committee of the Board of Directors of Research in Motion Limited*" dated January 31, 2012. http://www.rim.com/investors/pdf/Report_of_Independent_Committee.pdf

In order to avoid such a vote by its agitated shareholder base on its leadership governance structure at its July 12, 2011 AGM, RIM sought an agreement with NEI. Under the arrangement, NEI withdrew its shareholder proposal and RIM agreed to form a governance review committee of independent directors to study the authorities of an independent chair and propose and provide rationale for a recommended governance structure for RIM, including clarifications of the Co-CEOs and Co-Chair roles.[2] Under the agreement with NEI, RIM was required to finalize and make the report of this committee publicly available by January 31, 2012. RIM met this deadline.

Poor Operating Performance and Unconvincing Confidence from Lazaridis and Balsillie

On December 2, 2011, RIM had announced a pre-tax provision for its third quarter of approximately U.S. $485 million (U.S. $356 million after tax) to reduce the valuation of its high inventory level of its recently introduced BlackBerry PlayBook tablets.

During the December 15, 2011 conference call with analysts on the release of its third quarter 2012 results, Balsillie acknowledged the negative investor sentiment and announced, in a symbolic show of commitment, that he and Lazaridis were reducing their salaries to $1 per year, effective immediately.[3] Confidently, Balsillie and Lazaridis assured the investment community that they planned new initiatives for RIM's products, operating efficiencies and improved organization and committed to completing the transition "leaving no stone unturned." They also announced that RIM's transition to a new version of its operating system based on QNX software it had acquired would be delayed from early 2012 until late in the year.

RIM shareholders and investors were, however, not convinced by the confidence expressed by Balsillie and Lazaridis. The pressure on RIM's board and independent directors to demonstrate that they were able to fulfill their duties independently of management continued publicly and with increasingly defined focus on leadership. A Globe & Mail editorial critical of RIM's corporate governance, which followed shortly after the analysts' call and reflected the rising temperature of the Canadian business community, publicly advised Lazaridis and Balsillie to step down as Chairs. The Globe & Mail editors wrote:[4]

> "While many irate investors and analysts are calling for the co-resignation of the co-CEOs, at the very least, the duo needs to hang up their conflicted co-chairmanship of RIM's board of directors and give corporate governance a chance. …

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[2] The mandate of the Governance Review Committee was to (1) study the appropriate balance between an independent lead director or chair with full and exclusive authority customarily held by such an office holder; (2) determine the business necessity for Co-CEOs to have significant Board level titles to assist their selling and other responsibilities with large customers; and (3) propose and provide rationale for a recommended governance structure for RIM, which will include clarifications of the Co-CEOs and Chair roles, as well as the Board's mandate.

[3] RIM subsequently stated that they "voluntarily requested" this salary reduction to Canadian $1 and that it was effective January 1, 2012. Lazaridis and Balsillie resigned their executive posts shortly thereafter on January 21, 2012. The severance payments they received on their resignations are referred to below.

[4] Globe & Mail, Editorial, "*Keeping RIM in Motion*", December 22, 2011, at p. A20.

> "What's perplexing is how RIM's situation was allowed to deteriorate so dramatically. And the answer, in part, lies in poor corporate governance. In 2007, Jim Balsillie was forced to resign as chair over the backdating of stock options. High profile directors Roger Martin, the dean of the Rotman School of Management, and Barbara Stymiest, of TSX and Royal Bank fame, were added to the board to buff up governance. But a new chair to challenge the CEOs and hold them to account was never named. Instead, a 'lead director' was appointed and Mr. Balsillie was reinstated [as Chair] in 2010."

A few days later in December 2011, the Wall Street Journal reported:[5]

> "According to a person familiar with the matter, independent directors have long deferred to Mr. Balsillie. Mr. Richardson [Lead Director] runs the agenda in board meetings and Mr. Lazaridis typically makes short presentations, outlining the company's 'technical roadmap' or detailing new products, this person said, but Mr. Balsillie controls the floor.
>
> "Mr. Balsillie is 'the most forceful presence in the room by far', this person said. The two co-CEOs also have long prevented other executives at RIM from accessing the board, or from gaining insight into what goes on at board meetings, according to another person close to the company."

<u>Lazaridis and Balsillie Resign from their Joint and Dual Roles as Co-Chairs and Co-CEOs</u>

In a January 22, 2012 press release issued late on that Sunday night at 21:39 ET, RIM announced the resignations of Mike Lazaridis and Jim Balsillie as Co-Chairs of the Board and Co-CEOs and the appointment of a new CEO, Thorsten Heins, followed with other governance changes reviewed below.[6] Noticeably, the press release did not mention the existence of the Independent Governance Review Committee nor the forthcoming Independent Governance Report. The press release explicitly stated that the resignations of Mike Lazaridis and Jim Balsillie as Co-Chairmen and Co-CEOs occurred as a result of their own recommendations flowing from an existing, internal management succession planning process over many years[7], and was not a result of or related to the governance review or the widely expressed shareholder dissatisfaction with their joint and several double roles at the highest level of executive and corporate board functions.

As part of the management changes, Lazaridis remained with RIM and assumed new positions as Vice Chair of the Board and as Chair of a newly created standing Innovation

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[5] Wall Street Journal, "*Pressure Growing on RIM Directors to Act*", December 27, 2011, at p.B1.

[6] "*Research in Motion Names Thorsten Heins President and CEO*", dated January 22, 2012. http://press.rim.com/release.jsp?id=5358 The January 22 press release was filed by RIM as a Material Change Report on SEDAR on January 31, 2012. It reflected that the date of the material change was January 21, 2012, which was later disclosed by RIM as the date of the resignations of Lazaridis and Balsillie as management.

[7] Mike Lazaridis said that it was a four year process in developing Heins as RIM CEO. Heins joined RIM in 2007 after 23 years with Siemens. The Toronto Star, January 31, 2012.

Committee of the RIM board.[8] Balsillie remained as a RIM director, without a management role. It was not disclosed on which board committees that Balsillie would serve. (Balsillie's unsurprising and subsequent resignation as a RIM director was later announced by the Company on March 29, 2012, as part of its release of its financial results for its fourth quarter and fiscal year ended March 3, 2012.)

On page 3 of the January 22, 2012 press release, shareholders were advised of the separation of the roles of the Chair of the Board and the CEO and changes to the composition of the board:

> "Barbara Stymiest, who formerly served as a member of Royal Bank of Canada's Group Executive and has been a member of RIM's Board since 2007, has been named the independent Board Chair. John Richardson, formerly Lead Director, will remain on the Board. Prem Watsa, Chief Executive Officer of Fairfax Financial Holdings, also was named to the Board, expanding it to 11 members."

The press release did not disclose the date of Ms. Stymiest's appointment nor when Watsa was appointed to the RIM board. (A January 31, 2012 RIM Material Change Report stated that the date of the material change was January 21, 2012.) The press release also did not note that Fairfax Financial Holdings was a shareholder of RIM. Several days later after the announcement that Watsa[9] was a director of RIM, Fairfax Financial Holdings and related parties, purchased an additional 6.5 million and 7.5 million RIM shares on January 25 and 26, 2012, respectively. On January 26, 2012, Fairfax Financial Holdings and related controlled parties disclosed in a SEC joint filing that, as a group, they owned 26,848,500 RIM common shares or 5.12% of the issued shares.[10] (Lazaridis, after recent purchases of 3.1 million more common shares on January 25, 2012, owned close to 30 million common shares, and Balsillie owned over 26 million RIM common shares.)

A conference call was held with analysts on January 23, 2012 at 08:00 ET, the morning following the press release, in which only Ms. Stymiest and Thorsten Heins participated, as the new Chair of the Board and the new President and CEO, respectively. Ms. Stymiest stated that the senior management changes came about as a result of Lazaridis and Balsillie coming to the RIM board with the idea to implement the succession plan, which the board unanimously approved. Ms. Stymiest did not mention or refer to the corporate governance review that was in progress, the forthcoming Independent Governance Report nor the background behind the board changes including her appointment as Chair of the Board. Heins then spoke generally about his management and business plans as the new CEO. All of the questions that followed from analysts were directed to Heins and concerned strategic, business and operational matters. No questions were directed to the new Chair of the Board and none of the questions referred to the management and corporate governance board changes.

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[8] RIM said that the Innovation Committee, formed only in January 2012, assists the board's oversight of the Company's ongoing strategy for innovation and the pursuit of a culture of innovation.

[9] Prem Watsa holds the joint positions of Chairman and and CEO of Fairfax Financial Holdings and owns shares carrying 45% of the votes attaching to Fairfax's outstanding shares.

[10] Notwithstanding that RIM is incorporated in Canada, Fairfax Financial Holdings was not required to disclose its ownership of RIM shares under Canadian securities legislation. Such disclosure was only required under SEC regulations because RIM is traded on NASDAQ and the group's ownership exceeded 5%.

As reported later on February 1, 2012 in a Bloomberg interview, Ms. Stymiest said she was reviewing the composition of the RIM board to fill gaps in directors' knowledge.[11] She commented that the appointment of Prem Watsa to the board would provide RIM with a key understanding of Asian markets.[12]

Previous Corporate Governance Deficiencies at RIM – Improper Stock Option Granting

Over the 10 year period from December 1996 to July 2006, Balsillie, as Chairman of the Board and co-CEO, Lazaridis, as President and co-CEO, Dennis Kavelman ("Kavelman"), as the then CFO, the then Director of Finance, and certain members of the board of directors of RIM engaged in improper stock option granting practices, including backdating and repricing of executive, director and employee stock option awards. On May 17, 2007, RIM announced a restatement of its historical financial statements with cumulative, non-cash stock-based compensation expense in respect of options granted between 1999 and 2006 of U.S. $227 million up to the end of fiscal 2006. This restated compensation expense was charged against retained earnings. The total cumulative charge was U.S. $248.2 million.

In February 2009, as part of the Settlement Agreement approved by the OSC, among other things, Balsillie, Lazaridis and Kavelman admitted they backdated or repriced options with a total "in-the-money" previously undisclosed benefit of approximately C$66 million, returned the improper financial benefits they received from the options that were incorrectly priced, and undertook to contribute, in aggregate, C$83.1 million to RIM and to pay administrative penalties and OSC investigation costs totalling C$9 million.

A review of these improper stock option practices is available at www.governancecanada.com, "*Research in Motion – The Ten Year Option Granting Scandal*."

RIM's 2007 Representations to Separate the Chair of the Board and the CEO

On March 5, 2007, RIM's Special Committee, that reviewed its option granting practices during the period in question, reported a number of corporate governance changes at RIM, including:

> "<u>Consistent with current best practices in corporate governance, the roles of Chairman and CEO are being separated.</u> Mr. Balsillie has voluntarily stepped down from the role Chairman to allow future consideration of a non-executive Chairman by the Nominating Committee. Mr. Balsillie will retain his leadership roles as Co-CEO and Director." [Underline added]

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[11] At the next RIM annual meeting of shareholders called for July 10, 2012, there was only one change in the composition of the RIM board proposed, in addition to the prior resignation of Balsillie as a director. Antonio Viana-Baptista of Spain did not stand for re-election and Timothy Dattels, a private equity investor and investment banker with experience in Asia, was nominated for election as a director. RIM stated his areas of expertise as corporate finance, investment management, corporate strategy and international business. Presumably, these were areas that the new Chairman of the Board considered were gaps in the board's skills.

[12] http://www.bloomberg.com/news/2012-02-01/rim-s-stymiest-vows-more-forceful-board-as-blackberry-claws-back.html

(In light of his involvement in the option granting problems, Balsillie resigned as Chairman of the Board on March 2, 2007. As part of the settlement and sanctions approved by the OSC, Balsillie was required, among other things, to resign as a RIM director in February 2009 and agreed not to act as a director of any Canadian reporting issuer for at least 12 months.)

On May 17, 2007, RIM also announced, in connection with the restatement of its financial statements correcting its improper option granting and accounting practices, that: "Consistent with current best practices in corporate governance, <u>the roles of Chairman and CEO have been separated</u>", and that Balsillie resigned as Chairman "to allow future consideration of a non-executive Chairman by the Nominating Committee." [Underline added] [13]

As part of the Settlement Agreement with the OSC for the improper option granting and accounting practices, Balsillie's penalty included the requirement that he resign as a director of RIM. He remained off the RIM board from February 2009 until May 28, 2010. During the period that Balsillie resigned as Chair of the Board in March 2007 until December 2010, the position of Chair of the Board at RIM remained vacant. John Richardson acted as Lead Director during this period and until Ms. Stymiest was appointed the independent Chair of the Board.

Notwithstanding RIM's prior public representations that it "the roles of Chairman and CEO have been separated", on December 16, 2010, RIM announced, without further explanation, "an appropriate and effective leadership structure" by appointing Balsillie and Lazaridis as Co-Chairs of the Board, in addition to their positions as Co-CEOs.

> "RIM announced today that its board of directors has appointed co-Chief Executive Officers Jim Balsillie and Mike Lazaridis as co-chairmen of the board. John Richardson remains as lead independent director of RIM and will continue to facilitate the functioning of the board independently of management. The board believes these appointments, in conjunction with Mr. Richardson serving as lead independent director, represent an appropriate and effective leadership structure for RIM."

In March 2007, Barbara Stymiest and John Wetmore were appointed to the board of RIM as outside independent directors. At the RIM AGM held July 17, 2007, Roger Martin and David Kerr were elected as additional independent directors. Ms. Stymiest and Messrs. Martin, Wetmore and Kerr were independent directors of RIM when the board agreed in December 2010 to the appointment of Lazaridis and Balsillie to the dual and joint roles as Co-Chairs of the Board, in addition to their positions as Co-CEOs.

There has never been an explanation of why the independent directors of RIM failed to implement what RIM itself called in 2007 "best practices in corporate governance" and RIM's representation that "the roles of Chairman and CEO have been separated." The RIM independent directors have also not justified their inconsistent appointment of Lazaridis and Balsillie as Co-Chairs and Co-CEOs in December 2010, which appropriately raised the ire of RIM's stakeholders and the investment community.

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[13] RIM MD&A for the Three Months and Six Months ended September 2, 2006, dated May 17, 2007, "*Changes to the Company's Board of Directors, Board Committees and Organizational Structure*", at p.14.

<u>OSC Mandated Governance Review of RIM as at June 30, 2009</u>

Pursuant to the terms of the February 2009 Settlement Agreement approved by the OSC in connection with RIM's improper option granting and accounting practices, RIM was required to subject itself to an independent review of its corporate governance practices by an outside consultant approved by the staff of the OSC. In its reasons for approving the Settlement Agreement, the OSC hearing panel stated that it considered "it shocking that this misconduct occurred over a ten-year period" and concluded that:[14]

> "there was a <u>fundamental failure of governance</u>, a failure by the Board of Directors of RIM to carry out appropriately its oversight responsibilities, both in terms of compliance with the Option Plan and the rules contained in the TSX Company Manual (the "TSX Rules"), but more fundamentally in failing to provide appropriate oversight with respect to the issue of securities and compliance with securities laws." [Underline added]

Protiviti Co., the independent consultant that undertook the OSC mandated review, published its report, which is only filed on SEDAR. See, "*Governance Review of Research in Motion Limited: as of June 30, 2009*", for the full document and all the recommendations to improve RIM's corporate governance practices and policies.[15] With respect to key issue of leadership of the board of directors, and as its first finding and recommendation, Protiviti Co. concluded:

> "The position of board chair has been vacant since March 2, 2007. Previously the position had been held by a non-independent director. The Company continues to have an independent 'lead director' but no board chair has yet been appointed.
>
> "*The Board should appoint a board chair to fill the currently vacant position. The chair of the board should be an independent director as is the general practice among Canadian public companies and as identified as a corporate governance practice by National Policy 58-201, Corporate Governance Guidelines. The board should adopt a structure enabling independent directors to provide the necessary leadership in exercising independent judgment and effectively performing their oversight role. If an independent director cannot be appointed and a non-independent director assumes the position of board chair, an independent director can be appointed to act as lead director with disclosure of the matter. However, in such a situation, the board should evaluate whether, in view of the substantial improvements recommended in this report, its current leadership structure can support the effective and independent board leadership required to oversee management and discharge its responsibilities to the corporation and its shareholders.* [Emphasis in original]
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> "The RIM board requires strong and active independent leadership to:

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[14] *In the Matter of Research in Motion Limited, James Balsillie, Mike Lazaridis et al.*, Settlement Hearing, February 5, 2009; Oral Ruling and Reasons, May 21, 2009. http://www.osc.gov.on.ca/documents/en/Proceedings-RAD/rad_20090521_rim_set.pdf

[15] http://www.osc.gov.on.ca/documents/en/Proceedings-OTH/gov_rev_20090630_rim.pdf

- Exercise effective oversight of the co-CEOs, who are founders of the Company and who exercise great influence in all aspects of RIM's affairs;

- Provide the necessary drive and energy required to oversee change and the implementation of the governance improvements noted in this report; and

- Effectively fulfill its governance responsibilities in the interest of the Company and its shareholders."

On April 1, 2010, the RIM board of directors responded to the Protiviti Co. recommendation to separate the role of the Chair of the Board and the CEO and to appoint an independent Chair. In Appendix A to its MD&A for RIM's fiscal year ended February 27, 2010, the RIM board did not accept the recommendation to split the Chair and the CEO. It stated:

> "The Board has considered its current leadership structure and believes it supports the effective and independent board leadership required to oversee management and discharge its responsibilities to the Company and its shareholders. … The Board and the Company believe that this highly independent board structure provides the necessary leadership in exercising independent judgment and effectively performing the Board's oversight role, and the absence of a Board chair does not adversely affect this determination. … The Board believes that the Company has been well served by its current leadership structure. The Board will continue to monitor the appropriateness of its current leadership structure from time to time, including whether it is appropriate to appoint a Chair and whether the Chair should be an independent director."

On December 16, 2010, nine months later, as noted earlier, the RIM board decided that it was appropriate to appoint a Chair, or two, and that the Chairs need not be independent, and it announced the appointment of Messrs. Lazaridis and Balsillie as Co-Chairs of the Board, in addition to their positions as Co-CEOs. John Richardson remained as independent lead director.

<u>Report of RIM's Independent Governance Review Committee January 30, 2012</u>

The RIM Independent Governance Review Committee noted, in its brief Report, the well known difference between Canadian and U.S. corporate governance practices in separating, in Canada, and not separating in the U.S., the roles of Chair of the Board and the CEO. Based on "the strong opposition to non-independent chairs in Canada", the Committee recommended that RIM adopt the Canadian predominant practice, discontinue its structure of combining the roles of Chair and CEO and appoint an independent Chair.

It is interesting to note that the non-management directors of RIM, who include the new Chair Barbara Stymiest, Roger Martin, David Kerr and John Watson, who have been on the RIM board since 2007, referred to recent discussions with NEI and the Canadian Coalition for Good

Governance as support for their new conclusion that there is a predominant practice in Canada to adopt and "strong opposition" to combining the roles of Chair and CEO.

Notwithstanding RIM's earlier public representations in the spring of 2007 that the "roles of Chairman and CEO have been separated", and the failure of RIM's independent directors thereafter to adopt the well-recognized corporate governance practices in Canada, it was only the public activism and dissatisfaction of RIM's shareholders that created the external pressure and impetus to force the independent directors of RIM to change. The Independent Governance Report came to the only conclusion that was possible and appropriate for RIM, almost four years after RIM itself represented that it would do so.

New Mandate of the Chair and Vice-Chair

The mandate of the board of directors of RIM recommended by the Independent Governance Report contains an appropriate and standard set of duties and responsibilities for and independent chair of the board.

The RIM press release announcing the changes also advised that as the new Vice-Chair, Mike Lazaridis, "will work closely with Mr. Heins to offer strategic counsel, provide a smooth transition and continue to promote the BlackBerry brand worldwide." The board approved mandate for the Vice-Chair includes the following:

> "The Corporation has one Vice-Chair who is not an officer or employee of the Corporation. In addition to the Vice-Chair's other responsibilities as a Director of the Corporation as described in Section 4 below, the Vice-Chair will provide strategic counsel and advice to the Chief Executive Officer as may be determined from time to time by the Board and the Vice-Chair taking into consideration, among other things, the scope and nature of counsel/advice requested by the Chief Executive Officer from time to time."

Lazaridis is also the Chair of the new standing Innovation Committee. The mandate and the composition of the Innovation Committee were not disclosed with the Independent Governance Report. As a founder of RIM and having been directly involved in the creation of its successful BlackBerry technology and operating systems, Lazaridis, with his new roles as Vice-Chair of the Board and as Chair of the standing Innovation Committee, will continue to have influence on RIM's management and business affairs. Depending on the strength of the independent leadership skills and abilities of the new CEO, Heins, and the new independent Chair of the Board, the continuing contribution of Lazaridis to RIM may well be beneficial. On January 25, 2012, three days after his resignation as Co-Chair and Co-CEO, Lazaridis evidenced his commitment to the company he co-founded in 1984 with Douglas Fregin by purchasing an additional 3.1 million RIM shares in the open market at an estimated average price per share of $15.89 to control nearly 30 million shares of the company[16].

Severance Payments to Lazaridis and Balsillie

[16] At May 22, 2012, Lazaridis owned 29,672,616 RIM common shares.

Lazaridis and Balsillie resigned their management positions on January 21, 2012. In connection with such resignations, the RIM board approved so-called “transition agreements” with each of Lazaridis and Balsillie, which provided substantial severance payments to each of them[17].

In the case of Lazaridis, he received benefits and services with an estimated value of $853,306. This amount excluded the estimated value of the future accelerated vesting of unvested RSUs at the time he ceases to be Vice-Chair of the Board. As at March 2, 2012, the value of this future acceleration was $3,102,750.

In the case of Balsillie, he received an amount of $4,802,434 (fiscal 2011 base salary plus annual incentive multiplied by two), and the value of future accelerated vesting of unvested RSUs at time he ceases to be a board member. Balsillie subsequently resigned as a RIM board member in March 2012 resulting in the accelerated vesting of his unvested RSUs. The value of the accelerated vesting was $3,102,750 at the time of his resignation. The total value of Balsillie’s severance entitlements was $7,929,229.

-30-

[17] RIM Management Information Circular, dated May 24, 2012.