

GREAT ATLANTIC & PACIFIC TEA CO INC
Form PRER14A
March 13, 2008

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

SCHEDULE 14A

**PROXY STATEMENT PURSUANT TO SECTION 14(a) OF THE SECURITIES
EXCHANGE ACT OF 1934 (AMENDMENT NO. 1)**

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 Section 240.14a-12.

The Great Atlantic & Pacific Tea Company, Inc.

(Name of Registrant as Specified In Its Charter)

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

Payment of Filing Fee (Check the appropriate box):

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

- (1) Title of each class of securities to which transaction applies:
 - (2) Aggregate number of securities to which transaction applies:
 - (3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (Set forth the amount on which the filing fee is calculated and state how it was determined):
 - (4) Proposed maximum aggregate value of transaction:
-

(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:

THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.

2 Paragon Drive
Montvale, New Jersey 07645

**NOTICE OF SPECIAL MEETING OF STOCKHOLDERS
TO BE HELD , 2008**

To the stockholders of THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.:

We will hold a Special Meeting of Stockholders (the *Special Meeting*) of The Great Atlantic & Pacific Tea Company, Inc., a Maryland corporation (the *Company* or *A&P*), at The Woodcliff Lake Hilton, 200 Tice Boulevard, Woodcliff Lake, New Jersey, on , , 2008, at 9:00 A.M. (E.S.T.), for the following purposes:

1. to consider and vote on a proposal to approve an amendment to the Company's charter in the form attached to the accompanying proxy statement as Appendix A and incorporated herein by reference to increase the total number of shares of common stock which the Company has authority to issue from 80,000,000 shares to 160,000,000 shares;
2. to consider and vote on a proposal to approve the

issuance of the Company's common stock pursuant to a net share settlement of the warrants described in the accompanying proxy statement;

3. to consider and vote on a proposal to approve the issuance of an additional 1,577,569 shares of the Company's common stock pursuant to the share lending agreements described in the accompanying proxy statement;
4. to consider and vote on a proposal to approve the adoption of the Company's 2008 Long Term Incentive and Share Award Plan;
5. to consider and vote on a proposal to adjourn or postpone the Special Meeting, if necessary, to solicit additional

proxies; and

6. to transact any other business as may properly come before the meeting and any adjournments or postponements thereof.

The board of directors has fixed , 2008 as the record date for this meeting. Only stockholders of record at the close of business on that date are entitled to receive notice and to vote at the meeting or at any adjournment or postponement thereof.

The affirmative vote of two-thirds of the outstanding shares of the Company s common stock entitled to vote on the matter is required to approve Proposal 1. The affirmative vote of a majority of the votes cast by holders of the Company s common stock at the Special Meeting is required to approve each of Proposals 2, 3 and 4, *provided* that the total votes cast must represent a majority of the outstanding shares of the Company s common stock entitled to vote on each such proposal. The adoption of Proposal 5 requires the affirmative vote of a majority of shares of the Company s common stock represented in person or by proxy at the Special Meeting and entitled to vote on the record date, regardless of whether a quorum is present.

Whether or not you plan to attend the meeting, please either complete, sign and return the accompanying proxy card to the Company in the enclosed envelope, which requires no postage if mailed in the United States, or use the Internet or telephone proxy authorization options detailed on the proxy card. If you hold your shares through a bank, brokerage firm or nominee, you should follow the instructions of your bank, brokerage firm or nominee regarding voting your shares.

By Order of the Board of Directors

Allan Richards
*Senior Vice President, Human Resources,
Labor Relations, Legal Services & Secretary*

, 2008

Important Notice Regarding the Availability of Proxy Materials for the Stockholder Meeting to Be Held on , 2008. The proxy statement is available at www.aptea.com/investors.asp.

You are cordially invited to attend the meeting. Whether or not you plan to do so, your vote is important. Please promptly submit your proxy by mail, telephone or the Internet.

THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.

2 Paragon Drive
Montvale, New Jersey 07645

PROXY STATEMENT

TABLE OF CONTENTS

	Page
<u>SOLICITATION AND REVOCATION OF PROXIES</u>	1
<u>VOTING AT MEETING</u>	1
<u>ACQUISITION OF PATHMARK AND RELATED TRANSACTIONS</u>	4
<u>AMENDMENT OF THE COMPANY S CHARTER TO INCREASE THE NUMBER OF AUTHORIZED SHARES OF COMMON STOCK (PROPOSAL 1)</u>	7
<u>APPROVAL OF THE COMPANY S SHARE ISSUANCE PURSUANT TO A NET SHARE SETTLEMENT OF THE WARRANTS (PROPOSAL 2)</u>	8
<u>APPROVAL OF THE ISSUANCE OF AN ADDITIONAL 1,577,569 SHARES OF THE COMPANY S COMMON STOCK PURSUANT TO THE SHARE LENDING AGREEMENTS (PROPOSAL 3)</u>	9
<u>APPROVAL OF THE ADOPTION OF THE COMPANY S 2008 LONG TERM INCENTIVE AND SHARE AWARD PLAN (PROPOSAL 4)</u>	11
<u>APPROVAL OF THE ADJOURNMENT OR POSTPONEMENT OF THE SPECIAL MEETING (PROPOSAL 5)</u>	15
<u>BENEFICIAL OWNERSHIP OF SECURITIES</u>	16
<u>DESCRIPTION OF THE COMPANY S CAPITAL STOCK</u>	20
<u>STOCKHOLDER PROPOSALS</u>	21
<u>OTHER MATTERS</u>	21
<u>APPENDIX</u>	
<u>A</u>	FORM OF CHARTER AMENDMENT AUTHORIZED SHARES A-1
<u>APPENDIX</u>	
<u>B</u>	THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC. 2008 LONG TERM INCENTIVE AND SHARE AWARD PLAN B-1
<u>APPENDIX</u>	
<u>C</u>	EXECUTIVE AND DIRECTOR COMPENSATION C-1

SOLICITATION AND REVOCATION OF PROXIES

This proxy statement is furnished by the board of directors of The Great Atlantic & Pacific Tea Company, Inc. (the *Company* or *A&P*) for use at the Company's Special Meeting of Stockholders to be held on , 2008 (the *Special Meeting*). It is expected that the solicitation of proxies will be primarily by mail. Proxies may also be solicited personally by regular employees of the Company, by telephone or by other means of communication at nominal cost. The Company will bear the cost of such solicitation. It will reimburse banks, brokers and trustees, or their nominees, for reasonable expenses incurred by them in forwarding proxy material to beneficial owners of stock in accordance with the New York Stock Exchange (*NYSE*) schedule of charges. Any stockholder giving a proxy has the power to revoke it at any time prior to its exercise by giving notice in writing to the Secretary, at the address above, or by casting a ballot at the meeting in person or by proxy. This proxy statement is first being mailed to stockholders on or about , 2008.

The Company has retained MacKenzie Partners, Inc. to assist in the solicitation of proxies for the meeting and to verify the records relating to the solicitations. MacKenzie Partners, Inc. will receive reasonable and customary compensation for its services (estimated at \$25,000) and will be reimbursed for certain reasonable out-of-pocket expenses and other customary costs.

VOTING AT MEETING

Record Date; Required Votes

The Company's board of directors has fixed the close of business on , 2008 as the record date for determining the holders of the Company's common stock entitled to notice of, and to vote at, the Special Meeting. Only holders of record of the Company's common stock at the close of business on the record date will be entitled to notice of, and to vote at, the Special Meeting or any adjournment or postponement of the Special Meeting. There are no appraisal or dissenter's rights with respect to any matter to be voted on at the Special Meeting.

As of the record date, [57,075,869] shares of the Company's common stock were issued and outstanding and entitled to vote at the Special Meeting and there were approximately [5,702] holders of record of the Company's common stock. Each share of common stock entitles the holder to one vote on each matter to be considered at the Special Meeting. If you are a record holder of the Company's common stock, you may vote your shares of the Company's common stock in person at the Special Meeting or by proxy as described below under Voting by Proxy; Revocation of Proxies.

The presence in person or by proxy at the Special Meeting of the holders of at least a majority of the outstanding shares of the Company's common stock entitled to vote at the meeting will constitute a quorum for the Special Meeting. Properly signed proxies that are marked *abstain* are known as abstentions. Abstentions will be counted for the purpose of determining whether a quorum exists at the Special Meeting.

Under the Maryland General Corporation Law (the *MGCL*), Proposal 1, to amend the Company's charter, requires the affirmative vote of two-thirds of the outstanding shares of the Company's common stock. Therefore, a stockholder's failure to vote, a broker nonvote or an abstention will have the same effect as a vote *AGAINST* approval of the amendment to the Company's charter.

Proposal 2, the proposal to approve the issuance of the Company's common stock pursuant to a net share settlement of the warrants issued in connection with the Financing (as defined below), requires the affirmative vote of a majority of all votes cast by the holders of common stock at a meeting at which a quorum is present, *provided* that the rules and regulations of the NYSE (the *NYSE Rules*) further require that the total votes cast on the proposal represent at least a majority of the outstanding shares of the Company's common stock entitled to vote on the proposal. Because approval is based on the affirmative vote of a majority of votes cast, a stockholder's failure to vote will not affect the outcome of the vote on the proposal, assuming a majority of the outstanding shares are voted on the proposal. Because the NYSE

treats abstentions as votes cast with respect to Proposal 2, an abstention will have the same effect as a vote AGAINST this proposal.

Proposal 3, the proposal to approve the issuance of an additional 1,577,569 shares of the Company's common stock pursuant to the share lending agreements, requires the affirmative vote of a majority of all votes cast by the holders of common stock at a meeting at which a quorum is present, *provided* that the NYSE Rules further require that the total votes cast on the proposal represent at least a majority of the outstanding shares of the Company's common stock entitled to vote on the proposal. Because approval is based on the affirmative vote of a majority of votes cast, a stockholder's failure to vote will not affect the outcome of the vote on the proposal, assuming a majority of the outstanding shares are voted on the proposal. Because the NYSE treats abstentions as votes cast with respect to Proposal 3, an abstention will have the same effect as a vote **AGAINST** this proposal.

Proposal 4, the proposal to approve the adoption of the Company's 2008 Long Term Incentive and Share Award Plan, requires the affirmative vote of a majority of all votes cast by the holders of common stock at a meeting at which a quorum is present, *provided* that the NYSE Rules further require that the total votes cast on the proposal represent at least a majority of the outstanding shares of the Company's common stock entitled to vote on the proposal. Because approval is based on the affirmative vote of a majority of votes cast, a stockholder's failure to vote will not affect the outcome of the vote on the proposal, assuming a majority of the outstanding shares are voted on the proposal. Because the NYSE treats abstentions as votes cast with respect to Proposal 4, an abstention will have the same effect as a vote **AGAINST** this proposal.

Proposal 5, the proposal to adjourn or postpone the Special Meeting, if necessary, to solicit additional proxies, requires the affirmative vote of a majority of the votes cast by the holders of the Company's common stock at the Special Meeting.

Acting upon any procedural matters submitted to the stockholders at the Special Meeting will require the affirmative vote of a majority of the votes cast by the holders of the Company's common stock with respect to such proposal.

The Company does not expect that any matter other than the proposals listed above will be brought before the Special Meeting. If, however, other matters are properly brought before the Special Meeting, or any adjournment of the Special Meeting, the persons named as proxies will vote in accordance with their discretion.

Voting by Proxy; Revocation of Proxies

Each copy of this proxy statement mailed to the Company's stockholders is accompanied by a form of proxy and a self-addressed postage prepaid envelope.

If you are a registered stockholder (that is, if you hold your common stock in certificate form or are named as the record holder of such common stock on the stock transfer books of the Company), you should either complete and return the proxy card accompanying this proxy statement, or authorize a proxy by telephone, through the Internet or by any other electronic means by following the instructions included with your proxy card, in each case, to ensure that your vote is counted at the Special Meeting, or at any adjournment or postponement thereof, regardless of whether you plan to attend the Special Meeting.

If you hold your shares through a bank, brokerage firm or nominee, you should follow the separate voting instructions, if any, provided by the bank, brokerage firm or nominee with this proxy statement. Your bank, brokerage firm or nominee may permit proxy authorization through the Internet or by telephone. Please contact your bank, brokerage firm or nominee to determine how to vote your proxy.

You can revoke your proxy at any time before the vote is taken at the Special Meeting. If you have not voted through your bank, brokerage firm or nominee, you may revoke your proxy before the proxy is voted by:

delivering
a written
notice of
revocation
of proxy,
which is
dated a
later date
than the
initial
proxy, to
the
Company's
Secretary;

delivering
a duly
executed
proxy
bearing a
later date
than the
initial
proxy;

authorizing
a new
proxy by
telephone
or through
the Internet
at a later
time, but
not later
than 11:59
P.M.
(Eastern
Standard
Time) on ,
2008 or the
day before
the meeting
date if the
Special
Meeting is
adjourned
or
postponed;
or

voting in
person at
the Special
Meeting;
however,
simply
attending
the Special
Meeting
without
voting will
not revoke
an earlier
proxy.

To submit a written notice of revocation or other communications about revoking your proxy with respect to your shares of the Company's common stock, or to request a new proxy card, you should contact:

The Great Atlantic & Pacific Tea Company, Inc.
Two Paragon Drive
Montvale, New Jersey 07645
Telephone: (201) 573-9700
Attention: Secretary

If your shares of common stock are held in street name, you should follow the instructions of your bank, brokerage firm or nominee regarding the revocation of proxies. If your bank, brokerage firm or nominee allows you to authorize

a proxy by telephone or through the Internet, you may be able to change your vote by submitting a proxy again by telephone or through the Internet.

All shares represented by valid proxies received through this solicitation, and not revoked, will be voted in accordance with your instructions on the proxy card. If you authorize a proxy by telephone or through the Internet, your shares will be voted at the Special Meeting as instructed.

If you sign and return your proxy card for your shares of the Company's common stock without specifying on the proxy card, as to one or more proposals, how you want your shares of the Company's common stock voted, your proxy will be voted (1) FOR Proposal 1, the proposal to amend the Company's charter to increase the number of authorized shares of common stock, if you do not specify a vote FOR or AGAINST that proposal; (2) FOR Proposal 2, the proposal to approve the issuance of the Company's common stock pursuant to a net share settlement of the warrants issued in connection with the Financing, if you do not specify a vote FOR or AGAINST that proposal; (3) FOR Proposal 3, the proposal to approve the issuance of an additional 1,577,569 shares of the Company's common stock pursuant to the share lending agreements, if you do not specify a vote FOR or AGAINST that proposal; (4) FOR Proposal 4, the proposal to approve the adoption of the Company's 2008 Long Term Incentive and Share Award Plan, if you do not specify a vote FOR or AGAINST that proposal; and (5) FOR Proposal 5, the proposal to adjourn or postpone the Special Meeting, if necessary, to solicit additional proxies, if you do not specify a vote FOR or AGAINST that proposal. We intend, with respect to any procedural matters submitted to the stockholders at the Special Meeting, that the shares represented by properly submitted proxies will be voted, or not voted, by and at the discretion of the persons named as proxies on the proxy card.

Effects of Abstentions

Absent specific instructions from the beneficial owner of shares, brokers may not vote shares of the Company's common stock with respect to the proposal to amend the Company's charter to increase the number of authorized shares of common stock, the proposal to approve the issuance of the Company's common stock pursuant to a net share settlement of the warrants issued in connection with the Financing, the proposal to approve the issuance of the Company's common stock pursuant to the share lending agreements, the adoption of the Company's 2008 Long Term Incentive and Share Award Plan, the adjournment or postponement of the Special Meeting or any other matters that may properly come before the Special Meeting.

Proposal 1, the proposal to amend the Company's charter, requires the affirmative vote of two-thirds of the outstanding shares of the Company's common stock. Therefore, an abstention will have the same effect as a vote AGAINST approval of the amendment to the Company's charter.

Because the NYSE treats abstentions as votes cast with respect to (i) Proposal 2, the proposal to approve the issuance of the Company's common stock pursuant to a net share settlement of the

warrants issued in connection with the Financing, (ii) Proposal 3, the proposal to approve the issuance of an additional 1,577,569 shares of the Company's common stock pursuant to the share lending agreements and (iii) Proposal 4, the proposal to approve the adoption of the Company's 2008 Long Term Incentive and Share Award Plan, an abstention will have the same effect as a vote AGAINST these proposals.

Because the MGCL does not treat abstentions as votes cast with respect to Proposal 5, the proposal to adjourn or postpone the Special Meeting, if necessary, to solicit additional proxies, an abstention will have no effect on the outcome of the vote on that proposal.

Adjournments and Postponements

Although it is not expected, the Special Meeting may be adjourned or postponed for the purpose of soliciting additional proxies or for any other reason. The MGCL provides that if the Special Meeting is convened on the date for which it was called, any adjournment may be made from time to time to a date not more than 120 days after the original record date without further notice. The Company's bylaws further state that if there is no quorum present at the Special Meeting, the holders of a majority of the outstanding shares of voting stock present in person or represented by proxy at the Special Meeting may adjourn the meeting from time to time, without notice other than an announcement made at the Special Meeting, until the requisite amount of voting stock shall be present. Any signed proxies received by the Company which are otherwise silent on the matter will be voted in favor of an adjournment in these circumstances. Any adjournment of the Special Meeting will allow the Company's stockholders who have already sent in their revocable proxies to revoke them at any time prior to their use.

ACQUISITION OF PATHMARK AND RELATED TRANSACTIONS

The Acquisition and Related Transactions

On March 4, 2007, the Company entered into an Agreement and Plan of Merger (the *Merger Agreement*) providing for the Company's acquisition (the *Acquisition*) of Pathmark Stores, Inc. (*Pathmark*). Also on March 4, 2007, the Company entered into a financing commitment letter with Banc of America Securities LLC (*BAS*), Lehman Brothers Inc. (*Lehman*), and related entities, who committed to provide financing to fund a portion of the cash consideration payable to the Pathmark stockholders in the Acquisition and to finance working capital needs upon consummation of the Acquisition. The financing commitments provided for a \$615.0 million senior secured revolving credit facility (the *ABL Facility*) to finance the working capital of the Company and certain of its subsidiaries (including Pathmark) upon consummation of the merger and (ii) up to \$780.0 million of senior secured loans (the *Bridge Facility*) as bridge or interim financing, which the Company anticipated refinancing with senior secured notes which could have been issued by A&P and/or certain of its subsidiaries.

As the Company previously disclosed on November 5, 2007, the Company determined that selling its shares of Metro Inc. and applying the proceeds of the sale, together with borrowings under a reduced Bridge Facility, should provide a lower anticipated total amount of indebtedness upon closing the Acquisition and lower the Company's anticipated post-Acquisition interest expense. Because the March 4, 2007, financing commitment letter provided that the Company would retain its shares of Metro, Inc., the Company obtained necessary waivers to facilitate this financing structure, subject to the sale of the Metro shares. Also as disclosed, the Company expected that any amounts borrowed under the Bridge Facility to close the Acquisition would be refinanced shortly thereafter with the proceeds of an offering of senior secured notes, a convertible debt offering, or a combination thereof.

On November 8, 2007, stockholders of the Company approved the issuance of the Company's common stock in connection with the Acquisition. On November 26, 2007, the Company sold all of its 11,726,645 shares of Metro Inc. for gross proceeds of approximately \$347 million. At the closing of the Acquisition on December 3, 2007, the Company entered into the ABL Facility and the

Bridge Facility to provide financing for a portion of the cash consideration in the Acquisition and to provide for working capital.

In mid-December 2007, the Company entered into a number of transactions related to the financing of the Acquisition and refinancing of the Bridge Facility (the *Financing*) including:

the issuance
of \$420
million
aggregate
principal
amount of
senior notes
convertible
into the
Company's
common
stock (the
Notes);

the entry into
convertible
note hedge
and warrant
transactions;
and

the entry into
share lending
agreements
pursuant to
which the
affiliates of
the
underwriters
of the Notes
offering (the
*Share
Borrowers*)
may borrow
and sell from
time to time
shares of the
Company's
common
stock.

The Company determined to pursue an offering of convertible notes based on its understanding of the credit markets at the time of refinancing the Bridge Facility in mid-December 2007 and based on its belief that it could issue convertible notes, despite any potential dilution of the Company's common stock that could occur upon conversion, on terms that would be more favorable to the Company than could be obtained through refinancing the Bridge Facility

with an issue of senior secured notes, including lower interest rates, the absence of collateral requirements and relatively fewer covenant restrictions on the Company's ongoing business. At the same time, based on its understanding of the liquidity for the Company's common stock that convertible note investors would require in order for the Company to consummate a convertible note offering and to do so on favorable terms, the Company entered into share lending agreements with affiliates of BAS and Lehman, the underwriters of the convertible notes, so that an adequate amount of shares would be available to support the hedging typically desired by convertible note investors. In order to limit the potential dilution that could occur upon conversion of the convertible notes, the Company entered into the hedge and warrant transactions with affiliates of BAS and Lehman.

The Company is seeking stockholder approval at this time for Proposal 1, the proposal to amend the Company's charter to increase the number of authorized shares of common stock, for Proposal 2, the proposal to approve the issuance of the Company's common stock pursuant to a net share settlement of the warrants issued in connection with the Financing and for Proposal 3, the proposal to approve the issuance of an additional 1,577,569 shares of the Company's common stock pursuant to the share lending agreements because the company had not finally determined the terms of any permanent refinancing of the Bridge Facility until after the shareholder vote approving the Acquisition and after the closing of the Acquisition.

As of the record date, [57,075,869] shares of the Company's common stock were issued and outstanding, 6,000,000 shares were reserved for issuance under the Company's equity compensation plans, 12,309,513 shares were reserved for issuance upon exercise of warrants assumed and the rollover warrants issued in connection with the Acquisition, and 3,144,986 shares were reserved for issuance under the share lending agreements, for a total of [78,530,368] shares of the Company's common stock issued or reserved for issuance as of the record date out of the 80,000,000 shares authorized for issuance under the Company's charter.

As described below, the Company has agreed to reserve 11,278,988 shares of its common stock for issuance upon conversion of the Notes and 13,534,786 shares of its common stock in connection with the warrants issued in connection with the Financing. Therefore, as described below, in order to satisfy its obligations under the agreements governing the transactions related to the Financing and to provide the Company with the flexibility to issue shares of its common stock for other appropriate purposes, the Company is requesting that its stockholders approve an amendment to the Company's charter to increase the number of shares of common stock that the Company is authorized to issue; to approve the issuance of shares of the Company's common stock pursuant to a net share settlement of the warrants; and to approve the issuance of an additional 1,833,250 shares of the Company's common stock for borrowing pursuant to the share lending agreements.

The Notes and Conversion into Shares of Common Stock; Dilution

The following is a description of the terms of the Notes that were issued in December 2007. The Notes were issued under an indenture and supplemental indentures, each of which has been filed with the SEC and is available on the SEC's website at <http://www.sec.gov>. Stockholders and investors are encouraged to read the indenture and supplemental indentures because they, and not this summary, govern the Notes.

The Notes consist of \$165 million aggregate principal amount of 5.125% Convertible Senior Notes due 2011 (the *2011 notes*) and \$255 million aggregate principal amount of 6.75% Convertible Senior Notes due 2012 (the *2012 notes*). The Notes are the Company's general unsecured obligations and rank equally in right of payment with all of the Company's other existing and future obligations that are unsecured and unsubordinated. The Notes are effectively subordinated to all of the Company's existing and future secured debt to the extent of the assets securing such indebtedness and, because the Notes are not guaranteed, are structurally subordinated to the indebtedness and other liabilities of the Company's subsidiaries, including subsidiary guarantees of the Company's ABL credit facility. The 2011 notes mature on June 15, 2011 unless earlier converted or repurchased. The 2012 notes mature on December 15, 2012 unless earlier converted, redeemed or repurchased.

Holders of the Notes may convert their (i) 2011 notes based on a conversion rate of 27.4725 shares of the Company's common stock per \$1,000 principal amount of 2011 notes (equal to an initial conversion price of approximately \$36.40 per share) and (ii) 2012 notes based on a conversion rate of 26.4550 shares of the Company's common stock per \$1,000 principal amount of 2012 notes (equal to an initial conversion price of approximately \$37.80 per share), which the Company will settle as described in the next paragraph, in the following circumstances:

during any
fiscal quarter
commencing
after the fiscal
quarter ending
June 14, 2008
(and only
during any such
fiscal quarter),
if the closing
price of the
Company's
common stock
on at least 20
trading days in
the period of 30
consecutive
trading days
ending on the
last trading day
of the preceding
fiscal quarter is
more than
130% of the
conversion
price on such
last trading day;

if the Company has called the 2012 notes for redemption, at any time prior to the close of business one business day prior to the redemption date for such notes;

upon the occurrence of certain corporate transactions such as (i) distribution to all or substantially all of the Company's common stock holders of rights or warrants to purchase common stock at less than the then current market price; (ii) distribution to all or substantially all of the Company's common stock holders of assets, debt securities or rights to purchase the Company's common stock which distribution has a per-share value exceeding 10% of the

then-current
market price of
the Company's
common stock;
or (iii) certain
fundamental
change
transactions,
such as a
change of
control of the
Company;

during the five
trading day
period
following any
five
consecutive
trading day
period in which
the trading
price of the
notes for each
day of such
period was less
than 98% of the
closing price of
the Company's
common stock
multiplied by
the
then-applicable
conversion rate
on each day in
the five
consecutive
trading day
period; or

at any time on
or after March
15, 2011 for the
2011 notes or
September 15,
2012 for the
2012 notes until
the close of
business on the
business day
preceding the

respective
stated
maturities.

The Notes provide for anti-dilution adjustments of the conversion rates in the event of stock or other dividends or distributions on the Company's common stock; distribution of rights, warrants or options to all or substantially all holders of the Company's common stock and payments in connection with any tender offer or exchange offer for the Company's common stock.

Upon conversion of any Notes, the Company has the right to deliver shares of common stock, cash or a combination of cash and shares of common stock. If certain fundamental change transactions, such as a change of control of the Company, occur, conversion rate for any Notes

converted in connection with those fundamental changes will be increased by a number of additional shares of common stock specified in the indenture and supplemental indentures governing the Notes.

If all of the Notes were converted into shares of the Company's common stock, the Company would issue 11,278,988 shares of its common stock, or approximately 19.8% of the number of shares of the Company's common stock that were issued and outstanding as of the record date, which would lead to a decrease, or dilution, of the percentage of the Company's common stock held by stockholders prior to any such conversion. Issuing a significant number of shares of common stock upon conversion could lead to a decrease in the market price of the Company's common stock, depending on the market's perception of the relative value of discharging the corresponding debt obligation represented by the Notes being converted. The Company is not able to predict the net effect of any such conversion on the market price of the Company's common stock. Additionally, the Notes may only be converted under certain circumstances described above and because the conversion prices of the Notes are significantly higher than the current market price of the Company's common stock, the Company is not able to predict when or if the market price of the Company's common stock may increase to a level that would result in conversion by the Noteholders. Also, any such conversion would remain subject to the Company's right to settle the conversion by delivery of shares of common stock, cash or a combination of cash and shares of common stock and, in order to limit the potential dilution that could occur upon conversion of the convertible notes, the Company entered into the hedge and warrant transactions.

AMENDMENT OF THE COMPANY'S CHARTER TO INCREASE THE NUMBER OF AUTHORIZED SHARES OF COMMON STOCK (PROPOSAL 1)

The Company's stockholders are being asked to consider and vote on a proposal to approve an amendment to the Company's charter in the form attached to this proxy statement as Appendix A and incorporated herein by reference to increase the total number of shares of common stock which the Company has authority to issue from 80,000,000 shares to 160,000,000 shares. As described above, as of the record date a total of [78,530,368] shares of the Company's common stock were issued or reserved for issuance. If Proposals 1, 2, 3 and 4 are all approved, the Company plans to reserve an additional 11,278,988 shares of its common stock for issuance upon conversion of the Notes, 13,534,786 shares of its common stock in connection with the warrants issued in connection with the Financing and [9,700,000] shares of its common stock for issuance under the Company's 2008 Long Term Incentive and Share Award Plan, after which a total of [113,044,142] shares of the Company's common stock will have been issued or reserved for issuance.

The proposal to amend the Company's charter requires the affirmative vote of two-thirds of the outstanding shares of the Company's common stock. Therefore, a stockholder's failure to vote, a broker nonvote or an abstention will have the same effect as a vote AGAINST approval of the amendment to the Company's charter.

The Company's board of directors deems it advisable and in the best interests of the Company to increase the number of authorized shares of common stock in order to meet its current share reservation obligations and to ensure that there is a sufficient number of authorized shares available to provide the Company with flexibility to issue common stock for appropriate purposes in the future, including any possible equity financing transactions.

Additional authorized shares of common stock could be used in connection with an arrangement, such as a stockholder rights plan, that could have the effect of hindering or delaying a third party offer to acquire the Company or its common stock at a premium to market prices. However, the Company has no plans or proposals to adopt provisions or enter into arrangements that may have material anti-takeover consequences. The Company has no plans, proposals, or arrangements at this time, written or otherwise, to issue any of the additional authorized shares of common stock that are the subject of this proposal, other than as disclosed in this proxy statement in connection with a net share settlement under the warrants issued in connection with the financing, pursuant to the share lending agreements and potential future grants under the Company's 1998 Long Term Incentive Plan and 2008 Long Term Incentive Plan.

The Company has agreed, pursuant to the warrants described below, to seek stockholder approval to increase the number of authorized shares of common stock. If the Company's stockholders do not approve the proposal to amend the Company's charter to increase the number of authorized shares at or prior to its second annual meeting of stockholders following December 2007, then the number of shares of common stock subject to the warrants will automatically increase by 10% and the counterparties to the warrants will have the right to terminate the warrants. The number of shares of the Company's common stock subject to the warrants is 11,278,988, so an increase of 10% would result in 12,406,887 shares being subject to the warrants. If the Company's stockholders approve such proposal and additional shares of the Company's common stock are issued, then the market price of the Company's common stock may be adversely affected.

The Company's board of directors unanimously recommends that the Company's stockholders vote FOR the proposal to approve the amendment to the Company's charter.

APPROVAL OF THE COMPANY'S SHARE ISSUANCE PURSUANT TO A NET SHARE SETTLEMENT OF THE WARRANTS (PROPOSAL 2)

Convertible Note Hedge and Warrant Transactions

As described above, in connection with the Financing, in December 2007, the Company entered into convertible note hedge and warrant transactions designed to reduce the Company's exposure to potential dilution of its common stock upon any conversion of the Notes. The convertible note hedge transactions allow the Company to purchase from the counterparties thereto shares of the Company's common stock in connection with a conversion of the Notes, whereas the warrant transactions allow the counterparties thereto to require the Company to sell to them shares of the Company's common stock.

The warrants, as amended (the *Warrants*), provide that the default settlement method is cash settlement and limit the Company's ability to select a settlement method other than cash settlement until the Company has (a) (i) obtained stockholder approval to the extent required by the NYSE Rules to allow the issuance of the Company's common stock pursuant to a net share settlement of the Warrants or (ii) reasonably determined that such stockholder approval is not required pursuant to the NYSE Rules and (b) authorized and reserved a number of shares of common stock equal to the product of 1.2 multiplied by the aggregate number of shares, 11,278,988, of the Company's common stock issuable upon exercise of the Warrants, the product of which is 13,534,786 shares.

Subject to the adjustments described in the Warrants, the aggregate number of shares of the Company's common stock issuable upon exercise of the Warrants is 11,278,988. However, any settlement of the Warrants through the issuance of common stock would be required by the terms of the Warrants to be made by net share settlement. Therefore, the actual number of shares of the Company's common stock issuable pursuant to a net share settlement of the Warrants would equal the product of (i) the number of Warrants exercised and (ii) (A) the excess of the value weighted average price of the Company's common stock (as determined pursuant to the terms of the Warrants) over the strike price of such Warrants divided by (B) such value weighted average price. The Warrants have strike prices of \$46.20 per warrant for the Warrants relating to the 2011 notes and \$49.00 per warrant for the Warrants relating to the 2012 notes.

As an example of net share settlement, if 1000 Warrants relating to the 2011 notes are exercised in 2011 when they first become exercisable and the value weighted average price of the Company's common stock at that time is \$[30.00], then the number of shares of the Company's common stock issuable pursuant to a net share settlement would be equal the product of (i) the number of Warrants exercised (1000) and (ii) (A) the excess of the value weighted average price of the Company's common stock (\$[30.00]) over the strike price of such Warrants (\$46.20), in which case the excess is zero because the value weighted average price is less than the strike price, divided by (B) such value weighted average price (\$[30.00]). In comparison, if the value weighted average price of the Company's common stock at that time were (\$[50.00]), then the Company would issue [76] shares of common stock upon net share settlement in this example. As illustrated in this example, the Company could issue common stock pursuant to net

share settlement of the Warrants, if the

value weighted average price of the Company's common stock at the time is greater than the strike price of the relevant Warrants, which could cause the price of the Company's common stock to be less than it might otherwise be. As discussed above under "Acquisition of Pathmark and Related Transactions" The Acquisition and Related Transactions, the Company determined that by offering the Notes, the Company could obtain terms that would be more favorable to the Company, and to limit the potential dilution that could occur upon conversion of the convertible notes, the Company entered into the hedge and warrant transactions.

Stockholder Approval of Share Issuance in Connection with the Warrants

The Company's stockholders are being asked to consider and vote on a proposal to approve the issuance of the Company's common stock pursuant to a net share settlement of the Warrants.

Although not required by the MGCL, the Company believes that stockholder approval of the issuance of the Company's common stock pursuant to a net share settlement of the Warrants is required by the NYSE Rules. Such rules require the affirmative vote of the holders of a majority of shares of the Company's common stock cast on such proposal, in person or by proxy, *provided* that the total votes cast on the proposal represent at least a majority of the outstanding shares of the Company's common stock entitled to vote on the proposal. Because approval is based on the affirmative vote of a majority of votes cast, the failure of a stockholder to vote or a broker nonvote will not affect the outcome of the vote on the proposal, assuming a majority of the outstanding shares vote on the proposal. Because the NYSE treats abstentions as votes cast with respect to this stock issuance proposal, an abstention will have the same effect as a vote **AGAINST** this proposal. Abstentions and broker nonvotes will be counted for the purpose of determining whether a quorum exists at the Special Meeting.

The Company's board of directors deems it advisable and in the best interests of the Company for the Company's stockholders to approve the issuance of shares of the Company's common stock pursuant to a net share settlement of the Warrants to provide the Company with flexibility upon conversion of the Notes and under other circumstances in which the Warrants may be exercised.

The Warrants require the Company to use commercially reasonable efforts to obtain stockholder approval to the extent required by the NYSE Rules at a meeting of the Company's stockholders to be held not later than August 15, 2008 to allow the Company to issue shares of the Company's common stock pursuant to a net share settlement of the Warrants. If the Company's stockholders do not approve the proposal to approve the issuance of shares of the Company's common stock pursuant to a net share settlement of the Warrants, the Warrants will continue in effect, but the Company will not be able to use the net share settlement method upon exercise of the Warrants and will instead be required to use cash settlement. If the Company's stockholders approve such proposal and shares of the Company's common stock are issued pursuant to a net share settlement of the Warrants, then the market price of the Company's common stock may be adversely affected.

The Company's board of directors unanimously recommends that stockholders vote **FOR** the proposal to approve the issuance of shares of the Company's common stock pursuant to a net share settlement of the Warrants.

APPROVAL OF THE ISSUANCE OF AN ADDITIONAL 1,577,569 SHARES OF THE COMPANY'S COMMON STOCK PURSUANT TO THE SHARE LENDING AGREEMENTS (PROPOSAL 3)

Share Lending Agreements and Common Stock Offering

As described above, in connection with the Financing, in December 2007, the Company entered into share lending agreements, as amended (the *Share Lending Agreements*), pursuant to which the Company agreed to issue and lend up to 11,278,988 shares of common stock, subject to certain adjustments, to the Share Borrowers. Under the Share Lending Agreements, the Share Borrowers have offered and sold and may offer and sell the borrowed shares in registered public offerings and have used and may use the short position resulting from the sale of such shares to

facilitate the

establishment of hedge positions by investors in the Notes. Borrowed shares may also be used by the Share Borrowers for other purposes, including in connection with hedging the convertible note hedge and warrant transactions described above. The Share Borrowers have received and will receive all of the proceeds from the sale of the borrowed shares. The Company has not received and will not receive any of the proceeds from such sales, but has received and will receive a nominal lending fee from the Share Borrowers. Upon expiration of the loan availability period under the Share Lending Agreements, the Share Borrowers are required to return all shares borrowed thereunder, unless the Company agrees to settle in cash.

The Share Lending Agreements limit the number of shares of common stock that the Share Borrowers may borrow to an aggregate of 9,701,419 shares until such time as (i) the Company obtains stockholder approval to the extent required by the NYSE Rules to allow it to issue up to an aggregate of 11,278,988 shares of common stock pursuant to the Share Lending Agreements or (ii) the Company reasonably determines that such stockholder approval is not required pursuant to the NYSE Rules, or such lesser number that can be issued under the Share Lending Agreements without such stockholder approval.

As discussed above under *Acquisition of Pathmark and Related Transactions* The Acquisition and Related Transactions, the Company determined that by offering the Notes, which are convertible senior notes, in connection with the Financing, compared to an offering of senior secured notes, the Company could obtain terms that would be more favorable to the Company, despite any potential dilution of the Company's common stock upon conversion, including lower interest rates, the absence of collateral requirements and relatively fewer covenant restrictions on the Company's ongoing business. Also, based on the Company's understanding of the liquidity for the Company's common stock that convertible note investors would require in order for the Company to consummate a convertible note offering and to do so on favorable terms, the Company determined to enter into share lending agreements with affiliates of the underwriters of the convertible notes so that an adequate amount of shares would be available to support the hedging typically desired by convertible note investors. In order to limit the potential dilution that could occur upon conversion of the convertible notes, the Company entered into the hedge and warrant transactions.

There are potential risks associated with the Share Lending Agreements including the following. The issuance and sales of substantial amounts of common stock or other equity related securities including sales pursuant to the Share Lending Agreements, or the perception that such issuances and sales may occur, could adversely affect the market price of the Company's common stock. Additionally, the existence of the Share Lending Agreements and short positions established in connection with the sale of the Notes, as well as transactions by which investors in the Notes may hedge their investments in such Notes through short sales or privately negotiated derivative transactions, or other short sales of the Company's common stock could have the effect of causing the market price of the Company's common stock to be lower over the term of the Share Lending Agreements than it would have been had the Company not entered into the Share Lending Agreements.

Stockholder Approval of Share Issuance in Connection with the Share Lending Agreements

The Company's stockholders are being asked to consider and vote on a proposal to approve the issuance of the maximum number of shares of the Company's common stock that may be borrowed under the Share Lending Agreements.

Up to 9,701,419 shares may be issued under the Share Lending Agreements without stockholder approval. Although not required by the MGCL, the Company believes that stockholder approval of the issuance of an additional 1,577,569 shares of the Company's common stock pursuant to the Share Lending Agreements is required by the NYSE Rules. Such rules require the affirmative vote of the holders of a majority of shares of the Company's common stock cast on such proposal, in person or by proxy, *provided* that the total votes cast on the proposal represent at least a majority of the outstanding shares of the Company's common stock entitled to vote on the proposal. Because approval is based on the affirmative vote of a majority of votes cast, the failure of a stockholder to vote or a broker nonvote will not affect the outcome of the vote on the proposal, assuming a

majority of the outstanding shares vote on the proposal. Because the NYSE treats abstentions as votes cast with respect to this stock issuance proposal, an abstention will have the same effect as a vote AGAINST this proposal. Abstentions and broker nonvotes will be counted for the purpose of determining whether a quorum exists at the Special Meeting.

The Company's board of directors deems it advisable and in the best interests of the Company for the Company's stockholders to approve the issuance of the maximum number of shares of the Company's common stock that may be borrowed under the Share Lending Agreements.

The Share Lending Agreements require the Company to use commercially reasonable efforts to obtain stockholder approval to the extent required by the NYSE Rules at a meeting of the Company's stockholders to be held not later than August 15, 2008 to allow the Company to issue up to an aggregate of 11,278,988 shares of common stock pursuant to the Share Lending Agreements. If the Company's stockholders do not approve the proposal to approve the issuance of an additional 1,577,569 shares of the Company's common stock pursuant to the Share Lending Agreements, the Share Lending Agreements will continue in effect, but the number of shares that may be borrowed under the Share Lending Agreements will continue to be limited to an aggregate of 9,701,419 shares until such stockholder approval is obtained or determined to be unnecessary. If the Company's stockholders approve such proposal and additional shares of the Company's common stock are issued pursuant to the Share Lending Agreements, then the market price of the Company's common stock may be adversely affected. In addition, if the Share Borrowers use the short position resulting from the sale of such shares to facilitate the establishment of hedge positions by investors in the Notes, then the market price of the Company's common stock may be adversely affected.

The Company's board of directors unanimously recommends that stockholders vote FOR the proposal to approve the issuance of shares of the Company's common stock pursuant to the Share Lending Agreements.

APPROVAL OF THE ADOPTION OF THE COMPANY'S 2008 LONG TERM INCENTIVE AND SHARE AWARD PLAN (PROPOSAL 4)

The Company's stockholders are being asked to consider and vote on a proposal to approve the adoption of the Company's 2008 Long Term Incentive and Share Award Plan (the *2008 Plan*). The 2008 Plan is intended to replace the expiring 1998 Long Term Incentive and Share Award Plan (the *1998 Plan*). The board of directors and management believe that the 2008 Plan, like the 1998 Plan, will help attract, retain and motivate employees and promote long-term growth and profitability by further aligning employee and stockholder interests. The board of directors, therefore, unanimously recommends that stockholders vote FOR the proposal to approve the 2008 Plan.

The adoption of this proposal requires the affirmative vote of the holders of a majority of shares of the Company's common stock cast on the proposal, in person or by proxy, *provided* that the total votes cast on the proposal represent at least a majority of the outstanding shares of the Company's common stock entitled to vote on the proposal. Because approval is based on the affirmative vote of a majority of votes cast, the failure of a stockholder to vote or a broker nonvote will not affect the outcome of the vote on the proposal, assuming a majority of the outstanding shares vote on the proposal. Because the NYSE treats abstentions as votes cast with respect to this proposal, an abstention will have the same effect as a vote AGAINST this proposal. Abstentions and broker nonvotes will be counted for the purpose of determining whether a quorum exists at the Special Meeting.

The 1998 Plan was approved by stockholders upon its inception and was most recently approved, as amended, by the stockholders on July 13, 2006. The 1998 Plan will by its terms expire on July 14, 2008. The 2008 Plan provides for the same types of awards and is otherwise similar to the 1998 Plan and is intended to replace the 1998 Plan. Upon approval by the stockholders of the 2008 Plan, no further awards will be made under the 1998 Plan.

A summary of the principal features of the 2008 Plan is provided below and is qualified in its entirety by reference to the actual 2008 Plan, a copy of which is included as Appendix B.

Additionally, information regarding compensation of directors and executive officers is provided in Appendix C, which is attached to and forms part of this proxy statement.

General. The 2008 Plan provides for the grant of Awards in the form of Stock Options, Stock Appreciation Rights (*SARs*), Restricted Shares, Restricted Share Units, Performance Shares, Performance Units, Dividend Equivalents, Other Share-Based Awards or any combination thereof. The total number of shares of common stock of the Company available for grant under the 2008 Plan is 8,000,000 shares plus the number of shares remaining available for grant under the 1998 Plan as of the effective date of the 2008 Plan (, 2008), subject to increases described in Adjustments below. Shares may consist, in whole or in part, of authorized and unissued shares, or shares acquired by the Company in the open market or in private transactions.

The 2008 Plan has been designed so that stock options, SARs and certain performance-based Awards under the 2008 Plan may comply with Section 162(m) of the Internal Revenue Code of 1986, as amended (the *Code*). Compliance with Section 162(m) of the Code enables awards under the 2008 Plan to qualify as performance-based compensation that is exempt from the provision of Section 162(m) disallowing a tax deduction to public companies for annual compensation in excess of \$1,000,000 paid to the Company's CEO and certain other highly compensated executives at fiscal year end.

Administration. The 2008 Plan is administered by the Human Resources & Compensation Committee of the board of directors, or such other committee designated by the board of directors (the *Committee*), which consists of two or more directors, each of whom is a non-employee director to the extent applicable under Rule 16b-3 under the Securities Exchange Act of 1934, as amended (the *Exchange Act*), and an outside director to the extent applicable under Section 162(m) of the Code; *provided, however*, that a failure to qualify as a non-employee director or outside director shall not in itself invalidate any Award made under the 2008 Plan. The Committee may make all decisions and determinations regarding the 2008 Plan as it may deem necessary or advisable. Subject to the terms of the 2008 Plan, the Committee is authorized to, among other things, determine the type(s) of Awards, the number of shares to which an Award may relate and the terms and conditions of the Awards; adopt or revise any rules and regulations as it may deem advisable to administer the 2008 Plan; accelerate the exercisability or vesting of any Award; and make all other decisions and determinations that may be required under the 2008 Plan. The Committee is currently comprised of Bobbie Gaunt, Chair, John Barline, Ed Lewis and Maureen Tart-Bezer.

Eligibility. The Committee has the discretion to grant Awards to any employee of the Company, or a subsidiary or an affiliate, including any employee who is a member of the board of directors. It is, however, the Committee's continuing intent that only management employees at or above store manager level are eligible. As of the date of this proxy statement, there are approximately eligible participants.

Number of Shares of Common Stock Available under the 2008 Plan. The number of shares of common stock reserved for grant under the 2008 Plan is 8,000,000 shares, plus any shares remaining available for grant under the 1998 Plan on the effective date of the 2008 Plan (, 2008) and as may be increased as described under Adjustments below. As of , 2008, [1,700,000] shares remained available for grant under the 1998 Plan. The Committee may not grant an Award under the 2008 Plan if the number of shares to which such Award relates, when added to the number of shares previously issued under the 2008 Plan, exceeds the total number of shares available for grant. Shares awarded under the 2008 Plan may be authorized and unissued shares.

Awards, Types and Applicable Provisions. Stock options may include nonstatutory stock options (*NSOs*) as well as incentive stock options (*ISOs*) intended to qualify for special tax treatment. The term of a stock option cannot exceed 10 years, and the exercise price of a stock option must be equal to or greater than the fair market value of the common stock on the date of grant.

Except for certain anti-dilution adjustments, the 2008 Plan prohibits (i) amendments to lower the exercise price of outstanding stock options or SARs or (ii) exchanges of stock options or SARs for other stock options or SARs with

lower exercise prices.

NSO grants are governed by Section 83 of the Code. Generally, no federal income tax is payable by a participant upon the grant of an NSO. Under current tax law, if a participant exercises an NSO, he or she will be taxed on the difference between the fair market value of the common stock on the exercise date and the option exercise price. The Company will be entitled to a corresponding deduction on its income tax return upon the exercise of an NSO.

ISO grants are governed by Section 422 of the Code. Generally no federal income tax is payable by a participant upon the exercise of an ISO (except alternative minimum tax may be payable upon exercise). If the shares of common stock acquired upon exercise of an ISO are sold or exchanged more than one year after the date of exercise and more than two years after the date of grant of the option, any gain or loss will be long-term capital gain or loss. If shares of common stock acquired upon exercise of an ISO are disposed of prior to the expiration of these one-year or two-year holding periods (a *Disqualifying Disposition*), the participant will recognize ordinary income at the time of disposition, and the Company will generally be entitled to a deduction, in an amount equal to the excess of the fair market value of the shares of common stock at the date of exercise over the exercise price. Any additional gain will be treated as capital gain, long-term or short-term, depending on how long the shares of common stock have been held. Where shares of common stock are sold or exchanged in a Disqualifying Disposition (other than certain related party transactions) for an amount less than their fair market value at the date of exercise, any ordinary income recognized in connection with the Disqualifying Disposition will be limited to the amount of gain, if any, recognized in the sale or exchange, and any loss will be a long-term or short-term capital loss, depending on how long the shares of common stock have been held.

SARs entitle the participant to receive any appreciation in the value of the underlying stock from the Company, either in shares of common stock or in cash or a combination of the two, with the Committee having the discretion to determine the form in which such payment will be made. The amount payable on exercise of a SAR is measured by the difference between the fair market value of the underlying stock at exercise and the exercise price (which may not be less than the fair market value of the common stock on the date of grant). The term of an SAR cannot exceed 10 years. SARs may, but need not, be granted in conjunction with options. Upon exercise of a SAR granted in tandem with an option, the corresponding portion of the related option must be surrendered and cannot thereafter be exercised. The amount payable upon exercise of a SAR will constitute compensation income to the participant at the time of exercise, and the Company will be entitled to a corresponding deduction.

Restricted Shares and Performance Shares entitle the participant to ownership of shares of the Company's common stock subject to any performance conditions or other restrictions including installment or vesting conditions. A participant who receives Restricted Shares or Performance Shares will generally recognize compensation income at the time they vest based on the then fair market value of the shares, unless the participant instead elects to be taxed at the time of the award. The Company will be entitled to a corresponding deduction.

Restricted Share Units and Performance Units entitle the participant to receive either shares of common stock or cash or a combination as the Committee shall determine upon attainment of the performance objectives or satisfaction of other restrictions or vesting criteria.

Dividend equivalents and Other Share-Based Awards may be granted to the participant separately or in conjunction with the foregoing, *provided* they are denominated or payable consistent with the purpose of the 2008 Plan, including unrestricted shares awarded purely as a bonus and cash awards as an element of or supplement to any other Award under the 2008 Plan.

A participant who receives Restricted Share Units, Performance Units, Dividend Equivalents or other Share-Based Awards will generally recognize compensation income in respect of the amounts payable under the award at the time of payment, and the Company will be entitled to a corresponding deduction.

The foregoing description concerning U.S. federal income tax consequences related to Awards is a general summary and intended solely as information for stockholders, not as tax guidance.

If the Committee determines that a Performance Share, Performance Unit or other Award (other than an Option or SAR) should qualify as performance-based compensation for purposes of Code Section 162(m), the grant, vesting, exercise and/or settlement of such Award must be contingent upon achievement of pre-established goals. Further, while performance objectives may vary among participants, they shall be based upon one or more of the following performance criteria:

total stockholder return, earnings, earnings per share, operating income, net income, pro forma net income, return on stockholders' equity, return on invested capital, return on designated assets, net asset value, economic value added, EBITDA, share price, sales, revenues, expenses, operating profit margin, operating cash flow, cash flow per share, net profit margin, and achievement of synergies.

The benefits to be received or allocated under the 2008 Plan are not determinable.

Limitations on Grants. The maximum number of shares of common stock with respect to which stock options or SARs may be granted during any calendar year to any participant under the 2008 Plan shall be 500,000 shares. The maximum number of shares of common stock that may be granted during any calendar year to any participant in connection with stock-based awards other than stock options and SARs intended to qualify as performance-based compensation within the meaning of Section 162(m)(4)(C) of the Code shall be limited to 750,000 shares or the equivalent. The maximum amount payable upon settlement of cash-based awards intended to qualify as performance-based compensation within the meaning of Section 162(m)(4)(C) of the Internal Revenue Code shall be limited to \$1,000,000.

Transferability. Unless otherwise expressly indicated by the Committee, Awards are not transferable except by will or the laws of descent and distribution or beneficiary designation and shall be exercisable during the lifetime of the holder only by such holder or his/her guardian or legal representative.

Adjustments. In the event that a dividend in shares, recapitalization, share split, reverse split, reorganization, merger, consolidation, spin-off, combination, repurchase, share exchange, extraordinary dividend, or other similar corporate transaction or event affects the shares, such that an adjustment is appropriate in order to prevent dilution or enlargement of the rights of Award holders, the Committee shall adjust the aggregate number and kind of shares reserved for issuance under the 2008 Plan, the number and kind of shares covered by each outstanding award, and the amounts to be paid by Award holders or the Company on any outstanding Award, or provide for a distribution of cash or property. No such adjustment may increase the aggregate value of any outstanding award.

If any Awards under the 2008 Plan or 1998 Plan are forfeited, canceled, terminated, exchanged, surrendered, applied to satisfy withholding obligations or terminated for any other reason prior to exercise or without a distribution of shares or settled in cash, then the underlying shares of common stock again become available for awards under the 2008 Plan.

Change of Control. In the event of a Change of Control (as defined in the 2008 Plan), unless otherwise provided by the Committee at the time of grant, all outstanding Awards pursuant to which a holder may have rights the exercise of which is restricted or limited shall become fully exercisable, all restrictions or limitations on outstanding Awards shall lapse, and all performance criteria and other conditions shall be deemed to be achieved or fulfilled and shall be waived by the Company.

Withholding Taxes. The Company may withhold, or require a participant to remit to the Company, an amount sufficient to satisfy any federal, state, local or foreign withholding tax requirements associated with Awards under the 2008 Plan.

Amendment and Termination. No Awards may be granted under the 2008 Plan subsequent to , 2018. The Company's board of directors may terminate the 2008 Plan at an earlier date, or amend the 2008 Plan at any time. However, the

Company must obtain stockholder approval for any 2008 Plan amendment to the extent required by applicable stock exchange rules or as required for the 2008 Plan to satisfy the requirements of Section 162(m) or 422 of the Code. In addition, the award

holder's written consent is required for any amendment or termination of the 2008 Plan which will adversely affect any previously granted award.

The Company's board of directors unanimously recommends that the Company's stockholders vote FOR the proposal to approve the adoption of the Company's 2008 Long Term Incentive and Share Award Plan.

**APPROVAL OF THE ADJOURNMENT OR POSTPONEMENT OF THE SPECIAL MEETING
(PROPOSAL 5)**

The Company's stockholders are being asked to consider and vote on a proposal to adjourn or postpone the Special Meeting, if necessary, to solicit additional proxies. The adoption of the proposal to adjourn or postpone the Special Meeting, if necessary, to solicit additional proxies requires the affirmative vote of a majority of the votes cast by the holders of the Company's common stock at the Special Meeting, regardless of whether a quorum is present. Therefore, a stockholder's failure to vote, a broker nonvote or an abstention will have no effect on the outcome of the vote on this proposal. The Company's board of directors unanimously recommends that stockholders vote FOR the proposal to adjourn or postpone the Special Meeting, if necessary, to solicit additional proxies.

BENEFICIAL OWNERSHIP OF SECURITIES**Beneficial Ownership of More Than 5% of the Company's Common Stock**

Except as set forth below, as of _____, 2008, no person beneficially owned, to the knowledge of the Company, more than 5% of the outstanding shares of the Company's common stock.

Name and Address of Beneficial Owner	Amount and Nature of Beneficial Ownership(1)			% of Class
	Total Beneficial Ownership	Sole Voting/Investment Power	Shared Voting/Investment Power	
Christian W.E. Haub(2) 2 Paragon Drive Montvale, NJ 07645	22,661,538	666,167 (3)	21,995,871 (4)	39.7%
Erivan Karl Haub(2) Wissollstrasse 5-43 45478 Mülheim an der Ruhr, Germany	22,155,471	160,100	21,995,371	38.8%
Karl-Erivan Warder Haub(2)	21,995,371	0	21,995,371	