

CHEESECAKE FACTORY INC  
Form PRE 14A  
March 20, 2008

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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

**SCHEDULE 14A**

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 Cheesecake Factory Incorporated**

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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:

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(1) Amount Previously Paid:

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(2) Form, Schedule or Registration Statement No.:

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(3) Filing Party:

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(4) Date Filed:

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\_\_\_\_\_, 2008

Dear Stockholder:

You are cordially invited to attend The Cheesecake Factory Incorporated Annual Meeting of Stockholders on Thursday, May 22, 2008 at 10:00 a.m. (Pacific Daylight Time). The meeting will be held at the Janet and Ray Scherr Forum Theatre, Thousand Oaks Civic Arts Plaza, 2100 Thousand Oaks Boulevard, Thousand Oaks, California 91362.

The matters to be acted upon at the meeting are described in the attached Notice of Annual Meeting and Proxy Statement. Our agenda for the Annual Meeting will also include an overview of our business operations and recent performance results.

Regardless of whether or not you will attend, please vote by signing, dating and returning the enclosed Proxy Card, or you can vote by telephone or Internet (see back cover). Voting by mail will not prevent you from voting in person at the meeting.

Sincerely,

David Overton  
*Chairman of the Board and Chief Executive Officer*

**YOUR VOTE IS VERY IMPORTANT**

Whether or not you plan to attend the Annual Meeting of Stockholders, and to ensure that a quorum is present, you are urged to vote your proxy by telephone or the Internet (see back cover), or by returning the Proxy Card by mail. If you are able to attend the meeting and you wish to vote your shares in person, the proxy is revocable.

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**IF YOU PLAN TO ATTEND THE MEETING**

Please note that attendance will be limited to stockholders. Admission will be on a first-come, first-served basis. Stockholders may be asked to present valid picture identification, such as a driver's license or passport. Stockholders holding stock in brokerage accounts ("street name" holders) will need to bring a copy of a brokerage statement reflecting stock ownership as of the record date. Cameras, recording devices and other electronic devices will not be permitted at the Annual Meeting.

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**THE CHEESECAKE FACTORY INCORPORATED**

26901 Malibu Hills Road  
Calabasas Hills, California 91301

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**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS**

**on**  
**May 22, 2008**

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The 2008 Annual Meeting of Stockholders of THE CHEESECAKE FACTORY INCORPORATED (the "Company") will be held at the Janet and Ray Scherr Forum Theatre, Thousand Oaks Civic Arts Plaza, 2100 Thousand Oaks Boulevard, Thousand Oaks, California 91362, on Thursday, May 22, 2008, beginning at 10:00 a.m. Pacific Daylight Time, for the following purposes:

1. To elect two nominees to serve as directors of the Company for three-year terms and until respective successors shall be elected and qualified;
2. To approve an amendment to the Company's Amended and Restated 2001 Omnibus Stock Incentive Plan;
3. To approve amendments to the Company's Certificate of Incorporation to eliminate the classified Board of Directors and make conforming changes to the Company's Certificate of Incorporation;
4. To ratify the selection of PricewaterhouseCoopers LLP as the Company's independent registered public accounting firm for the fiscal year ending December 30, 2008; and
5. To transact such other business as may properly come before the meeting or any adjournment thereof.

At the Annual Meeting, the Board of Directors intends to present David Overton and Agnieszka Winkler for election to the Board of Directors.

The Board of Directors has fixed the close of business on March 31, 2008 as the record date for the determination of stockholders entitled to notice of and to vote at the Annual Meeting or any adjournment or postponement thereof.

By Order of the Board of Directors,

Debby R. Zurzolo  
*Secretary*

Calabasas Hills, California  
\_\_\_\_\_, 2008

**YOUR VOTE IS VERY IMPORTANT REGARDLESS OF THE NUMBER OF SHARES THAT YOU OWN. PLEASE READ CAREFULLY THE ATTACHED PROXY STATEMENT, COMPLETE, SIGN AND DATE THE ENCLOSED PROXY CARD, AND RETURN THE PROXY CARD AS SOON AS POSSIBLE.**

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## THE CHEESECAKE FACTORY INCORPORATED

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### PROXY STATEMENT FOR THE ANNUAL MEETING OF STOCKHOLDERS TO BE HELD ON MAY 22, 2008

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#### General

This Proxy Statement is furnished to the stockholders of THE CHEESECAKE FACTORY INCORPORATED (the "Company" and "we," "us" or "our") in connection with the solicitation of proxies by our Board of Directors for use at the Annual Meeting of Stockholders to be held at the Janet and Ray Scherr Forum Theatre, Thousand Oaks Civic Arts Plaza, 2100 Thousand Oaks Boulevard, Thousand Oaks, California 91362, on May 22, 2008, beginning at 10:00 a.m. Pacific Daylight Time, and at any adjournment or postponement thereof. We intend to cause this Proxy Statement and form of proxy to be mailed to stockholders on or about \_\_\_\_\_, 2008.

#### Voting; Quorum; Abstentions and Broker Non-Votes

On March 31, 2008, the record date fixed by the Board of Directors for the Annual Meeting, \_\_\_\_\_ shares of our common stock were outstanding and there were no outstanding shares of any other class of stock. Each holder of common stock is entitled to one vote for each share of such stock held of record. Only stockholders of record at the close of business on March 31, 2008 will be entitled to notice of and to vote at the Annual Meeting.

The required quorum for the transaction of business at the Annual Meeting is a majority of the issued and outstanding shares of our common stock entitled to vote at the Annual Meeting, whether present in person or represented by proxy. Our Bylaws provide that unless otherwise provided by law or by the Certificate of Incorporation or the Bylaws, all elections and questions other than the election of directors shall be decided by the vote of the holders of a majority of the outstanding shares of stock entitled to vote thereon present in person or by proxy at the Annual Meeting. Shares of stock represented by a properly signed and returned proxy will be treated as present at the Annual Meeting for purposes of determining a quorum, regardless of whether the proxy is marked as casting a vote or abstaining. Shares of voting stock represented by "broker non-votes" (i.e., shares of stock held in record name by brokers or nominees as to which (i) instructions have not been received from the beneficial owners or persons entitled to vote; (ii) the broker or nominee does not have discretionary voting power under applicable rules or the instrument under which it serves in such capacity; or (iii) the record holder has indicated on the proxy card or has executed a proxy and otherwise notified us that it does not have authority to vote such shares on that matter) shall be treated as present for purposes of determining a quorum.

Directors are elected by a plurality of the votes cast. Accordingly, abstentions and broker non-votes will not affect the election of a candidate who receives a plurality of votes. Proposals 2 and 4 each require the approval of a majority of the outstanding shares of stock entitled to vote thereon present in person or proxy at the Annual Meeting. Accordingly, abstentions as to each of these proposals will have the same effect as votes against the proposal. Broker non-votes as to Proposals 2 and 4, however, will be deemed shares not entitled to vote on the proposal, will not be counted as votes for or against the proposals, and will not be included in calculating the number of votes necessary for approval of the proposals. Proposal 3 requires the affirmative vote of the holders of at least eighty percent (80%) of the combined voting power of our common stock. Accordingly, abstentions and broker non-votes will have the same effect as voting against Proposal 3.

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## Proxies

Proxies delivered pursuant to this solicitation are revocable at the option of the persons executing the same, prior to their exercise, by attendance and voting at the Annual Meeting (although attendance at the Annual Meeting itself will not revoke a proxy) or by filing written notice with Debby R. Zurzolo, our Secretary, a written notice revoking the proxy or another duly executed proxy bearing a later date. Unless previously revoked, all proxies representing shares entitled to vote that are delivered pursuant to this solicitation will be voted at the Annual Meeting by the named attorneys-in-fact and agents, to the extent authorized, in accordance with the directions contained therein.

If no directions are given, the shares represented by such proxies will be voted **FOR** the election of the nominees for directors, David Overton and Agnieszka Winkler; **FOR** the approval of an amendment to the Company's Amended and Restated 2001 Omnibus Stock Incentive Plan; **FOR** the approval of the amendments to the Company's Certificate of Incorporation to declassify the Board of Directors; and **FOR** the ratification of the selection of PricewaterhouseCoopers LLC as the Company's independent registered public accounting firm for the fiscal year ending December 30, 2008; The named proxies may vote in their discretion upon such other matters as may properly come before the Annual Meeting, including any motion made for adjournment or postponement (including for purposes of soliciting additional votes).

## Solicitation

We will pay for the cost of preparing, assembling and mailing the Notice of Annual Meeting and Proxy Statement and the cost of this solicitation. Our directors, officers and other staff members may solicit proxies, without additional remuneration, in person or by telephone or facsimile transmission. Banks, brokerage houses and other custodians, nominees or fiduciaries will be requested to forward soliciting material to their principals and to obtain authorization for the execution of proxies, and will be reimbursed for their reasonable out-of-pocket expenses incurred in that regard. Our staff members participating in a solicitation of proxies will not receive any additional remuneration. We have retained MacKenzie Partners, Inc., a proxy soliciting firm, to provide advice with respect to the 2008 Annual Meeting of Stockholders and MacKenzie Partners, Inc. may assist in the solicitation of proxies for an estimated total fee of \$60,000, plus reimbursement of certain out-of-pocket expenses.

**Important Notice regarding the Availability of Proxy Materials for the Stockholder Meeting to Be Held on May 22, 2008: This Proxy Statement and our 2007 Annual Report to Stockholders are available at \_\_\_\_\_.**

## PROPOSAL 1

### ELECTION OF DIRECTORS

Our Bylaws provide for a Board of Directors consisting of no less than five and no more than thirteen members, the exact number within this range being determined by the Board of Directors. The Board of Directors has currently set the number of directors at eight. The Board of Directors is classified into three classes with each director serving a three-year term. David Overton and Agnieszka Winkler are serving terms that will expire at the Annual Meeting of Stockholders to be held in 2008. Allen J. Bernstein, Jerome I. Kransdorf and Wayne H. White are serving terms that will expire at the Annual Meeting of Stockholders to be held in 2009. Alexander L. Cappello, Thomas L. Gregory and David R. Klock are serving terms that will expire at the Annual Meeting of Stockholders to be held in 2010. At each Annual Meeting of Stockholders, directors are elected for a full term of three years to succeed those directors whose terms are expiring. If the stockholders approve the proposed amendments to the Company's Certificate of Incorporation, all directors will be elected for a one-year term beginning with the 2011 Annual Meeting of Stockholders. *See Proposal No. 3, "Approval of Amendments to the Certificate of Incorporation to Eliminate the Classified Board of Directors, to Permit Removal of Directors with or without*

*Cause, and to Eliminate the Supermajority Vote Requirement with Respect to Article FIFTH of the Certificate of Incorporation".*

The Corporate Governance and Nominating Committee of the Board of Directors ("Governance Committee") has recommended the nomination of David Overton and Agnieszka Winkler for reelection to the Board of Directors for three-year terms that will expire at the Annual Meeting of Stockholders to be held in 2011. Mr. Overton is our current Chairman of the Board and Chief Executive Officer. Ms. Winkler was recommended by a non-management director for consideration by the Governance Committee and was appointed by the Board of Directors in fiscal 2007 to fill a vacancy. The Board of Directors approved the Governance Committee's recommendations and nominated Mr. Overton and Ms. Winkler, each of whom has indicated his or her willingness to serve. Unless a stockholder specifies otherwise, the shares represented by each returned proxy will be voted **FOR** the election of Mr. Overton and Ms. Winkler.

**THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS A VOTE *FOR* THE ELECTION OF MR. OVERTON AND MS. WINKLER TO THE BOARD OF DIRECTORS.**

**Our Board of Directors**

DAVID OVERTON, age 62, co-founded our predecessor with his parents. He has served as our Chairman of the Board and Chief Executive Officer since its incorporation in February 1992.

ALLEN J. BERNSTEIN, age 62, became a director of the Company in February 2008. Mr. Bernstein is the President of Endeavor Restaurant Group, Inc. He founded and served as Chairman and Chief Executive Officer of Morton's Restaurant Group, Inc. from 1989 through 2005 and presently serves as its Chairman Emeritus. He currently serves on the boards of directors of a number of privately held companies, including Charlie Brown's Steakhouse, Caribbean Restaurants, LLC, and Bravo Development, Inc. In addition, Mr. Bernstein is non-executive Chairman of the Board of Perkins & Marie Callenders, Inc., as well as Director Emeritus of McCormick & Schmick's Seafood Restaurants. He also serves on both the Board of Directors and Board of Trustees of the American Film Institute.

ALEXANDER L. CAPPELLO, age 52, became a director of the Company in February 2008. Mr. Cappello is Chairman and Chief Executive Officer of Cappello Capital Corp., a global merchant banking firm, which has conducted business in 50 countries where its principals have completed over \$110 billion in transactions. Mr. Cappello has more than 30 years of global experience in corporate management, corporate finance, and investment banking and merchant banking. He currently serves as a Trustee for the University of Southern California and past President of its Alumni Association Board of Governors. In addition, he serves as a Trustee of the City of Hope, and a director of California Republic Bank and the RAND Corporation Center for Middle East Public Policy. Mr. Cappello previously served as Chairman of the International Board of the Young Presidents Organization, Chairman of Inter-Tel (Delaware), Incorporated and has served as a director for a number of public companies prior to their acquisition or privatization, including Koo Koo Roo, Inc., Cytrx Corp., and Genius Products, Inc.

THOMAS L. GREGORY, age 72, became a director of the Company upon the consummation of our initial public offering in September 1992. Mr. Gregory has over 50 years of experience in the food service industry. He served as Vice Chairman of the Board of Directors of Sizzler International, Inc., a restaurant chain, until August 1994. Mr. Gregory served as President, Chief Executive Officer and a member of the Board of Directors of Sizzler from 1982 to 1991, and then served as President of its successor company until his retirement in 1992. From 1974 to 1991, he served as Vice President for Collins Foods International, Inc., a food service company, and retained such position concurrently with his positions at Sizzler. Mr. Gregory is a member of the Board of Directors of Regis Corporation, the world's largest chain of retail hair care operations.

DAVID R. KLOCK, Ph.D., age 63, became a director of the Company in December 2006. He is currently the Wachovia Chair in Business and Dean of the School of Business at the University of Alabama

at Birmingham. From 2005 until 2008, Dr. Klock was Dean of the College of Business Administration at California State Polytechnic University in Pomona, California. In 2004, Dr. Klock was appointed Chairman of CompBenefits Corporation, an Atlanta, Georgia-based provider of dental and vision plans to over 4.5 million members in the United States. From 1993 to 2004, Dr. Klock served as Chairman and Chief Executive Officer of CompBenefits and from 1991 to 1993, he served as President.

JEROME I. KRANSDORF, age 69, became a director of the Company in March 1997. Mr. Kransdorf has more than 40 years of investment management experience. He currently serves as President of JaK Direct, a division of Muriel Siebert & Co., Inc. From 1997 to 2001, Mr. Kransdorf served as Senior Vice President of J. & W. Seligman & Co. Incorporated, an investment advisory firm. From 1959 to 1997, he was employed in investment and senior management positions at Wertheim & Co. and its successor companies.

WAYNE H. WHITE, age 70, became a director of the Company upon the consummation of our initial public offering in September 1992. From 1983 until his retirement in June 2002, Mr. White was an investment banker specializing in gaming and restaurant companies. Mr. White has approximately 20 years of senior management experience in the restaurant industry, including Victoria Station (seven years) and Famous Restaurants (two years). He is also a member of the Board of Directors of Nevada Gold & Casinos, Inc.

AGNIESZKA WINKLER, age 62, became a director of the Company in May 2007. Ms. Winkler is the founder and Chairperson of The Winkler Group, a San Francisco-based management consultancy specializing in branding and marketing efficiency and effectiveness. She is also the founder and former Chairperson and Chief Executive Officer of Winkler Advertising, founded in 1984, and Team Toolz Inc., founded in 1999, both of which were acquired. Ms. Winkler has served on the Boards of Directors of the following NASDAQ-listed companies before they were acquired: Inter-Tel (Delaware), Incorporated, Reno Air, Inc. and SuperCuts, Inc.. In addition, she served as Vice Chairperson of the Board of Directors of IPLocks, Inc., a privately held company. Ms. Winkler currently serves on the Board of Trustees of Santa Clara University and is Vice Chair of the Committee of 200 Foundation. Ms. Winkler is the author of "Warp Speed Branding," published by Wiley in the United States, China, and Turkey.

#### **The Company's Director Nominations Process**

The Board of Directors has adopted a Policy and Procedure Regarding Board of Director Candidates (the "Nominations Policy"). The purpose of the Nominations Policy is to describe the process by which candidates are selected for possible inclusion in our recommended slate of director nominees. The Governance Committee of the Board of Directors administers the Nominations Policy.

The Governance Committee is responsible for identifying candidates for nomination or appointment to the Board of Directors. To fulfill this function, the Governance Committee will at least annually review the size and composition of the Board of Directors and its committees, including the number of directors eligible for election at the annual meeting of stockholders, in accordance with our Articles of Incorporation and Bylaws. The Governance Committee may solicit recommendations for nominees from other directors, members of management or others. In addition, the Governance Committee will consider recommendations of a stockholder of record who timely complies with these policies and procedures.

#### *Minimum Qualifications*

The Governance Committee has identified the following minimum qualifications for candidates for nomination to the Board of Directors:

Each candidate must consent in writing to be named in our proxy statement as a nominee and to serve as a director of the Company if nominated, elected or appointed, and qualified.



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Each candidate's service as a director must not cause us or any of our subsidiaries to lose, or to be threatened with the loss of any application for, right to the use of, or entitlement to, any material governmental license, authorization or permit.

Each candidate shall be an individual who has demonstrated integrity and ethics in his/her personal and professional life and has established a record of professional accomplishment in his/her chosen field.

Each candidate shall be prepared to represent the best interests of all of our stockholders and not just one particular constituency.

No candidate or family member (as defined in the NASDAQ rules) of a candidate may have any current material personal, financial or professional interest in any company determined by the Governance Committee to be a significant competitor of ours.

Each candidate must be prepared to participate fully in Board activities, including active membership on at least one Board committee, and not have other personal or professional commitments that would, in the Governance Committee's sole judgment, interfere with or limit his or her ability to do so.

Each candidate may not serve as a member of the board of directors of more than four publicly traded companies in addition to us.

Each candidate shall not have attained the age of 72 as of the date of appointment or election to the Board.

### *Criteria for Evaluating Candidates*

In evaluating nominations, the Committee will seek to achieve a balance of different capabilities and overall diversity, including in the areas of personal and professional experiences and backgrounds, financial, managerial and operational knowledge; variety of opinions and perspectives; and other differentiating characteristics with the goal of seeking and selecting candidates that will enhance the Board's ability to adequately perform its responsibilities, increase shareholder value, and adhere to good corporate governance practices. The Committee will consider the following criteria in evaluating candidates for nomination in light of the size and composition of the Board of Directors and its committees:

Satisfaction of the minimum qualifications established by the Committee.

Education and other training.

Relevant personal and professional background, including financial, managerial and operational skills and knowledge and experience in both corporate and non-traditional environments, such as government, academia and non-profit organizations.

Whether the candidate is a party to any action or arbitration adverse to us or any of our subsidiaries.

Whether the candidate would qualify as an "independent" director as defined by The NASDAQ Stock Market listing standards.

Whether the candidate would qualify as an "audit committee financial expert."

Whether the candidate has been involved in any legal proceeding that would be required to be disclosed by us pursuant to Item 401(f) of Regulation S-K.

Whether any business relationships exist, or have existed, that would be required to be disclosed pursuant to Item 404 of Regulation S-K.

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The candidate's reputation for judgment and honesty.

Whether we would be required to disclose any of the relationships described in Section 407(e) of Regulation S-K.

The number and identity of any other boards of directors of which the candidate is a member.

Other professional and personal commitments that could affect the candidate's ability to serve.

Whether the candidate has provided accurate and complete responses to any requests for additional information by the Committee.

Other relevant characteristics that would enhance the Board's ability to adequately perform its responsibilities, increase shareholder value, and adhere to good corporate governance practices.

Any history of criminal convictions.

If requested by the Committee, whether the candidate has agreed to be interviewed by the Committee.

### *General Nomination Right of All Stockholders*

Any of our stockholders may nominate one or more persons for election as a director of the Company at an annual meeting of stockholders if the stockholder complies with the advance notice, information and consent provisions contained in our Bylaws. Nominations for the election of directors, other than by the Governance Committee or the Board of Directors, must be made by a stockholder of record on the date of giving notice and on the record date for such meeting by giving timely written notice to our Secretary at our principal offices. Such notice must be received within a minimum of 90 days and a maximum of 120 days prior to the anniversary date of the immediately preceding annual meeting of stockholders; provided that if notice or prior public disclosure of the date of the annual meeting is given or made to the stockholders for a meeting date that is not within 30 days before or after the anniversary of the immediately preceding annual meeting of stockholders, notice by the stockholder will be timely if received not later than the close of business on the tenth day following the day on which such notice was mailed or such public disclosure was made, whichever first occurs, or no less than 90 days or more than 120 days prior to the annual meeting. In the event that the number of a class of directors to be elected is increased and we make no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors at least 100 days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice will be considered timely, but only with respect to nominees for any new positions created by the increase, if the notice is delivered to, or mailed and received at, our principal executive offices (addressed to our Secretary) no later than 10 calendar days following the day on which we make the public announcement. In the case of a special meeting of stockholders called for the purpose of electing directors, notice will be timely if the stockholder provides written notice to our Secretary not later than the close of business on the tenth day following the day on which notice of the date of the special meeting was mailed or public disclosure of the meeting date was made, whichever first occurs, or no less than 90 or more than 120 days prior to the meeting. The stockholder's notice must include all of the information required by our Bylaws, including a statement whether the stockholder intends to deliver a proxy statement and form of proxy to a sufficient number of holders to elect the nominee or nominees. If the stockholder provides a statement that the stockholder intends to deliver a proxy statement and form of proxy, the nomination may not be brought before the meeting unless the stockholder has delivered a proxy statement and form of proxy to holders of a percentage of our voting shares reasonably believed by the stockholder to be sufficient to elect the nominee or nominees proposed by the stockholder.

The foregoing summary does not purport to be a complete description of all of the provisions of our Bylaws pertaining to stockholder nominations and proxies. Stockholders may obtain, without charge, a copy of our Bylaws upon written request to our Secretary at our principal executive offices. Our Bylaws are

also available on website at [www.thecheesecakefactory.com](http://www.thecheesecakefactory.com) by clicking on the links for "Investors," "Corporate Governance" and "Bylaws."

*Stockholder Recommendations to the Governance Committee*

A stockholder of record may also recommend a candidate for consideration by the Governance Committee. In order to give the Governance Committee sufficient time to evaluate a recommended candidate, the recommendation should be received by our Secretary at our principal executive offices no later than the 120<sup>th</sup> calendar day before the date of our proxy statement released to stockholders in connection with the previous year's annual meeting of stockholders. With respect to the 2009 Annual Meeting of Stockholders, recommendations must be received by December \_\_\_\_, 2008. The stockholder's recommendation must include all of the following:

The stockholder's name, address and telephone number.

The recommended candidate's name, address and telephone number.

The written consent of the recommended candidate to be named in our proxy statement and to serve as a director if nominated, elected or appointed, and qualified to serve.

A description of all arrangements or understandings in connection with such recommendation between the stockholder and the recommended candidate or between the stockholder and any other person or persons (including their names).

A description of any business, familial or other financial or personal relationship between the stockholder and the recommended candidate.

Information with respect to the recommended candidate with respect to each of the criteria identified above for evaluating recommendations.

*Evaluation of Candidates*

The Governance Committee will consider all candidates identified through the process outlined above, and will evaluate each of them, including incumbents, based on the same criteria. If, based on the Governance Committee's initial evaluation, a candidate continues to be of interest to the Governance Committee, the Chair of the Governance Committee will interview the candidate and communicate the Chair's evaluation to the other committee members and the Chairman of the Board of Directors. Other members of the Governance Committee and senior Company management will conduct subsequent interviews. Ultimately, background and reference checks will be conducted and the Governance Committee will meet to finalize its list of recommended candidates for consideration by the full Board of Directors. If an incumbent is nominated, the interview process may be abbreviated at the discretion of the Chair of the Governance Committee. If the Chair of the Governance Committee is being considered for re-nomination, the other Governance Committee members shall appoint another member of the Governance Committee to head the review process for the Chair's reconsideration.

*Future Revisions to the Nominations Policy*

The Governance Committee's Nominations Policy is intended to provide a flexible set of guidelines for the effective functioning of the director nomination process. The Governance Committee intends to review this policy and procedure at least annually and anticipates that modifications will be necessary from time to time as our needs and circumstances evolve, and to conform with changes in applicable legal or listing standards.

**Affirmative Determinations Regarding Director Independence and Other Matters**

The Board of Directors has determined each of the following directors to be an "independent director" as such term is defined in NASD Marketplace Rule 4200(a)(15): Allen J. Bernstein; Alexander L. Cappello; Thomas L. Gregory; David R. Klock; Jerome I. Kransdorf; Wayne H. White; and Agnieszka Winkler. In this Proxy Statement, these seven directors are referred to individually as an "Independent Director" and collectively as the "Independent Directors." In addition, the Board of Directors has determined that Karl Matthies, who resigned from the Board of Directors effective May 3, 2007, was an "Independent Director."

The Board of Directors has established three standing committees and two special committees. The three standing committees of the Board include the Governance Committee, Audit Committee and Compensation Committee. In addition, a Special Litigation Committee and a Special Committee were formed in fiscal 2007. With the assistance of our legal counsel, the Board of Directors reviewed the applicable legal standards for independence and criteria for determination of "audit committee financial expert" as well as responses to annual questionnaires completed by the directors. The Board of Directors has also determined that each member of the five committees of the Board of Directors meets the independence requirements applicable to those committees prescribed by the NASD Marketplace Rules, and has further determined that Thomas L. Gregory, Coordinating Director and the chair of the Audit Committee of the Board of Directors, is an "audit committee financial expert" as such term is defined in Item 407(d)(5)(ii) of Regulation S-K adopted by the Securities and Exchange Commission (SEC).

**Coordinating Director**

Annually, the Independent Directors of the Board of Directors select from among their group one Independent Director to serve as "Coordinating Director." The role of the Coordinating Director is to coordinate the activities of the Independent Directors, coordinate the agenda and materials for meetings of the Board of Directors, advise the Chairman of the Board of Directors concerning scheduling of meetings, preside at all executive session meetings of the Independent Directors, coordinate any self-evaluation of performance of the Board of Directors and serve as the principal liaison between the Independent Directors and our Chairman of the Board and Chief Executive Officer. Mr. Gregory currently serves as Coordinating Director.

**Corporate Governance**

The Board of Directors is committed to ethical business practices and believes that good corporate governance is important to ensure that the Company is managed for the long-term benefit of its stockholders.

The Independent Directors meet regularly in executive session without management. The Coordinating Director leads these executive session meetings. Currently, all directors except for one, David Overton, are Independent Directors. In addition, each member of all five committees of the Board of Directors is an Independent Director. Additional information regarding Board committees appears in the section of this Proxy Statement entitled "Committees of the Board of Directors."

We make available on our website the policy that the Board of Directors has adopted for stockholders and employees who wish to communicate any concern directly with the Board of Directors. The policy can be found at [www.thecheesecakefactory.com](http://www.thecheesecakefactory.com) by clicking on the links for "Investors," "Corporate Governance" and "Governance Principles and Guidelines," and the document entitled "Corporate Governance Principles and Guidelines."

**Board of Directors and Committee Meetings, Committee Members and Chairpersons, Attendance and Fees**

During fiscal 2007, the Board of Directors held 16 meetings; the Audit Committee held nine meetings; the Compensation Committee held 17 meetings; and the Governance Committee held five meetings. In addition, the Independent Directors of the Company held four executive sessions. Meetings include both in-person and telephonic meetings. No member of the Board of Directors attended fewer than 75% of the aggregate number of meetings of the Board of Directors and the committees on which he or she served. We make available on our website the policy that the Board of Directors has adopted regarding Board members' attendance at our Annual Meeting of Stockholders and our procedure for annual committee membership and chairperson assignments. Five of our six directors then in office attended the 2007 Annual Meeting of Stockholders. The remaining director was unable to attend due to a previously scheduled travel commitment. The policy can be found at [www.thecheesecakefactory.com](http://www.thecheesecakefactory.com) by clicking on the links for "Investors," "Corporate Governance" and "Governance Principles and Guidelines," and the document entitled "Corporate Governance Principles and Guidelines."

The following table sets forth certain information regarding the compensation earned by or awarded to each Independent Director who served on our Board of Directors in fiscal 2007. Mr. Overton is an employee of The Cheesecake Factory Incorporated and is not compensated for his services as a director.

**DIRECTOR COMPENSATION TABLE**

Name	Fees Earned or Paid in Cash \$	Option Awards \$(1)(2)(3)	Total \$
Allen J. Bernstein(4)			
Alexander L. Cappello(4)			
Thomas L. Gregory(5)	53,500	105,830	159,330
David R. Klock	48,500	105,830	154,330
Jerome I. Kransdorf(5)	46,000	105,830	151,830
Karl L. Matthies(5)(6)	8,750		8,750
Wayne H. White(5)	46,000	105,830	151,830
Agnieszka Winkler(7)	20,500	408,272	428,772

(1) The dollar amounts listed do not necessarily reflect the dollar amounts of compensation actually realized or that may be realized. In accordance with SEC regulations, these amounts reflect the dollar amounts recognized for financial statement reporting purposes for fiscal 2007 in accordance with the provisions of Financial Accounting Standards Board ("FASB") Statement No. 123(R), "Share-Based Payment" ("SFAS 123R"), ignoring estimates of forfeitures for service based vesting conditions. See Note 11 of the Notes to Consolidated Financial Statements in our Annual Report on Form 10-K for the fiscal year ended January 1, 2008 filed with the SEC on February 28, 2008 for information regarding assumptions underlying the valuation of equity awards. The grant date fair value of the stock option awards granted in fiscal 2007 (computed in accordance with SFAS 123R), was \$151,221 for each of Messrs. Gregory, Klock, Kransdorf and White, and was \$453,663 for Ms. Winkler.

(2) As of January 1, 2008, each Independent Director held options exercisable for the following number of shares of our common stock: Thomas L. Gregory, 80,625; David R. Klock, 37,500; Jerome I. Kransdorf, 41,250; Karl L. Matthies, 37,500; Wayne H. White, 80,625; and Agnieszka Winkler, 37,500.



- (3) Under the terms of the Amended and Restated 1997 Non-Employee Director Stock Option Plan ("Non-Employee Director Plan"), Independent Directors were eligible to receive options to purchase shares of our common stock. Because the plan expired in May 2007, no further options may be granted under that plan. During fiscal 2006, the Board of Directors approved grants of 7,500 options in January 2006 for services in fiscal 2006 and 7,500 options in December 2006 for services in fiscal 2007 to each Independent Director then serving on the Board under the Non-Employee Director Plan at exercise prices equal to the fair market value on the respective dates of grant. These options vested on the date of grant.
- During fiscal 2007, the Board of Directors approved grants to each Independent Director (other than Messrs. Bernstein, Cappello and Matthies) under the Non-Employee Director Plan of 15,000 options in May 2007, of which 7,500 options were for services in fiscal 2008 and vested on December 31, 2007 and 7,500 options were for services in fiscal 2009 and will vest on December 31, 2008.
- (4) Mr. Bernstein and Mr. Cappello were appointed to the Board of Directors effective February 12, 2008.
- (5) Fees were earned, but not paid in cash, as Mr. Gregory, Mr. Kransdorf, Mr. Matthies and Mr. White each elected to have his fees paid to a nonqualified deferred compensation plan account administered under The Cheesecake Factory Incorporated Executive Savings Plan ("Executive Savings Plan").
- (6) Mr. Matthies resigned from our Board of Directors and its Audit, Compensation and Governance Committees effective May 3, 2007.
- (7) Ms. Winkler was appointed to our Board of Directors effective May 3, 2007.

During fiscal 2007, each Independent Director received an annual fee of \$35,000, plus \$1,500 for each meeting of the Board of Directors attended. The Coordinating Director received an annual fee of \$7,500. The Chairs of the Audit, Compensation and Governance Committees each received an annual fee of \$5,000. The Chair of the Special Litigation Committee received an annual fee of \$7,500. Independent Directors who served on committees would have received an additional fee of \$1,250 for each meeting attended that takes place on a date other than the day of a regularly scheduled Board of Directors meeting; however, no such meetings were held in fiscal 2007. In determining to increase the cash portion of the annual fee, the committee chair and meeting attendance fees for fiscal 2007, the Board of Directors reviewed total compensation packages provided to directors at other companies within our sector and other companies of our size and determined that a modest increase in the cash portion of such fees was warranted. No fees were paid to Independent Directors with respect to attendance at telephonic meetings of the Board of Directors or a committee, or with respect to attendance at executive sessions of the Board of Directors.

During fiscal 2008, each Independent Director will receive an annual fee of \$35,000, plus \$1,500 for each meeting of the Board of Directors attended. The Coordinating Director will receive an annual fee of \$7,500. The Chairs of the Audit, Compensation and Governance Committees will each receive an annual fee of \$5,000. The Chair of the Special Litigation Committee will receive an annual fee of \$7,500. The Chair of the Special Committee will receive a fee of \$60,000 and each member serving on the Special Committee will receive a fee of \$40,000 for service through March 31, 2008, in addition to meeting fees (both telephonic and in-person meetings) of \$1,500 per meeting. Independent Directors who serve on committees will also receive an additional fee of \$1,250 for meetings attended that take place on a date other than the day of a regularly scheduled Board of Directors meeting. No fees are paid to Independent Directors with respect to attendance at telephonic meetings of the Board of Directors or a committee, or with respect to attendance at executive sessions of the Board of Directors. In fiscal 2008, the Compensation Committee directly engaged a consultant, Radford Surveys + Consulting, to review director compensation. Following the review of the consultants' report, which compared our director compensation to that of a peer group, the Compensation Committee recommended, and the Board of Directors



approved, the foregoing compensation structure for Fiscal 2008. With respect to Messrs. Bernstein and Cappello, the Board intends to make either a one-time grant of stock options to each person to purchase 30,000 shares (assuming Proposal 2 in this Proxy Statement is approved by stockholders) or a cash payment of \$100,000 for services as a new director.

Members of the Board of Directors are also eligible to participate in the Executive Savings Plan, a nonqualified deferred contribution plan, by contributing all or a portion of their director fees to this plan. See "Executive Compensation Nonqualified Deferred Compensation." We do not make matching contributions under the Executive Savings Plan with respect to contributions made by non-employee Board of Director members.

Each Independent Director is entitled to reimbursement for reasonable out-of-pocket expenses incurred in connection with travel to and from, and attendance at, meetings of the Board of Directors or its committees and related activities, including director education courses and materials.

### **Indemnification of Officers and Directors**

As permitted by the Delaware General Corporation Law, our Certificate of Incorporation limits the personal liability of our directors for monetary damages for breach of fiduciary duty of care as a director. Liability is not eliminated for (a) any breach of the director's duty of loyalty to us or our stockholders, (b) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) unlawful payment of dividends or stock purchases or redemptions pursuant to Section 174 of the Delaware General Corporation Law, or (d) any transaction from which the director derived an improper personal benefit. Our Certificate of Incorporation also provides that we shall indemnify and advance indemnification expenses on behalf of all directors and officers of ours to the fullest extent permitted by Delaware law. Article VIII of our Bylaws also requires us, subject to certain limitations, to indemnify directors and officers and advance expenses. The indemnification and advancement of expenses provisions of Article VIII are not exclusive of any other rights of indemnification or advancement of expenses.

We have also entered into indemnification agreements with our directors and Named Executive Officers. Each indemnification agreement requires us to indemnify and hold harmless the director or Named Executive Officer to the fullest extent authorized by the laws of the State of Delaware. Each indemnification agreement also requires us, subject to specific terms and conditions, to advance expenses to the director or officer. Each indemnification agreement also sets forth various procedures and definitions with respect to indemnification and advancement of expenses. We are also obligated to maintain directors' and officers' liability insurance. With specified exceptions, we are not obligated to provide indemnification or advance expenses with respect to actions initiated by the director or officer or to indemnify the director or officer in connection with proceedings by us to enforce non-compete or non-disclosure agreements. To the extent the provisions of the indemnification agreements exceed the indemnification permitted by applicable law, such provisions may be unenforceable or may be limited to the extent they are found by a court of competent jurisdiction to be contrary to public policy.

### **Committees of the Board of Directors**

The Board of Directors has three standing committees the Audit Committee, the Compensation Committee, and the Governance Committee. In fiscal 2007, the Board of Directors also appointed a Special Litigation Committee to facilitate timely and orderly consideration of the matters raised by the stockholder derivative actions described below, as well as a Special Committee to evaluate corporate governance issues and to explore potential strategic alternatives intended to increase stockholder value for recommendation to the full Board. The members of each committee and the functions performed thereby are described below.

*Audit Committee*

The Audit Committee operates pursuant to a written charter, which is available on our website at [www.thecheesecakefactory.com](http://www.thecheesecakefactory.com) by clicking on the links for "Investors," "Corporate Governance," and "Committee Charters." The Audit Committee is primarily responsible for monitoring the quality and integrity of our financial statements and related disclosure and systems of internal controls regarding risk management, finance and accounting; monitoring our compliance with legal and regulatory requirements; monitoring the independent auditor's qualifications and independence; monitoring the performance of our internal audit function and independent auditors; providing an avenue of communication among the independent auditors, management and the Board of Directors; and issuing the report of the Audit Committee required by the SEC to be included in our Proxy Statement. The Audit Committee conducts an annual performance evaluation of its charter, composition, complaint procedures, financial oversight responsibilities, and other matters. The Audit Committee is directly responsible for the appointment, compensation, retention, and oversight of the work of our public accounting firm engaged to issue an audit report or perform other audit, review, or attest services. The Audit Committee pre-approves the audit work, as well as all non-audit work to be performed by our external auditors, after considering its permissibility under SEC rules and its impact on auditor independence. The Audit Committee also reviews material written communications the external auditors may provide to management and discusses any concerns with the auditors and management.

Pursuant to its charter, the Audit Committee also reviews our policies and procedures relating to conflicts of interest and approves any proposed "related party transaction." For this purpose, "related party transaction" means a transaction required to be disclosed pursuant to Item 404 of Regulation S-K adopted by the SEC. We also have adopted a written Code of Ethics for our directors, executive officers and senior financial officers which, among other things, requires prompt reporting of potential conflicts to the Audit Committee. In addition, at least annually management reviews with the Audit Committee related party transactions.

Mr. Gregory, Dr. Klock and Ms. Winkler served on the Audit Committee in fiscal 2007, with Mr. Gregory serving as Chair. In addition, Mr. Cappello will serve on the Audit Committee in fiscal 2008.

*Compensation Committee*

The Compensation Committee operates pursuant to a written charter, which is available on our website at [www.thecheesecakefactory.com](http://www.thecheesecakefactory.com) by clicking on the links for "Investors," "Corporate Governance," and "Committee Charters." The Compensation Committee is responsible for determining the compensation of our Chief Executive Officer and all other Named Executive Officers. The Compensation Committee reviews and approves all employment, retention and severance agreements for Named Executive Officers and prepares, or causes to be prepared, the Compensation Committee Report in our Proxy Statement. Our Chief Executive Officer makes recommendations to the Compensation Committee concerning the compensation of our executive officers, other than himself. The Compensation Committee also makes recommendations to the Board of Directors concerning Independent Director compensation. The Compensation Committee directly engaged Radford Surveys + Consulting in early fiscal 2008 to conduct an assessment of our director compensation. In addition, management engaged Towers Perrin in fiscal 2007 to conduct an assessment of our Chief Executive Officer's compensation.

The Compensation Committee approves and administers our incentive compensation programs, including our equity incentive plans and our performance-based bonus plan, the Amended and Restated Performance Incentive Plan, ("Incentive Plan"). The Committee makes recommendations to the Board of Directors with respect to incentive and equity compensation plans and periodically reviews and makes recommendations concerning existing or new executive compensation, performance incentives, employee benefits, stock plans or management perquisites. The Compensation Committee conducts an annual

evaluation of its charter. The Compensation Committee authorizes and approves all grants of equity compensation to our employees under our equity compensation plans.

Messrs. White, Gregory and Kransdorf served on the Compensation Committee in fiscal 2007, with Mr. White serving as Chair. In addition, Mr. Bernstein will serve on the Compensation Committee in fiscal 2008.

*Governance Committee*

The Governance Committee operates pursuant to a written charter which is available on our website at [www.thecheesecakefactory.com](http://www.thecheesecakefactory.com) by clicking on the links for "Investors," "Corporate Governance," and "Committee Charters." The Governance Committee is responsible for evaluating issues and developments related to corporate governance and making recommendations to the full Board of Directors with respect to corporate governance standards, corporate governance proposals from stockholders, the establishment and composition of committees of the Board of Directors and potential candidates for nomination as Board members. The Governance Committee is responsible for overseeing and recommending programs and activities for the continuing education of directors. The Governance Committee also identifies potential candidates for nomination or appointment as directors and makes recommendations to the Board of Directors concerning nominees to be presented for stockholder approval and to fill any vacancies. The Governance Committee conducts an annual evaluation of its charter.

Messrs. Kransdorf, Gregory and White, Dr. Klock and Ms. Winkler served on the Governance Committee, with Mr. Kransdorf serving as Chair.

*Special Litigation Committee*

In fiscal 2007, our Board of Directors established a Special Litigation Committee in order to facilitate timely and orderly consideration of the matters raised by eight separate putative stockholder derivative actions ("Option Derivative Actions"), and to determine how we should respond to the allegations made in those Option Derivative Actions, including whether it is in the best interests of our stockholders to continue pursuing the claims asserted in the Option Derivative Actions. The Option Derivative Actions were filed against us, Messrs. Gregory, Kransdorf, Matthies, Overton and White, and certain of our current and former officers following our announcement, on July 18, 2006, that the Audit Committee of our Board of Directors was reviewing our historical stock option granting practices. The Option Derivative Actions allege, among other things, that certain of the Company's stock option grants had been "backdated." The Board appointed Dr. Klock as the Special Litigation Committee's Chair. The Special Litigation Committee completed its investigation and has negotiated with all parties involved in the Option Derivative Actions a stipulation of settlement, which was filed with the court on February 27, 2008 and is subject to judicial approval after notice and hearing. In consideration for the full settlement and release of all released claims (as defined in the stipulation), the stipulation provides for certain corporate governance reforms, consisting principally of the following: (a) additional processes for the approval of stock option grants; (b) adoption of additional standards for director independence; (c) the addition of one new independent director; (d) additional insider trading controls; (e) provisions for recovery of performance-based cash bonus payments made to executive officers that were predicated on later-restated financial statements; and (f) provisions for director education. In addition, the stipulation includes the agreement of each of David Overton, a director and our Chief Executive Officer, Gerald Deitchle, a former Chief Financial Officer, Thomas Gregory, a director, Wayne White, a director, and Jerome Kransdorf, a director, that an aggregate of \$940,000 will be repaid to the Company by them, contingent on final approval of the stipulation. The actions filed in federal court were consolidated in the Central District of California under the caption, *In re The Cheesecake Factory Derivative Litigation*, No. CV-06-06234-ABC(MANx). The actions filed in state court have been consolidated in the Los Angeles Superior Court under the same caption, No. BC355953.

*Special Committee*

In fiscal 2007, our Board of Directors established a Special Committee comprised solely of Independent Directors in order to, among other matters, evaluate corporate governance issues and the advisability of pursuing strategic alternatives intended to increase stockholder value, including but not limited to, a recapitalization, and to make recommendations to the full Board of Directors. The Special Committee operates pursuant to a charter adopted on December 4, 2007. Messrs. Gregory, Kransdorf and White and Ms. Winkler initially served on the Special Committee in fiscal 2007 and shortly thereafter, the committee membership was reduced to include Messrs. Gregory and Kransdorf, with Ms. Winkler serving as Chair.

Mr. Matthies served as a member of our Audit, Compensation and Governance Committees prior to his resignation effective May 3, 2007.

**REPORT OF THE AUDIT COMMITTEE OF THE BOARD OF DIRECTORS**

The following Audit Committee report does not constitute soliciting material and is not deemed filed or incorporated by reference into any other Company filing under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, except to the extent the Company specifically incorporates this Audit Committee report by reference therein.

As more fully described in its charter, the Audit Committee oversees the Company's financial reporting and internal control processes on behalf of the Board of Directors, as well as the independent audit of the Company's consolidated financial statements by the Company's independent auditors. The Audit Committee approved the engagement of PricewaterhouseCoopers LLP ("PwC") as the Company's independent auditors for fiscal 2007. Management has the primary responsibility for the Company's financial statements and the financial reporting process, including the Company's system of internal controls. In fulfilling its oversight responsibilities, the Audit Committee reviewed and discussed the Company's audited financial statements for fiscal 2007 with management and PwC. Management and PwC have represented to the Audit Committee that the Company's consolidated financial statements were prepared in accordance with generally accepted accounting principles.

The Audit Committee reviewed with PwC such other matters as are required to be discussed with the Audit Committee under generally accepted auditing standards, including the matters required to be discussed by Statement on Auditing Standards No. 61, "Communication with Audit Committees," as amended. In addition, the Audit Committee has discussed with PwC the auditors' independence from management and the Company, including the matters in the written disclosures and the letter from the independent auditors required by Independence Standards Board Standard No. 1, "Independence Discussion with Audit Committee." The Audit Committee discussed with PwC the overall scope and plans for their audit. The Audit Committee periodically meets with PwC, with and without management present, to discuss the results of their audit, their evaluation of the Company's internal controls and the overall quality of the Company's financial reporting.

Based upon these reviews and discussions, the Audit Committee has approved the recommendation of Company management that the audited consolidated financial statements for the fiscal year ended January 1, 2008 be included in the Company's Annual Report on Form 10-K filed with Securities and Exchange Commission.

Respectfully submitted,

Thomas L. Gregory,  
Chair  
David R. Klock  
Agnieszka Winkler  
Alexander L. Cappello\*

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Due to his recent appointment, Mr. Cappello abstained from the vote on this Report.

**PROPOSAL 2**

**AMENDMENT OF THE COMPANY'S AMENDED AND RESTATED  
2001 OMNIBUS STOCK INCENTIVE PLAN**

We are seeking approval of an amendment to our 2001 Omnibus Stock Incentive Plan ("2001 Plan") to clarify that eligible individuals under the plan include members of our Board of Directors, whether or not employed by us.

**Background**

Our stockholders approved the amendment and restatement of the 2001 Plan at the 2004 Annual Meeting of Stockholders. As amended and restated, the 2001 Plan provides for awards of stock options as well as stock appreciation rights, restricted shares, deferred shares, performance shares and performance units to employees and others providing key services to us and any related company, but does not expressly permit grants to non-employee directors. Awards under the 2001 Plan may be awarded to "eligible individuals." Previously, stock options were granted to our non-employee directors pursuant to our 1997 Non-Employee Director Stock Option Plan. However, this plan terminated pursuant to its terms in fiscal 2007 and no further options may be granted under it.

At this time, we are not proposing that stockholders approve a separate stock option plan for non-employee directors. Rather, the proposed amendment is intended to make it clear that "eligible individuals" under the 2001 Plan include members of our Board of Directors, whether or not employed by us. If approved, the Board of Directors intends to award options to purchase 30,000 shares of our common stock to each of Messrs. Bernstein and Cappello who were appointed to the Board of Directors in February 2008. If the amendment is not approved, the Board of Directors intends to pay each of Messrs. Bernstein and Cappello as new directors \$100,000. Further, if the amendment is approved, the Board of Directors intends to grant options to non-employee directors in the future under the 2001 Plan as compensation for service on the Board of Directors and may grant other equity awards permitted under the 2001 Plan. However, the Board does not intend to make additional option grants to Messrs. Gregory, Klock, Kransdorf, or White or Ms. Winkler with respect to services as a director in fiscal 2008 or fiscal 2009.

The amendment does not increase the number of shares reserved for issuance under the 2001 Plan. If this amendment is not approved, we will not be able to grant options or other equity compensation to non-employee directors unless and until an equity plan permitting grants is approved by stockholders. The Board of Directors believes that an important method of aligning Directors' interests with that of our stockholders is to base a portion of their compensation on equity compensation, such as stock options. The 2001 Plan, previously approved by stockholders, has sufficient outstanding shares available for grant in order to provide equity compensation to employees and non-employee directors for a period of time, based upon our historical granting practices. Under the 2001 Plan, we have granted awards with respect to 1,590,250 shares and 2,033,131 shares remain outstanding and available for awards. For information concerning awards under the 2001 Plan made to our Named Executive Officers in Fiscal 2007, see "Executive Compensation Grants of Plan-Based Awards in Fiscal 2007."

Set forth below is the text of the Section 12.1(n) of the 2001 Plan as proposed to be amended, with additions indicated by underlining and deletions indicated by strikeout:

*"Eligible Individual.* The term "Eligible Individual" ~~shall~~ means any employee of the Company or a Related Company, and any consultant or other person providing key services to the Company or a Related Company (including, without limitation, a member of the Company's Board of Directors, whether or not employed by the Company.)"

**THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS A VOTE *FOR* THE AMENDMENT OF THE COMPANY'S AMENDED AND RESTATED 2001 OMNIBUS STOCK INCENTIVE PLAN.**

*The Company is not requesting authorization to increase shares available for grant under the 2001 Plan or proposing any other amendments to the 2001 Plan for stockholder approval other than the amendment to the definition of "Eligible Individual" described above permitting grants to non-employee directors.* In accordance with the SEC rules, the terms and provisions of the 2001 Plan prior to adoption of this proposal are summarized below. This summary, however, does not purport to be a complete description of the 2001 Plan. The following summary is qualified in its entirety by reference to the complete text of the 2001 Plan. The 2001 Plan has been filed with the SEC as Exhibit A to this Proxy Statement and may be accessed from the SEC's website at [www.sec.gov](http://www.sec.gov). Any stockholder that wishes to obtain a copy of the actual plan document may do so by written request to our Corporate Secretary at 26901 Malibu Hills Road, Calabasas Hills, California 91301.

**Description of the 2001 Plan**

**Eligibility**

Any employee of ours or any related company (as defined in the 2001 Plan) and any consultant or other person providing key services to us or a related company is eligible for selection to receive awards under the 2001 Plan. Currently, only our Named Executive Officers have received awards under the 2001 Plan and 2,033,131 shares remain outstanding and available for grant under the 2001 Plan.

**Administration**

The authority to control and manage the operation and administration of the 2001 Plan is vested in the Compensation Committee which has full power and authority to implement and carry out the Plan. The Compensation Committee has the authority and discretion (i) to select from among the Eligible Individuals those persons who shall receive Awards, (ii) to determine the time or times of receipt of awards, (iii) to determine the types of awards and the number of shares covered by the options, (iv) to establish the terms, conditions, restrictions, deferral arrangements and other provisions of awards, (v) to cancel or suspend awards, (vi) to permit a participant to relinquish (in full or part) an award in order to maximize the participant's after-tax proceeds, (vii) to provide for "gross-up" for any taxes associated with any award, (viii) to grant awards in lieu of salary increases or other compensation or benefit arrangements, (ix) to provide for such forfeitures of awards as may be permitted under applicable law, and (x) to make such modifications or adjustments to awards to participants working outside the United States as are advisable to fulfill the purposes of the 2001 Plan. In making such determinations, the Compensation Committee may take into account the nature of services rendered by the individual, the individual's present and potential contribution to our success and such other factors as the Compensation Committee deems relevant.

The Compensation Committee also has the authority and discretion to establish the performance objectives (as defined) for participants who have received grants of awards. The Compensation Committee has the authority and discretion to determine the extent to which awards under the 2001 Plan will be structured to conform to the requirements applicable to performance-based compensation as described in Section 162(m) of the Internal Revenue Code, and to take such action, establish such procedures, and impose such restrictions at the time such awards are granted as the Compensation Committee determines to be necessary or appropriate to conform to such requirements.

The Compensation Committee has the authority and discretion to interpret the 2001 Plan, to establish, amend, and rescind any rules and regulations relating to the 2001 Plan, to determine the terms and provisions of any agreements made pursuant to the 2001 Plan, and to make all other determinations that may be necessary or advisable for the administration of the 2001 Plan. Any interpretation of the 2001

Plan by the Compensation Committee and any decision made by it under the 2001 Plan are final and binding.

Notwithstanding any other provision of the 2001 Plan to the contrary, in the event of termination of employment by reason of death, disability, retirement, early retirement with our consent or leave of absence authorized by us, under applicable law or otherwise approved by us, or in the event of hardship or other special circumstances, of a participant who holds an award that is not immediately and fully exercisable, or any shares of stock that are subject to any transfer restriction, the Compensation Committee may take any action that it deems to be equitable under the circumstances or in the best interests of the Company, including, without limitation, waiving or modifying any limitation or requirement with respect to any award granted under this plan.

The Compensation Committee may not approve any agreement, amendment or modification to an agreement or the 2001 Plan that would reprice any option issued under the 2001 Plan.

In controlling and managing the operation and administration of the 2001 Plan, the Compensation Committee acts by a majority of its then members, by meeting or by written consent without a meeting.

#### **Certain Restrictions**

Pursuant to the 2001 Plan, the maximum number of shares of common stock that may be covered by awards granted to any one individual is 500,000 shares during any consecutive 12-month period. Only 25% of the authorized shares may be used for incentive awards under the 2001 Plan. This calculation does not include shares of common stock that may be issued upon the exercise of nonqualified stock options.

#### **Performance Objectives**

Section 162(m) prevents a publicly held corporation from claiming tax deductions for compensation in excess of \$1 million paid to certain of its senior executives. Compensation is exempt from this limit if it is "qualified performance-based compensation." Awards under the 2001 Plan may qualify as performance-based compensation so long as certain requirements are satisfied, including the prior approval by stockholders of the performance formulas or measures. Under the 2001 Plan, the Compensation Committee has the authority and discretion to establish performance objectives for grants of awards or persons granted awards. Any award that is intended to qualify as "performance-based compensation" under Code Section 162(m) shall be limited to specified levels of or increases in the Company's or subsidiary's performance based upon measurement criteria specified in the plans. Except in the case of an option intended to qualify under Section 162(m), if the Compensation Committee determines that a change in the business or operations of the Company or other events render the performance objectives unsuitable, the Committee may modify such performance objectives, in whole or part, as the Committee deems appropriate.

#### **Stock Options**

Stock options granted under the 2001 Plan may be options that are intended to qualify as "incentive stock options" within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended (the "Code"), or "nonqualified stock options" that are not intended to so qualify. The exercise price of each nonqualified stock option is determined by the Compensation Committee and must not be less than 100% of the fair market value of the common stock subject to the option on the date the option is granted. The exercise price of incentive stock options may not be less than 100%; provided, however, that the purchase price of the common stock subject to the incentive stock option may not be less than 110% of such fair market value (without regard to any restriction other than a restriction which, by its terms, will never lapse) when the optionee owns (or is deemed to own pursuant to Section 424(d) of the Code) common stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or any of its subsidiaries.



We may issue incentive stock options provided that the aggregate fair market value (determined at the time the incentive stock option is granted) of the common stock with respect to which incentive stock options are exercisable for the first time by the optionee during any calendar year (under all incentive stock option plans of the Company) may not exceed \$100,000. Should it be determined that any incentive stock option granted pursuant to the 2001 Plan exceeds such maximum, such incentive stock option shall be considered to be a nonqualified stock option and not to qualify for treatment as an incentive stock option under Section 422 of the Code to the extent, but only to the extent, of such excess. Only Company employees are eligible for grants of incentive stock options. Subject to the adjustments for stock splits or reverse split as set forth in the 2001 Plan, the maximum number of shares that may be issued under the 2001 Plan as options intended to be incentive stock options is 700,000 shares. The Compensation Committee may grant "reload" options under the conditions set forth in the 2001 Plan. The criteria and method for exercising options are specified in the 2001 Plan.

Options granted under the 2000 Plan may be exercised until ten years from the date of grant except as otherwise provided in the plan or stock option agreement. No option granted under the 2001 Plan shall be exercisable after the expiration date established by the Compensation Committee at the time of grant, provided that the expiration date shall not be later than the earliest to occur of: (i) the ten-year anniversary of the date on which the option is granted; (ii) if the grantee's date of termination of employment occurs by reason of death or disability, the one-year anniversary of such date of termination; (iii) if the grantee's termination of employment occurs by reason of retirement, the third-year anniversary of such date of termination (other than in the case of an incentive stock option); or (iv) if the grantee's date of termination occurs for reasons other than retirement, death or disability, or cause, the 90-day anniversary of such date of termination, except as otherwise stated in the plan or option agreement.

The 2001 Plan provides that any shares of common stock covered by an award that are forfeited because of the failure to meet a contingency or condition shall again be available for delivery pursuant to new awards granted under the Plan. To the extent any shares of common stock covered by an award are not delivered to a participant or beneficiary because the award is forfeited or canceled, or the shares of common stock are not delivered because the award is settled in cash, such shares shall not be deemed to have been delivered for purposes of determining the maximum number of shares of common stock available for delivery under the 2001 Plan. If the exercise price of any option granted under the 2001 Plan is satisfied by tendering shares of common stock to the Company (by either actual delivery or by attestation), only the number of shares of common stock issued net of the shares of common stock, are available for delivery under the 2001 Plan. Shares of common stock delivered under the 2001 Plan in settlement, assumption or substitution of outstanding awards (or obligations to grant future awards) under the plans or arrangements of another entity, shall not reduce the maximum number of shares of common stock available for delivery under the Plan, to the extent that such settlement, assumption or substitution is a result of the Company or a related company acquiring another entity (or an interest in another entity).

The 2001 Plan provides that upon a "change in control" (as defined in the 2001 Plan), all options granted at such time and are not then exercisable shall become immediately exercisable provided, however, the option agreement does not provide otherwise, or the options are not otherwise assumed in the case of certain acquisitions or sales of assets.

### **Stock Appreciation Rights**

The Compensation Committee may grant "tandem" stock appreciation rights in connection with an option granted under the 2001 Plan or "freestanding" stock appreciation rights unrelated to any option. Stock appreciation rights are the right to receive from the Company an amount determined by the Compensation Committee and expressed as a percentage (not exceeding 100%) of the "spread" at the time of exercise. The "spread" in the case of a freestanding stock appreciation right is the amount by which the fair market value of the Company's common stock on the date of exercise exceeds the base price specified in the right. The "spread" in the case of tandem stock appreciation rights is the amount by which

the fair market value of the Company's common stock on the date of exercise exceeds the option price specified in the related option. Tandem stock appreciation rights may be exercised only upon conditions specified in the plans. Freestanding stock appreciation rights must specify a base price (which must be equal to or greater than the fair market value on the grant date) and the period(s) of continuous employment of the grantee by the Company or any subsidiary that are necessary before the freestanding stock appreciation right or installments thereof become exercisable. Freestanding stock appreciation rights may provide for earlier exercise in the event of a change in control of the Company or other similar transaction or event. Any grant of stock appreciation rights may be paid in cash, shares of common stock or any combination thereof, or grant to the participant, or reserve to the Compensation Committee, the right to elect among those alternatives. Any grant may also preclude the right of the grantee to receive, and the Company to issue, common stock or other equity securities in lieu of cash. No freestanding stock appreciation right granted under the 2001 Plan may be exercised more than ten years from the grant date.

### **Restricted Shares**

An award of restricted shares involves the immediate transfer by the Company to a participant of ownership of a specific number of shares of common stock in consideration of the performance of services. The Compensation Committee may impose restrictions and limitations on voting, dividend and other ownership rights in such shares subject to conditions specified in the plans and may specify performance objectives which, if achieved, will result in termination or early termination of the restrictions applicable to such shares. Restricted shares must be subject to a "substantial risk of forfeiture" within the meaning of Section 83 of the Code. To enforce these forfeiture provisions, the transferability of restricted shares will be prohibited or restricted in a manner and to the extent prescribed by the Compensation Committee for the period during which the forfeiture provisions are to continue, but not less than three years from date of grant. The Compensation Committee may provide for a shorter period during which the forfeiture provisions are to apply in the event of a change in control of