

NexCen Brands, Inc.  
Form DEF 14A  
November 03, 2009

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

SCHEDULE 14A  
(Rule 14a-101)  
INFORMATION REQUIRED IN PROXY STATEMENT  
SCHEDULE 14A INFORMATION  
Proxy Statement Pursuant to Section 14(a) of the Securities  
Exchange Act of 1934

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

NexCen Brands, Inc.  
(Name of Registrant as Specified in Its Charter)  
(Name of Person(s) Filing Proxy Statement if other than the Registrant)

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(3) Filing party:

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October 22, 2009

Dear NexCen Stockholders:

On behalf of the Board of Directors and management of NexCen Brands, Inc., I cordially invite you to attend the 2009 Annual Meeting of Stockholders to be held on December 1, 2009 at 10:30 a.m. Eastern Standard Time at our franchise operations facility, NexCen Franchise Management, 1346 Oakbrook Drive, Suite 170, Norcross, Georgia 30093.

You will find information regarding the matters to be voted on in the attached Notice of Annual Meeting of Stockholders and proxy statement. We are sending our stockholders a notice regarding the availability of this proxy statement, our Annual Report on Form 10-K for 2008 and other proxy materials via the Internet. This electronic process gives you fast, convenient access to the proxy materials, reduces the impact on the environment and reduces our printing and mailing costs. A paper copy of these materials can be requested using one of the methods described in the materials.

This is our first Annual Meeting of Stockholders since September 5, 2007. We did not hold an Annual Meeting of Stockholders in 2008. In 2008, NexCen Brands faced challenges, both specific to our Company and with respect to the general economic environment. Starting in May 2008, we dedicated a significant amount of time and resources toward addressing those challenges. We reduced operating expenses; restructured the Company's credit facility to provide a more appropriate working capital structure; divested our non-core businesses; reduced debt; improved corporate infrastructure and internal controls; and executed on initiatives to grow our franchised brands. We believe that the Company's core business remains intact and the Company is better positioned for future stability and growth. However, the Company continues to face a number of challenges as detailed in our Annual Report on Form 10-K. As can be imagined, the events of 2008 had a significant impact on our 2008 financial results.

To date in 2009, we have continued to build on our efforts from the past year. We entered into additional favorable modifications to our credit facility; further reduced debt and operating expenses; filed our amended Annual Report on Form 10-K/A for 2007 (which included no material changes to the Company's 2007 financial results); filed our Annual Report on Form 10-K for 2008; and continued to make progress towards our goal of becoming compliant with our financial reporting obligations before year end.

In addition, we are making significant investments in our franchise businesses while continuing to execute on our four-pronged business strategy for 2009 to: 1) strengthen each of our brands, 2) enhance the profitability of our franchisees, 3) complete the integration of the franchised brands into our operating infrastructure, and 4) find ways to further leverage NexCen University, our centralized training, research, development and operations center. Over the last year and a half, we have introduced our franchised brands to 13 new countries and introduced 10 of our existing international markets with new brands utilizing our master development platform. Further, we reached expansion milestones with Marble Slab Creamery® opening its 50th store in Canada and TAF™ opening its 50th location in Mexico. We look forward to continuing to extend our franchised brands into new markets.

Whether or not you plan to attend, we urge you to participate in NexCen Brands' 2009 Annual Meeting of Stockholders by promptly voting via the Internet, telephone or completing a proxy card. Regardless of the size of your investment, your vote is important, so please act at your earliest convenience.

We appreciate your participation, support and interest in NexCen Brands. While we believe we have made progress on our various initiatives in a relatively in short period of time, we recognize that there is still work to be done and opportunities to realize. I am confident that our core values – innovation, knowledge, commitment and integrity – will continue to serve as the foundation for our business. To that end, our mission to be a leader in the global management

of franchised consumer brands remains unchanged.

Sincerely,

Kenneth J. Hall  
Chief Executive Officer

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NEXCEN BRANDS, INC.  
1330 Avenue of the Americas, 34th Floor  
New York, New York 10019

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS  
TO BE HELD ON DECEMBER 1, 2009

DATE: December 1, 2009  
TIME: 10:30 a.m. EST  
PLACE: NexCen Franchise Management  
1346 Oakbrook Drive, Suite 170  
Norcross, GA 30093

Dear NexCen Stockholder:

At the Annual Meeting, stockholders will act upon the following matters:

1. Election of five directors to hold office until the 2010 Annual Meeting of Stockholders or until their successors are elected and qualified; and
2. Ratification of the appointment of KPMG LLP as NexCen's independent registered public accounting firm for the fiscal year ending December 31, 2009.

Information about the matters to be acted upon at the Annual Meeting is contained in the attached proxy statement. Stockholders will also transact any other business properly brought before the meeting. At this time, the Board of Directors knows of no other matters to be presented.

Stockholders of record as of the close of business on October 6, 2009 will be entitled to notice of and to vote at the Annual Meeting and any adjournment or postponement thereof.

This Notice of Annual Meeting of Stockholders and proxy statement is accompanied by our Annual Report on Form 10-K for 2008.

Your vote is important. You are cordially invited to attend the Annual Meeting, but whether or not you expect to attend, please take a moment to vote by Internet, telephone or completing a proxy card as detailed in the "How Do I Vote?" section of this document. Your prompt cooperation will save the Company additional solicitation costs.

BY ORDER OF THE BOARD OF DIRECTORS

Sue J. Nam  
General Counsel, Secretary

New York, New York  
October 22, 2009

Important Notice Regarding the Availability of Proxy Materials for the Stockholder Meeting to Be Held on December 1, 2009. Our Annual Report on Form 10-K for 2008, the 2009 Proxy Statement and other proxy materials are available at [www.proxyvote.com](http://www.proxyvote.com).



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NEXCEN BRANDS, INC.  
1330 Avenue of the Americas, 34th Floor  
New York, New York 10019

## INFORMATION ABOUT THE ANNUAL MEETING AND VOTING

### GENERAL INFORMATION

The Board of Directors of NexCen Brands, Inc. (“NexCen”, “NexCen Brands” or the “Company”) is providing this proxy statement in connection with the Annual Meeting of Stockholders to be held on December 1, 2009 (the “Annual Meeting”) at 10:30 a.m. Eastern Standard Time at NexCen Franchise Management, 1346 Oakbrook Drive, Suite 170, Norcross, GA 30093 and any adjournment or postponement thereof. On or about October 22, 2009, we began mailing a Notice of Internet Availability of Proxy Materials (the “Notice”) containing instructions on how to access this proxy statement, our Annual Report on Form 10-K for 2008 and other proxy materials via the Internet. This proxy statement contains important information for you to consider when deciding how to vote on the matters brought before the Annual Meeting. Please read it carefully.

### PROPOSALS TO BE CONSIDERED

At the Annual Meeting, we will ask our stockholders to consider and vote upon the following matters:

1. Election of five directors to hold office until the 2010 Annual Meeting of Stockholders or until their successors are elected and qualified; and
2. Ratification of the appointment of KPMG LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2009.

Our Board of Directors is not aware of any other matters to be presented at the Annual Meeting. If any other matters should properly come before the Annual Meeting, then stockholders present at the Annual Meeting may vote on such items. If you are represented by proxy, your proxy will vote your shares using his or her discretion.

### VOTING INSTRUCTIONS AND INFORMATION

#### Who is Soliciting My Proxy?

You have received these proxy materials because NexCen’s Board of Directors is soliciting your proxy to vote your shares at the Annual Meeting. This proxy statement is intended to assist you in deciding how to vote your shares.

#### Who Pays the Costs of the Proxy Solicitation?

NexCen will pay the costs of requesting these proxies. Our directors, officers and employees may request proxies in person, by telephone or by electronic transmission, but they will not receive additional compensation for their services. The Company will not engage a proxy solicitor for the Annual Meeting. We will reimburse brokers, banks, and other nominees for their reasonable out-of-pocket expenses in sending notices or proxy materials to beneficial owners of our common stock.

#### Who Can Vote?

You are entitled to vote or direct the voting of your NexCen common stock if you were a stockholder on October 6, 2009, the record date for the Annual Meeting. On that date, approximately 56,951,730 shares of common stock were



outstanding and the holders thereof are entitled to notice of and to vote at the Annual Meeting. Each share of our common stock is entitled to one vote.

Who Is the Holder of Record?

You may own shares of our common stock either (1) directly registered in your name at our transfer agent, Computershare; or (2) indirectly through a broker, bank or other nominee.

If your shares are registered directly in your name with our transfer agent, Computershare, you are the Holder of Record of these shares, and we are sending the Notice directly to you. If you hold shares indirectly through a broker, bank or other nominee, the Notice is being sent to you by or on behalf of that entity.

## How Do I Vote?

Your vote is important. We encourage you to vote promptly. You may vote in one of the following ways:

### Holders of Record

- **By Internet.** You can vote on the Internet. The website address for Internet voting is [www.proxyvote.com](http://www.proxyvote.com). Internet voting is available 24 hours a day. If you vote by Internet, you do not need to return a proxy card. Your vote by Internet must be received by 11:59 p.m. EST, November 30, 2009.
- **By Telephone.** You can vote your shares by telephone by calling 1-800-690-6903. Telephone voting is available 24 hours a day. If you vote by telephone, you do not need to return a proxy card. Your vote by telephone must be received by 11:59 p.m. EST, November 30, 2009.
- **By Mail.** If you would like to vote by mail, follow the instructions on the Notice to request a paper copy of the proxy materials. Then complete the proxy card, date and sign it, and return it in the postage-paid envelope provided. Your vote by mail must be received by 10:00 a.m. EST, December 1, 2009, the date of the Annual Meeting.
  - **By Attending the Annual Meeting.** If you attend the Annual Meeting, you can vote your shares in person. You will need to have proof of ownership of NexCen common stock on the record date and valid photo identification with you for admission to the Annual Meeting. For directions to the meeting location, please call 770-514-4500.

### Shares Held by Brokers, Banks and Nominees

- If your shares of common stock are held through a broker, bank or other nominee, you will receive instructions from that entity in connection with the voting of your shares.
- If you plan to attend the Annual Meeting and vote in person, you will need to contact your broker, bank or other nominee to obtain a “legal proxy” to permit you to vote by written ballot at the Annual Meeting.

## What is a Quorum of Stockholders?

A quorum is required to transact business at the Annual Meeting. We will have a quorum and be able to conduct the business of the Annual Meeting if a majority of the shares entitled to vote are present at the meeting, either in person or by proxy. Abstentions and broker non-votes each will be included in determining the number of shares present and voting at the Annual Meeting for the purpose of determining the presence of a quorum.

## How Are Votes Counted?

All shares that have been properly voted, and not revoked, will be voted at the Annual Meeting in accordance with your instructions. If you sign and return the proxy card but do not specify how you wish your shares to be voted, your shares represented by that proxy will be voted as recommended by the Board of Directors: “for” all of the five nominees for Director listed in this proxy statement; “for” ratification of the appointment of KPMG LLP as our independent registered public accounting firm for 2009.

## How Many Votes Are Required?

Each share of our common stock issued and outstanding on October 6, 2009 will be entitled to one vote.

- For the election of directors in Item 1, the five candidates who receive the highest number of votes cast “For” at the Annual Meeting shall be elected, provided a quorum is present.
- The affirmative vote of a majority of the shares of our common stock present in person or represented by proxy at the Annual Meeting, and entitled to vote on the subject matter, shall be required to approve Item 2, provided a quorum is present.

Under the General Corporation Law of the State of Delaware, an abstaining vote and a broker non-vote are counted as present and are, therefore included for purposes of determining whether a quorum of shares is present at the Annual Meeting. A broker non-vote occurs when a broker submits a proxy card with respect to shares of common stock held in a fiduciary capacity (typically referred to as being held in “street name”), but declines to vote on a particular matter because the broker has not received voting instructions from the beneficial owner. Under the rules that govern brokers who are voting with respect to shares held in street name, brokers have the discretion to vote such shares on routine matters, but not on non-routine matters. Items 1 and 2 are routine matters. For the purpose of determining whether the stockholders have approved matters other than the election of directors, abstentions are treated as shares present or represented and voting, so abstentions have the same effect as negative votes.

- For Item 1, abstentions and broker non-votes will not affect the outcome of this proposal.
- For Item 2, because this proposal requires the affirmative vote of a majority of the shares present in person or by proxy at the meeting and entitled to vote on the subject matter, abstentions will have the same effect as votes against the proposal because the shares will count toward the quorum but not toward the vote needed to adopt this proposal. Broker non-votes will have no effect on this proposal.

#### How Can I Revoke My Proxy or Change My Vote?

You can revoke your proxy or change your vote by:

#### Holders of Record

- Sending written notice of revocation to the Secretary of NexCen;
- Submitting another timely and later dated proxy by mail or, prior to 11:59 p.m. EST, on November 30, 2009 by telephone or Internet; or
- Attending the Annual Meeting and voting in person by written ballot.

#### Stock Held by Brokers, Banks and Nominees

- You must contact your broker, bank or other nominee to obtain instructions on how to revoke your proxy or change your vote. You may also obtain a “legal proxy” from your broker, bank or other nominee to attend the Annual Meeting and vote in person by written ballot.

#### Who Will Count the Votes?

Broadridge Financial Solutions, Inc. will tabulate and certify the votes.

ITEM 1 – ELECTION OF DIRECTORS

The following individuals are the nominees for election to the Board of Directors:

| Name              | Age | Position   |
|-------------------|-----|--|
| David S. Oros     | 49  | Chairman of the Board  |
| James T. Brady    | 68  | Director, Audit Committee (Chairman), Compensation Committee, Nominating/Corporate Governance Committee (Chairman) |
| Paul Caine        | 44  | Director, Audit Committee, Nominating/Corporate Governance Committee   |
| Edward J. Mathias | 67  | Director, Audit Committee, Compensation Committee (Chairman)   |
| George P. Stamas  | 58  | Director   |

Each of the nominees currently is a member of the Board of Directors, and each has been recommended for re-election to the Board of Directors by the Nominating/Corporate Governance Committee and nominated for re-election by the Board of Directors. Each also consented to serve as a Director if re-elected. The principal occupation and other information regarding each Director are set forth below.

Each Director will be elected to hold office for a one-year term until the 2010 Annual Meeting of Stockholders, unless he resigns or is removed before his term expires, or until his replacement is elected and qualified. If any of the nominees cannot serve for any reason (which is not anticipated), the Board of Directors may designate a substitute nominee or nominees. If a substitute is nominated, we will vote all valid proxies for the election of the substitute nominee or nominees. Alternatively, the Board of Directors also may decide to leave a board seat or seats open until a suitable candidate or candidates are located, or it may decide to reduce the size of the board.

RECOMMENDATION

The Board of Directors recommends that stockholders vote “FOR” all of the nominees.

Nominees for Director

David S. Oros founded the Company in 1996, and currently serves as our Chairman of the Board of Directors. From 1996 until June 2006, Mr. Oros served as our Chief Executive Officer. From 1994 until 1996, Mr. Oros was President of NexGen Technologies, L.L.C., a wireless software development company that contributed all of its assets to the Company. From 1992 until 1994, he was President of the Wireless Data Group at Westinghouse Electric. Prior to that, from 1982 until 1992, Mr. Oros was at Westinghouse Electric directing internal research and managing large programs in advanced airborne radar design and development. Mr. Oros received a B.S. in mathematics and physics from the University of Maryland. Mr. Oros is currently a managing partner for Global Domain Partners, LLC. Other directorships include: Evolving Systems, Inc.

James T. Brady was elected director of the Company on June 28, 2002. Mr. Brady has served as the Managing Director - Mid-Atlantic, for Ballantrae International, Ltd., a management consulting firm, since 2000 and was an independent business consultant from May 1998 until 2000. From May 1995 to May 1998, Mr. Brady was the

Secretary of the Maryland Department of Business and Economic Development. Prior to May 1995, Mr. Brady was a managing partner with Arthur Andersen LLP in Baltimore, Maryland. Mr. Brady received a B.A. from Iona College. Other directorships include: McCormick & Company, Inc., Constellation Energy Group, Inc. and T. Rowe Price Group.

Paul Caine was elected director of the Company on September 5, 2007. Since October 2008, Mr. Caine has served as President and Group Publisher of Time Inc.'s Style and Entertainment Group overseeing the PEOPLE Group (PEOPLE, People.com, Stylewatch, People en Español, People Country), as well as Entertainment Weekly, EW.com., In Style and Essence. His career at Time Inc. began in 1989 as an advertising sales representative for PEOPLE. During his tenure at Time Inc., Mr. Caine has been the Associate Publisher of PEOPLE, Publisher of Teen People, Entertainment Weekly and PEOPLE, the Group Publisher of the PEOPLE Group and the President of the Entertainment Group. Prior to joining Time Inc., Mr. Caine worked for USA Today and J. Walter Thompson. Mr. Caine received a B.S. in Business Communication from Indiana University.

Edward J. Mathias was elected director of the Company on June 28, 2002. Mr. Mathias has been a managing director of The Carlyle Group, a Washington, D.C. based global private equity firm, since 1994. Mr. Mathias served as a managing director of T. Rowe Price Associates, Inc., an investment management firm, from 1971 to 1993. He received a B.A. from the University of Pennsylvania and an M.B.A. from Harvard University. Other directorships include: Allied Capital, Brown Advisory Holdings, Inc. and a special purpose acquisition corporation, Triple Crown Acquisition Corp.

George P. Stamas was elected a director of the Company on October 20, 1999. Since January 2002, Mr. Stamas has been a senior partner with the law firm of Kirkland & Ellis LLP. Also, since November 2001, Mr. Stamas has been a venture partner with New Enterprise Associates. From December 1999 until December 2001, Mr. Stamas served as the Vice Chairman of the board of directors and Managing Director of Deutsche Banc Alex Brown (now Deutsche Bank Securities). Mr. Stamas is counsel to, and a limited partner of, the Baltimore Orioles baseball team and also of Lincoln Holdings, which holds interests in the Washington Wizards and Washington Capitals. He received a B.S. in economics from the Wharton School of the University of Pennsylvania and a J.D. from the University of Maryland Law School. Other directorships include: FTI Consulting, Inc.

## ITEM 2 – RATIFICATION OF THE APPOINTMENT OF THE INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Audit Committee of the Board of Directors has selected KPMG LLP as the Company’s independent registered public accounting firm for 2009, and the Board of Directors is asking stockholders to ratify that selection. We are not required to have the stockholders ratify the selection of KPMG LLP as our independent auditor. We nonetheless are doing so because we believe it is a matter of good corporate practice. If the stockholders do not ratify the selection, the Audit Committee will reconsider the retention of KPMG LLP, but ultimately may retain such independent auditor. Even if the selection is ratified, the Audit Committee, in its discretion, may change the appointment at any time if it determines that such a change would be in the best interests of NexCen and its stockholders. A representative of KPMG LLP is expected to be present at the Annual Meeting. Such representative will have an opportunity to make a statement if he or she desires to do so and will be available to respond to appropriate questions.

### RECOMMENDATION

The Board of Directors recommends that stockholders vote “FOR” ratification of the appointment of KPMG LLP as the Company’s independent registered public accounting firm for 2009.

### Audit Fees

The aggregate fees billed for professional services rendered for NexCen by KPMG LLP for the years ended December 31, 2008 and 2007 were:

|                    | 2008 |           | 2007 |         |
|--------------------|------|-----------|------|---------|
| Audit Fees         | \$   | 1,267,900 | \$   | 668,211 |
| Audit-Related Fees |      | 232,100   |      | 287,699 |
| Tax Fees           |      | -         |      | 37,608  |
| Total Fees         | \$   | 1,500,000 | \$   | 993,528 |

“Audit Fees” include time billed to NexCen for professional services rendered for the annual audit for NexCen’s consolidated financial statements, the quarterly reviews of the consolidated financial statements for fiscal years 2008 and 2007 and the audit with respect to management’s assessment of the effectiveness of internal control over financial reporting as of December 31, 2007 and the effectiveness of internal control over financial reporting as of December 31, 2007.

The aggregate amount billed for all tax fees for the years ended December 31, 2008 and 2007 (see chart above under heading "Tax Fees") principally covered tax planning, tax consulting and tax compliance services provided to NexCen.

"Audit Related Fees" for 2008 include professional services performed by KPMG LLP related primarily to a Current Report on Form 8-K/A filing related to the Great American Cookies acquisition and procedures in connection with the Company's special investigation in 2008. For 2007, these fees include professional services performed by KPMG LLP related primarily to Current Reports on Form 8-K/A filings related to Bill Blass, MaggieMoo's, Marble Slab, Pretzel Time and Pretzelmaker acquisitions and audits of the financial statements of certain of our franchise brands as required by the Federal Trade Commission in preparing Uniform Franchise Offering Circulars.

NexCen does not use our independent auditor as our internal auditor nor do we have an internal auditor.



No other professional services were rendered or fees were billed by KPMG LLP for the most recent fiscal year or for the year ending December 31, 2008 and 2007.

The Audit Committee has adopted policies and procedures for the pre-approval of the above fees. All requests for services to be provided by KPMG LLP are submitted to the Audit Committee. Requests for all non-audit related services require pre-approval from the entire Audit Committee. A schedule of approved services is then reviewed and approved by the entire Audit Committee at each Audit Committee meeting.

#### AUDIT COMMITTEE REPORT

In accordance with its written charter, the Audit Committee assists the Board of Directors in its oversight of NexCen's accounting and financial reporting practices. The Audit Committee charter is located on our website at [www.nexcenbrands.com](http://www.nexcenbrands.com).

Management of NexCen is responsible for the preparation, presentation and integrity of NexCen's financial statements and for maintaining appropriate accounting and financial reporting policies and practices, and internal controls and procedures designed to assure compliance with accounting standards and applicable laws and regulations. The independent auditor is responsible for auditing NexCen's consolidated financial statements and expressing an opinion as to their conformity with generally accepted accounting principles. The independent auditor has free access to the Audit Committee to discuss any matters it deems appropriate.

In performing its oversight function, the Audit Committee reviewed and discussed with NexCen's management and independent auditor the audited consolidated financial statements of the Company as of and for the year ended December 31, 2008 and management's report on internal control over financial reporting. The Audit Committee also discussed with NexCen's independent auditor the matters required to be discussed by Public Company Accounting Oversight Board ("PCAOB") Auditing Standard AU Section 380, "Communication with Audit Committees," and Rule 2-07 of Regulation S-X promulgated by the SEC, as modified or supplemented.

The Audit Committee received from the independent auditor formal written statements pursuant to PCAOB Ethics and Independence Rule 3526, "Communication with Audit Committee Concerning Independence." The Audit Committee also discussed with the independent auditor the auditor's independence from management and NexCen.

The Audit Committee has discussed with and received regular status reports from the independent auditor on the overall scope and plans for their audit. The Audit Committee also met periodically with the independent auditor, with and without management present, to discuss the results of their audit findings. The Audit Committee also reviewed management's assessment of the Company's internal control over financial reporting, the Company's critical accounting policies and practices and alternative treatments of financial information during the Committee's discussions with the independent auditor.

In determining whether to reappoint KPMG LLP as NexCen's independent auditor, the Audit Committee took into consideration a number of factors, including the quality of the Audit Committee's ongoing discussions with KPMG LLP, an assessment of the professional qualifications and past performance of KPMG LLP, and the importance of KPMG LLP's experience with and knowledge of the Company. In light of all of these considerations, the Audit Committee believes it is in the interest of NexCen and its stockholders for KPMG LLP to continue as its independent auditor.

Based upon the reports and discussions described in this report, and subject to the limitations on the roles and responsibilities of the Audit Committee referred to above and its charter, the Audit Committee recommended to the Board of Directors that the audited financial statements and management's report on internal control over financial

reporting be included in NexCen's Annual Report on Form 10-K for 2008 for filing with the SEC.

AUDIT COMMITTEE OF THE BOARD OF DIRECTORS

James T. Brady (Chairman)

Paul Caine

Edward J. Mathias

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## CORPORATE GOVERNANCE

The Board of Directors reviews the Company's policies and business strategies and advises and counsels the Chief Executive Officer and other executive officers who manage NexCen's business. The Board of Directors consists of five members, none of whom are currently employed by the Company. Three of the directors (Messrs. Brady, Caine and Mathias) have been determined by the Board to be "independent" as that term is defined in the NASDAQ listing standards and in NexCen's Corporate Governance Guidelines.

The Company's Corporate Governance Guidelines, our general code of ethics, our code of ethical conduct for senior financial officers, and the Policy and Procedures with respect to Related Persons Transactions, as well as the charters for our Audit Committee, Nominating/Corporate Governance Committee and Compensation Committee, are available on our website at [www.nexcenbrands.com](http://www.nexcenbrands.com). This information is also available in print upon written request to Corporate Secretary, NexCen Brands, Inc., 1330 Avenue of the Americas, 34th Floor, New York, New York 10019.

### Director Independence

Our Board of Directors has adopted the following standard for independence:

"Independent director" means a person other than an executive officer or employee of the Company or any other individual having a relationship which, in the opinion of the Company's Board, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

In connection with, and to assist in making, this determination, the Board has adopted the definition of independence contained in the NASDAQ listing standards as our categorical standard of independence. However, even if a director meets this categorical standard of independence to conclude that a director is independent, the Board must also determine that no other relationship exists that, in the Board's judgment, "would interfere with the exercise of independent judgment by that director in carrying out the responsibilities of a director."

Each of our directors, other than Messrs. Oros and Stamas, qualifies as "independent" in accordance with the Company's independence standard. In making their affirmative determination of independence, the directors reviewed and discussed information provided by the directors and management with regard to each director's business and personal activities as they relate to NexCen and NexCen's management. Mr. Oros was employed during a portion of 2009 by the Company, and, as such, he does not qualify as an independent director. The Board of Directors also determined that Mr. Stamas should not be considered an independent director in view of the business relationship between the Company and Kirkland & Ellis LLP. Mr. Stamas' business relationship with the Company is described below under the caption "Certain Related Party Transactions for 2008 and 2009." All members of the Audit Committee, Compensation Committee and Nominating/Corporate Governance Committee are independent directors.

In 2008, each of our directors, other than Messrs. Oros, Stamas and D'Loren (who resigned on August 15, 2008), qualified as "independent" in accordance with the Company's independence standard. Messrs. Oros and D'Loren were employed during a portion of 2008 by the Company, and, as such, neither qualified as an independent director. Similar to 2009, the Board of Directors also determined that Mr. Stamas should not be considered an independent director in view of the business relationship between the Company and Kirkland & Ellis LLP as mentioned above.

In determining that each individual who is currently serving or served as a member of the Board of Directors during 2008, other than Messrs. Oros, D'Loren, and Stamas, is or was independent, the Board of Directors considered the following relationships, which it determined did not impair such director's independence:

-

In May 2008, the Company engaged FTI Consulting, Inc. (“FTI”) to assist the Company in its restructuring efforts and public relations. Since 1992, Mr. Dunn, a member of the Company’s Board of Directors in 2008, has served as a director of FTI and/or as its President and Chief Executive Officer. This engagement is described below under the caption “Certain Related Party Transactions for 2008 and 2009.” Mr. Dunn resigned as a director on September 25, 2008.

- In July 2007, the Company entered into a commercial agreement with Mr. Traub, a member of the Company’s Board of Directors in 2008, and a business that he owns and operates, Marvin Traub Associates. This agreement is described below under the caption “Certain Related Party Transactions for 2008 and 2009.” The Board of Directors determined that Mr. Traub should be considered an independent director on September 25, 2008 in connection with the resignation of Mr. Dunn from the Board of Directors. Mr. Traub resigned as a director on December 4, 2008.

Other than as discussed above, the Board of Directors did not consider and was not aware of any other transactions, relationships or arrangements that would affect the determination of our director's independence under the Company's standards.

#### Policies and Procedures for the Review and Approval of Related Party Transactions

The Company adopted the Policy and Procedures with respect to Related Persons Transactions for the review, approval or ratification of all related party transactions. The policy is administered by the Nominating/Corporate Governance Committee.

Pursuant to the Policy and Procedures, any proposed related person transaction must be submitted for consideration at the first regular or special meeting of the Nominating/Corporate Governance Committee that immediately precedes or follows the Company entering into a related party transaction. In determining whether or not to approve or ratify such transactions, the Committee considers all the relevant facts and circumstances related to the transaction including, but not limited to (1) the benefit to the Company; (2) if the transaction involves a director, a member of the director's immediate family or an entity affiliated with a director, the impact on the director's independence; (3) the related person's relationship to the Company and interest in the transaction; (4) the availability of other sources for comparable products or services; (5) the terms of the transaction (including dollar value of the transaction); (6) the terms available to unrelated third parties; and (7) any other information regarding the transaction or the related person in the context of the transaction that is material to investors in light of the circumstances of the particular transaction. The Nominating/Corporate Governance Committee approves or ratifies only those transactions that are in, or are not inconsistent with, the best interests of the Company and our stockholders.

In the event that the Nominating/Corporate Governance Committee determines not to ratify a related party transaction, it may evaluate all options, including but not limited to, termination of the transaction on a prospective basis, rescission of such transaction, or modification of the transaction in a manner that would permit it to be ratified by the Committee.

The Company's Policy and Procedures with respect to Related Persons Transactions can be found on our website.

#### Certain Related Party Transactions for 2008 and 2009

The Company receives legal services from Kirkland & Ellis LLP, which is considered a related party because a partner at that firm, George P. Stamas, is a member of the Company's Board of Directors. For the years ended December 31, 2008, 2007 and 2006, expenses related to Kirkland & Ellis LLP were approximately \$2.0 million, \$1.3 million, and \$1.7 million, respectively. For the years ended December 31, 2008, 2007, 2006, the Company had outstanding payables due to Kirkland & Ellis LLP of approximately \$989,000, \$121,000, and \$492,000, respectively.

In May 2008, the Company engaged FTI Consulting, Inc. ("FTI") to assist the Company in its restructuring efforts and public relations. Since 1992, Mr. Dunn, a former member of the Company's Board of Directors, has served as a director of FTI and/or as its President and Chief Executive Officer. For the year ended December 31, 2008, expenses related to FTI were approximately \$619,333. For the year ended December 31, 2008, the Company had outstanding payables due to FTI of approximately \$89,073. As detailed above, Mr. Dunn resigned as a director on September 25, 2008.

In July 2007, the Company entered into an agreement with Marvin Traub Associates, Inc. an entity owned by Mr. Traub, a former member of the Company's Board of Directors, to help the Company identify, approach, and negotiate a deal with a premier U.S. based big box retail chain so that such retailer might joint venture with, or purchase a license from the Company to open Maggie Moo's ice cream locations within their stores. Marvin Traub Associates, Inc.

received a one-time retainer fee of \$25,000 upon the agreement's execution in 2007. If the Company were successful in consummating a relationship with a third party, Marvin Traub Associates, Inc. would have received an additional \$100,000 success fee. No success fee ultimately was paid. As detailed above, Mr. Traub resigned as a director on December 4, 2008.

#### COMPENSATION COMMITTEE INTERLOCKS AND INSIDER PARTICIPATION

None of the members of our Compensation Committee is or has ever been an officer or employee of NexCen or any of our subsidiaries. None of our executive officers serves as a member of the board of directors or a compensation committee of any entity that had one or more executive officers serving on our Board of Directors or our Compensation Committee.

## COMMUNICATION WITH DIRECTORS

Interested parties, including stockholders, may communicate with the Board of Directors as a whole or with specified individual Directors by using the following address:

NexCen Brands, Inc.  
Board of Directors  
c/o Corporate Secretary  
1330 Avenue of the Americas, 34th Floor  
New York, New York 10019

## DIRECTOR NOMINEE CRITERIA AND PROCESS

The Nominating/Corporate Governance Committee unanimously recommended the nominees for election to the Board of Directors for the Annual Meeting. The Nominating/Corporate Governance Committee may consider suggestions from many sources, including stockholders and third-party search firms, regarding possible candidates for director. In accordance with NexCen's Corporate Governance Guidelines, the Nominating/Corporate Governance Committee will consider, among other things, the candidate's experience, expertise in matters affecting NexCen and its business, ability and willingness to contribute special competencies to board activities, personal integrity, and leadership experience. The Nominating/Corporate Governance Committee evaluates candidates on the basis of their qualifications, experience, skills, and ability to enhance stockholder value and without regard to gender, race, color, national origin, or other protected status. Once possible candidates are identified, the Nominating/Corporate Governance Committee will discuss its recommendations with the Board of Directors. If the candidate is approved by the Board of Directors, the recommended candidate will be nominated for election by NexCen's stockholders (or appointed to fill a vacancy on the board, if applicable). When a vacancy occurs on the Board of Directors, the Nominating/Corporate Governance Committee may recommend to the Board of Directors a nominee to fill the vacancy. As provided in NexCen's bylaws, the Board of Directors may appoint a new director when a vacancy occurs between Annual Meetings of Stockholders. Alternatively, the Board of Directors also may decide to leave a board seat or seats open until a suitable candidate or candidates are located, or it may decide to reduce the size of the Board of Directors.

The Nominating/Corporate Governance Committee will consider nominations submitted by shareholders in accordance with the procedures set forth in our bylaws, as discussed below in "Submission of Shareholder Proposals." Such nominations will be evaluated in accordance with the same criteria as candidates initially proposed by the Nominating/Corporate Governance Committee. Nominations should be sent to the attention of Corporate Secretary, NexCen Brands, Inc., 1330 Avenue of the Americas, 34th Floor, New York, New York 10019.

## DIRECTOR ATTENDANCE

During 2008, the Board of Directors held 20 meetings. Each of the incumbent members of the Board of Directors attended at least 75% of the combined total meetings of the Board of Directors and the respective committees on which such member served in 2008. The average attendance of all Directors was 90%. Directors are expected to attend the Annual Meeting of Stockholders. The Company did not hold an Annual Meeting of Stockholders in 2008, but all Directors in office as of the date of the 2007 Annual Meeting of Stockholders attended the 2007 meeting.

## COMMITTEES OF THE BOARD OF DIRECTORS

Our bylaws authorize our Board of Directors to appoint one or more committees, each consisting of one or more directors. The Board of Directors currently has three standing committees: an Audit Committee, a

Nominating/Corporate Governance Committee and a Compensation Committee, each of which has adopted written charters that are all currently available on our website. On December 5, 2008, in connection with the approval of the reduction in size of the Board of Directors to five members, the Board of Directors reduced the size of both the Nominating/Corporate Governance Committee and the Compensation Committee to two directors.



#### Audit Committee

Members: Directors Brady (Chairman), Caine and Mathias

Number of Meetings in 2008: 13

The Audit Committee's responsibilities include:

- appointing, replacing, overseeing and compensating the work of a firm to serve as the registered independent public accounting firm to audit the Company's financial statements;
- discussing the scope and results of the audit with the independent registered public accounting firm and reviewing with management and the independent registered public accounting firm the Company's interim and year-end operating results;
  - considering the adequacy of the Company's internal accounting controls and audit procedures;
- approving (or, as permitted, pre-approving) all audit and non-audit services to be performed by the independent registered public accounting firm; and
- providing an avenue of communication among the independent auditor, management, employees and the Board of Directors.

The Board of Directors has determined that the members of the Audit Committee satisfy the "independence" and "financial literacy" requirements for audit committee members as set forth by the SEC and as adopted in the NASDAQ listing standards.

The Board of Directors also determined that Mr. Brady is an audit committee financial expert, as defined by Item 407 of Regulation S-K and as required by Nasdaq Rule 5605(c)(2)(A), and is independent of management, as defined by Rule 10A-3(b)(1) of the Exchange Act and Nasdaq Rule 5605(a)(2) and as required by Nasdaq Rule 5605(c)(2)(A). We believe that Mr. Brady is qualified to be an "audit committee financial expert" because he has the following attributes: (i) an understanding of GAAP and financial statements, (ii) the ability to assess the general application of such principles in connection with accounting for estimates, accruals and reserves, (iii) experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the Company's financial statements, and experience actively supervising one or more persons engaged in such activities, (iv) an understanding of internal control over financial reporting and (v) an understanding of audit committee functions. Mr. Brady acquired these attributes by having held various positions that provided the relevant experience, including 33 years with Arthur Andersen (including 20 years as an audit partner) and membership on the audit committees of several public companies since 1998. Mr. Brady also currently serves on the audit committees of three other public companies, but the Board of Directors has determined that such service does not affect his independence, responsibilities or duties as a member of the Audit Committee.

#### Nominating/Corporate Governance Committee

Members: Directors Brady (Chairman) and Caine

Number of Meetings in 2008: 2

The Nominating/Corporate Governance Committee's responsibilities include:

- identifying, evaluating and recommending nominees to serve on the Board of Directors and committees of the Board of Directors;
- conducting searches for appropriate directors and evaluating the performance of the Board of Directors and of individual directors;
- screening and recommending to the Board of Directors individuals qualified to become the chief executive officer of the Company or to become senior executive officers of the Company;
  - assessing the policies, procedures and performance of the Board of Directors and its committees;
- developing, evaluating and recommending to the Board of Directors any changes or updates to the Company's policies on business ethics, conflicts of interest and related party transactions;

- making recommendations regarding director compensation to the Board of Directors; and
- overseeing the Company's corporate governance procedures and practices.

#### Compensation Committee

Members: Directors Mathias (Chairman) and Brady

Number of Meetings in 2008: 10

The Compensation Committee's responsibilities include:

- reviewing and approving corporate goals and objectives that are relevant to the compensation of the chief executive officer and other executive officers;
- evaluating the chief executive officer's performance and setting compensation in light of corporate objectives;
- reviewing and approving the compensation of the Company's other executive officers;
- administering the Company's stock option and stock incentive plans; and
- reviewing and making recommendations to the Board of Directors with respect to the Company's overall compensation objectives, policies and practices, including with respect to incentive compensation and equity plans.

#### Ad Hoc Committees of the Board of Directors

##### Restructuring Committee

On May 18, 2008, we established an ad hoc Restructuring Committee of our Board of Directors, consisting of Messrs. Oros, Brady and Stamas. The Restructuring Committee did not have a formal charter, but was charged with overseeing, on behalf of the Board of Directors, the Company's efforts to improve our financial condition and evaluate our restructuring alternatives. On May 12, 2009, the Restructuring Committee was disbanded after the Board's determination that this ad hoc committee was no longer needed in light of the progress made to date by the Company in its restructuring efforts and the reduced number of members on the Board of Directors.

#### DIRECTOR COMPENSATION

In 2008, non-employee Directors each received a retainer of \$20,000 (paid quarterly), a fee of \$1,500 for each board meeting they attended, and reimbursement for reasonable travel expenses relating to attendance at board meetings. Audit Committee members received \$2,500 for each Audit Committee meeting they attended, and the chairperson of the Audit Committee received an additional \$12,500 annual retainer (paid quarterly). Each of the chairpersons of the Compensation Committee and the Nominating/Corporate Governance Committee receives an additional retainer of \$2,500. On December 5, 2008, the Board of Directors approved providing a fee of \$1,000 commencing in 2009 to the respective members of the Compensation Committee and the Nominating/Corporate Governance Committee for attending each committee meeting that is held separately from a Board of Directors meeting.

No stock or option awards were granted to directors in 2008. In addition, as of December 31, 2008, all of the non-qualified options granted to the directors in 2007 were cancelled either (1) voluntarily by the director through the Company's Stock Option Cancellation Program instituted on November 12, 2008 or (2) in accordance with the option

grant agreements which provided that the grantee would forfeit any unvested options upon resignation. See “Compensation Discussion and Analysis” for additional details regarding the Stock Option Cancellation Program.

The following table sets forth compensation information for 2008 for each current and former member of our Board of Directors with the exception of Mr. D’Loren. Directors who were employees, such as Messrs. D’Loren and Oros, do not receive additional compensation for serving on the Board of Directors. See “Summary Compensation” table and “Grants of Plan-Based Awards” table for disclosures related to Mr. D’Loren.

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| Name                                  | Fees Earned<br>or Paid<br>in Cash<br>(\$) | Stock<br>Awards<br>(\$) | Option<br>Awards<br>(\$)(8) | Non-Equity<br>Incentive<br>Compensation<br>(\$) | Change in<br>Pension Value<br>and Nonqualified<br>Deferred Compensation |  | All Other<br>Compensation<br>(\$) | Total<br>(\$) |
|---------------------------------------|---|-------------------------|-----------------------------|---|---|--|-----------------------------------|---------------|
|                                       |   |                         |                             |   | Change in<br>Pension Value<br>(\$)                                      | Change in<br>Nonqualified<br>Deferred Compensation<br>(\$) |                                   |               |
| David S. Oros                         | -   | -                       | -                           | -   | -   | -  | \$ 152,188(9)                     | \$ 152,188    |
| James T. Brady                        | \$ 97,500(1)                              | -                       | -                           | -   | -   | -  | -                                 | \$ 97,500     |
| Paul Caine                            | \$ 75,500(2)                              | -                       | -                           | -   | -   | -  | -                                 | \$ 75,000     |
| Jack B. Dunn, IV<br>(former director) | \$ 34,228(3)                              | -                       | -                           | -   | -   | -  | -                                 | \$ 34,228     |
| Edward J. Mathias                     | \$ 82,500(4)                              | -                       | -                           | -   | -   | -  | -                                 | \$ 82,500     |