

SCOTTS MIRACLE-GRO CO

Form DEF 14A

December 11, 2009

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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

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(Name of Registrant as Specified In Its Charter)

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

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

1) Title of each class of securities to which transaction applies:

2) Aggregate number of securities to which transaction applies:

3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

4) Proposed maximum aggregate value of transaction:

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- Fee paid previously with preliminary materials.
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1) Amount Previously Paid:

2) Form, Schedule or Registration Statement No.:

3) Filing Party:

4) Date Filed:

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*The Scotts Miracle-Gro Company*  
**Proxy Statement for 2010 Annual Meeting of Shareholders**

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**14111 Scottslawn Road  
Marysville, Ohio 43041**

**NOTICE OF ANNUAL MEETING OF SHAREHOLDERS  
To Be Held Thursday, January 21, 2010**

NOTICE IS HEREBY GIVEN that the Annual Meeting of Shareholders 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 21, 2010, at 9:00 A.M., Eastern Time (the Annual Meeting ), for the following purposes:

1. To elect four directors, each to serve for a term of three years expiring at the 2013 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, 2010.
3. To transact such other business as may properly come before the Annual Meeting or any adjournment or postponement thereof.

The Proxy Statement accompanying this Notice of Annual Meeting of Shareholders describes each of these items in detail. The Company has not received notice of any other matters that may be properly presented at the Annual Meeting.

Only shareholders of record at the close of business on Wednesday, November 25, 2009, 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.

On or about December 11, 2009, the Company will mail to shareholders either: (1) a copy of the accompanying Proxy Statement, a form of proxy and the Company s 2009 Annual Report or (2) a Notice of Internet Availability of Proxy Materials, which will indicate how to access the Company s proxy materials on the Internet.

Your vote is very important. Please vote as soon as possible even if you plan to attend the Annual Meeting.

By Order of the Board of Directors,

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

December 11, 2009

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**Proxy Statement for the  
Annual Meeting of Shareholders of**

**THE SCOTTS MIRACLE-GRO COMPANY**

**To Be Held on Thursday, January 21, 2010**

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**14111 Scottslawn Road  
Marysville, Ohio 43041**

**PROXY STATEMENT**

**for**

**Annual Meeting of Shareholders  
to be held on Thursday, January 21, 2010**

**GENERAL INFORMATION ABOUT VOTING**

This Proxy Statement, along with the 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 21, 2010, at 9:00 A.M., Eastern Time, and at any adjournment or postponement thereof. 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.

Only holders of record of the Company's common shares, without par value (the Common Shares), at the close of business on Wednesday, November 25, 2009 (the Record Date) are entitled to receive notice of and to vote at the Annual Meeting. As of the Record Date, there were 65,980,395 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.

This year, the Company is furnishing proxy materials over the Internet to a number of its shareholders as permitted under the rules of the Securities and Exchange Commission (the SEC). Under these rules, many of the Company's shareholders will receive a Notice of Internet Availability of Proxy Materials instead of a paper copy of the Notice of Annual Meeting of Shareholders, this Proxy Statement and the Company's 2009 Annual Report. The Notice of Internet Availability of Proxy Materials contains instructions on how to access those documents over the Internet and how shareholders can receive a paper copy of the Company's proxy materials, including the Notice of Annual Meeting of Shareholders, this Proxy Statement, the Company's 2009 Annual Report and a form of proxy. All shareholders who do not receive a Notice of Internet Availability of Proxy Materials will receive a paper copy of the proxy materials by mail. The Company believes this new process will conserve natural resources and reduce the costs of printing and distributing proxy materials. **Shareholders who receive a Notice of Internet Availability of Proxy Materials are reminded that the Notice is not itself a proxy card.**

**Important Notice Regarding the Availability of Proxy Materials for the Annual Meeting of Shareholders to Be Held on January 21, 2010: The Notice of Annual Meeting of Shareholders, Proxy Statement and 2009 Annual Report are available at [www.proxyvote.com](http://www.proxyvote.com).** At [www.proxyvote.com](http://www.proxyvote.com), shareholders can view the proxy materials, cast their vote and request to receive proxy materials in printed form by mail or electronically by e-mail on an ongoing basis.

If you received a paper copy of the proxy materials by mail, a form of proxy for use at the Annual Meeting is included. You may ensure your representation at the Annual Meeting by completing, signing, dating and promptly returning the form of proxy. A return envelope, which requires no postage if mailed in the United States, has been provided for your use. Alternatively, shareholders may transmit their voting

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instructions electronically via the Internet or by using the toll-free telephone number stated on the form of proxy or the Notice of Internet Availability of Proxy Materials. The deadline for transmitting voting instructions electronically via the Internet or telephonically is 11:59 P.M., Eastern Time, on January 20, 2010. The Internet and telephone voting procedures are designed to authenticate shareholders' identities, allow shareholders to give their voting instructions and confirm that such voting instructions have been properly recorded.

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 or the Notice of Internet Availability of Proxy Materials 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 or the Notice of Internet Availability of Proxy Materials. **Attending the Annual Meeting will not, in and of itself, constitute revocation of a previously-appointed proxy.**

If you hold your Common Shares in "street name" with a broker/dealer, financial institution or other nominee or holder of record, 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 Common Shares will not be voted by the broker/dealer for the election of directors or other non-routine matters but the broker/dealer will have the discretion to vote your Common Shares on routine matters, such as the ratification of the selection of the Company's independent registered public accounting firm.

The Company will bear the costs of soliciting proxies on behalf of the Board of Directors and tabulating your votes. The Company has retained Broadridge Financial Solutions, Inc. to assist in distributing these proxy materials. Directors, officers and regular employees of the Company, personally, by telephone, by e-mail or otherwise, may solicit your votes without additional compensation. 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. The Company will reimburse its transfer agent, Wells Fargo Shareholder Services, as well as broker/dealers, financial institutions and other custodians, nominees and fiduciaries for forwarding proxy materials to shareholders, according to certain regulatory fee schedules.

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.

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 are counted for purposes of determining the presence or absence of a quorum. Broker non-votes, where broker/dealers, who hold their

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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, are counted for the purposes of establishing a quorum based solely on matters of a routine nature.

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 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.

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 four nominees of the Board of Directors listed below under the caption

**PROPOSAL NUMBER 1 ELECTION OF DIRECTORS**, to the extent permitted by applicable law, 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, 2010 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.

**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 III directors hold office for terms expiring at the Annual Meeting, the Class I directors hold office for terms expiring in 2011 and the Class II directors hold office for terms expiring in 2012.

At the Annual Meeting, four Class III directors will be elected. Three of the four individuals nominated by the Board of Directors for election as directors are currently serving as Class III directors Mark R. Baker, Joseph P. Flannery and Katherine Hagedorn Littlefield. Patrick J. Norton's term as a Class III director will expire at the Annual Meeting. The Board of Directors has nominated Adam Hanft for election as a Class III director. The nomination of each individual was recommended to the Board of Directors by the Governance and Nominating Committee (the Governance Committee).

The individuals elected as Class III directors at the Annual Meeting will hold office for a three-year term expiring at the 2013 Annual Meeting of Shareholders and until their respective successors are duly elected and qualified, or until their earlier death, resignation or removal. The individuals named as proxy holders 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 or through the telephone or Internet voting procedures. 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 Committee. The individuals

designated as proxy holders cannot vote for more than four nominees for election as Class III directors at the Annual Meeting.

The following information, as of November 25, 2009, with respect to the age, principal occupation or employment, other affiliations and business experience during the last five years of each director or nominee



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for election or 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 Election or Re-Election to the Board of Directors**

**Class III Terms to Expire at the 2013 Annual Meeting**

*Mark R. Baker, age 52, 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 77, 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 (Chair)

*Adam Hanft, age 59, Nominee for Election as a Director of the Company*

On November 12, 2009, the Board of Directors, upon the recommendation of the Governance Committee, nominated Mr. Hanft for election as a Class III member of the Board of Directors. Mr. Hanft was recommended by James Hagedorn, the Company's Chairman of the Board and Chief Executive Officer, who knew Mr. Hanft from his participation on the Company's Innovation & Technology Advisory Board. Mr. Hanft is the founder and Chief Executive Officer of Hanft Unlimited, Inc., a marketing organization formed in March 2004 that includes Hanft Raboy & Partners, Fishtank Consulting and Garvey Publishing. Mr. Hanft is a frequent commentator, columnist and author on marketing and branding-related issues.

*Katherine Hagedorn Littlefield, age 54, 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, and Adelphi University. She is the sister of James Hagedorn, the Chief Executive Officer and Chairman of the Board of Directors of the Company.

Committee Memberships: Finance; Innovation & Technology (Chair)



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**Class I Terms to Expire at the 2011 Annual Meeting**

*James Hagedorn, age 54, 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 Memberships: None at this time

*William G. Jurgensen, age 58, Director of the Company since May 2009*

On May 6, 2009, the Board of Directors, upon the recommendation of the Governance Committee, appointed Mr. Jurgensen as a member of the Board of Directors to fill an existing vacancy in Class I. Mr. Jurgensen was recommended by Carl F. Kohrt, Ph.D., a non-management director of the Company, who knew Mr. Jurgensen from his business and civic activities. Mr. Jurgensen served as Chief Executive Officer of Nationwide Mutual Insurance Company and Nationwide Financial Services, Inc., leading providers of diversified insurance and financial services, from 2000 until February 2009. Mr. Jurgensen serves as a director of one other public company: ConAgra Foods, Inc.

Committee Memberships: Audit; Governance and Nominating

*Nancy G. Mistretta, age 55, Director of the Company since 2007*

Ms. Mistretta is a retired partner of Russell Reynolds Associates, an executive search firm ( Russell Reynolds ), where she served as a partner from February 2005 until June 2009. She was a member of Russell Reynolds Not-For-Profit Sector and was 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 was also active in the CEO/Board Services Practice of Russell Reynolds. Prior to joining Russell Reynolds, 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. She also serves on the New York Advisory Board of The Posse Foundation, Inc.

Committee Memberships: Compensation and Organization; Finance (Chair)

*Stephanie M. Shern, age 61, 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 and member of the Audit Committees of three other public companies: CenturyTel, Inc.; Koninklijke Ahold N.V.; and GameStop Corp.

Committee Membership: Audit (Chair)

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**Directors Continuing in Office Class II Terms to Expire at the 2012 Annual Meeting**

*Alan H. Barry, age 66, Director of the Company since April 2009*

On April 8, 2009, the Board of Directors, upon the recommendation of the Governance Committee, appointed Mr. Barry as a member of the Board of Directors to fill an existing vacancy in Class II. Mr. Barry was recommended by Mark R. Baker, the Company's President and Chief Operating Officer. Mr. Barry retired in December 2007 as President and Chief Operating Officer of Masco Corporation, a manufacturer, distributor and installer of home improvement and building products. Mr. Barry began his career at Masco Corporation in 1972. Mr. Barry serves as a director of two privately-held companies: IPS Corporation; and H.W. Kaufman Financial Group, Inc.

Committee Memberships: Audit; Finance

*Thomas N. Kelly Jr., age 62, Director of the Company since 2006*

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, which became Sprint Nextel Corporation, 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 Membership: Compensation and Organization (Chair)

*Carl F. Kohrt, Ph.D., age 65, Director of the Company since 2008*

Dr. Kohrt served as President and Chief Executive Officer of Battelle Memorial Institute ( Battelle ), a non-profit charitable trust headquartered in Columbus, Ohio, from October 15, 2001 until December 31, 2008. 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 one public company, Kinetic Concepts, Inc., as well as a director of three privately-held companies: Pharos, LLC; Levitronix, Inc.; and 360ip Pte Ltd. He also serves as Chairman of the Columbus, Ohio science center COSI and Battelle For Kids, a private, non-profit education company.

Committee Memberships: Compensation and Organization; Innovation & Technology

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*John S. Shiely, age 57, Director of the Company since 2007*

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 indicated he will relinquish his Chief Executive Officer title at the end of 2009. 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 three privately-held companies: Quad/Graphics, Inc.; Cleveland Rock and Roll, Inc. (the corporate board of the Rock and Roll Hall of Fame and Museum); and Children s Hospital and Health System, Inc.

Committee Memberships: Audit; Governance and Nominating

Patrick J. Norton s term as a Class III director expires at the Annual Meeting. Mr. Norton, age 59, 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.

On December 18, 2008, Arnold W. Donald notified the Company that he had decided not to stand for re-election to the Board of Directors. Mr. Donald s term as a Class II director expired at the Annual Meeting of Shareholders held on January 22, 2009. On January 21, 2009, Karen G. Mills, who had served as a Class I director, notified the Company that she was resigning from the Board of Directors, effective immediately.

## **Recommendation and Vote**

Under Ohio law and the Company s Code of Regulations, the four nominees for election as Class III 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 and Common Shares represented by broker non-votes will not be counted toward the election of directors or toward the election of the individual nominees of the Board of Directors. The individuals designated as proxy holders cannot vote for more than four nominees for election as Class III directors at the Annual Meeting.

**YOUR BOARD OF DIRECTORS RECOMMENDS THAT SHAREHOLDERS VOTE FOR THE ELECTION OF ALL OF THE ABOVE-NAMED CLASS III 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. The Board of Directors, with the assistance of the Governance 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.

**Table of Contents****Director Independence**

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

- |                          |                        |
|--------------------------|------------------------|
| (1) Alan H. Barry        | (6) Nancy G. Mistretta |
| (2) Joseph P. Flannery   | (7) Patrick J. Norton  |
| (3) William G. Jurgensen | (8) Stephanie M. Shern |
| (4) Thomas N. Kelly Jr.  | (9) John S. Shiely     |
| (5) Carl F. Kohrt, Ph.D. |                        |

In addition, based upon the recommendation of the Governance Committee and its own review, consideration and discussion, the Board of Directors has determined that Adam Hanft, who has been nominated for election as a director of the Company at the Annual Meeting, satisfies the applicable independence requirements set forth in the NYSE Rules and the SEC Rules. Also, the Board of Directors determined that each of former directors Karen G. Mills and Arnold W. Donald satisfied the applicable independence requirements set forth in the NYSE Rules and the SEC Rules during their periods of service which ended on January 21, 2009 and January 22, 2009, respectively.

In determining that Mr. Hanft would qualify as an independent director if elected, the Board considered that the Company has paid Mr. Hanft or companies controlled by him less than \$120,000 for service on the Company's Innovation & Technology Advisory Board and other advisory services during the 2009 fiscal year. In determining that Ms. Mistretta qualifies as an independent director, the Board of Directors considered that Ms. Mistretta was employed by Russell Reynolds during a portion of the 2009 fiscal year and has since retired, and that the Company and its subsidiaries used Russell Reynolds for executive employment searches and paid Russell Reynolds less than \$120,000 in the 2009 fiscal year.

In determining that Mr. Donald qualified and Mr. Norton qualifies as an independent director under the applicable NYSE Rules and SEC Rules, the Board of Directors considered that Mr. Donald had been and Mr. Norton is a director of Scotts Miracle-Gro Foundation, an Ohio non-profit 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. In determining that Mr. Norton qualified as an independent director, the Board also considered the terms of a letter agreement with the Company, dated November 5, 2002, and amended on October 25, 2005, whereby Mr. Norton has continued to participate in the Company's group medical and dental plans by personally paying the full premium associated with these plans under the prevailing annual COBRA rates. As such, Mr. Norton's participation results in no incremental cost to the Company. Pursuant to the terms of the agreement, Mr. Norton is entitled to continue to so participate until his 65th birthday on November 19, 2015.



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; and (c) Mark R. Baker is not independent because he is the President and Chief Operating Officer of the Company.

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### **Lead Independent Director**

The Board of Directors elected Carl F. Kohrt, Ph.D. to serve as the Lead Independent Director on January 22, 2009, upon the recommendation of the Governance Committee and with the support of management. Dr. Kohrt serves in this capacity at the pleasure of the Board of Directors and will continue to so serve until his successor is elected and qualified. As Lead Independent Director, Dr. Kohrt 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 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 Committee, selects nominees to stand for election as directors. In considering candidates for the Board of Directors, the Governance 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 Committee may consider any factors it deems appropriate when considering candidates for the Board of Directors, including a candidate's: judgment; functional skills; 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; international experience; 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 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 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 is older than 72, the Board of Directors has chosen to nominate Joseph P. Flannery for re-election to the Board of Directors at the Annual Meeting because his expertise and knowledge make him a valuable candidate.

The Governance Committee considers candidates for the Board of Directors from any reasonable source, including current director, management and shareholder recommendations, and does not evaluate candidates differently based on the source of the recommendation. Pursuant to its written charter, the Governance 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 Committee by giving written notice of the recommendation to the Corporate Secretary of the Company. The recommendation must 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, must 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 of Directors 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

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Company's principal 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.

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 Meeting of Shareholders**

The Board of Directors held 13 regularly scheduled or special meetings during the Company's fiscal year ended September 30, 2009 (the "2009 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 2009 fiscal year that such individual served as a director, with the exception of Stephanie M. Shern.

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 11 then incumbent directors and director nominees attended the Company's last Annual Meeting of Shareholders held on January 22, 2009.

In accordance with the Corporate Governance Guidelines and applicable NYSE Rules, the non-management directors of the Company regularly meet in executive session (without management participation). 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.

### **Committees of the Board**

The Board of Directors has five standing committees: (1) the Audit Committee; (2) the Compensation and Organization Committee; (3) the Finance Committee; (4) the Governance and Nominating Committee; and (5) the Innovation & Technology Committee.

### ***Audit Committee***

The Audit Committee, which was established in accordance with Section 3(a)(58)(A) of the Securities Exchange Act of 1934, as amended (the Exchange Act ), is organized and conducts its business pursuant to a written charter adopted by the Board of Directors. A copy of the Audit Committee charter is posted under the Corporate Governance link on the Company s Internet website at <http://investor.scotts.com> and is available

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in print to any shareholder of the Company or other interested person who requests it from the Corporate Secretary of the Company. At least annually, in consultation with the Governance Committee, the Audit Committee evaluates its performance, reviews and assesses the adequacy of its charter and recommends to the Board of Directors any proposed changes thereto as may be necessary or desirable.

The Audit Committee is responsible for: (1) overseeing the accounting and financial reporting processes of the Company, including the audits of the Company's consolidated financial statements, (2) appointing, compensating and overseeing the work of the independent registered public accounting firm employed by the Company, (3) establishing procedures for the receipt, retention and treatment of complaints received by the Company regarding accounting, internal accounting controls, auditing matter