

AMERICAN APPAREL, INC  
Form DEF 14A  
May 20, 2011  
Table of Contents

**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**

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

**American Apparel, Inc.**

(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):

- 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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(2) Aggregate number of securities to which transaction applies:

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

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

.. Fee paid previously with preliminary materials.

.. 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:



**Table of Contents**

May 20, 2011

Dear Fellow Stockholder:

We are pleased to invite you to the 2011 Annual Meeting of Stockholders of American Apparel, Inc., to be held on June 21, 2011, at 2:00 p.m., Pacific Time, at the headquarters of American Apparel, Inc. at 747 Warehouse Street, Los Angeles, California 90021.

The matters to be considered and voted upon at the Annual Meeting are described in the Notice of Annual Meeting of Stockholders and the Proxy Statement that accompany this letter.

This year we are mailing full sets of proxy materials to our stockholders. In the future, we expect to take advantage of the Securities and Exchange Commission rule allowing companies to furnish proxy materials to their stockholders via the Internet.

It is very important that your shares be represented and voted at the Annual Meeting. Please read the attached Proxy Statement and vote your shares as soon as possible by using the telephone or Internet voting systems, or by completing, signing and dating the proxy card and returning it promptly.

Thank you for your continued support of American Apparel.

Sincerely,

/s/ Dov Charney

Dov Charney  
Chairman of the Board

**Table of Contents**

**AMERICAN APPAREL, INC.**

**747 Warehouse Street**

**Los Angeles, California 90021**

**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS**

**To be held on June 21, 2011**

**Time and Date:**

2:00 p.m., Pacific Time, on Tuesday, June 21, 2011

**Place:**

American Apparel, Inc. headquarters located at 747 Warehouse Street, Los Angeles, California 90021

**Items of Business:**

1. To elect Robert Greene and Allan Mayer to the Board of Directors, each to serve for a term of three years and until his successor is duly elected and qualified, or such director's earlier death, resignation or removal.
  
2. To ratify the appointment of Marcum LLP as our independent auditors for the fiscal year ending December 31, 2011.
  
3. To approve an amendment to our Amended and Restated Certificate of Incorporation to increase the number of authorized shares of our common stock that we may issue.
  
4. To conduct an advisory vote on executive compensation.
  
5. To conduct an advisory vote on the frequency of holding future advisory votes on executive compensation.
  
6. To approve (i) the reduction of the exercise price of the existing warrants issued to an affiliate of Lion Capital LLP, (ii) the issuance of one or more additional warrants to an affiliate of Lion Capital LLP and (iii) the reduction of the exercise price of any such additional warrants, in each case as contemplated by our credit agreement with Lion Capital

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LLP and as such exercise price may be further adjusted pursuant to the warrants and such credit agreement, and the issuance of shares of our common stock upon exercise of the warrants.

7. To approve the American Apparel, Inc. 2011 Omnibus Stock Incentive Plan.

8. To approve the potential issuance to certain investors of up to 27,443,173 shares of our common stock upon the exercise of purchase rights under that certain Purchase and Investment Agreement, dated as of April 21, 2011, by and among American Apparel, Inc. and the investors signatory thereto, and such additional shares as may be issued pursuant to topping-up and anti-dilution adjustments under that agreement.

9. To approve the potential issuance to Dov Charney of up to 40,313,316 shares of our common stock pursuant to that certain Purchase Agreement, dated as of April 27, 2011, by and between American Apparel, Inc. and Dov Charney, and such additional shares as may be issued pursuant to topping-up and anti-dilution adjustments under that agreement.

10. To consider and transact such other business as may properly come before the Annual Meeting.

**Table of Contents**

**Board of Directors Recommendation:** A majority of the Board of Directors recommends that you vote **FOR** the election of each nominee for the Board of Directors, **FOR** Items 2, 3, 4, 6, 7, 8 and 9 and, with respect to Item 5, for the option of **once every three years** as the preferred frequency for advisory votes on executive compensation.

**Adjournments and Postponements:** Any action on the items of business described above may be considered at the Annual Meeting at the time and on the date specified above or at any time and date to which the Annual Meeting may be properly adjourned or postponed.

**Record Date:** You are entitled to notice of and to vote at the Annual Meeting and any adjournment or postponement thereof only if you were a holder of record of shares of American Apparel, Inc. common stock as of the close of business on the Record Date. If your shares are held in an account at a brokerage firm, bank or similar organization, that organization is considered the record holder for purposes of voting at the Annual Meeting and will provide you with instructions on how you can direct that organization to vote your shares.

**Voting:** Your vote is very important. Whether or not you plan to attend the Annual Meeting, we encourage you to read the accompanying Proxy Statement and our 2010 Annual Report on Form 10-K, as amended, and vote as soon as possible. You may submit your proxy for the Annual Meeting by using the telephone or Internet voting system or by completing, signing, dating and returning your proxy card. You also may vote by attending the Annual Meeting in person. For specific instructions on how to vote your shares, please refer to the section entitled **Questions and Answers about the Proxy Materials and Annual Meeting** beginning on page 1 of the accompanying Proxy Statement.

**Admission:** Space limitations make it necessary to limit attendance at the Annual Meeting to stockholders and one guest. If your shares are held in an account at a brokerage firm, bank or similar organization and you wish to attend the Annual Meeting, you must obtain a letter from that brokerage firm, bank or similar organization confirming your beneficial ownership of the shares as of the record date and bring it to the Annual Meeting. Admission to the Annual Meeting will be on a first-come, first-served basis. Cameras and recording devices will not be permitted at the Annual Meeting.

**The Annual Meeting will begin promptly at 2:00 p.m., Pacific Time.**

**Registration will begin at 1:30 p.m., Pacific Time.**

Sincerely,

/s/ Glenn A. Weinman  
Glenn A. Weinman  
Senior Vice President, General Counsel and Secretary

Los Angeles, California

May 20, 2011

**IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS FOR THE STOCKHOLDERS MEETING TO BE HELD ON JUNE 21, 2011:** The Proxy Statement and Annual Report to stockholders will be available at <http://www.cstproxy.com/americanapparel/2011>.

**Table of Contents**

Table of Contents

<u>Notice of Annual Meeting of Stockholders</u>	
<u>Proxy Statement</u>	1
<u>Proposal No. 1: Election of Directors</u>	9
<u>Proposal No. 2: Appointment of Independent Auditors</u>	11
<u>Relationship with Independent Auditors</u>	14
<u>Audit Committee Report</u>	16
<u>Proposal No. 3: Charter Amendment</u>	17
<u>Proposal No. 4: Advisory Vote on Executive Compensation</u>	19
<u>Proposal No. 5: Frequency of Future Advisory Votes on Executive Compensation</u>	20
<u>Proposal No. 6: Warrant Exercise Price Resent Proposal</u>	21
<u>Proposal No. 7: 2011 Omnibus Stock Incentive Plan</u>	26
<u>Proposal No. 8: Potential Issuance of Shares Pursuant to Investor Purchase Agreement</u>	33
<u>Proposal No. 9: Potential Issuance of Shares Pursuant to Charney Purchase Agreement</u>	36
<u>Directors and Executive Officers</u>	40
<u>Corporate Governance and Board Matters</u>	45
<u>Processes and Procedures for Determination of Executive and Director Compensation</u>	53
<u>Compensation of Directors</u>	55
<u>Compensation Discussion and Analysis</u>	56
<u>Compensation Committee Report on Executive Compensation</u>	60
<u>Compensation Committee Interlocks and Insider Participation</u>	60
<u>Summary Compensation Table</u>	61
<u>Equity Compensation Plan Information</u>	64
<u>Grants of Plan-Based Awards</u>	64
<u>Outstanding Equity Awards at Fiscal Year End</u>	65
<u>Options Exercised and Stock Vested</u>	66
<u>Beneficial Ownership of Shares</u>	70
<u>Certain Relationships and Related Transactions</u>	72
<u>Information Concerning Stockholder Proposals</u>	78
<u>Annex A</u>	A-1
<u>Annex B</u>	B-1
<u>Proxy Card</u>	



**Table of Contents**

**AMERICAN APPAREL, INC.**

**747 Warehouse Street**

**Los Angeles, California 90021**

**PROXY STATEMENT**

**FOR 2011 ANNUAL MEETING OF STOCKHOLDERS**

**To be held on June 21, 2011**

**QUESTIONS AND ANSWERS ABOUT THE PROXY MATERIALS AND ANNUAL MEETING**

**Q: Why am I receiving these materials?**

A: This proxy statement (this Proxy Statement), together with our Annual Report on Form 10-K for the year ended December 31, 2010, as amended (our Annual Report), is being mailed to stockholders commencing on or about May 20, 2011 in connection with the solicitation by the Board of Directors (the Board of Directors or the Board) of American Apparel, Inc. (the Company or American Apparel) of proxies for use at the 2011 Annual Meeting of Stockholders and any adjournments or postponements thereof (the Annual Meeting) to be held at the Company's headquarters located at 747 Warehouse Street, Los Angeles, California 90021, on Tuesday, June 21, 2011, at 2:00 p.m., Pacific Time, for the purposes set forth in this Proxy Statement and in the accompanying Notice of Annual Meeting of Stockholders.

**Q: I share an address with another stockholder, and we received only one copy of the Proxy Statement. How may I obtain a separate copy of the Proxy Statement?**

A: The Company has adopted a procedure called householding, which the SEC has approved. Under this procedure, the Company may deliver a single copy of the Proxy Statement and our Annual Report to stockholders who share the same address unless the Company has received contrary instructions from one or more of the stockholders. This procedure reduces the Company's printing costs, mailing costs and fees. If you would like to receive a separate copy of the Proxy Statement and our Annual Report, please submit your request to:  
American Apparel, Inc.

Attn: Investor Relations

747 Warehouse Street

Los Angeles, California 90021

(213) 488-0226

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Similarly, if you share an address with another stockholder and received multiple copies of the Proxy Statement and our Annual Report, you may write or call us at the above address and phone number to make arrangements to receive a single copy of the Proxy Statement and our Annual Report at the shared address in the future.

In addition, if you share the same address with another stockholder and request a printed copy of the Proxy Statement and our Annual Report, you may write or call us at the above address to request that a separate copy of the Proxy Statement and our Annual Report be delivered to each stockholder at the shared address.

Stockholders who hold shares in an account at a brokerage firm, bank or similar organization may contact their brokerage firm, bank or other similar organization to request information about householding.

**Q: What does it mean if I get more than one proxy card?**

A: If your shares are registered differently and are in more than one account, you may receive more than one proxy card. Please follow the voting instructions on the proxy cards or voting instruction forms, as

**Table of Contents**

applicable, and vote all proxy cards or voting instruction forms you receive, as applicable, to ensure that all of your shares are voted. We encourage you to have all accounts registered in the same name and address whenever possible. You can accomplish this by contacting our transfer agent at:

Continental Stock Transfer & Trust Company

17 Battery Place

New York, NY 10004

(212) 509-4000, extension 241

*continentalstock.com*

[proxy@continentalstock.com](mailto:proxy@continentalstock.com)

**Q: How can I get electronic access to the 2011 Annual Meeting materials?**

A: This Proxy Statement and our Annual Report are also available without charge on the Company's website at [investors.americanapparel.net](http://investors.americanapparel.net) and the SEC's website at [sec.gov](http://sec.gov). By referring to our website, we do not incorporate the website or any portion of the website by reference into this Proxy Statement.

**Q: How can I receive my proxy materials electronically in the future?**

A: The proxy card or voting instruction form contains instructions on how you can elect to receive future proxy materials electronically by e-mail. Choosing to receive future proxy materials by e-mail will save the Company the cost of printing and mailing documents to you and will reduce the impact of the Company's annual meetings on the environment. If you choose to receive future proxy materials by e-mail, you will receive an e-mail message next year with instructions containing a link to those materials and a link to the proxy voting website. Your election to receive proxy materials by e-mail will remain in effect until you terminate it.

**Q: What items will be voted on at the Annual Meeting?**

- A: (1) The election of each of Messrs. Robert Greene and Allan Mayer to the Board of Directors, each to serve for a term of three years and until his successor is duly elected and qualified, or such director's earlier death, resignation or removal. This proposal is referred to as Proposal 1.
- (2) The ratification of the appointment of Marcum LLP as our independent auditors for the fiscal year ending December 31, 2011. This proposal is referred to as Proposal 2.
- (3) The approval of an amendment to our Amended and Restated Certificate of Incorporation to increase the number of authorized shares of the Company's common stock ( Common Stock ) that we may issue. This proposal is referred to as Proposal 3.
- (4) An advisory vote on executive compensation. This proposal is referred to as Proposal 4.
- (5) An advisory vote on the frequency of holding future advisory votes on executive compensation. This proposal is referred to as Proposal 5.
- (6) The approval of (i) the reduction of the exercise price of the existing warrants issued to an affiliate of Lion Capital LLP, (ii) the issuance of one or more additional warrants to an affiliate of Lion Capital LLP and (iii) reduction of the exercise price of any such additional warrants, in each case as contemplated by our credit agreement with Lion Capital LLP and as such exercise price may be further adjusted pursuant to the

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warrants and such credit agreement, and the issuance of shares of Common Stock upon exercise of the warrants. This proposal is referred to as Proposal 6.

(7) The approval of the American Apparel, Inc. 2011 Omnibus Stock Incentive Plan. This proposal is referred to as Proposal 7.

(8) The approval of the potential issuance to certain investors of up to 27,443,173 shares of Common Stock upon the exercise of purchase rights under that certain Purchase and Investment Agreement, dated as of

**Table of Contents**

April 21, 2011, by and among the Company and the investors signatory thereto (the Investor Purchase Agreement ), and such additional shares as may be issued pursuant to topping-up and anti-dilution adjustments under the Investor Purchase Agreement. This proposal is referred to as Proposal 8.

(9) The approval of the potential issuance to Dov Charney of up to 40,313,316 shares of Common Stock pursuant to that certain Purchase Agreement, dated as of April 27, 2011, by and between the Company and Dov Charney (the Charney Purchase Agreement ), and such additional shares as may be issued pursuant to topping-up and anti-dilution adjustments under the Charney Purchase Agreement. This proposal is referred to as Proposal 9.

(10) Such other business as may properly come before the Annual Meeting.

The stockholders of the Company have no dissenters or appraisal rights in connection with any of the proposals to be voted on at the Annual Meeting.

**Q: How does the Board recommend I vote on the proposals?**

A: A majority of the Board recommends a vote FOR the election of each of Messrs. Robert Greene and Allan Mayer to the Board of Directors, each to serve for a term of three years and until his successor is duly elected and qualified, or such director's earlier death, resignation or removal.

A majority of the Board recommends a vote FOR the ratification of Marcum LLP as our independent auditors for the year ending December 31, 2011.

A majority of the Board recommends a vote FOR the amendment to our Amended and Restated Certificate of Incorporation to increase the number of shares of Common Stock that we may issue.

A majority of the Board recommends a vote FOR the approval, on an advisory basis, of executive compensation.

A majority of the Board recommends a vote for the frequency of holding future advisory votes or executive compensation once every three years.

A majority of the Board recommends a vote FOR the approval of the reduction of the exercise price of the existing warrant issued to an affiliate of Lion Capital LLP and the issuance of one or more additional warrants to an affiliate of Lion Capital LLP and the reduction of the exercise price of any such additional warrants, in each case as contemplated by our credit agreement with Lion Capital LLP and as such exercise price may be further adjusted pursuant to the warrants, and the issuance of shares of Common Stock upon exercise of the warrants.

A majority of the Board recommends a vote FOR the approval of the American Apparel, Inc. 2011 Omnibus Stock Incentive Plan.

A majority of the Board recommends a vote FOR the approval of the potential issuance to certain investors of up to 27,443,173 shares of Common Stock upon the exercise of purchase rights under the Investor Purchase Agreement, and such additional shares as may be issued pursuant to topping-up and anti-dilution adjustments under the Investor Purchase Agreement.

A majority of the Board recommends a vote FOR the approval of the potential issuance to Dov Charney of up to 40,313,316 shares of Common Stock pursuant to the Charney Purchase Agreement, and such additional shares as may be issued pursuant to topping-up and anti-dilution adjustments under the Charney Purchase Agreement.

**Q: If the Company's stockholders approve Proposals 8 and 9, what is the potential dilution to the Company's public stockholders?**

A:

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Assuming (i) issuance in full of the approximately 27.4 million shares of Common Stock certain investors have a right to purchase under the Investor Purchase Agreement (as described in Proposal 8), (ii) issuance in

**Table of Contents**

full of the approximately 42.4 million shares of Common Stock issuable to Mr. Charney or that Mr. Charney has a right to purchase or receive under the Charney Purchase Agreement (as described in Proposal 9) and the March Purchase Agreement (as defined below), (iii) exercise in full of new warrants issued to Lion/Hollywood L.L.C. as a result of such issuances to the investors and Mr. Charney described above, (iv) exercise in full of Lion/Hollywood L.L.C.'s and SOF Investments, L.P. Private IV's existing warrants to purchase a total of 20.9 million shares of Common Stock, (v) exercise in full by management of currently outstanding options to purchase, and full vesting of restricted stock awards with respect to, a total of 2,550,000 shares of Common Stock and (vi) no other issuances of Common Stock or securities convertible, exercisable or exchangeable for Common Stock, the percentage ownership of stockholders (other than Mr. Charney, the investors and holders of outstanding warrants described in Proposals 8 and 9 and not including management options in such percentage) would be reduced from 38.4% as of the closing of the issuance of shares to such investors on April 26, 2011 (or 45.7% as of the Record Date prior to giving effect to such closing) to 18.4%. See the table in Proposal 9 for more information regarding potential dilution to the Company's public stockholders. To the extent that additional shares of Common Stock or securities convertible, exercisable or exchangeable for Common Stock are issued (including pursuant to a New Issuance (as defined in Proposal 8) and related topping-up and anti-dilution adjustments under the Investor Purchase Agreement, the Charney Purchase Agreement, Lion/Hollywood L.L.C.'s warrants and the credit agreement with Lion Capital LLP), the Company's public stockholders would experience further dilution. The Company is not currently contemplating any New Issuances, however, as previously disclosed, the Company is in the process of seeking additional financing, to the extent available, and may enter into new financings as opportunities arise and as the Company deems advisable, and any such financing may include such a New Issuance.

**Q: What is the difference between the closing price of the Common Stock as of the trading day immediately preceding the respective dates of the Investor Purchase Agreement and the Charney Purchase Agreement described in Proposals 8 and 9 and the sales price of the Common Stock under such agreements?**

A: The sales prices under both the Investor Purchase Agreement and the Charney Purchase Agreement were \$0.90 per share. As of the trading day immediately preceding the respective dates of the Investor Purchase Agreement and the Charney Purchase Agreement, the closing price of the Common Stock was \$1.21 per share and \$1.58 per share, respectively, and, as a result, the respective sales prices under the Investor Purchase Agreement and the Charney Purchase Agreement were at a discount to the then current market price of approximately 25.6% and 43.0%, respectively.

**Q: Who is entitled to vote?**

A: Only holders of record of Common Stock as of the close of business on April 25, 2011 (the Record Date) are entitled to vote at the Annual Meeting.

If your shares are held in an account at a brokerage firm, bank or similar organization, that organization is considered the record holder for purposes of voting at the Annual Meeting and will provide you with instructions on how to direct that organization to vote your shares. See "What if my shares are held in an account at a brokerage firm, bank or similar organization?" below.

**Q: How many shares can vote?**

A: As of the Record Date, 82,771,426 shares of Common Stock, the only outstanding voting securities of the Company, were issued and outstanding. Each record holder of Common Stock is entitled to one vote for each share held.

**Q: How do I vote?**

A: There are four ways to vote:

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*Voting in Person.* To vote in person, you must attend the Annual Meeting and follow the procedures for voting announced at the Annual Meeting. If your shares are held in an account at a brokerage firm, bank or similar organization, you must present a signed proxy from that organization in order to be able to vote at the Annual Meeting.



## **Table of Contents**

*Voting by Internet.* You may vote by proxy over the Internet by following the instructions provided in the proxy card or voting instruction form, as applicable.

*Voting by Telephone.* You may vote by proxy by calling the toll free number found on the proxy card or voting instruction form, as applicable.

*Voting by Mail.* You may vote by proxy by mail by following the instructions on the proxy card or voting instruction form, as applicable.

### **Q: Can I change my vote after I have voted?**

A: You may revoke your proxy and change your vote at any time before the final vote at the Annual Meeting by voting again by proxy as described above (only your latest, properly completed proxy submitted, whether by mail, telephone or the Internet, prior to the Annual Meeting will be counted) or by attending the Annual Meeting and voting in person. However, your attendance at the Annual Meeting will not automatically revoke your proxy unless you vote again at the Annual Meeting or specifically request in writing that your prior proxy be revoked by delivering to the Company's Secretary at 747 Warehouse Street, Los Angeles, California 90021 a written notice of revocation prior to the Annual Meeting.

### **Q: What if my shares are held in an account at a brokerage firm, bank or similar organization?**

A: If your shares are held in an account at a brokerage firm, bank or similar organization, then you are the beneficial owner of shares held in street name.

The organization holding your account is considered the record holder for purposes of voting at the Annual Meeting. As a beneficial owner, you have the right to direct that organization on how to vote the shares held in your account, and that organization will provide you with instructions on how to do so. You will receive a voting instruction form from your brokerage firm, bank or similar organization instead of a proxy card, and you should follow the instructions on the voting instruction form.

If you do not provide the organization that holds your shares with specific voting instructions, under the rules of the NYSE Amex LLC (the NYSE Amex) in effect as of the date of this Proxy Statement, that organization generally may vote on routine matters but cannot vote on non-routine matters. Non-routine matters include Proposals 1, 3, 4, 5, 6, 7, 8 and 9. If the organization that holds your shares does not receive instructions from you on how to vote your shares on a non-routine matter, that organization will inform the inspector of elections that it does not have the authority to vote on that matter with respect to your shares. This is generally referred to as a broker non-vote. A broker non-vote will have the effects described under *What is a quorum?* and *What is required to approve each proposal?* below.

### **Q: What is a quorum?**

A: A quorum is a majority of the outstanding shares entitled to vote, present in person or represented by proxy. Abstentions and broker non-votes will be counted for purposes of determining whether a quorum is present.

### **Q: What is required to approve each proposal?**

A: A quorum must have been established in order to consider any matter.

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For Proposal 1, directors are elected by a plurality of votes cast. Therefore, the two candidates for director receiving the most votes will become directors of the Company. Stockholders may not cumulate their votes. Any broker non-votes and any proxies marked "Withhold" with respect to the election of one or more directors will not count as "votes cast" with respect to the director or directors indicated and therefore will be disregarded for purposes of determining the outcome of this proposal.

Proposal 2, the ratification of our independent auditors, requires the affirmative "for" vote of a majority of those shares present in person or represented by proxy and entitled to vote on this proposal at the Annual

## **Table of Contents**

Meeting. Any abstentions with respect to this proposal will count as votes against this proposal. Any broker non-votes with respect to this proposal will not count as shares entitled to vote on this proposal and therefore will be disregarded for purposes of determining the outcome of the vote on this proposal.

Proposal 3, the approval of an amendment to the Company's Amended and Restated Certificate of Incorporation to increase the number of authorized shares the Company may issue, requires the affirmative for vote of a majority of outstanding shares entitled to vote on this proposal at the Annual Meeting. Any abstentions and broker non-votes with respect to this proposal will count as votes against this proposal.

Proposal 4, the approval, on an advisory basis, of the Company's executive compensation, requires the affirmative for vote of a majority of those shares present in person or represented by proxy and entitled to vote on this proposal at the Annual Meeting. Any abstentions with respect to this proposal will count as votes against this proposal. Any broker non-votes with respect to this proposal will not count as shares entitled to vote on this proposal and therefore will be disregarded for purposes of determining the outcome of the vote on this proposal.

Proposal 5, an advisory vote on whether an advisory vote on the frequency of holding future advisory votes on executive compensation should be held annually, every two years, or every three years, will be voted upon by a plurality of the votes cast. Therefore, the time frame receiving the most votes will be considered the frequency advised by the Stockholders. Any abstentions and broker non-votes with respect to this proposal will not count as votes cast and therefore will be disregarded for the purposes of determining the outcome of this proposal.

Proposal 6, the approval of the reduction of the exercise price of the existing warrant issued to an affiliate of Lion Capital LLP and the issuance of one or more additional warrants to an affiliate of Lion Capital LLP and the reduction of the exercise price of any such additional warrants, in each case as contemplated by our credit agreement with Lion Capital LLP and as such exercise price may be further adjusted pursuant to the warrants and such credit agreement, and the issuance of shares of Common Stock upon exercise of the warrants, requires the affirmative for vote of a majority of those shares present in person or represented by proxy and entitled to vote on this proposal at the Annual Meeting. Any abstentions with respect to this proposal will count as votes against this proposal. Any broker non-votes with respect to this proposal will not count as shares entitled to vote on this proposal and therefore will be disregarded for purposes of determining the outcome of the vote on this proposal.

Proposal 7, the approval of the 2011 Omnibus Stock Incentive Plan, requires the affirmative for vote of a majority of those shares present in person or represented by proxy and entitled to vote on this proposal at the Annual Meeting. Any abstentions with respect to this proposal will count as votes against this proposal. Any broker non-votes with respect to this proposal will not count as shares entitled to vote on this proposal and therefore will be disregarded for purposes of determining the outcome of the vote on this proposal.

Proposal 8, the approval of the potential issuance to certain investors of up to 27,443,173 shares of Common Stock upon the exercise of purchase rights under the Investor Purchase Agreement, requires the affirmative for vote of a majority of those shares present in person or represented by proxy and entitled to vote on this proposal at the Annual Meeting. Any abstentions with respect to this proposal will count as votes against this proposal. Any broker non-votes with respect to this proposal will not count as shares entitled to vote on this proposal and therefore will be disregarded for purposes of determining the outcome of the vote on this proposal.

Proposal 9, the approval of the potential issuance to Dov Charney of up to 40,313,316 shares of Common Stock pursuant to the Charney Purchase Agreement, requires the affirmative for vote of a majority of those shares present in person or represented by proxy and entitled to vote on this proposal at the Annual Meeting. Any abstentions with respect to this proposal will count as votes against this proposal. Any broker non-votes with respect to this proposal will not count as shares entitled to vote on this proposal and therefore will be disregarded for purposes of determining the outcome of the vote on this proposal.

Dov Charney, the beneficial owner of approximately 54.3% of the outstanding shares of Common Stock and voting power of the Company as of the Record Date, has informed the Company that he intends to vote in

**Table of Contents**

favor of the election of Messrs. Greene and Mayer to the Board of Directors. Mr. Charney's vote is sufficient to elect Messrs. Greene and Mayer without further affirmative votes from the other stockholders. For more information on shares owned by Mr. Charney and other directors and executive officers of the Company, see "Beneficial Ownership of Shares" herein.

In addition, Mr. Charney has informed the Company that he intends to vote in favor of Proposals 1, 2, 3, 4, 6, 7, 8 and 9 and, for the frequency of holding on advisory vote on executive compensation once every three years for Proposal 5, and his vote is sufficient to approve such proposals without further affirmative votes from the other stockholders.

**Q: How will voting on any other business be conducted?**

A: Although we do not know of any business to be considered at the Annual Meeting other than the proposals described in this Proxy Statement, if any other business is presented at the Annual Meeting, your signed proxy or your authenticated Internet or telephone proxy, will give authority to each of Dov Charney, our Chairman and Chief Executive Officer, Thomas M. Casey, our Acting President, John J. Luttrell, our Executive Vice President and Chief Financial Officer, and Glenn A. Weinman, our Senior Vice President, General Counsel and Secretary, to vote on such matters at his discretion.

**Q: What is the deadline to propose actions for consideration at next year's annual meeting of stockholders or to nominate individuals to serve as directors?**

A: You may submit proposals, including director nominations, for consideration at future stockholder meetings as follows:  
Stockholder Proposals: For a stockholder proposal to be considered for inclusion in the Company's proxy statement for the 2012 Annual Meeting of Stockholders, the written proposal must be delivered to or mailed and received by the Secretary of the Company at our principal executive offices no later than January 21, 2012. If the date of the 2012 Annual Meeting of Stockholders is moved more than 30 days before or after the anniversary date of the Annual Meeting, the deadline for inclusion of proposals in our proxy statement instead will be a reasonable time before we begin to print and mail our proxy materials. Such proposals also will need to comply with Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), regarding the inclusion of stockholder proposals in company-sponsored proxy materials. Proposals should be addressed to:

American Apparel, Inc.

Attn: Glenn A. Weinman, Secretary

747 Warehouse Street

Los Angeles, California 90021

(213) 488-0226

For a stockholder proposal that is not intended to be included in the Company's proxy statement for the 2012 Annual Meeting of Stockholders under Rule 14a-8 under the Exchange Act, written notice of the proposal, which notice must include the information required by the Company's bylaws (the "Bylaws"), must be received by the Company's Secretary:

Not earlier than the close of business on the 90th day prior to the 2012 Annual Meeting of Stockholders; and

Not later than the close of business on the 60th day prior to the 2012 Annual Meeting of Stockholders.

## Edgar Filing: AMERICAN APPAREL, INC - Form DEF 14A

If less than 70 days notice or prior public disclosure of the date of the 2012 Annual Meeting of Stockholders is given or made to stockholders, then notice of a stockholder proposal that is not intended to be included in the Company's proxy statement under Rule 14a-8 under the Exchange Act must be received no later than the close of business on the tenth day following the date on which notice of the date of the 2012 Annual

**Table of Contents**

Meeting of Stockholders is mailed to the stockholders or the date on which public disclosure of the date of the 2012 Annual Meeting of Stockholders is made, whichever is first.

Nomination of Director Candidates: You may propose director candidates for consideration by the Board's Nominating and Corporate Governance Committee or you may nominate director candidates directly at an annual meeting in accordance with the procedures set forth in the Bylaws, as summarized under the caption "Corporate Governance and Board Matters - Consideration of Director Nominees - Stockholder Nominees" herein.

Copy of Bylaw Provisions: You may contact the Company's Secretary at our principal executive offices for a copy of the relevant Bylaw provisions regarding the requirements for making stockholder proposals and nominating director candidates.

**Q: How is the Company soliciting proxies for the Annual Meeting?**

A: This solicitation is made by mail on behalf of the Board of Directors. Costs of the solicitation will be borne by the Company. Further solicitation of proxies may be made by telephone, facsimile or personal interview by the directors, officers and employees of the Company and its affiliates, who will not receive additional compensation for the solicitation. The Company will reimburse banks, brokerage firms and other custodians, nominees and fiduciaries for reasonable expenses incurred by them in forwarding proxy materials to stockholders.

**Q: How can I find the voting results of the Annual Meeting?**

A: We intend to announce preliminary voting results at the Annual Meeting and will publish final results in our Current Report on Form 8-K within four business days after the Annual Meeting.

**Q: How may I communicate with the Company's Board or the non-management directors on the Company's Board?**

A: You may communicate with the Board by submitting an e-mail to the Company's Board at [bod@americanapparel.net](mailto:bod@americanapparel.net). All directors have access to this e-mail address.

**Table of Contents**

**PROPOSAL 1: ELECTION OF CLASS A DIRECTORS**

Pursuant to the Company's Amended and Restated Certificate of Incorporation, the Board of Directors is divided into three classes of directors serving staggered terms (Classes A, B and C). One class of directors is elected at each annual meeting of stockholders for a three-year term, and those directors will hold office until their successors have been duly elected and qualified, or until their earlier death, resignation or removal. The Bylaws authorize a Board of Directors consisting of not less than one or more than nine directors. The Board of Directors currently consists of six members: Messrs. Dov Charney, Robert Greene, Adrian Kowalewski, Allan Mayer, Mark Samson and Mark A. Thornton. We currently have three vacancies on the Board of Directors. See "Directors and Executive Officers" herein.

The terms of Messrs. Greene and Mayer will expire at the Annual Meeting. After careful consideration of the specific experience, qualifications, attributes and skills of each director and director nominee, the Board has nominated Robert Greene and Allan Mayer (the "Class A Nominees") for reelection at the Annual Meeting. Messrs. Greene and Mayer currently meet the criteria to qualify as independent directors according to SEC regulations and NYSE Amex listing standards. As previously announced, Keith Miller resigned from the Board of Directors on May 2, 2011 and the Company has decided not to appoint an additional Class A director at this time.

If elected, each of the Class A Nominees will serve for a term of three years and until his successor is duly elected and qualified at the 2014 Annual Meeting of Stockholders, or such director's earlier death, resignation or removal.

Each of the Class A Nominees has consented to being named in this Proxy Statement and has agreed to serve as a member of the Board of Directors if elected. If any of the Class A Nominees is unable to serve, which is not anticipated, the persons named as proxies intend to vote for such other person or persons as the Board of Directors may designate in accordance with the Investment Agreement and the 2009 Investment Voting Agreement (as defined below). In no event will the shares represented by the proxies be voted for more than two nominees for Class A directors at the Annual Meeting.

The names and certain information concerning each of the Class A Nominee's experience, qualifications, attributes and skills are set forth below, and the names and certain information regarding the continuing directors whose terms expire in 2012 and 2013 are set forth under the heading "Directors and Executive Officers" herein.

**Robert Greene** became a director of American Apparel upon consummation of the Acquisition (as defined under "Corporate Governance and Board Matters" below) on December 12, 2007. Mr. Greene is a bestselling author known for his books on business strategy. Since 2003, Mr. Greene has worked as a private consultant to several executives in businesses ranging from financial management to artists' agencies and film producers. He has written four books: *The 48 Laws of Power* (1998, over 900,000 copies sold in the U.S., and translated into 21 languages); *The Art of Seduction* (2001); *The 33 Strategies of War* (2006); and *The 50th Law* (2009). He has worked in New York City as an editor and writer for several magazines, including *Esquire*, and in Hollywood as a story developer and writer. He has previously resided in London, England; Paris, France; and Barcelona, Spain; he speaks several languages and has worked as a translator. Mr. Greene attended the University of California, Berkeley and the University of Wisconsin-Madison, where he received a B.A. in classical studies. The Nominating and Corporate Governance Committee and the Board of Directors believes that Mr. Greene's experience as a consultant and his research on business strategy, combined with the leadership skills and experiences of the Company's other Board members, provides the Company with the perspectives and judgment necessary to guide the Company's strategy and monitor execution.

**Allan Mayer** became a director of American Apparel upon consummation of the Acquisition on December 12, 2007. Since October 2006, he has been a principal partner, member of the management committee, and head of the Strategic Communications Division of 42 West LLC, a leading public relations firm. Previously,

## **Table of Contents**

from 1997 until October 2006, Mr. Mayer was managing director and head of the entertainment practice at the nationally-known crisis communications firm Sitrick and Company. Mr. Mayer began his professional life as a journalist, working as a staff reporter for *The Wall Street Journal*; a writer, foreign correspondent and senior editor for *Newsweek*; and the founding editor (and later publisher) of *Buzz* magazine. He also served as editorial director of Arbor House Publishing Co. and senior editor of Simon & Schuster. Mr. Mayer has authored two books *Madam Prime Minister: Margaret Thatcher and Her Rise to Power* (Newsweek Books, 1980) and *Gaston's War* (Presidio Press, 1987) and is co-author, with Michael S. Sitrick, of *Spin: How To Turn The Power of the Press to Your Advantage* (Regnery, 1998). In addition, he has written for a wide variety of national publications, ranging from *The New York Times Magazine* to *Vogue*. Mr. Mayer is a recipient of numerous professional honors, including the National Magazine Award, the Overseas Press Club Citation of Excellence, and six William Allen White Awards. Mr. Mayer serves on the board of directors of Film Independent and lectures regularly on crisis management and communications at UCLA's Anderson School of Business and USC's Annenberg School of Communication. Mr. Mayer received his B.A. from Cornell University. The Nominating and Corporate Governance Committee and the Board of Directors believes that Mr. Mayer's experience as member of management of a leading public relations firm and in a leadership position as managing director of a nationally known crisis communications firm, combined with the leadership skills and experiences of the Company's other Board members, provides the Company with the perspectives and judgment necessary to guide the Company's strategy and monitor execution.

## **Vote Required**

The Class A Nominees will be elected by a plurality of the votes cast at the Annual Meeting.

Dov Charney, the beneficial owner of approximately 54.3% of the outstanding shares of Common Stock and voting power of the Company as of the Record Date, has informed the Company that he intends to vote in favor of the election of Messrs. Greene and Mayer. Mr. Charney's vote is sufficient to elect Messrs. Greene and Mayer without further affirmative votes from the other stockholders. For more information on shares owned by Mr. Charney and other directors and executive officers of the Company, see "Beneficial Ownership of Shares" herein.

Any broker non-votes and any proxies marked "Withhold" with respect to the election of one or more directors will not count as votes cast with respect to the director or directors indicated and therefore will be disregarded for purposes of determining the outcome of the election of the Class A Nominees.

**A majority of the Board of Directors recommends a vote FOR each of the Class A Nominees.**



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**Table of Contents**

**PROPOSAL 2: RATIFICATION OF APPOINTMENT OF INDEPENDENT AUDITORS**

The Audit Committee has selected the firm of Marcum LLP (formerly Marcum & Kleigman LLP, Marcum ) to act as the Company's independent auditors for the fiscal year ending December 31, 2011, and recommends that the stockholders vote in favor of such appointment.

**Change in Accountants in 2009**

Effective April 3, 2009, the Audit Committee of the Board of Directors (the Audit Committee ) of the Company appointed Deloitte and Touche LLP ( Deloitte ) as the Company's independent registered public accounting firm for the year ending December 31, 2009, and dismissed Marcum as the Company's independent registered public accounting firm. On April 6, 2009, Deloitte accepted the engagement as the Company's independent registered public accounting firm for the fiscal year ending December 31, 2009. Except as described below, Marcum did not perform any audit or review services for the Company subsequent to the issuance of its audit report dated March 16, 2009 (which was included in the Company's Annual Report on Form 10-K for the year ended December 31, 2008 ( 2008 Annual Report )), with respect to the Company's financial statements for the year ended December 31, 2008. As described below, the change in independent registered public accounting firms was not the result of any disagreement with Marcum. During the years ended December 31, 2008 and December 31, 2007, and during the subsequent interim period from January 1, 2009 through April 3, 2009, the Company had no disagreements with Marcum on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure that, if not resolved to Marcum's satisfaction, would have caused Marcum to make reference to the subject matter thereof in connection with its report on the Company's consolidated financial statements for either of such years. Marcum's audit report dated March 16, 2009 (which was included in the 2008 Annual Report) on the Company's consolidated financial statements as of, and for the years ended, December 31, 2008 and December 31, 2007, did not contain an adverse opinion or a disclaimer of opinion, nor was it qualified or modified as to uncertainty, audit scope, or accounting principles.

During the years ended December 31, 2008 and December 31, 2007, and during the subsequent interim period from January 1, 2009 through April 3, 2009, there were no reportable events (as defined in Item 304(a)(1)(v) of Regulation S-K), except that (i) in Marcum's report dated March 16, 2009 (which was included in the 2008 Annual Report) on the Company's internal control over financial reporting as of December 31, 2008, Marcum expressed an adverse opinion on the effectiveness of the Company's internal control over financial reporting due to the existence of the material weaknesses identified and described in Management's Report on Internal Control Over Financial Reporting under Item 9A in the Annual Report on Form 10-K for the year ended December 31, 2008; and (ii) Marcum discussed with the Audit Committee the existence of the material weaknesses in the Company's internal control over financial reporting identified and described in Internal Control Over Financial Reporting under Item 9A in the Company's Annual Report on Form 10-K for the year ended December 31, 2007, filed with the SEC on March 17, 2008. In accordance with Item 304(a)(3) of Regulation S-K, the Company provided Marcum with a copy of the disclosures it made in the Company's Amendment No. 1 to Current Report on Form 8-K filed on April 10, 2009 (the April 2009 Current Report ) prior to the time the April 2009 Current Report was filed with the SEC. The Company requested that Marcum furnish a letter addressed to the SEC stating whether or not it agrees with the statements made herein. A copy of Marcum's letter dated April 10, 2009 was filed as Exhibit 16.1 to the April 2009 Current Report.

During the years ended December 31, 2008 and December 31, 2007, and during the subsequent interim period from January 1, 2009 through April 3, 2009, respectively, neither the Company nor anyone acting on its behalf has consulted with Deloitte on any of the matters or events set forth in Item 304(a)(2) of Regulation S-K.

**Change in Accountants in 2010**

Effective July 22, 2010, Deloitte resigned as the Company's independent registered public accounting firm. During the period from April 3, 2009 through July 22, 2010, the Company had no disagreements with Deloitte on

**Table of Contents**

any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure that, if not resolved to Deloitte's satisfaction, would have caused Deloitte to make reference to the subject matter thereof in connection with its report on the Company's consolidated financial statements for the year ended December 31, 2009.

Deloitte's audit report dated March 31, 2010 (which was included in the Annual Report) on the Company's consolidated financial statements as of, and for the year ended, December 31, 2009 did not contain an adverse opinion or a disclaimer of opinion, nor was it qualified or modified as to uncertainty, audit scope, or accounting principles.

During the period from April 3, 2009 through July 22, 2010, there were no reportable events (as defined in Item 304(a)(1)(v) of Regulation S-K), except that (i) in Deloitte's report dated March 31, 2010 (which was included in the Annual Report) on the Company's internal control over financial reporting as of December 31, 2009, Deloitte identified material weaknesses in internal control over financial reporting related to the control environment and to the financial closing and reporting process, which are further described under Item 9A in the Annual Report, and advised that the Company had not maintained effective internal control over financial reporting as of December 31, 2009; and (ii) Deloitte advised the Company that certain information had come to Deloitte's attention, that if further investigated may materially impact the reliability of either its previously issued audit report or the underlying consolidated financial statements for the year ended December 31, 2009 included in the Annual Report. Deloitte requested that the Company provide Deloitte with the additional information Deloitte believed was necessary to review before the Company and Deloitte could reach any conclusions as to the reliability of the previously issued consolidated financial statements for the year ended December 31, 2009 and auditors' report thereon. On December 15, 2010, the Audit Committee of the Company received notice from Deloitte stating that Deloitte had concluded that Deloitte's report on the Company's previously issued consolidated financial statements as of and for the year ended December 31, 2009, including Deloitte's report on internal control over financial reporting at December 31, 2009, included in the Company's Annual Report on Form 10-K for the year ended December 31, 2009, should not be relied on or associated with the Company's consolidated financial statements as of and for the year ended December 31, 2009. The Audit Committee of the Board of Directors of the Company discussed each of these matters with Deloitte. The Company authorized Deloitte to respond fully to the inquiries of the Company's successor accountants concerning each of these matters.

In accordance with Item 304(a)(3) of Regulation S-K, the Company provided Deloitte with a copy of the disclosures it made in the Company's Current Report on Form 8-K filed on July 28, 2010 (the July 2010 Current Report) prior to the time the July 2010 Current Report was filed with the SEC. The Company requested that Deloitte furnish a letter addressed to the SEC stating whether or not it agrees with the statements made herein. A copy of Deloitte's letter dated July 28, 2010 was filed as Exhibit 16.1 to the July 2010 Current Report.

On July 26, 2010, the Audit Committee engaged Marcum as the Company's independent auditors to audit the Company's financial statements. During the fiscal years ended December 31, 2008 and 2009, and the subsequent interim period from January 1, 2010 through July 26, 2010, the Company has not, and no one on the Company's behalf had, consulted with Marcum on any of the matters or events set forth in Item 304(a)(2) of Regulation S-K, except that (i) Marcum audited the Company's consolidated financial statements as of, an