

SCOTTS MIRACLE-GRO CO

Form DEF 14A

December 19, 2008

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INFORMATION REQUIRED IN PROXY STATEMENT

SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of the Securities
Exchange Act of 1934 (Amendment No.)

Filed by the Registrant
Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to §240.14a-12

The Scotts Miracle-Gro Company

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

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The Scotts Miracle-Gro Company
Proxy Statement for 2009 Annual Meeting of Shareholders

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**14111 Scottslawn Road
Marysville, Ohio 43041**

December 19, 2008

Dear Fellow Shareholders:

The Annual Meeting of Shareholders of The Scotts Miracle-Gro Company will be held at 8:30 a.m., Eastern Time, on Thursday, January 22, 2009, at The Berger Learning Center, 14111 Scottslawn Road, Marysville, Ohio 43041. The formal Notice of Annual Meeting of Shareholders and Proxy Statement contain detailed information about the business to be conducted at the Annual Meeting.

On behalf of the Board of Directors and management, I invite you to attend the Annual Meeting.

The Board of Directors has nominated three directors for election, each to serve for a term of three years expiring at the 2012 Annual Meeting of Shareholders (Proposal Number 1). The Board of Directors recommends that you vote **FOR** each of the nominees.

This year, you are also being asked to ratify the selection of Deloitte & Touche LLP as the Company's independent registered public accounting firm for the fiscal year ending September 30, 2009 (Proposal Number 2). The Board of Directors recommends that you vote **FOR** the ratification of this selection.

Only shareholders of record at the close of business on November 26, 2008, are entitled to receive notice of and to vote at the Annual Meeting.

Whether or not you plan to attend the Annual Meeting, please record your vote on the accompanying form of proxy and return it promptly in the postage-paid envelope provided. Alternatively, if you are a registered shareholder, you may transmit voting instructions for your Common Shares electronically via the Internet or telephonically by following the specific instructions on your form of proxy.

Sincerely,

James Hagedorn
*Chief Executive Officer
and Chairman of the Board*

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**14111 Scottslawn Road
Marysville, Ohio 43041**

**NOTICE OF ANNUAL MEETING OF SHAREHOLDERS
To Be Held Thursday, January 22, 2009**

NOTICE IS HEREBY GIVEN that the Annual Meeting of Shareholders (the Annual Meeting) of The Scotts Miracle-Gro Company (the Company) will be held at The Berger Learning Center, 14111 Scottslawn Road, Marysville, Ohio 43041, on Thursday, January 22, 2009, at 8:30 a.m., Eastern Time, for the following purposes:

1. To elect three directors, each to serve for a term of three years expiring at the 2012 Annual Meeting of Shareholders.
2. To ratify the selection of Deloitte & Touche LLP as the Company s independent registered public accounting firm for the fiscal year ending September 30, 2009.
3. To transact such other business as may properly come before the Annual Meeting or any adjournment or postponement thereof.

Only shareholders of record at the close of business on Wednesday, November 26, 2008, the date established by the Company s Board of Directors as the record date, are entitled to receive notice of and to vote at the Annual Meeting.

You are invited to attend the Annual Meeting. Whether or not you plan to attend, you may vote by completing, signing, dating and promptly returning the accompanying form of proxy. A return envelope, which requires no postage if mailed in the United States, has been provided for your use. Alternatively, if you are a registered shareholder, you may vote your Common Shares at the Annual Meeting by submitting your voting instructions electronically via the Internet or telephonically by following the specific instructions on your form of proxy. Voting your Common Shares by returning the accompanying form of proxy, electronically through the Internet or by telephone does not affect your right to vote in person if you attend the Annual Meeting and wish to revoke your previous vote.

By Order of the Board of Directors,

James Hagedorn
*Chief Executive Officer
and Chairman of the Board*

December 19, 2008

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Annual Meeting of Shareholders of**

THE SCOTTS MIRACLE-GRO COMPANY

To Be Held on Thursday, January 22, 2009

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**14111 Scottslawn Road
Marysville, Ohio 43041**

PROXY STATEMENT

for

**Annual Meeting of Shareholders
to be held on Thursday, January 22, 2009**

GENERAL INFORMATION ABOUT VOTING

This Proxy Statement, along with the accompanying form of proxy, are being furnished in connection with the solicitation of proxies, on behalf of the Board of Directors of The Scotts Miracle-Gro Company (together with its corporate predecessors, as appropriate, the Company), for use at the Annual Meeting of Shareholders of the Company (the Annual Meeting) to be held at The Berger Learning Center, 14111 Scottslawn Road, Marysville, Ohio 43041, on Thursday, January 22, 2009, at 8:30 a.m., Eastern Time, and at any adjournment or postponement thereof. This Proxy Statement and the accompanying form of proxy are first being sent or given to shareholders of the Company on or about December 22, 2008.

Only holders of record of the Company's Common Shares, without par value (Common Shares), at the close of business on Wednesday, November 26, 2008 (the Record Date) are entitled to receive notice of and to vote at the Annual Meeting. As of the Record Date, there were 65,373,940 Common Shares outstanding. Holders of Common Shares as of the Record Date are entitled to one vote for each Common Share held. There are no cumulative voting rights in the election of directors.

Under the Company's Code of Regulations, the presence, in person or by proxy, of the holders of a majority of the outstanding Common Shares entitled to vote is necessary to constitute a quorum for the transaction of business at the Annual Meeting. Proxies reflecting abstentions and broker non-votes are counted for purposes of determining the presence or absence of a quorum. Broker non-votes are those where broker/dealers, who hold their customers Common Shares in street name, sign and submit proxies for such Common Shares and fail to vote such Common Shares on some matters because they cannot vote on those matters without instructions from their customers.

A form of proxy for use at the Annual Meeting accompanies this Proxy Statement. You may ensure your representation at the Annual Meeting by completing, signing, dating and promptly returning the accompanying form

of proxy. A return envelope, which requires no postage if mailed in the United States, has been provided for your use. Alternatively, shareholders holding Common Shares registered directly with the Company's transfer agent, National City Bank, may transmit their voting instructions electronically via the Internet or by using the toll-free telephone number stated on the form of proxy. The deadline for transmitting voting instructions electronically via the Internet or telephonically is 11:59 p.m., Eastern Time, on January 21, 2009. The Internet and telephone voting procedures are designed to authenticate shareholders' identities, allow

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shareholders to give their voting instructions and confirm that such voting instructions have been properly recorded.

If you hold your Common Shares in street name with a broker/dealer, financial institution or other nominee or holder of record, you may be eligible to appoint your proxy electronically via the Internet or telephonically. If you hold your Common Shares in street name, you are urged to carefully review the information provided to you by the holder of record. This information will describe the procedures you must follow in order to instruct the holder of record how to vote the street name Common Shares and how to revoke any previously-given voting instructions. If you hold your Common Shares in street name and do not provide voting instructions to your broker/dealer within the required time frame before the Annual Meeting, your broker/dealer will have the discretion to vote your Common Shares on routine matters such as the uncontested election of directors and the ratification of the selection of the Company's independent registered public accounting firm.

If you are a registered shareholder, you may revoke your proxy at any time before it is actually voted at the Annual Meeting by giving written notice of revocation to the Corporate Secretary of the Company, by revoking via the Internet site, by using the toll-free telephone number stated on the form of proxy and electing revocation as instructed or by attending the Annual Meeting and giving notice of revocation in person. You may also change your vote by choosing one of the following options: (1) executing and returning to the Company a later-dated form of proxy; (2) voting in person at the Annual Meeting; (3) submitting a later-dated electronic vote through the Internet site; or (4) voting by telephone at a later date by using the toll-free telephone number stated on the form of proxy. **Attending the Annual Meeting will not, in and of itself, constitute revocation of a previously-appointed proxy.**

Proxies will be solicited by mail and may be further solicited by additional mailings, personal contact, telephone, facsimile or electronic mail by directors, officers and regular employees of the Company, none of whom will receive additional compensation for such solicitation activities. The Company will reimburse its transfer agent, National City Bank, as well as broker/dealers, financial institutions and other custodians, nominees and fiduciaries for their standard charges and expenses incurred in connection with forwarding proxy materials to the beneficial shareholders. The Company will bear the costs of preparing, assembling, printing and mailing this Proxy Statement, the accompanying form of proxy and any other related materials, as well as all other costs incurred in connection with the solicitation of proxies on behalf of the Board of Directors. However, if you provide voting instructions through the Internet, you may incur costs associated with electronic access, such as usage charges from Internet access providers and telephone companies, which the Company will not reimburse.

If you participate in The Scotts Company LLC Retirement Savings Plan (the RSP) and Common Shares have been allocated to your account in the RSP, you will be entitled to instruct the trustee of the RSP how to vote such Common Shares. You may receive your form of proxy with respect to your RSP Common Shares separately. If you do not give the trustee of the RSP voting instructions, the trustee will not vote such Common Shares at the Annual Meeting.

If you participate in The Scotts Miracle-Gro Company Discounted Stock Purchase Plan (the Discounted Stock Purchase Plan), you will be entitled to vote the number of Common Shares credited to your custodial account (including any fractional Common Shares) on any matter submitted to the Company's shareholders for consideration at the Annual Meeting. If you do not vote or grant a valid proxy with respect to the Common Shares credited to your custodial account, those Common Shares will be voted by the custodian under the Discounted Stock Purchase Plan in accordance with any stock exchange or other rules governing the custodian in the voting of Common Shares held for customer accounts.

The results of shareholder voting at the Annual Meeting will be tabulated by or under the direction of the inspector of election appointed by the Company's Board of Directors for the Annual Meeting. Common Shares represented by properly executed forms of proxy returned to the Company prior to the Annual Meeting or represented by properly authenticated voting instructions timely recorded through the Internet or by telephone will be counted toward the

establishment of a quorum for the Annual Meeting even though they are marked For All, Withhold All, For All Except, For, Against or Abstain or are not marked at all.

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Those Common Shares represented by properly executed forms of proxy, or properly authenticated voting instructions recorded through the Internet or by telephone, which are timely received prior to the Annual Meeting and not revoked, will be voted as specified by the shareholder. The Common Shares represented by valid proxies timely received prior to the Annual Meeting which do not specify how the Common Shares should be voted will be voted **FOR** the election as directors of the Company of each of the three nominees of the Board of Directors listed below under the caption **PROPOSAL NUMBER 1 ELECTION OF DIRECTORS** and **FOR** the ratification of the selection of Deloitte & Touche LLP as the Company's independent registered public accounting firm for the fiscal year ending September 30, 2009 as described below under the caption **PROPOSAL NUMBER 2 RATIFICATION OF THE SELECTION OF THE INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**. No appraisal rights exist for any action proposed to be taken at the Annual Meeting.

NOTICE REGARDING AVAILABILITY OF PROXY MATERIALS

Important Notice Regarding the Availability of Proxy Materials for the Annual Meeting of Shareholders of The Scotts Miracle-Gro Company To Be Held on Thursday, January 22, 2009: This Proxy Statement, a sample of the form of proxy card sent or given to shareholders by the Company and the Company's 2008 Annual Report are available on the Company's Internet website located at <http://investor.scotts.com>.

Our telephone number is (937) 644-0011 should you wish to obtain directions to our corporate offices in order to attend the Annual Meeting and vote in person. Directions to our corporate offices can also be found on the outside back cover page of this Proxy Statement.

PROPOSAL NUMBER 1

ELECTION OF DIRECTORS

There are currently 12 individuals serving on the Board of Directors, which is divided into three staggered classes, with each class serving three-year terms. The Class II directors hold office for terms expiring at the Annual Meeting, the Class III directors hold office for terms expiring in 2010 and the Class I directors hold office for terms expiring in 2011. On December 18, 2008, Arnold W. Donald, who currently serves as a Class II director, notified the Company that he had decided not to stand for re-election to the Board of Directors. Mr. Donald's term as a director will expire at the Annual Meeting.

Because the Governance and Nominating Committee has not yet identified a qualified candidate to replace Mr. Donald, the Board of Directors is only presenting three candidates for election as Class II directors at the Annual Meeting—Thomas N. Kelly Jr., Carl F. Kohrt, Ph.D. and John S. Shiely—each of whom is currently serving as a Class II director. The nomination of each individual was recommended to the Board of Directors by the Governance and Nominating Committee.

The individuals elected as Class II directors at the Annual Meeting will hold office for a three-year term expiring at the Annual Meeting of Shareholders of the Company to be held in 2012 and until their respective successors are duly elected and qualified, or until their earlier death, resignation or removal. The individuals named as proxies in the form of proxy solicited by the Board of Directors intend to vote the Common Shares represented by the proxies received under this solicitation for the Board of Directors' nominees, unless otherwise instructed on the form of proxy. The Board of Directors has no reason to believe that any of the nominees will be unable or unwilling to serve as a director of the Company if elected. If any nominee who would have otherwise received the required number of votes becomes unable to serve or for good cause will not serve as a candidate for election as a director, the individuals designated as proxy holders reserve full discretion to vote the Common Shares represented by the proxies they hold for the election of the remaining nominees and for the election of any substitute nominee designated by the Board of Directors.

following recommendation by the Governance and Nominating Committee. The individuals designated as proxy holders cannot vote for more than three nominees for election as Class II directors at the Annual Meeting.

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The following information, as of November 26, 2008, with respect to the age, principal occupation or employment, other affiliations and business experience during the last five years of each director or nominee for re-election as a director, has been furnished to the Company by each director or nominee. Except where indicated, each director or nominee has had the same principal occupation for the last five years.

Nominees Standing for Re-Election to the Board of Directors

Class II Terms to Expire at the 2012 Annual Meeting

Thomas N. Kelly Jr., age 61, Director of the Company since 2006

On August 11, 2006, the Board of Directors of the Company, upon the recommendation of the Governance and Nominating Committee, appointed Mr. Kelly as a member of the Board of Directors of the Company to fill a vacancy in Class II. Mr. Kelly was recommended to the Governance and Nominating Committee by Stephanie M. Shern, a director of the Company, who knew Mr. Kelly from her service on the board of directors of Nextel Communications, which became Sprint Nextel Corporation. Mr. Kelly served as Executive Vice President, Transition Integration of Sprint Nextel Corporation, a global communications company, from December 2005 until April 2006. He served as the Chief Strategy Officer of Sprint Nextel Corporation from August 2005 until December 2005. He served as the Executive Vice President and Chief Operating Officer of Nextel Communications from February 2003 until August 2005, and as Executive Vice President and Chief Marketing Officer of Nextel Communications from 1996 until February 2003. Mr. Kelly serves as a director of two privately-held companies: ChaCha Search, Inc., located in Indianapolis, Indiana, and CoverageCo., where he also serves as a non-executive chairman, located in Boston, Massachusetts. He also serves as a director of the Weston Playhouse Theatre Company, a not-for-profit regional theater located in Weston, Vermont. Mr. Kelly also volunteers for several school and youth athletic organizations in Northern Virginia.

Committee Memberships: Audit; Innovation & Technology

Carl F. Kohrt, Ph.D., age 64, Director of the Company since January 2008

On January 31, 2008, the Board of Directors of the Company, upon the recommendation of the Governance and Nominating Committee, appointed Dr. Kohrt as member of the Board of Directors of the Company to fill the vacancy in Class II created by the retirement of Gordon F. Brunner. Dr. Kohrt was recommended to the Company's Governance and Nominating Committee by executive officers of the Company, who knew Dr. Kohrt from his work at Battelle Memorial Institute (Battelle). Dr. Kohrt has served as President and Chief Executive Officer of Battelle, a non-profit charitable trust headquartered in Columbus, Ohio, since October 15, 2001. Battelle is an international science and technology enterprise that explores emerging areas of science, develops and commercializes technology and manages laboratories for customers. Dr. Kohrt serves as a director of two privately-held companies: Pharos, LLC and Levitronix, Inc. He also serves as Chairman of the Columbus, Ohio science center COSI and Battelle For Kids, a private, non-profit education company.

Committee Memberships: Governance and Nominating; Innovation & Technology

(Chair)

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John S. Shiely, age 56, Director of the Company since January 2007

On January 25, 2007, the Board of Directors of the Company, upon the recommendation of the Governance and Nominating Committee, appointed Mr. Shiely as a member of the Board of Directors of the Company to fill the vacancy in Class II created by the retirement of John M. Sullivan. Mr. Shiely was recommended to the Company's Governance and Nominating Committee by Mark R. Baker, a member of the Company's Board of Directors, who knew Mr. Shiely from Mr. Shiely's work at Briggs & Stratton Corporation. Mr. Shiely serves as Chairman of the Board and Chief Executive Officer of Briggs & Stratton Corporation (Briggs & Stratton), a manufacturer of small, air-cooled engines for lawn and garden and other outdoor power equipment and a producer of generators and pressure washers in the United States. Mr. Shiely has served as Chief Executive Officer of Briggs & Stratton since July 1, 2001 and was appointed Chairman of the Board in 2003. Mr. Shiely serves as a director of one other public company, Marshall & Ilsley Corporation, as well as a director of four privately-held companies: Quad/Graphics, Inc.; Cleveland Rock and Roll, Inc. (the corporate board of the Rock and Roll Hall of Fame and Museum); the Outdoor Power Equipment Institute, Inc.; and Children's Hospital and Health System, Inc.

Committee Memberships: Audit; Finance

Directors Continuing in Office
Class III Terms to Expire at the 2010 Annual Meeting

Mark R. Baker, age 51, Director of the Company since 2004

Mr. Baker has served as President and Chief Operating Officer of the Company since October 2008. From September 2002 until October 2008, Mr. Baker served as Chief Executive Officer of Gander Mountain Company, an outdoor retailer specializing in hunting, fishing and camping gear. He served as President of Gander Mountain Company from February 2004 until October 2008 and as a director of Gander Mountain Company from April 2004 until October 2008.

Committee Memberships: None at this time

Joseph P. Flannery, age 76, Director of the Company since 1987

Mr. Flannery has served as President, Chief Executive Officer and Chairman of the Board of Directors of Uniroyal Holding, Inc., an investment management company, since 1986.

Committee Memberships: Compensation and Organization; Governance and Nominating (Interim Chair)

Katherine Hagedorn Littlefield, age 53, Director of the Company since 2000

Ms. Littlefield is the Chair of Hagedorn Partnership, L.P. She also serves on the boards for Hagedorn Family Foundation, Inc., a charitable organization, Adelphi University and The Pennington School. She is the sister of James Hagedorn, the Chief Executive Officer

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and Chairman of the Board of Directors of the Company.

Committee Memberships: Finance; Innovation & Technology

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Patrick J. Norton, age 58, Director of the Company since 1998

Mr. Norton retired on January 1, 2003, after having served as Executive Vice President and Chief Financial Officer of The Scotts Company since May 2000 and as interim Chief Financial Officer of The Scotts Company from February 2000 to May 2000. From January 1, 2003 until January 31, 2006, Mr. Norton acted as an advisor for the Company, primarily for the Scotts LawnService® business. Mr. Norton is a director of one other public company, Greif, Inc. Mr. Norton serves as an independent director for two privately-held companies: Svoboda Capital Partners LLC and Optronics, Inc. He is also a director of Scotts Miracle-Gro Foundation.

Committee Membership: Finance

Class I Terms to Expire at the 2011 Annual Meeting

James Hagedorn, age 53, Director of the Company since 1995 and Chairman of the Board of Directors since January 2003

Mr. Hagedorn has served as Chief Executive Officer of the Company since May 2001. He served as President of the Company from November 2006 until October 2008, and from May 2001 until December 2005. He also serves as a director for Farms For City Kids Foundation, Inc., Nurse-Family Partnership, The CDC Foundation, Embry-Riddle Aeronautical University, North Shore University Hospital (New York), Scotts Miracle-Gro Foundation and the Intrepid Sea, Air & Space Museum, all charitable organizations. Mr. Hagedorn is the brother of Katherine Hagedorn Littlefield, a director of the Company.

Committee Membership: None at this time

Karen G. Mills, age 55, Director of the Company since 1994 and Lead Independent Director since 2006

Ms. Mills has served as President of MMP Group, a private equity investor and advisor, since 1999. She is currently a director of Arrow Electronics, Inc., a public company. Ms. Mills is the Chair of the Governor's Council on Competitiveness and the Economy of the state of Maine and serves on the Board of the Maine Technology Institute. She is also a director of the Maine chapter of the Nature Conservancy.

Committee Memberships: Audit; Compensation and Organization (Interim Member)

Nancy G. Mistretta, age 54, Director of the Company since August 2007

Ms. Mistretta has been a member of Russell Reynolds Associates, an executive search firm, since February 2005. She is a member of Russell Reynolds Associates' Not-For-Profit Sector and is responsible for managing executive officer searches for many large philanthropies, with a special focus on educational searches for presidents, deans and financial officers. Based in New York, New York, she is also active in the CEO/Board Services Practice of Russell Reynolds Associates. Prior to joining Russell Reynolds Associates, Ms. Mistretta was with J.P. Morgan and its heritage institutions for 29 years and served as a Managing Director in Investment Banking from 1991 to 2005.

Committee Membership: Finance (Chair)

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Stephanie M. Shern, age 60, Director of the Company since 2003

Mrs. Shern is the founder of Shern Associates LLC, a retail consulting and business advisory firm formed in February 2002. From May 2001 to February 2002, Mrs. Shern served as the Senior Vice President and Global Managing Director of Retail and Consumer Products at Kurt Salmon Associates, a management consulting firm specializing in retail and consumer products. From 1995 to April 2001, Mrs. Shern was the Vice Chairman and Global Director of Retail and Consumer Products for Ernst & Young LLP. Mrs. Shern is a CPA and a member of the American Institute of CPAs and the New York State Society of CPAs. Mrs. Shern is currently a director of three other public companies: Embarq Corporation; Koninklijke Ahold N.V.; and GameStop Corp.

Committee Membership: Audit (Chair)

Arnold W. Donald, whose term expires at the Annual Meeting, has decided not to stand for re-election. Mr. Donald, age 54, is the former President and Chief Executive Officer of the Juvenile Diabetes Research Foundation International, a charitable funder and advocate of type 1 (juvenile) diabetes research, a position he held from January 1, 2006 to February 28, 2008. Before joining the Juvenile Diabetes Research Foundation International in 2006, Mr. Donald founded Merisant Company, whose products include the sweeteners Equal® and Canderel®, where he held the position of Chairman of the Board and Chief Executive Officer from its inception in 2000 through June of 2003, and continued to serve as Chairman of the Board through 2005. He serves as a director of four other public companies: Crown Holdings, Inc.; Oil-Dri Corporation of America; The Laclede Group, Inc.; and Carnival Corporation. Mr. Donald has served as a director of the Company since 2000.

Recommendation and Vote

Under Ohio law and the Company's Code of Regulations, the three nominees for election as Class II directors receiving the greatest number of votes **FOR** election will be elected as directors of the Company. Common Shares represented by properly executed and returned forms of proxy or properly authenticated voting instructions recorded through the Internet or by telephone will be voted **FOR** the election of the Board of Directors' nominees unless authority to vote for one or more of the nominees is withheld. Common Shares as to which the authority to vote is withheld will not be counted toward the election of directors or toward the election of the individual nominees specified on the form of proxy. The individuals designated as proxy holders cannot vote for more than three nominees for election as Class II directors at the Annual Meeting.

YOUR BOARD OF DIRECTORS RECOMMENDS THAT SHAREHOLDERS VOTE FOR THE ELECTION OF ALL OF THE ABOVE-NAMED CLASS II DIRECTOR NOMINEES.

CORPORATE GOVERNANCE

Corporate Governance Guidelines

In accordance with applicable sections of the New York Stock Exchange (NYSE) Listed Company Manual (the NYSE Rules), the Board of Directors has adopted Corporate Governance Guidelines to promote the effective functioning of the Board and its committees and to reflect the Company's commitment to the highest standards of corporate governance. The Board of Directors, with the assistance of the Governance and Nominating Committee, periodically reviews the Corporate Governance Guidelines to ensure they are in compliance with all applicable requirements and address evolving corporate governance issues. The Corporate Governance Guidelines are posted

under the Corporate Governance link on the Company's Internet website located at <http://investor.scotts.com> and are available in print to any shareholder of the Company or other interested person who requests them from the Corporate Secretary of the Company.

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Director Independence

In consultation with the Governance and Nominating Committee, the Board of Directors has reviewed, considered and discussed each director's relationships, both direct and indirect, with the Company and its subsidiaries, including those listed under CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, and the compensation and other payments each director has, both directly and indirectly, received from or made to the Company and its subsidiaries in order to determine whether such director satisfies the applicable independence requirements set forth in the NYSE Rules and the rules and regulations of the Securities and Exchange Commission (the SEC Rules). Based upon the recommendation of the Governance and Nominating Committee and its own review, consideration and discussion, the Board of Directors has determined that of the following members of the Board of Directors satisfy such independence requirements and are therefore independent directors:

- | | |
|--------------------------|--|
| (1) Arnold W. Donald | (6) Nancy G. Mistretta |
| (2) Joseph P. Flannery | (7) Stephanie M. Shern |
| (3) Thomas N. Kelly Jr. | (8) John S. Shiely |
| (4) Carl F. Kohrt, Ph.D. | (9) Gordon F. Brunner (retired as a director effective January 31, 2008) |
| (5) Karen G. Mills | |

In determining that Mr. Donald qualifies as an independent director under the NYSE Rules and SEC Rules, the Board of Directors considered his service as a director of Scotts Miracle-Gro Foundation, an Ohio nonprofit corporation formed for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the IRC). The current primary activity of Scotts Miracle-Gro Foundation is to fund the Miracle-Gro Cap Kids at COSI, a program designed to provide academic and other support services to a select group of economically and socially disadvantaged students in the Columbus (Ohio) Public School District.

The Board of Directors determined that: (a) James Hagedorn is not independent because he is the Chief Executive Officer of the Company and beneficially owns more than 5% of the outstanding Common Shares; (b) Katherine Hagedorn Littlefield is not independent because she beneficially owns more than 5% of the outstanding Common Shares and is the sister of James Hagedorn; (c) Patrick J. Norton is not independent because, considering all the facts and circumstances, his advisory relationship with the Company, which commenced immediately following his retirement on January 1, 2003 and which ended on January 31, 2006, was believed to be too close in time to his employment to permit sufficient separation of interests; and (d) Mark R. Baker qualified as an independent director of the Company for the fiscal year ended September 30, 2008 (the 2008 fiscal year), but is no longer independent because he was named President and Chief Operating Officer of the Company effective October 1, 2008.

Lead Independent Director

The Board of Directors elected Karen G. Mills to serve as the Lead Independent Director on January 26, 2006, upon the recommendation of the Governance and Nominating Committee and with the support of management. Ms. Mills serves in this capacity at the pleasure of the Board of Directors and will continue to so serve until her successor is elected and qualified. As Lead Independent Director, Ms. Mills presides at the executive sessions of the non-management directors of the Company and of the independent directors of the Company.

Nominations of Directors

As described below, the Company has a standing Governance and Nominating Committee that has responsibility for, among other things, providing oversight on the broad range of issues surrounding the composition and operation of the Board of Directors, including identifying candidates qualified to become directors and recommending director nominees to the Board of Directors.

The Board of Directors, taking into account the recommendations of the Governance and Nominating Committee, selects nominees to stand for election as directors. In considering Governance and Nominating

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Committee-recommended candidates for the Board of Directors, the Governance and Nominating Committee evaluates the entirety of each candidate's credentials and does not have any specific eligibility requirements or minimum qualifications that candidates must meet. The Governance and Nominating Committee may consider any factors it deems appropriate when considering candidates for the Board of Directors, including a candidate's: judgment; skill; diversity; strength of character; experience with businesses and organizations of comparable size or scope; experience as an executive of, or advisor to, a publicly-traded or private company; experience and skill relative to other members of the Board of Directors; specialized knowledge or experience; and desirability of the candidate's membership on the Board of Directors and any committees of the Board of Directors.

While, under the Company's Corporate Governance Guidelines, in general, a director is not eligible to stand for re-election once he or she has reached the age of 72, the Governance and Nominating Committee and the Board of Directors will review individual circumstances and may from time to time choose to renominate a director who is 72 or older. Although he was then older than 72, the Board of Directors chose to nominate Joseph P. Flannery for re-election to the Board at the Company's 2007 Annual Meeting of Shareholders because his expertise and knowledge made him a valuable candidate.

The Governance and Nominating Committee considers candidates for the Board of Directors from any reasonable source, including current directors, management and shareholder recommendations, and does not evaluate candidates differently based on the source of the recommendation. Pursuant to its written charter, the Governance and Nominating Committee has the authority to retain consultants and search firms to assist in the process of identifying and evaluating director candidates and to approve the fees and other retention terms of any such consultant or search firm.

Shareholders may recommend director candidates for consideration by the Governance and Nominating Committee by giving written notice of the recommendation to the Corporate Secretary of the Company. The recommendation should include the candidate's name, age, business address and principal occupation or employment, as well as a description of the candidate's qualifications, attributes and other skills. A written statement from the candidate consenting to serve as a director, if so elected, should accompany any such recommendation.

Communications with the Board

The Board of Directors believes it is important for shareholders of the Company and other interested persons to have a process pursuant to which they can send communications to the Board and its individual members, including the Lead Independent Director. Accordingly, shareholders and other interested persons who wish to communicate with the Board of Directors, the Lead Independent Director, the non-management directors as a group or any particular director may do so by addressing such correspondence to the name(s) of the specific director(s), to the Lead Independent Director, to the Non-Management Directors as a group or to the Board of Directors as a whole, and sending it in care of the Company to the Company's principle corporate offices at 14111 Scottslawn Road, Marysville, Ohio 43041. All such correspondence should identify the author as a shareholder or other interested person, explain such person's interest and clearly indicate to whom the correspondence is directed. Correspondence marked personal and confidential will be delivered to the intended recipient(s) without opening. Copies of all correspondence will be circulated to the appropriate director or directors. There is no screening process in respect of communications from shareholders and other interested persons.

Code of Business Conduct and Ethics

In accordance with applicable NYSE Rules and SEC Rules, the Board of Directors has adopted The Scotts Miracle-Gro Company Code of Business Conduct and Ethics, which is available under the Corporate Governance link on the Company's Internet website located at <http://investor.scotts.com> and in print to any shareholder of the Company

or other interested person who requests it from the Corporate Secretary of the Company.

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All of the employees of the Company and its subsidiaries, including executive officers, and all directors of the Company are required to comply with the Company's Code of Business Conduct and Ethics. The Sarbanes-Oxley Act of 2002 and the SEC Rules promulgated thereunder require companies to have procedures for the receipt, retention and treatment of complaints regarding accounting, internal accounting controls or auditing matters and to allow for the confidential, anonymous submission by employees of concerns regarding questionable accounting or auditing matters. The Company's procedures for addressing these matters are set forth in the Code of Business Conduct and Ethics.

MEETINGS AND COMMITTEES OF THE BOARD

Meetings of the Board and Board Member Attendance at Annual Meetings of Shareholders

The Board of Directors held 19 regularly scheduled or special meetings during the Company's 2008 fiscal year. Each incumbent member of the Board of Directors attended at least 75% of the aggregate of the total number of meetings of the Board of Directors and the total number of meetings held by the committee(s) of the Board of Directors on which he or she served, in each case during the period of the 2008 fiscal year that such individual served as a director.

Although the Company does not have a formal policy requiring members of the Board of Directors to attend annual meetings of the shareholders, the Company encourages all incumbent directors and director nominees to attend each such annual meeting. All of the 12 then incumbent directors and director nominees attended the Company's last annual meeting of shareholders held on January 31, 2008.

In accordance with the Company's Corporate Governance Guidelines and applicable NYSE Rules, the non-management directors of the Company met in executive session (without management participation) in connection with each of the four regularly scheduled meetings of the Board of Directors held during the Company's 2008 fiscal year. In addition, the independent directors of the Company meet in executive session as matters appropriate for their consideration arise but, in any event, at least once a year.