LIBERATE TECHNOLOGIES
Form DEF 14A
September 24, 2003

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**SCHEDULE 14A INFORMATION**

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

Filed by the Registrant ý

Filed by a Party other than the Registrant o

Check the appropriate box:

o Preliminary Proxy Statement

o **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**

ý Definitive Proxy Statement

o Definitive Additional Materials

o Soliciting Material Under Rule 14a-12

**Liberate Technologies**

(Name of Registrant as Specified In Its Charter)

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

Payment of Filing Fee (Check the appropriate box):

ý No fee required

o 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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(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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o Fee paid previously with preliminary materials.

o Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the form or schedule and the date of its filing.

(1) Amount previously paid:

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

(3) Filing Party:

(4) Date Filed:

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**LIBERATE TECHNOLOGIES**
**2 Circle Star Way**
**San Carlos, California 94070**
**September 24, 2003**

To Our Stockholders:

You are cordially invited to attend the 2003 Annual Meeting of Stockholders of Liberate Technologies. The attached Notice and Proxy Statement describe in detail the time, place, and agenda of the meeting.

Please use this opportunity to take part in Liberate's affairs by voting on the business to come before this meeting. **Whether or not you plan to attend the meeting in person, please promptly complete, sign, date, and return the accompanying proxy in the enclosed postage-paid envelope before the meeting so that your shares will be represented at the meeting.** Returning the proxy does not deprive you of your right to attend the meeting and vote your shares in person.

On behalf of the Board of Directors, I would like to express our appreciation for your continued interest in Liberate.

Sincerely,

David Lockwood
*Chairman and Chief Executive Officer*

**LIBERATE TECHNOLOGIES**
**2 Circle Star Way**
**San Carlos, California 94070**
**NOTICE OF 2003 ANNUAL MEETING OF STOCKHOLDERS**
**To be held October 28, 2003**

To Our Stockholders:

The 2003 Annual Meeting of Stockholders of Liberate Technologies will be held at the Hotel Sofitel San Francisco Bay, located at 223 Twin Dolphin Drive, Redwood Shores, California, on Tuesday, October 28, 2003 at 4:00 p.m. local time for the following purposes:

1. To elect five directors, each to serve until the next annual meeting of stockholders and until his or her successor has been elected and qualified (or until his or her earlier resignation, death, or removal). At the meeting, our Board of Directors intends to present the following nominees for election as directors:

| | |
|---|---|
| David Lockwood | Charles N. Corfield |
| Patrick S. Jones | Dr. David C. Nagel |
| Robert R. Walker | |

2. To ratify the selection of PricewaterhouseCoopers LLP as our independent auditors for the current fiscal year; and

3. To transact any other business that may properly come before the meeting.

The attached proxy statement provides additional information about the items of business.

Only stockholders of record at the close of business on September 2, 2003 are entitled to vote at the meeting. A list of these stockholders will be available for inspection at our corporate headquarters, located at 2 Circle Star Way, San Carlos, California, during ordinary business hours for the ten-day period prior to the meeting.

BY ORDER OF THE BOARD OF DIRECTORS,

Kent Walker
*Executive Vice President Corporate and Legal Affairs,*
*General Counsel, and Secretary*

San Carlos, California
September 24, 2003

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**IMPORTANT**

**Whether or not you plan to attend the meeting in person, please promptly complete, sign, date, and return the accompanying proxy in the enclosed postage-paid envelope before the meeting so that your shares will be represented at the meeting.**

**LIBERATE TECHNOLOGIES**
**2 Circle Star Way**
**San Carlos, California 94070**

**PROXY STATEMENT**
**FOR 2003 ANNUAL MEETING OF STOCKHOLDERS**
**To be held October 28, 2003**

The Board of Directors of Liberate Technologies, a Delaware corporation, hereby solicits the accompanying proxy for use at the 2003 Annual Meeting of Stockholders to be held at the Hotel Sofitel San Francisco Bay, located at 223 Twin Dolphin Drive, Redwood Shores, California, on Tuesday, October 28, 2003, at 4:00 p.m. local time, and at any adjournment or postponement of the meeting. This proxy statement and the accompanying form of proxy were first mailed on or about September 24, 2003 to all stockholders entitled to vote at the meeting. Our 2003 Annual Report on Form 10-K is enclosed with this proxy statement.

## PURPOSE OF MEETING

The specific proposals to be considered and acted upon at the meeting are summarized in the accompanying Notice of 2003 Annual Meeting of Stockholders. Each proposal is described in more detail in this proxy statement.

## VOTING MATTERS AND SOLICITATION OF PROXIES

### Record Date

Our common stock is the only type of security entitled to vote at the meeting. Only holders of record of our common stock at the close of business on September 2, 2003 (the "record date") will be entitled to vote at the meeting. At the close of business on September 2, 2003, we had 104,006,079 shares of common stock outstanding and entitled to vote.

### Quorum Required

Our bylaws provide that the holders of a majority of the shares of our common stock outstanding on the record date, present in person or represented by proxy, and entitled to vote generally in the election of directors, will constitute a quorum for the transaction of business at the meeting. Abstentions and broker non-votes will be counted as present for the purpose of determining the presence of a quorum.

### Voting Rights

Each stockholder of record is entitled to one vote for each share of common stock held on the record date. Stockholders may not vote their shares cumulatively. All votes will be tabulated by the inspector of elections appointed for the meeting, who will separately tabulate affirmative and negative votes, abstentions, and broker non-votes. If you properly complete and return the enclosed form of proxy, but do not specify voting directions, your proxy will be voted FOR the nominees of the Board (as set forth in Proposal No. 1), FOR Proposal No. 2, and at the discretion of the proxy holders as to any other matter that may properly come before the meeting. All shares represented by a valid and properly completed proxy received prior to the meeting will be voted.

### Votes Required

**Proposal 1.** Directors will be elected by a plurality of the affirmative votes cast by those shares present in person, or represented by proxy, and entitled to elect directors. The five nominees for director receiving the highest number of affirmative votes will be elected. Abstentions and broker non-votes will not be counted toward a nominee's total. Stockholders may not cumulate votes in the election of directors or vote for a greater number of persons than the number of nominees named in this proxy statement. Properly completed proxies that do not specify voting directions will be voted "FOR" the Board's nominees set forth in Proposal No. 1.

**Proposal 2.** Ratification of the selection of PricewaterhouseCoopers LLP ("PricewaterhouseCoopers") as our independent auditors for the current fiscal year requires the affirmative vote of a majority of those shares present in person, or represented by proxy, and entitled to vote on the proposal. Abstentions will have the same effect as negative votes with regard to this proposal. Broker non-votes will not be counted as having been voted on this proposal and will therefore have no effect on this proposal. Properly completed proxies that do not specify voting directions will be voted "FOR" Proposal No. 2.

**Revocability of Proxies and Voting by Beneficial Owners at the Annual Meeting**

If you sign a proxy in the form accompanying this proxy statement, you may revoke it prior to the meeting or at the meeting prior to the vote pursuant to the proxy. You may revoke your proxy by delivering written notice to Liberate stating that the proxy is revoked, by delivering a subsequent proxy to Liberate signed by you, or by attending the meeting and voting in person. Any revocations made prior to the beginning of the meeting should be delivered to our Secretary at our principal executive offices. Please note, however, that if you wish to vote in person at the meeting and your shares are held of record by a broker, bank, or other nominee, you must bring to the meeting a letter from the record holder confirming your beneficial ownership of the shares.

**Voting Results**

We will announce the preliminary voting results at the annual meeting. We will publish the final results in our quarterly report on Form 10-Q for the quarter ending November 30, 2003.



## PROPOSAL NO. 1

## ELECTION OF DIRECTORS

At the meeting, stockholders will elect directors, who will each serve until the next annual meeting of stockholders and until his successor has been elected and qualified (or until his earlier resignation, death, or removal). Liberate currently has authorized five directors. Our Board of Directors has nominated five persons to stand for election as directors (the "nominees"), all of whom are listed below with their ages as of August 31, 2003, their positions and offices held with Liberate, and certain biographical information. Each nominee for election has agreed to serve if elected, and neither the Board nor Liberate's management has any reason to believe that any nominee will be unavailable to serve. If any nominee is unable or declines to serve as a director at the time of the meeting, the proxies will be voted for any nominee who may be designated by the present Board to fill the vacancy. Unless otherwise instructed, the proxy holders intend to vote all proxies received by them in the accompanying form FOR the nominees listed below.

**Nominees**

| Name | Age | Positions and Offices Held with Liberate |
|---|---|---|
| David Lockwood(1) | 43 | Chairman and Chief Executive Officer |
| Charles N. Corfield(2)(3)(4) | 44 | Director |
| Patrick S. Jones(2)(3)(4) | 58 | Director |
| Dr. David C. Nagel(4) | 58 | Director |
| Robert R. Walker(2)(3) | 53 | Director |

(1) Member of Secondary Compensation Committee

(2) Member of Corporate Governance Committee

(3)

Member of Finance and Audit Committee

(4)

Member of Compensation Committee

*David Lockwood* has served as Chairman and Chief Executive Officer of Liberate since June 2003 and served as a strategic advisor to Liberate from March 2003 to June 2003. He was an executive officer of InterTrust Technologies Corporation, a provider of digital rights management software, from September 2001 to February 2003, serving in the roles of Chief Executive Officer, President, and Executive Vice Chairman. He also served as a director of InterTrust from October 2000 to January 2003. From January 2000 to October 2001, Mr. Lockwood was the Managing Partner of Reuters Greenhouse Fund, a venture capital firm. Prior to joining Reuters Greenhouse Fund, Mr. Lockwood spent 10 years at Goldman, Sachs & Co., most recently as a Managing Director. Mr. Lockwood currently serves on the Board of Directors of Forbes.com and is a managing member of Lockwood Capital Advisors LLC.

*Charles N. Corfield* has served as a director of Liberate since December 1998. Since August 2000, Mr. Corfield has served as Chief Executive Officer of SandCherry Networks, a provider of telecommunications software. Mr. Corfield was previously Managing Director of Lhotse Shar, LLC, a venture/investment company, since 1998, and has been a private investor in a variety of high-technology firms since 1995. Mr. Corfield co-founded Frame Technology, a software company, in 1986 and served as a member of its board of directors and as its Chief Technology Officer until it was acquired by Adobe Systems in 1995. Mr. Corfield also serves as a director of iBasis, a provider of internet-based communication services.



*Patrick S. Jones* has served as a director of Liberate since June 2003. Since March 2001, Mr. Jones has been a private investor and a board member of several public and private companies. From June 1998 to March 2001, Mr. Jones served as Senior Vice President and Chief Financial Officer of Gemplus International S.A., a smart card device manufacturer. From June 1992 to June 1998, Mr. Jones served as Vice President and Corporate Controller of Intel Corporation, a semiconductor manufacturer. Mr. Jones also serves on the board of directors of QRS Corporation, a developer of supply chain management software and services for the retailing industry, and Genesys S.A., a conferencing services provider. Mr. Jones is also the chairman of the board of Dione plc, a privately held manufacturer of Electronic Point Of Sale (EPOS) terminals.

*Dr. David C. Nagel* has served as a director of Liberate since February 2000. Since August 2001, Dr. Nagel has served as President and Chief Executive Officer of PalmSource, Inc., a Palm OS platform subsidiary of Palm. Before joining PalmSource in August 2001, Dr. Nagel was President of AT&T Labs from April 1996 and AT&T Chief Technology Officer from August 1997 to August 2001. Dr. Nagel also served as Chief Technology Officer of Concert, a joint venture between AT&T and British Telecom, from June 1999 to August 2001. Prior to joining AT&T, Dr. Nagel was a Senior Vice President of Apple Computer, where he led a worldwide research and development group responsible for Macintosh hardware, Mac OS software, imaging, and peripheral products. Before joining Apple's Advanced Technology Group in 1988, Dr. Nagel was a research scientist and head of human factor research at NASA's Ames Research Center. Dr. Nagel also serves as a director of Palm and PalmSource.

*Robert R. Walker* has served as a director of Liberate since June 2003. From March 1999 to December 2001, Mr. Walker served as Executive Vice President and Chief Financial Officer of Agilent Technologies, an electronic equipment manufacturing company. Prior to joining Agilent Technologies, Mr. Walker held positions including Vice President, Chief Information Officer and Group Controller at Hewlett-Packard Company, from June 1975 to February 1999. Mr. Walker is also a member of the executive committee of Financial Executives International and a director of Electro Scientific Industries, Inc., a supplier of manufacturing equipment to the global electronics market.

**Resignation of Directors**

In June 2003, Mitchell Kertzman and Coleman Sisson resigned as officers and directors of Liberate. In September 2003, Christopher Bowick, a director since November 2001, and Dana Evan, a director since January 2001, also resigned from our Board of Directors and the Board decreased the number of authorized directors to five. Ms. Evan was also a member of the Finance and Audit Committee, the Compensation Committee and the Corporate Governance Committee. The Board of Directors thanks these directors for their valued service to Liberate.

**Meetings of the Board of Directors and Board Committees**

During our fiscal year ended May 31, 2003, our Board held nine meetings and acted by written consent in lieu of a meeting on four occasions. During fiscal 2003, each of the directors standing for re-election, during his or her tenure, attended or participated in at least 75% of the aggregate of: (1) the total number of meetings held by the Board, and (2) the total number of meetings held by all Board committees on which such director served. After each regularly scheduled Board meeting, the independent directors of our Board hold a separate meeting that employee and affiliated directors and other members of management do not attend.

During fiscal 2003, the Board of Directors established a Corporate Governance Committee to identify and nominate candidates for membership on the Board, to assist the Board in succession planning for executive officers, to oversee compliance with Liberate's codes of conduct, and to evaluate Board performance. The Board also eliminated the Independent Committee, transferring its



responsibilities for approving related-party transactions to the Finance and Audit Committee, and eliminated the Investment Committee and Executive Committee in order to provide full Board oversight of most corporate activities. The Board currently has the following four standing committees: the Finance and Audit Committee, the Compensation Committee, the Secondary Compensation Committee, and the Corporate Governance Committee.

*Finance and Audit Committee.* During fiscal 2003, the Finance and Audit Committee of the Board held seventeen meetings, including meetings held in connection with the investigation regarding the restatement of Liberate's financial results. The Committee also acted by written consent in lieu of a meeting on one occasion. As specified in its charter, the Finance and Audit Committee's principal functions are:

- To appoint, compensate, and oversee the work of Liberate's independent auditor;
- To oversee Liberate's accounting and financial reporting processes and the audits of Liberate's financial statements;
- To oversee and monitor: (i) the integrity of Liberate's financial statements; (ii) Liberate's compliance with legal and regulatory requirements; (iii) the independent auditor's qualifications, independence, and performance; (iv) Liberate's internal auditing function and internal controls; and (v) compliance with Liberate's Code of Business Conduct and Code of Financial Conduct; and
- To update the Board regarding the Committee's activities, advise the Board in detail of its material findings on a periodic basis and, as appropriate, make recommendations for Board action.

In addition, the Finance and Audit Committee has responsibility for overseeing spending and signature authority levels, reviewing related-party transactions, and maintaining procedures for the confidential reporting of violations of Liberate's policies. During fiscal 2003, the members of the Finance and Audit Committee were Ms. Evan, Mr. Corfield, and Dr. Nagel, and these committee members issued the Finance and Audit Committee Report contained in this proxy statement. The current members of the Finance and Audit Committee are Mr. Walker (chair), Mr. Corfield, and Mr. Jones, each of whom is an independent director. The charter of the Finance and Audit Committee is attached as *Appendix A* to this proxy statement.

*Compensation Committee.* During fiscal 2003, the Compensation Committee of the Board held five meetings and acted by written consent in lieu of a meeting on nine occasions. The Compensation Committee administers our equity incentive plans and other employee benefit plans and is responsible for designing, evaluating, and approving the compensation plans, policies, and programs of Liberate, especially those regarding executive compensation. Specifically, the Compensation Committee approves all compensation, bonus, and other incentive compensation for Liberate's executive officers and approves any perquisites, equity incentive awards, and special cash payments made or paid to executive officers. During fiscal 2003, the members of the Compensation Committee were Ms. Evan and Mr. Corfield, and these committee members issued the Compensation Committee contained in this proxy statement. The current members of the Compensation Committee are Mr. Corfield (chair), Mr. Jones, and Dr. Nagel, each of whom is an independent director. The charter of the Compensation Committee is attached as *Appendix B* to this proxy statement.

*Secondary Compensation Committee.* During fiscal 2003, the Secondary Compensation Committee acted by written consent in lieu of a meeting on 17 occasions. The Secondary Compensation Committee administers our 1999 Equity Incentive Plan as to equity incentive awards to employees and consultants who are not officers or directors, in amounts not exceeding 100,000 shares per individual per grant. The sole member of the Secondary Compensation Committee is Mr. Lockwood.

*Corporate Governance Committee.* The Board created the Corporate Governance Committee in fiscal 2003 to identify and nominate candidates for membership on the Board, assist the Board in succession planning for executive officers, oversee compliance with Liberate's codes of conduct, and evaluate Board performance. During fiscal 2003, the Corporate Governance Committee of the Board held three meetings. The current members of the Corporate Governance Committee are Mr. Corfield (chair), Mr. Jones, and Robert Walker, each of whom is considered independent in light of applicable regulatory standards. In May 2003, the Corporate Governance Committee, which was then comprised of Mr. Corfield, Ms. Evan, and Dr. Nagel, participated in reviewing the qualifications and recommending the appointments of Mr. Jones and Mr. Walker, who were appointed to fill vacancies on the Board in June 2003 and who are standing for election at the annual meeting. The Corporate Governance Committee will consider director nominees recommended by our stockholders, provided that any notice of director nomination must meet all the requirements contained in our bylaws and include other information required pursuant to Regulation 14A under the Securities Exchange Act of 1934, including the nominee's consent to serve as a director. To make a director nomination at next year's annual meeting, you must follow the procedures described in this proxy statement under "Stockholder Proposals for the 2004 Annual Meeting." The charter of the Corporate Governance Committee is attached as *Appendix C* to this proxy statement.

**Director Compensation**

In July 2002, in order to retain qualified independent directors, the Board approved the grant of options to purchase 50,000 shares of our stock to each of the four independent Board members, Mr. Bowick, Mr. Corfield, Ms. Evan, and Dr. Nagel. These options have an exercise price of $2.42 per share, which was the closing price of the stock on the date of grant, and vest monthly over four years.

Through fiscal 2003, except for grants of stock options and the reimbursement of expenses incurred in connection with attendance at Board or committee meetings, our directors generally did not receive compensation for services provided as directors. We also did not pay compensation for committee participation or special assignments of the Board.

Through fiscal 2003, pursuant to the terms of our 1999 Equity Incentive Plan, upon the conclusion of each of our annual stockholders' meetings, each non-employee director who was to continue to serve as a Board member following the meeting would automatically be granted a fully vested option for 10,000 shares of our common stock, unless the director notified us that he or she was unable to accept such option. The exercise price of each option is equal to the fair market value of our common stock on the option grant date. The options expire on the earlier of the 10-year anniversary of the date of grant or 12 months after a director leaves the Board.

In August 2003, the Compensation Committee recommended and the Board of Directors adopted the following set of compensation proposals for non-employee directors:

- Each non-employee director will receive $30,000 in annual cash compensation, payable in semi-annual installments and $1,000 for participation in each Board and committee meeting. A director will only qualify for the payments if he or she has attended at least 75% of the meetings of the Board and applicable committees for the six months prior to payment.

- On the date a new non-employee director joins the Board, he or she will receive an award of stock units, which represent Liberate's agreement to issue shares of common stock on a future date. If the director joins the Board between October 1 and March 31, he or she will receive stock units worth $20,000, which will vest as to 50% of the units on the next April 1 and October 1, so long as the director remains on the Board. If the director joins the Board between April 1 and September 30, he or she will receive stock units worth $10,000, which will vest as to 100% of the units on the next October 1.



- On October 1 of each year, each non-employee director will receive an award of stock units worth $20,000, which will vest as to 50% of the units on April 1 and October 1 of the following year, so long as the director remains on the Board.

- Each non-employee director who receives stock units will be required to retain beneficial ownership of at least 50% of the shares issued upon vesting and settlement of the stock units until he or she leaves the Board.

Directors who are also our employees receive their employee compensation, including equity compensation under our 1999 Equity Incentive Plan, and are also eligible to participate in our other plans and benefits generally available to our employees. Compensation arrangements for directors who are or were employees are described in "Executive Compensation" and in the "Compensation Committee Report."

**Recommendation of the Board of Directors**

THE BOARD OF DIRECTORS RECOMMENDS A VOTE "**FOR**" THE NOMINEES LISTED IN THIS PROXY STATEMENT.



**PROPOSAL NO. 2**

**RATIFICATION OF INDEPENDENT AUDITORS**

**Proposed Independent Auditors For Fiscal 2004**

The Finance and Audit Committee has selected PricewaterhouseCoopers to serve as our independent auditors for our fiscal year ending May 31, 2004. Stockholder ratification of the selection of PricewaterhouseCoopers as our independent auditors is not required by our bylaws or otherwise. However, the Board is submitting the selection of PricewaterhouseCoopers to the stockholders for ratification as a matter of good corporate practice. As a result of changes the Board made in fiscal 2003 to the Finance and Audit Committee's charter, the Finance and Audit Committee now has the sole authority to engage or dismiss our independent auditors. If the stockholders fail to ratify the selection of PricewaterhouseCoopers, the Finance and Audit Committee will reconsider its retention of PricewaterhouseCoopers. Even if the selection of PricewaterhouseCoopers is ratified, the Finance and Audit Committee, in its discretion, may direct the appointment of a different independent accounting firm at any time during the year if it determines that such a change would be in the best interests of Liberate and our stockholders. Unless otherwise instructed, the proxy holders intend to vote all proxies that they receive FOR this Proposal No. 2.

Representatives of PricewaterhouseCoopers are expected to be present at the meeting, will have the opportunity to make a statement if they desire to do so, and will be available to respond to appropriate questions.

**Change in Independent Auditors During Fiscal 2002**

On May 3, 2002, we dismissed our former independent auditors, Arthur Andersen ("Andersen"), and engaged PricewaterhouseCoopers as our new independent auditors for fiscal 2002. In accordance with its then-current charter, the Finance and Audit Committee recommended the dismissal of Andersen and the engagement of PricewaterhouseCoopers, and our Board approved these actions. Following these changes, PricewaterhouseCoopers audited our 2002 financial statements.

During our two fiscal years ended May 31, 2001, and the subsequent interim period through May 3, 2002, there were: (1) no disagreements between us and Andersen on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements, if not resolved to Andersen's satisfaction, would have caused Andersen to make reference to the subject matter of the disagreement in connection with its reports, and (2) no reportable events described under Item 304(a)(1)(v) of Regulation S-K.

The audit reports of Andersen on our consolidated financial statements as of and for the fiscal years ended May 31, 2000 and 2001 did not contain any adverse opinion or disclaimer of opinion and were not qualified or modified as to uncertainty, audit scope, or accounting principles.

During our two fiscal years ended May 31, 2001, and the subsequent interim period through May 3, 2002, we did not consult with PricewaterhouseCoopers regarding the application of accounting principles to a specific transaction or any matter subsequent to a disagreement with our former independent auditor or any of the other matters or events set forth in Item 304(a)(2)(i) and (ii) of Regulation S-K.

**Fees For Independent Auditors**

The following table sets forth the aggregate fees billed by PricewaterhouseCoopers for professional services for each of fiscal 2003 and 2002 on behalf of Liberate Technologies and its subsidiaries, as well as out-of-pocket costs incurred in connection with these services:

| | 2003 | 2002 |
|---|---|---|
| ***Audit Fees*** | | |
| Audit fees(1) | $ 3,470,521 | $ 75,000 |
| Audit-related fees(2) | $ 186,200 | |
| Total Audit Fees | $ 3,656,721 | $ 75,000 |
| ***Non-Audit Fees*** | | |
| Tax Services and Compliance Fees(3) | $ 79,440 | |
| All Other Fees | | |
| Total Non-Audit Fees | $ 79,440 | |
| ***Total Fees*** | $ 3,736,161 | $ 75,000 |

(1) Includes fees for professional services for the audit of our consolidated financial statements included in our annual report on Form 10-K and review of financial statements included in our quarterly reports on Form 10-Q, or for services that are normally provided by the auditors in connection with statutory and regulatory filings or engagements.

(2) Includes accounting consulting related to audits, internal control advisory services, accounting and due diligence services related to corporate transactions, services related to the issuance by PricewaterhouseCoopers of consents to include its audit reports in certain documents, and other services related to the performance of the audit or review of our financial statements.

(3) Includes fees for tax compliance, tax advice, and tax planning.

Consistent with our Finance and Audit Committee Charter, all non-audit related services provided by outside accounting firms are pre-approved by our Finance and Audit Committee. In making its recommendation to ratify the appointment of PricewaterhouseCoopers as our independent auditors for fiscal 2004, the Finance and Audit Committee has determined that the non-audit services provided by PricewaterhouseCoopers to Liberate did not impair the independence of PricewaterhouseCoopers.

**Recommendation of the Board of Directors**

THE BOARD OF DIRECTORS RECOMMENDS A VOTE "**FOR**" THE RATIFICATION OF THE SELECTION OF PRICEWATERHOUSECOOPERS TO SERVE AS OUR INDEPENDENT AUDITORS FOR THE FISCAL YEAR ENDING MAY 31, 2004.



## EXECUTIVE OFFICERS

Our executive officers, their ages, positions with Liberate, and certain biographical information as of August 31, 2003 are as follows:

| Executive Officers | Age | Positions and Offices Held with Liberate |
|---|---|---|

| | | |
|---|---|---|
| David Lockwood * | 43 | Chairman and Chief Executive Officer |
| Philip A. Vachon | 46 | President Liberate International |
| Gregory S. Wood | 44 | Executive Vice President and Chief Financial Officer |
| Patrick P. Nguyen | 36 | Executive Vice President Corporate Development |
| Kent Walker | 42 | Executive Vice President Corporate and Legal Affairs, General Counsel, and Secretary |

*

Please see biographical information for Mr. Lockwood in "Proposal No. 1" above.

*Philip A. Vachon* was appointed President Liberate International in April 2003. From November 2002 to April 2003, Mr. Vachon supervised Liberate's worldwide sales organization. From January 2001 to October 2002, Mr. Vachon advised a variety of technology companies. From January 1999 to December 2000, he was Senior Vice President of Worldwide Sales for Liberate and from June 1997 to January 1999, he served as our Senior Vice President of Americas Sales. From March 1987 to June 1997, Mr. Vachon served in various capacities at Oracle, most recently as Vice President of Alliances.

*Gregory S. Wood* has been Executive Vice President and Chief Financial Officer of Liberate since June 2003 and served as a strategic advisor to Liberate from March 2003 to June 2003. Previously, he served as Chief Financial Officer of InterTrust, a provider of digital rights management software, from November 2000 to February 2003. Before joining InterTrust, Mr. Wood served as Chief Financial Officer of Network Computing Devices, a computer networking company, from August 1999 to November 2000. Mr. Wood also served as Executive Vice President and Chief Financial Officer, from December 1998 to July 1999, and as Chief Financial Officer, from July 1997 to November 1998, of Sutmyn Storage Corporation, a data storage company. Prior to joining Sutmyn, Mr. Wood served as Senior Vice President Finance and Managing Director, from April 1996 to June 1997, and as Vice President and Treasurer, from January 1990 to March 1996, of Memorex Telex NV, a supplier of computer networking products and services. Mr. Wood is a certified public accountant.

*Patrick P. Nguyen* has been Executive Vice President Corporate Development since June 2003 and served as a strategic advisor to Liberate from March 2003 to June 2003. Previously, he served as Senior Vice President Corporate Development and Vice President Global Alliances of InterTrust from July 1998 to February 2003. From February 1993 to June 1998, Mr. Nguyen was an attorney with Weil, Gotshal & Manges, where he was made a partner in January 1998 and was head of the corporate and technology transaction practice of the firm's Silicon Valley office.

*Kent Walker* has been an officer of Liberate since October 2000. He has served as General Counsel and Secretary since joining Liberate, and in June 2003, he became Executive Vice President Corporate and Legal Affairs. From August 2002 to June 2003, Mr. Walker also served as Chief Financial Officer. Mr. Walker also served as a Senior Vice President of Liberate from January 2001 to August 2002 and as a Vice President from October 2000 to January 2001. Prior to joining Liberate, Mr. Walker served as Associate General Counsel of America Online and Netscape Communications from April 1997 until October 2000. Prior to joining Netscape, Mr. Walker served as Senior Counsel to AirTouch Communications from March 1995 until April 1997. Prior to joining AirTouch



Communications, Mr. Walker served as an Assistant U.S. Attorney with the U.S. Department of Justice from 1990 to 1995.

Kent Walker is the only executive officer to have a sales plan under Rule 10b5-1 of the Securities Exchange Act of 1934, as amended, for trading in shares of our common stock. No directors have such plans. As permitted by Rule 10b5-1 and our insider trading policy, some or all of our officers and directors may establish these kinds of plans in the future. Each individual's plan will be separate and sales under the plans will not be coordinated.

## STOCK OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table shows how much of our common stock was beneficially owned as of July 31, 2003 by each holder of 5% or more of our common stock, each director, each executive officer named in the summary compensation table, and by all executive officers and directors as a group. To our knowledge and except as set forth in the footnotes to the table, the persons named in the table have sole voting and investment power with respect to all shares shown as beneficially owned by them, subject to community property laws where applicable. Unless we indicate otherwise, each holder's address is c/o Liberate Technologies, 2 Circle Star Way, San Carlos, California 94070.

The options column below reflects shares of common stock that are subject to options or warrants that are currently exercisable or are exercisable within 60 days of July 31, 2003 including those which are not yet vested. Those shares are deemed outstanding for the purpose of computing the percentage ownership of the person holding these options, but are not deemed outstanding for the purpose of computing the beneficial ownership of any other person. Percentage ownership is based on 104,006,079 shares outstanding on July 31, 2003.

**Amount and Nature of Beneficial Ownership**

| Beneficial Owner | Shares | Options | Total | Percent of Class |
|---|---|---|---|---|
| CCM Master Fund, Ltd.(1) | 15,764,621 | | 15,764,621 | 15.2% |
| David Lockwood(2) | 12,032,901 | 162,500 | 12,195,401 | 11.7% |
| Perry Capital LLC(3) | 10,200,000 | | 10,200,000 | 9.8% |
| OZ Management, L.L.C.(4) | 10,096,480 | | 10,096,480 | 9.7% |
| Highfields Capital Management LP(5) | 10,000,000 | | 10,000,000 | 9.6% |
| Mitchell E. Kertzman(6) | | 2,229,166 | 2,229,166 | 2.1% |
| Christopher J. Bowick(7) | 1,043,666 | 281,249 | 1,324,915 | 1.3% |
| Coleman Sisson(6) | 1,299 | 673,541 | 674,840 | * |
| Kent Walker | | 204,861 | 204,861 | * |
| Philip A. Vachon | 2,813 | 177,083 | 179,896 | * |
| Dr. David C. Nagel | | 159,999 | 159,999 | * |
| Charles N. Corfield | 43,402 | 74,513 | 117,915 | * |
| David A. Limp | 75,273 | | 75,273 | * |
| Dana L. Evan | | 57,916 | 57,916 | * |
| Donald M. Fitzpatrick | 4,313 | | 4,313 | * |
| Patrick S. Jones | | | | * |
| Robert R. Walker | | | | * |
| All current directors and executive officers as a group (11 persons)(8) | 12,089,116 | 1,103,956 | 13,193,072 | 12.6% |

*
Less than 1% of our outstanding shares of common stock.

(1)
Includes 15,744,521 shares owned directly by CCM Master Fund, Ltd., 13,600 shares held by Grant R. Coghill, and 6,500 shares held by Grace A. Coghill. Clint D. Coghill is the managing member of



Coghill Capital Management, L.L.C., an entity that serves as the investment manager of CCM Master Fund, Ltd. Clint D. Coghill also serves as the investment custodian for Grant R. Coghill and Grace A. Coghill. This information is taken from a Schedule 13G/A filed by the beneficial owners on February 20, 2003. The address of CCM Master Fund, Ltd. and the other beneficial owners of these securities is One North Wacker Drive, Suite 4725, Chicago, IL 60606.

(2)
Shares include 3,807,201 shares owned directly by Mr. Lockwood and 8,225,700 shares owned directly by Lockwood Fund LLC. Mr. Lockwood is managing member of Lockwood Capital Advisors LLC, which is the managing member of Lockwood Fund LLC. The address of the principal office of Lockwood Fund LLC and Lockwood Capital Advisors LLC is c/o Schulte Roth & Zabel LLP, 919 Third Avenue, New York, NY 10022, Attention: Stuart D. Freedman, Esq.

(3)
The address of Perry Capital LLC is 599 Lexington Avenue, New York, NY 10022.

(4)
The address of OZ Management, L.L.C. is 9 West 57th Street, 39th Floor, New York, NY 10019. This information has been taken from a Schedule 13G filed on July 2, 2003.

(5) The address of Highfields Capital Management LP is 200 Clarendon Street, 51st Floor, Boston, MA 02116. This information has been taken from a Schedule 13G filed on July 8, 2003.

(6) As of the date of this proxy statement, the options of Mr. Kertzman and Mr. Sisson had expired.

(7) Shares include 1,041,666 shares held by Cox Communications (of which Mr. Bowick is an executive officer) and options include warrants held by Cox Communications and its subsidiaries to purchase 266,666 shares exercisable within 60 days of July 31, 2003. Mr. Bowick disclaims beneficial ownership of all warrants and shares held by Cox Communications and its subsidiaries.

(8) This total excludes all shares and options beneficially owned by Mr. Kertzman, Mr. Sisson, Mr. Limp, and Mr. Fitzpatrick, who were no longer employed by Liberate as of July 31, 2003. It also excludes all shares and options beneficially owned by Mr. Bowick and Ms. Evan, who resigned from the Board in September 2003.

## EQUITY COMPENSATION PLAN INFORMATION

The following table summarizes information about our equity compensation plans as of May 31, 2003.

| Plan category | Number of securities to be issued upon exercise of outstanding options, warrants, and rights | Weighted average exercise price of outstanding options, warrants, and rights | Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)) |
|---|---|---|---|
| | (a) | (b) | (c) |
| Equity compensation plans approved by security holders(1)(2) | 9,746,116 | $ 8.02 | 15,270,765 |
| Equity compensation plans not approved by security holders(3)(4) | 9,462,496 | $ 2.73 | 650,000(5) |
| Total | 19,208,612 | $ 5.41 | 15,920,765 |

(1) Includes the 1996 Stock Option Plan, 1999 Equity Incentive Plan, and the 1999 Employee Stock Purchase Plan. No additional options may be issued under the 1996 Stock Option Plan. Under our 1999 Equity Incentive Plan, we may issue awards up to the available plan balance in the form of stock options, restricted shares, stock appreciation rights, and stock units. As of May 31, 2003, no awards, other than the options and purchase rights included in the table above, were outstanding under these plans.



(2) Each of the 1999 Equity Incentive Plan and 1999 Employee Stock Purchase Plan contains an automatic share increase provision. Accordingly, the number of shares of common stock reserved for issuance under these plans will automatically increase on each June 1. For our 1999 Equity Incentive Plan, on June 1 of each year the number of shares available increases automatically by the lesser of (a) 5% of our common shares outstanding on the date of increase, or (b) 6,000,000 shares. For our 1999 Employee Stock Purchase Plan, on June 1 of each year the number of shares available for purchase increases automatically by the lesser of (a) 2% of our common shares outstanding on the date of increase, or (b) 1,666,666 shares.

(3)

Includes grants made outside of the 1999 Equity Incentive Plan to executive officers and employees as well as warrant agreements issued to certain network operators. For more details about the grants to executive officers, see "Executive Compensation."

(4)
Excludes options to purchase an aggregate of 888,623 shares at a weighted average exercise price of $6.07 that were outstanding as of May 31, 2003 under equity compensation plans assumed by Liberate in connection with acquisition transactions. We will not grant any additional options under those assumed plans.

(5)
Represents warrants to purchase shares of common stock at a weighted average exercise price of $6.90 that network operators may earn by satisfying specific performance milestones.



## EXECUTIVE COMPENSATION

### Summary Compensation Table

The following summary compensation table sets forth, for the fiscal years ended May 31, 2001, 2002, and 2003, the compensation earned for services rendered in all capacities to us and our subsidiaries by Mitchell Kertzman, who was our Chief Executive Officer on May 31, 2003, the three other most highly compensated executive officers who were serving as such on May 31, 2003, and two additional individuals that would have been the most highly compensated executive officers if they had been serving as executive officers on May 31, 2003 (collectively, the "named executive officers"). We do not grant stock appreciation rights and have in the past provided no long-term compensation benefits other than stock options. In accordance with the rules of the Securities and Exchange Commission ("SEC"), the table below excludes certain items of compensation paid by us, such as perquisites and other personal benefits or reimbursements that did not exceed the lesser of $50,000 or 10% of the total annual salary and bonus reported for the named executive officers for such fiscal year.

**SUMMARY COMPENSATION TABLE**

| | | Annual Compensation | | | Long-Term Compensation Awards |
|---|---|---|---|---|---|
| **Name and Principal Position** | **Year** | **Salary ($)** | **Bonus ($)** | **Other Annual Compensation ($)** | **Number of Securities Underlying Options** |
| Mitchell E. Kertzman(1) | 2003 | 200,220 | | | |
| Former Chairman of the Board and | 2002 | 300,276 | 160,076 | | 650,000(2) |
| Chief Executive Officer | 2001 | 300,267 | 220,152 | | 200,000(2) |
| Coleman Sisson(1) | 2003 | 250,339 | 549,600 | 21,935(3) | 400,000 |
| Former President and Director | 2002 | 250,276 | 394,047 | | 500,000 |
| | 2001 | 235,684 | 137,595 | 106,894(3) | 130,000 |
| Philip A. Vachon | 2003 | 329,789 | | | 1,700,000 |
| President Liberate International | 2002 | 100,212 | | | |
| | 2001 | 374,655(4) | | | |
| Kent Walker | 2003 | 248,142 | | | 275,000 |
| Executive Vice President Corporate | 2002 | 225,276 | 65,530 | | 230,000 |
| and Legal Affairs, General Counsel, | 2001 | 133,138 | 21,886 | | |
| and Secretary | | | | | |

| | | | | | Long-Term Compensation |
|---|---|---|---|---|---|
| Donald M. Fitzpatrick(5) | 2003 | 168,513(6) | 257,941 | | 350,000 |
| Former Chief Operating Officer | 2002 | 606,610(7) | 372,000 | | 200,000 |
| | 2001 | 487,720(8) | 5,642 | 300(3) | 86,000 |
| David A. Limp(5) | 2003 | 41,715 | 613,100 | 250,000(9) | 200,000 |
| Former Executive Vice President | 2002 | 250,276 | 362,033 | | 60,000 |
| and Chief Strategy Officer | 2001 | 235,689 | 90,636 | | 105,000 |

(1) This executive officer left Liberate after May 31, 2003.

(2) This option was canceled in fiscal 2003.

(3) Relocation expenses.

(4) Includes $179,804 in commissions.



(5) This executive officer left Liberate during fiscal 2003.

(6) Includes $31,240 in commissions.

(7) Includes $371,334 in commissions.

(8) Includes $262,120 in commissions.

(9) Severance payments.

**Option Grants In Fiscal 2003**

During fiscal 2003, we granted to our employees, including certain of our named executive officers, options to purchase 12,732,157 shares of our stock. The following table sets forth information with respect to stock options granted to each of the named executive officers in fiscal 2003. The exercise price of each option listed below was equal to the fair market value of our common stock on the date of grant. These options vest over three years at the rate of 1/36th per month, except for Mr. Vachon's option, which vests over four years at a rate of 1/48th per month. All stock options listed below have a term of 10 years, subject to earlier termination upon termination of employment.

The "Potential Realizable Value" columns illustrate the hypothetical gains that would exist for the options at the end of the 10-year term of the option based on assumed annualized rates of compound stock price appreciation of 5% and 10% from the dates the options were granted to the end of the term. The 5% and 10% assumed rates of annual compound stock price appreciation are mandated by SEC rules and do not represent our estimate or projection of future common stock prices. Actual gains, if any, on option exercises will depend on the future performance of our common stock and overall market conditions. The potential realizable values shown in this table may never be achieved.

**Individual Grants**

| Name | Individual Grants: Number of Securities Underlying Options Granted | % of Total Options Granted to Employees In Fiscal Year | Exercise Price ($/Share) | Expiration Date | Potential Realizable Value At Assumed Annual Rates of Stock Price Appreciation For Option Term ($): 5% | 10% |
|---|---|---|---|---|---|---|
| Mitchell E. Kertzman | | | | | | |
| Coleman Sisson | 400,000 | 3.14 | 2.70 | 6/21/12 | 679,156 | 1,721,114 |
| Philip A. Vachon | 1,700,000 | 13.35 | 2.39 | 4/14/13 | 2,555,199 | 6,475,376 |
| | 175,000 | 1.37 | 2.70 | 6/21/12 | 297,131 | 752,988 |
| Kent Walker | 100,000 | 0.79 | 1.94 | 8/15/12 | 122,006 | 309,186 |
| Donald M. Fitzpatrick | 350,000 | 2.75 | 2.70 | 6/21/12 | 594,261 | 1,505,975 |
| David A. Limp | 200,000 | 1.57 | 2.70 | 6/21/12 | 339,578 | 860,557 |

As of the date of this proxy statement, the options issued to Mr. Sisson, Mr. Fitzpatrick, and Mr. Limp in fiscal 2003 had expired following termination of each officer's employment.

**Option Exercises in Fiscal 2003 and Fiscal Year-End Option Values**

The following table sets forth information concerning stock option exercises during fiscal 2003 by each of the above-named officers, including the aggregate amount of gains on the date of exercise. The value realized for option exercises is the aggregate fair market value of our common stock on the date of exercise less the exercise price. In addition, the table includes the number of shares covered by both exercisable and unexercisable stock options held on May 31, 2003 by each of those officers. Also reported are values for "in-the-money" stock options that represent the positive spread between the



respective exercise prices of outstanding stock options and the fair market value of our common stock as of May 31, 2003. The values for unexercised in-the-money options have not been, and may never be, realized. The fair market value is determined by the closing price of our common stock on May 31, 2003 as reported on the Pink Sheets system, which was $2.68 per share.

| Name | Number of Shares Acquired on Exercise | Value Realized ($) | Number of Securities Underlying Unexercised Options at Fiscal Year End: Exercisable | Unexercisable | Value of Unexercised In-the-Money Options at Fiscal Year End ($): Exercisable | Unexercisable |
|---|---|---|---|---|---|---|
| Mitchell E. Kertzman | | | 2,229,166 | | $ 289,792 | $ |
| Coleman Sisson | | | 579,930 | 450,070 | | |
| Philip A. Vachon | | | 35,416 | 1,664,584 | 10,271 | 482,729 |
| Kent Walker | | | 155,139 | 266,320 | 18,500 | 55,500 |
| Donald M. Fitzpatrick | | | | | | |
| David A. Limp | | | | | | |

As of the date of this proxy statement, all options held by Mr. Kertzman, Mr. Sisson, Mr. Fitzpatrick, and Mr. Limp had expired following termination of each officer's employment.

**Employment Contracts, Termination of Employment, and Change in Control Arrangements**

On October 12, 1998, we entered into an employment agreement with Mitchell E. Kertzman, our former Chief Executive Officer. Mr. Kertzman's annual base salary was $300,000, and he was eligible for a target annual bonus of $200,000, subject to adjustment based on performance measures, with a limit of 125% of the target amount. On October 15, 1998, pursuant to the terms of his employment agreement, we granted Mr. Kertzman an option to purchase 3,333,332 shares of our common stock. This option has expired.

In January 2001, we entered into employee retention agreements with Mr. Sisson, Mr. Fitzpatrick, and Mr. Limp. Each retention agreement was to provide $818,000 in periodic payments to each officer who achieved two years of continuous service through January 2003. During fiscal 2002, we paid $292,000 to each of these officers under these agreements. During fiscal 2003, Mr. Limp left Liberate as part of a reduction in force and realignment of management roles, which triggered a payment of the remaining $526,000 under his retention agreement. During fiscal 2003, we paid Mr. Fitzpatrick $219,000 under his agreement. In connection with the events leading to the restatement of our financial statements, we terminated Mr. Fitzpatrick's employment on December 27, 2002 before any additional payments were due. During fiscal 2003, we paid Mr. Sisson the remaining $526,000 due under his agreement.

In connection with Mr. Limp's departure in July 2002, we entered into a separation agreement and mutual release of claims with him. Under the terms of this agreement, we paid Mr. Limp an amount equal to his salary and on-target bonuses for fiscal 2002, in addition to the payment under his retention agreement discussed above. Further, in September 2002, we entered into a consulting agreement with Mr. Limp in which we agreed to pay him not less than $10,000 per month for consulting services. We paid Mr. Limp approximately $123,000 under this consulting agreement, which terminated in March 2003.

In July 2002, we entered into a new employee retention agreement with each of Mr. Kertzman, Mr. Sisson, Mr. Fitzpatrick, and Kent Walker. Under the terms of these agreements, in the event of a change of control of Liberate that is followed within one year by the officer's actual or constructive termination, the officer would have been guaranteed total payments of twice the officer's total cash compensation in the prior fiscal year, up to a maximum of $750,000. Because there has been no change of control, we have not made any payments under these agreements.



In July 2002, the Compensation Committee approved a senior management bonus plan under which Mr. Kertzman, Mr. Sisson, and Kent Walker would have been eligible to receive bonuses if Liberate had achieved specified revenue and operating expense targets. Liberate did not make any payments under this bonus plan.

In July 2002, the Compensation Committee also approved a sales commission plan under which Mr. Fitzpatrick would be eligible to receive commissions based on achievement of revenue and earnings targets. During fiscal 2003, Mr. Fitzpatrick received approximately $31,000 under this plan.

In November 2002, we entered into a letter agreement with Mr. Vachon in which we agreed to pay him $56,500 per month for advisory services through February 28, 2003. We subsequently extended that agreement through April 11, 2003, at which time Mr. Vachon became President Liberate International.

In March and April 2003, we entered into new employee retention agreements with Mr. Lockwood, Mr. Sisson, Mr. Vachon, Mr. Wood, Mr. Nguyen, and Kent Walker. Under the terms of the retention agreements, in the event of a change of control of Liberate that is followed within one year by the executive officer's actual or constructive termination, the executive officer will receive a payment equal to twice his total taxable compensation for the prior fiscal year, with a minimum payment of $500,000 and a maximum payment of $750,000. These agreements superseded the previous retention agreements that we had entered into with Mr. Sisson and Mr. Walker.

In March 2003, we agreed to amend the terms of outstanding option grants to Mr. Sisson and Kent Walker so that the grants would become fully vested upon certain employment termination events in connection with a change of control of Liberate.

In June 2003, Mr. Kertzman and Mr. Sisson terminated their employment with Liberate. We entered into an agreement with Mr. Sisson under which he will receive $10,000 per month for his services as an independent contractor and may receive additional compensation. We may terminate this agreement at any time. We also agreed to pay the premiums for Mr. Sisson's health coverage for twelve months.

The Compensation Committee has the authority under the 1999 Equity Incentive Plan to accelerate the vesting of the shares of common stock subject to outstanding options. Such acceleration may be conditioned on the optionee's termination of employment (whether involuntarily or through a forced resignation) and may be conditioned upon the occurrence of a merger, reorganization, or consolidation or upon a hostile take-over effected through a tender offer or through a change in the majority of the Board as a result of one or more contested elections for Board membership.

**Compensation for New Executive Officers**

In March 2003, we appointed Mr. Lockwood, Mr. Wood, and Mr. Nguyen as strategic advisors to Liberate, and in June 2003, they became executive officers. In April 2003, we also appointed Mr. Vachon as an executive officer. Each of these new executive officers receives an annual base salary of $250,000 and is eligible for a bonus to be determined by the Compensation Committee. In March 2003, the Compensation Committee granted an option to purchase 1,300,000 shares of our stock at an exercise price of $1.75 per share to each of Mr. Lockwood, Mr. Wood, and Mr. Nguyen. In April 2003, the Compensation Committee granted an option to purchase 1,700,000 shares of our stock at an exercise price of $2.39 per share to Mr. Vachon. Our Compensation Committee granted each of these options outside the 1999 Equity Incentive Plan. Each option vests monthly over four years so long as the recipient provides continuous service to Liberate, and each would become fully vested upon certain employment termination events in connection with a change of control of Liberate.



**Compensation Committee Interlocks and Insider Participation**

The Compensation Committee of our Board was formed in September 1997. For fiscal 2003, the Compensation Committee consisted of Mr. Corfield (chair) and Ms. Evan. Neither Mr. Corfield nor Ms. Evan has ever served as an officer or employee of Liberate o