

ACCURAY INC
Form DEF 14A
November 13, 2007

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

SCHEDULE 14A

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

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to §240.14a-12

ACCURAY INCORPORATED

(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.
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**NOTICE OF
2007 ANNUAL MEETING OF STOCKHOLDERS
TO BE HELD ON DECEMBER 12, 2007**

To our Stockholders:

You are cordially invited to attend our 2007 Annual Meeting of Stockholders, which will be held at the Four Seasons Hotel San Francisco, located at 757 Market Street, San Francisco, California 94103 on Wednesday December 12, 2007. We are holding the annual meeting for the following purposes:

1. To elect two Class I directors to hold office until our 2010 Annual Meeting of Stockholders, or until their respective successors have been duly elected or appointed;
2. To approve the 2007 Incentive Award Plan;
3. To ratify the appointment of Grant Thornton LLP as our independent registered public accounting firm for the fiscal year ending June 30, 2008; and
4. To transact any other business as may properly come before the meeting, including any motion to adjourn to a later date to permit further solicitation of proxies, if necessary, or any adjournment or postponement of the meeting.

These items of business to be transacted at the meeting are more fully described in the proxy statement, which is part of this notice.

The meeting will begin promptly at 10:00 a.m. PST and check-in will begin at 9:30 a.m. PST. Only holders of record of shares of our common stock at the close of business on October 31, 2007, the record date, are entitled to notice of, to attend and to vote at the meeting and any adjournments or postponements of the meeting.

For a period of at least 10 days prior to the meeting, a complete list of stockholders entitled to vote at the meeting will be available and open to the examination of any stockholder for any purpose germane to the meeting during normal business hours at our principal executive offices.

All stockholders are cordially invited to attend the meeting in person. Even if you plan to attend the meeting, please complete, sign and date the enclosed proxy card and return it promptly in the postage-paid return envelope in order to ensure that your vote will be counted if you later decide not to, or are unable to, attend the meeting. Even if you have given your proxy, you may still attend and vote in person at the meeting after revoking your proxy prior to the meeting.

By order of the Board of Directors,

Euan S. Thomson, Ph.D.
President and Chief Executive Officer
Sunnyvale, California
November 12, 2007

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**PROXY STATEMENT FOR
2007 ANNUAL MEETING OF STOCKHOLDERS
TO BE HELD ON DECEMBER 12, 2007**

This proxy statement is furnished to our stockholders as of October 31, 2007, the record date, in connection with the solicitation of proxies by our board of directors for use at our annual meeting of stockholders, to be held at the Four Seasons Hotel San Francisco, located at 757 Market Street, San Francisco, California 94103 on Wednesday December 12, 2007 at 10:00 a.m. PST and at and at any adjournments or postponements of the meeting. This proxy statement and the proxy card, together with a copy of our Annual Report on Form 10-K for our fiscal year ended June 30, 2007, is first being mailed to our stockholders on or about November 12, 2007.

**QUESTIONS AND ANSWERS REGARDING THIS SOLICITATION
AND VOTING AT THE MEETING**

- Why am I receiving this proxy statement?*** You are receiving this proxy statement from us because you were a stockholder of record at the close of business on the record date of October 31, 2007. As a stockholder of record, you are invited to attend our annual meeting of stockholders and are entitled to vote on the items of business described in this proxy statement. This proxy statement contains important information about the meeting and the items of business to be transacted at the meeting. You are strongly encouraged to read this proxy statement, which includes information that you may find useful in determining how to vote.
- Who is entitled to attend and vote at the meeting?*** Only holders of record of shares of our common stock at the close of business on October 31, 2007 (the record date) are entitled to notice of, to attend and to vote at the meeting and any adjournments or postponements of the meeting.
- How many shares are outstanding?*** On the record date, 54,581,364 shares of our common stock were issued and outstanding and held by approximately 275 holders of record. Each share of common stock outstanding on the record date is entitled to one vote.

How many shares must be present or represented to conduct business at the meeting (that is, what constitutes a quorum)?

The presence at the meeting, in person or represented by proxy, of the holders of at least a majority of the shares of our common stock, issued and outstanding on the record date and entitled to vote at the meeting, will constitute a quorum for the transaction of business. If, however, a quorum is not present, in person or represented by proxy, then either the chairman of the meeting or the stockholders entitled to vote at the meeting may adjourn the meeting until a later time.

What items of business will be voted on at the meeting?

The items of business to be voted on at the meeting are as follows:

1. The election of two Class I directors to hold office until our 2010 Annual Meeting of Stockholders, or until their respective successors have been duly elected or appointed;
2. The approval of the 2007 Incentive Award Plan; and
3. The ratification of the appointment of Grant Thornton LLP as our independent registered public accounting firm for the fiscal year ending June 30, 2008.

What happens if additional matters are presented at the meeting?

The only items of business that our board of directors intends to present at the meeting are set forth in this proxy statement. As of the date of this proxy statement, no stockholder has advised us of the intent to present any other matter, and we are not aware of any other matters to be presented at the meeting. If any other matter or matters are properly brought before the meeting, the person(s) named as your proxyholder(s) will have the discretion to vote your shares on the matters in accordance with their best judgment and as they deem advisable.

How does the board of directors recommend that I vote?

Our board of directors recommends that you vote your shares **"FOR"** the election of each of the director nominees identified in this proxy statement, **"FOR"** the approval of the 2007 Incentive Award Plan and **"FOR"** the ratification of the appointment of Grant Thornton LLP.

What shares can I vote at the meeting?

You may vote all of the shares you owned as of October 31, 2007, the record date, including shares held directly in your name as the *stockholder of record* and all shares held for you as the *beneficial owner* through a broker, trustee or other nominee such as a bank.

What is the difference between holding shares as a stockholder of record and as a beneficial owner?

Most of our stockholders hold their shares through a broker or other nominee rather than directly in their own name. As summarized below, there are some distinctions between shares held of record and those owned beneficially.

Stockholders of Record. If your shares are registered directly in your name with our transfer agent, Mellon Investor Services LLC, you are considered, with respect to those shares, the *stockholder of record*, and these proxy materials are being sent directly to you by us. As the *stockholder of record*, you have the right to vote in person at the meeting or direct the proxyholder how to vote your shares on your behalf at the meeting by fully completing, signing and dating the enclosed proxy card and returning it to us in the enclosed postage-paid return envelope.

Beneficial Owner. If your shares are held in a brokerage account or by a trustee or another nominee, you are considered the *beneficial owner* of shares held *in street name*, and these proxy materials are being forwarded to you together with a voting instruction card by your broker, trustee or other nominee. As the beneficial owner, you have the right to direct your broker, trustee or nominee to vote your shares as you instruct in the voting instruction card. The broker, trustee or other nominee may either vote in person at the meeting or grant a proxy and direct the proxyholder to vote your shares at the meeting as you instruct in the voting instruction card. You may also vote in person at the meeting, but only after you obtain a "legal proxy" from the broker, trustee or nominee that holds your shares, giving you the right to vote your shares at the meeting. Your broker, trustee or nominee has enclosed or provided a voting instruction card for you to use in directing the broker, trustee or nominee how to vote your shares.

How can I vote my shares without attending the meeting?

As discussed previously, whether you hold shares directly as the stockholder of record or as a beneficial owner, you may direct how your shares are voted without attending the meeting by completing and returning the enclosed proxy card or voting instruction card. If you provide specific instructions with regard to items of business to be voted on at the meeting, your shares will be voted as you instruct on those items. Proxies properly signed, dated and submitted to us that do not contain voting instructions and are not revoked prior to the meeting will be voted "**FOR**" the election of each of the director nominees identified in this proxy statement, "**FOR**" the approval of the 2007 Incentive Award Plan and "**FOR**" the ratification of the appointment of Grant Thornton LLP.

How can I vote my shares in person at the meeting?

Shares held in your name as the stockholder of record may be voted in person at the meeting. Shares held beneficially in street name may be voted in person only if you obtain a legal proxy from the broker, trustee or nominee that holds your shares giving you the right to vote the shares at the meeting. You should be prepared to present photo identification for admittance. Please also note that if you are not a stockholder of record but hold shares through a broker, trustee or nominee, you will need to provide proof of beneficial ownership as of the record date, such as your most recent brokerage account statement, a copy of the voting instruction card provided by your broker, trustee or nominee, or other similar evidence of ownership. The meeting will begin promptly at 10:00 a.m. PST. Check-in will begin at 9:30 a.m. PST. ***Even if you plan to attend the meeting, we recommend that you also complete, sign and date the enclosed proxy card or voting instruction card and return it promptly in the accompanying postage-paid return envelope in order to ensure that your vote will be counted if you later decide not to, or are unable to, attend the meeting.***

Can I change my vote or revoke my proxy?

You may change your vote or revoke your proxy at any time prior to the vote at the meeting. If you are the stockholder of record, you may change your vote by granting a new proxy bearing a later date, which automatically revokes the earlier proxy, by providing a written notice of revocation to our Corporate Secretary prior to your shares being voted, or by attending the meeting and voting in person. Attendance at the meeting will not cause your previously granted proxy to be revoked unless you specifically so request.

If you are a beneficial owner, you may change your vote by submitting a new voting instruction card to your broker, trustee or nominee, or, if you have obtained a legal proxy from your broker, trustee or nominee giving you the right to vote your shares, by attending the meeting and voting in person.

Is my vote confidential?

Proxy cards, voting instructions, ballots and voting tabulations that identify individual stockholders are handled in a manner that protects your voting privacy. Your vote will not be disclosed, except as required by law to Mellon Investor Services LLC, our transfer agent, to allow for the tabulation of votes and certification of the vote, and to facilitate a successful proxy solicitation.

How are votes counted and what vote is required to approve each item?

Each outstanding share of our common stock entitles the holder to one vote per share on each matter considered at the meeting. Stockholders are not entitled to cumulate their votes in the election of directors or with respect to any matter submitted to a vote of the stockholders. The election of directors requires a plurality of the votes cast for the election of directors and, accordingly, the two director nominees receiving the highest number of affirmative "FOR" votes at the meeting will be elected to serve as Class I directors. You may vote either "FOR" or "WITHHOLD" your vote for the director nominees. A properly executed proxy marked "WITHHOLD" with respect to the election of one or more directors will not be voted with respect to the director or directors indicated, although it will be counted for purposes of determining whether there is a quorum.

The approval of the 2007 Incentive Award Plan requires a majority of the votes cast. You may vote either "FOR" or "AGAINST" approval of the 2007 Incentive Award Plan, or you may abstain. A properly executed proxy marked "ABSTAIN" with respect to the approval of the 2007 Incentive Award Plan will not be voted with respect to approval of the 2007 Incentive Award Plan, although it will be counted for purposes of determining both whether there is a quorum and the total number of votes cast with respect to the proposal.

Stockholder ratification of the appointment of Grant Thornton LLP as our independent registered public accounting firm for the fiscal year ending June 30, 2008 is not required by law or by governing instruments. However, our board of directors is submitting the selection of Grant Thornton LLP to our stockholders for ratification as a matter of good corporate governance and practice. The ratification of the appointment of Grant Thornton LLP requires a majority of the votes cast. You may vote either "FOR" or "AGAINST" ratification of the appointment, or you may abstain. A properly executed proxy marked "ABSTAIN" with respect to the ratification of the appointment will not be voted with respect to such ratification, although it will be counted for purposes of determining both whether there is a quorum and the total number of votes cast with respect to the proposal. If the stockholders fail to ratify the appointment, the audit committee of our board of directors will reconsider whether or not to retain that firm.

What is a "broker non-vote"?

Under the rules that govern brokers and banks who have record ownership of our shares of common stock that are held in street name for their clients such as you, who are the beneficial owners of the shares, brokers and banks have the discretion to vote such shares on routine matters. The election of directors and the ratification of the appointment of independent registered public accounting firms are considered routine matters.

Therefore, if you do not otherwise instruct your broker or bank, the broker or bank may vote your shares on these matters. Approval of the 2007 Incentive Award Plan is considered non-routine, and therefore your broker or bank does not have the discretionary authority to vote your shares on this matter. A "broker non-vote" occurs when a broker or bank expressly instructs on a proxy card that it is not voting on a matter, whether routine or non-routine.

How are "broker non-votes" counted?

Broker non-votes will be counted as present for the purpose of determining the presence or absence of a quorum for the transaction of business, but they will *not* be counted in tabulating the voting result for any particular proposal.

How are abstentions counted?

If you return a proxy card that indicates an abstention from voting on all matters, the shares represented by your proxy will be counted as present for the purpose of determining both the presence of a quorum and the total number of votes cast with respect to a proposal (other than the election of directors), but they will not be counted in tabulating the voting results for any particular proposal. As a result, an abstention will have the same effect as a vote against a proposal.

What happens if the meeting is adjourned?

If our annual meeting is adjourned to another time and place, no additional notice will be given of the adjourned meeting if the time and place of the adjourned meeting is announced at the annual meeting, unless the adjournment is for more than 30 days, in which case a notice of the adjourned meeting will be given to each stockholder of record entitled to vote at the adjourned meeting. At the adjourned meeting, we may transact any items of business that might have been transacted at the annual meeting.

Who will serve as inspector of elections?

A representative of Mellon Investor Services LLC, our transfer agent, will tabulate the votes and act as inspector of elections at the meeting.

What should I do in the event that I receive more than one set of proxy materials?

You may receive more than one set of these proxy solicitation materials, including multiple copies of this proxy statement and multiple proxy cards or voting instruction cards. For example, if you hold your shares in more than one brokerage account, you may receive a separate voting instruction card for each brokerage account in which you hold shares. In addition, if you are a stockholder of record and your shares are registered in more than one name, you may receive more than one proxy card. Please complete, sign, date and return each proxy card and voting instruction card that you receive to ensure that all your shares are voted.

Who is soliciting my vote and who will bear the costs of this solicitation?

The enclosed proxy is being solicited on behalf of our board of directors. We will bear the entire cost of solicitation of proxies, including preparation, assembly, printing and mailing of this proxy statement. In addition to solicitation by mail, our directors, officers and employees may also solicit proxies in person, by telephone, by electronic mail or by other means of communication. We will not pay any additional compensation to our directors, officers or other employees for soliciting proxies. Copies of the proxy materials will be furnished to brokerage firms, banks, trustees, custodians and other nominees holding beneficially owned shares of our common stock, who will forward the proxy materials to the beneficial owners. We may reimburse brokerage firms, banks, trustees, custodians and other agents for the costs of forwarding the proxy materials. Our costs for forwarding proxy materials will not be significant.

Where can I find the voting results of the meeting?

We intend to announce preliminary voting results at the meeting, and publish the final voting results in our quarterly report on Form 10-Q for the second quarter of fiscal year 2008.

What is the deadline for submitting proposals for consideration at next year's annual meeting of stockholders or to nominate individuals to serve as directors?

As a stockholder, you may be entitled to present proposals for action at a future meeting of stockholders, including director nominations.

Stockholder Proposals

For a stockholder proposal to be considered for inclusion in our proxy statement for the annual meeting to be held in 2008, the proposal must be in writing and received by our Corporate Secretary at our principal executive offices no later than July 15, 2008. If the date of next year's annual meeting is more than 30 days before or 30 days after the anniversary date of this year's annual meeting, the deadline for inclusion of proposals in our proxy statement will instead be a reasonable time before we begin to print and mail our proxy materials. Stockholder proposals must comply with the requirements of Rule 14a-8 of the Securities Exchange Act of 1934, as amended, and any other applicable rules established by the Securities and Exchange Commission, or SEC. In addition, our bylaws establish an advance notice procedure with regard to certain matters, including stockholder proposals not included in our proxy statement, to be brought before an annual meeting of stockholders. In

general, notice

must be received at our principal executive offices not less than 90 calendar days before nor more than 120 calendar days before the one year anniversary of the date on which we first mailed our proxy statement to stockholders in connection with the previous year's annual meeting of stockholders. Therefore, to be presented at our 2008 annual meeting of stockholders, such a proposal must be received by us after July 15, 2008 but no later than August 14, 2008. If the date of the annual meeting is more than 30 days earlier or more than 30 days later than such anniversary date, notice must be received not later than the close of business on the later of 120 calendar days in advance of such annual meeting or ten calendar days following the date on which public announcement of the date of the meeting is first made. Our bylaws also specify requirements as to the form and content of a stockholder's notice. All stockholder proposals should be addressed to:

Corporate Secretary
Accuray Incorporated
1310 Chesapeake Terrace
Sunnyvale, California 94089

Nomination of Director Candidates

Any proposals for director candidates for consideration by our board of directors must be in writing and include the nominee's name and qualifications for board membership and should be directed to our Corporate Secretary at our principal executive offices. Our bylaws also require that any proposal for nomination of directors include the consent of each nominee to serve as a member of our board of directors, if so elected. Stockholders are also advised to review our bylaws, which contain additional requirements with respect to stockholder nominees for our board of directors. In addition, the stockholder must give timely notice to our Corporate Secretary in accordance with the provisions of our bylaws, which require that the notice be received by our Corporate Secretary no earlier than July 15, 2008 and no later than August 14, 2008.

PROPOSAL ONE ELECTION OF DIRECTORS**Classes of the Board of Directors**

Our Amended and Restated Certificate of Incorporation provides that our board of directors shall be divided into three classes, designated as Class I, Class II and Class III, respectively, with the classes of directors serving for staggered three-year terms. Our board of directors currently consists of six directors, divided evenly among the three classes.

The names of each member of our board of directors, including each nominee for election to our board of directors, the class in which they serve, their ages as of August 31, 2007, principal occupation and length of service on the board of directors, are as follows:

Name	Term Expires	Age	Principal Occupation	Director Since
Class I Directors				
Robert S. Weiss(1)(2)(3)	2007	60	Chief Executive Officer, The Cooper Companies, Inc.	2007
Li Yu (1)(2)(3)	2007	66	Chairman of the Board, President and Chief Executive Officer, Preferred Bank	2004
Class II Directors				
John R. Adler, Jr., M.D.	2008	53	Professor of Neurosurgery and Radiation Oncology, Stanford University; Co-founder, Accuray Incorporated	1990
Ted T.C. Tu	2008	51	President, President International Development Corporation	2004
Class III Directors				
Euan S. Thomson, Ph.D.	2009	44	President and Chief Executive Officer, Accuray Incorporated	2002
Wayne Wu(1)(2)(3)	2009	44	President, Pacific Health Investment, Inc.	1998

- (1) Member of the Compensation Committee
- (2) Member of the Audit Committee
- (3) Member of the Nominating and Corporate Governance Committee

Director Nominees

Our board of directors has nominated Robert S. Weiss and Li Yu for re-election as Class I directors. Each nominee for director has consented to being named in this proxy statement and has indicated a willingness to serve if elected. Although we do not anticipate that any nominee will be unavailable for election, if a nominee is unavailable for election, the persons named as proxyholders will use their discretion to vote for any substitute nominee in accordance with their best judgment as they deem advisable.

Robert S. Weiss has served as a member of our board of directors since January 2007. Mr. Weiss is the Chief Executive Officer of The Cooper Companies, Inc., or Cooper, a global specialty medical products company, a position to which he was appointed effective November 1, 2007. From January 2005 through October 2007, Mr. Weiss served as the Executive Vice President and Chief Operating Officer of Cooper. Prior to that, he served as Cooper's Executive Vice President since October 1995 and Chief Financial Officer from September 1989 to January 2005. Mr. Weiss also served as Cooper's Treasurer from September 1989 to March 2002. From March 1984 until October 1995 he served at Cooper in various roles, including Senior Vice President, Vice President and Corporate

Controller. Mr. Weiss also serves on the board of directors of Cooper. Mr. Weiss holds a B.S. in Accounting from the University of Scranton.

Li Yu has served as a member of our board of directors since June 2004. Since December 1991, Mr. Yu has served as the Chairman of the board of directors and, since January 1993, as the President and Chief Executive Officer of Preferred Bank, a financial institution. From 1987 until December 1991, Mr. Yu served as President of Greenway International, a privately held real estate investment company. From 1982 to 1987, he served as Chairman of the Board of California Pacific National Bank, which was acquired by an entity subsequently acquired by Bank of America. Mr. Yu holds an M.B.A. from the University of California, Los Angeles.

If elected, Messrs. Weiss and Yu will hold office as Class I directors until our annual meeting of stockholders to be held in 2010, assuming that their respective successors have been duly elected, or until their earlier death, resignation or removal.

Board of Directors' Recommendation

THE BOARD OF DIRECTORS RECOMMENDS THAT YOU VOTE *FOR* EACH OF THE TWO NOMINEES FOR CLASS I DIRECTOR LISTED ABOVE.

Directors Whose Terms Extend Beyond the 2007 Annual Meeting

Euan S. Thomson, Ph.D. has served as our Chief Executive Officer and a member of our board of directors since March 2002 and as our President since October 2002. Prior to joining our company, Dr. Thomson served as Chief Executive Officer of Photoelectron Corporation, a medical device company, and held various positions as a medical physicist within the United Kingdom National Health Service. He also previously worked as a consultant for other medical device companies, including Varian Oncology Systems and Radionics, Inc. Dr. Thomson holds a B.S. in Physics, an M.S. in Radiation Physics and a Ph.D. in Physics, with an emphasis on stereotactic brain radiotherapy, each from the University of London.

Dr. Thomson, our President and Chief Executive Officer and one of our continuing directors, served during various periods from March 1999 to February 2002 as President, Chief Executive Officer and a member of the board of directors of Photoelectron Corporation, a publicly held medical device company. In July 2003, Photoelectron Corporation filed for bankruptcy. Dr. Thomson did not have any involvement in the business or affairs of Photoelectron Corporation from the time of his departure through the time it filed for bankruptcy.

Wayne Wu has served as a member of our board of directors since April 1998 and the Chairman of our board of directors since May 2004. Since June 2005, Mr. Wu has been the President of Pacific Health Investment, Inc., a life science investments company. From February 1998 through May 2005, he served as manager of Pacific Republic Capital Group, a life science investments fund. Mr. Wu holds a B.S. in Mathematics from the National Central University in Taiwan and an M.A. in Mathematics from the University of Southern California. Mr. Wu also serves on the Board of Directors of Green Tree Investment Company, a chain of upscale budget business hotels in the People's Republic of China.

John R. Adler, Jr., M.D. is one of our founders and has served as a member of our board of directors since December 1990. From September 1999 through May 2004, Dr. Adler served as Chairman of our board of directors, and from October 1999 to March 2002, as our Chief Executive Officer. From January 1995 until July 1999, he served as the Vice Chairman of our board of directors. Since July 1987, Dr. Adler has been a member of the faculty at Stanford University and a Professor of Neurosurgery and Radiation Oncology at Stanford University since September 1998. Dr. Adler also serves on the editorial boards of Computer-Aided Surgery, The Journal of Medical Robotics and Computer Assisted Surgery, Chinese Journal of Clinical Oncology and Technology in Cancer Research

and Treatment. Dr. Adler holds an A.B. in Biochemistry from Harvard College and an M.D. from Harvard Medical School.

Ted T.C. Tu has served as a member of our board of directors since May 2004. Since May 2005, Mr. Tu has served as the president of President International Development Corporation, an investment holding company, and since January 2006, Mr. Tu has been the president of President Life Sciences Co., Ltd. From May 2000 to May 2005, Mr. Tu served as Executive Vice President of President International Development Corporation. Mr. Tu holds a B.A. in Industry and Business Administration from National Taiwan University and an M.B.A. from the University of Houston.

PROPOSAL TWO

PROPOSAL TO APPROVE THE 2007 INCENTIVE AWARD PLAN

2007 Incentive Award Plan

Prior to our initial public offering, our board of directors and our stockholders adopted and approved the Accuray Incorporated 2007 Incentive Award Plan, or 2007 Incentive Award Plan, for the benefit of employees and consultants of our company and our subsidiaries and members of our board of directors. Our board of directors believes that the 2007 Incentive Award Plan promotes the success and enhances the value of our company by continuing to link the personal interests of participants to those of our stockholders and by providing participants with an incentive for outstanding performance. As of August 31, 2007, options to purchase 765,519 shares of our common stock and 690,035 restricted stock units were outstanding under the 2007 Incentive Award Plan.

Section 162(m) of the Internal Revenue Code of 1986, as amended, or the Code, generally limits the deductibility of compensation paid to certain executive officers of a publicly-held corporation to \$1.0 million in any taxable year of the corporation. Certain types of compensation, including "qualified performance-based compensation," are exempt from this deduction limitation. In order to qualify for the exemption for qualified performance-based compensation, Section 162(m) of the Code generally requires that:

The compensation be paid solely upon account of the attainment of one or more pre-established objective performance goals;

The performance goals must be established by a compensation committee comprised of two or more "outside directors";

The material terms of the performance goals must be disclosed to and approved by the shareholders; and

The compensation committee of "outside directors" must certify that the performance goals have indeed been met prior to payment.

Section 162(m) contains a special rule for stock options and stock appreciation rights, or SARs, which provides that stock options and SARs will satisfy the qualified performance-based compensation exception if the awards are made by a qualifying compensation committee, the plan sets forth the maximum number of shares that can be granted to any person within a specified period and the compensation is based solely on an increase in the stock price after the grant date.

The 2007 Incentive Award Plan has been designed to permit our compensation committee to grant stock options and other awards which will qualify as qualified performance-based compensation under Section 162(m) of the Code. Notwithstanding these general requirements for qualified performance based compensation, however, Section 162(m) contains a transition rule for compensation plans of corporations which are privately held and which become publicly held in an initial public offering,

which generally provides that compensation paid under a plan that existed prior to the initial public offering will not be subject to Section 162(m) until the earliest to occur of:

The first material modification of the plan;

The issuance of all of the shares of stock reserved for issuance under the plan;

The expiration of the plan; or

The first meeting of stockholders at which directors are to be elected that occurs after the close of the third calendar year following the calendar year in which the corporation's initial public offering was consummated (the earliest such event, the "Transition Date").

Pursuant to the transition rule described above, awards made under our 2007 Incentive Award Plan are presently not subject to Section 162(m). Notwithstanding the availability of the transition rule, however, our board of directors believes that it is desirable to submit the 2007 Incentive Award Plan for stockholder approval in accordance with Section 162(m) in order to enable our compensation committee to grant awards under the 2007 Annual Incentive Plan that qualify as "qualified performance-based compensation" after the expiration of the transition period should the compensation committee desire to do so.

If the 2007 Incentive Award Plan is not approved by our stockholders at this annual meeting, the plan will continue to remain in effect and we will continue to rely on the exemption from Section 162(m) afforded to us by the transition rule described above for compensation paid pursuant to the 2007 Incentive Award Plan. During or after the expiration of the transition period, we will evaluate whether we will resubmit the 2007 Incentive Award Plan for stockholder approval in accordance with Section 162(m) or continue to maintain the 2007 Incentive Award Plan without shareholder approval and grant awards under the plan that will not qualify as "qualified performance-based compensation" under Section 162(m).

The following description of the material features and provisions of the 2007 Incentive Award Plan is qualified in its entirety by reference to the terms of the plan, a copy of which is attached to this proxy statement as Appendix B.

Shares Available for Awards

Subject to certain adjustments set forth in the plan, the maximum number of shares of our common stock that may be issued or awarded under the 2007 Incentive Award Plan is 4,500,000 shares. In addition, the number of shares that may be issued or awarded under the plan will be automatically increased on the first day of each of our fiscal years during the term of the plan, commencing on July 1, 2008, by a number of shares equal to the lesser of: (1) 3% of our outstanding capital stock on such date; (2) 1,500,000 shares; or (3) a lesser amount determined by our board of directors. If any shares covered by an award granted under the plan are forfeited, or if an award expires or terminates, the shares covered by the award will again be available for grant under the plan. With respect to the exercise of stock appreciation rights, only the number of shares actually issued upon such exercise will be counted against the shares available under the plan.

Awards

The 2007 Incentive Award Plan provides for the grant of incentive stock options, nonqualified stock options, restricted stock, stock appreciation rights, performance shares, performance stock units, dividend equivalents, stock payments, deferred stock, restricted stock units, performance bonus awards, and performance-based awards to eligible individuals. Except as otherwise provided by the plan administrator, no award granted under the plan may be assigned, transferred or otherwise disposed of by the grantee, except by will or the laws of descent and distribution.

The maximum number of shares of our common stock which may be subject to awards granted to any one participant during any calendar year is 500,000 and the maximum amount that may be paid to a participant in cash during any calendar year with respect to cash-based awards is \$1,000,000. However, these limits will not apply until the Transition Date.

Stock Options

Stock options, including both nonqualified stock options and incentive stock options, within the meaning of Section 422 of the Code, may be granted under the 2007 Incentive Award Plan. The option exercise price of all stock options granted pursuant to the plan will not be less than 100% of the fair market value of our stock on the date of grant. No incentive stock option may be granted to a grantee who owns more than 10% of our stock unless the exercise price is at least 110% of the fair market value at the time of grant. Notwithstanding whether an option is designated as an incentive stock option, to the extent that the aggregate fair market value of the shares with respect to which such option is exercisable for the first time by any optionee during any calendar year exceeds \$100,000, such excess will be treated as a nonqualified stock option.

Payment of the exercise price of an option may be made in cash or, with the consent of the plan administrator, shares of our stock with a fair market value on the date of delivery equal to the exercise price of the option or exercised portion thereof or other property acceptable to the plan administrator (including the delivery of a notice that the participant has placed a market sell order with a broker with respect to shares then issuable upon exercise of the option, and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to us in satisfaction of the option exercise price). However, no participant who is a member of our board of directors or an "executive officer" of our company within the meaning of Section 13(k) of the Securities Exchange Act of 1934, as amended, or Exchange Act, will be permitted to pay the exercise price of an option in any method which would violate Section 13(k) of the Exchange Act.

Stock options may be exercised as determined by the plan administrator, but in no event after the tenth anniversary of the date of grant. However, in the case of an incentive stock option granted to a person who owns more than 10% of our stock on the date of grant, such term will not exceed five years.

Restricted Stock

Eligible employees, consultants and directors may be issued restricted stock in such amounts and on such terms and conditions as determined by the plan administrator. Restricted stock will be evidenced by a written restricted stock agreement. The restricted stock agreement will contain restrictions on transferability and other such restrictions as the plan administrator may determine, including, without limitation, limitations on the right to vote restricted stock or the right to receive dividends on the restricted stock. These restrictions may lapse separately or in combination at such times, pursuant to such circumstances, in such installments, or otherwise, as the plan administrator determines at the time of grant of the award or thereafter.

Stock Appreciation Rights

A stock appreciation right, or SAR, is the right to receive payment of an amount equal to the excess of the fair market value of a share of our stock on the date of exercise of the SAR over the fair market value of a share of our stock on the date of grant of the SAR. The plan administrator may issue SARs in such amounts and on such terms and conditions as it may determine, consistent with the terms of the plan. The plan administrator may elect to pay SARs in cash, in our stock or in a combination of cash and our stock.

Other Awards Under the Plan

The 2007 Incentive Award Plan provides that the plan administrator may also grant or issue performance shares, performance stock units, dividend equivalents, stock payments, deferred stock, restricted stock units, performance bonus awards and performance-based awards or any combination thereof to eligible employees, consultants and directors. The term of each such grant or issuance will be set by the plan administrator in its discretion. The plan administrator may establish the exercise price or purchase price, if any, of any such award.

Payments with respect to any such award will be made in cash, in our stock or in a combination of cash and our stock, as determined by the plan administrator. Any such award will be subject to such additional terms and conditions as determined by the plan administrator and will be evidenced by a written award agreement.

Performance shares. Awards of performance shares are denominated in a number of shares of our stock and may be linked to any one or more performance criteria determined appropriate by the plan administrator, in each case on a specified date or dates or over any period or periods determined by the plan administrator.

Performance stock units. Awards of performance stock units are denominated in unit equivalent of shares of our stock and/or units of value, including dollar value of shares of our stock, and may be linked to any one or more performance criteria determined appropriate by the plan administrator, in each case on a specified date or dates or over any period or periods determined by the plan administrator.

Dividend equivalents. Dividend equivalents are rights to receive the equivalent value (in cash or our stock) of dividends paid on our stock. They represent the value of the dividends per share paid by us, calculated with reference to the number of shares that are subject to any award held by the participant.

Stock payments. Stock payments include payments in the form of our stock, options or other rights to purchase our stock made in lieu of all or any portion of the compensation that would otherwise be paid to the participant. The number of shares will be determined by the plan administrator and may be based upon specific performance criteria determined appropriate by the plan administrator, determined on the date such stock payment is made or on any date thereafter.

Deferred stock. Deferred stock may be awarded to participants and may be linked to any performance criteria determined to be appropriate by the plan administrator. Stock underlying a deferred stock award will not be issued until the deferred stock award has vested, pursuant to a vesting schedule or performance criteria set by the plan administrator, and unless otherwise provided by the plan administrator, recipients of deferred stock generally will have no rights as a stockholder with respect to such deferred stock until the time the vesting conditions are satisfied and the stock underlying the deferred stock award has been issued.

Restricted stock units. Restricted stock units may be granted to any participant in such amounts and subject to such terms and conditions as determined by the plan administrator. At the time of grant, the plan administrator will specify the date or dates on which the restricted stock units will become fully vested and nonforfeitable, and may specify such conditions to vesting as it deems appropriate. At the time of grant, the plan administrator will specify the maturity date applicable to each grant of restricted stock units which will be no earlier than the vesting date or dates of the award and may be determined at the election of the participant. On the maturity date, we will transfer to the participant one unrestricted, fully transferable share of our stock for each restricted stock unit scheduled to be paid out on such date and not previously forfeited.

Performance bonus awards. Any participant selected by the plan administrator may be granted a cash bonus payable upon the attainment of performance goals that are established by the plan administrator and relate to any one or more performance criteria determined appropriate by the plan administrator on a specified date or dates or over any period or periods determined by the plan administrator. Any such cash bonus paid to a "covered employee" within the meaning of Section 162(m) of the Code may be a performance-based award as described below.

Performance-based awards. The plan administrator may grant awards to employees who are or may be "covered employees," as defined in Section 162(m) of the Code, that are intended to be qualified performance-based compensation within the meaning of Section 162(m) of the Code in order to preserve the deductibility of these awards for federal income tax purposes. Participants are only entitled to receive payment for a performance-based award for any given performance period to the extent that pre-established performance goals set by the plan administrator for the period are satisfied. With regard to a particular performance period, the plan administrator will have the discretion to select the length of the performance period, the type of performance-based awards to be granted, and the goals that will be used to measure the performance for the period. In determining the actual size of an individual performance-based award for a performance period, the plan administrator may reduce or eliminate (but not increase) the award. Generally, a participant will have to be employed by us or any of our qualifying subsidiaries on the date the performance-based award is paid to be eligible for a performance-based award for any period. Stock options and SARs granted under the 2007 Incentive Award Plan will generally satisfy the exception for qualified performance-based compensation since they will be made by a qualifying compensation committee, the plan sets forth the maximum number of shares of our common stock which may be subject to awards granted to any one participant during any calendar year, and the per share exercise price of options and SARs must be at least equal to the fair market value of a share of our common stock on the date of grant.

Administration

With respect to stock option grants and other awards granted to our independent directors, the 2007 Incentive Award Plan will be administered by our full board of directors. With respect to all other awards, the plan must be administered by a committee consisting of at least two directors, each of whom qualifies as a non-employee director pursuant to Rule 16b of the Exchange Act, an "outside director" pursuant to Section 162(m) of the Code and an independent director under the rules of the principal securities market on which our shares are traded. This committee is currently our compensation committee. In addition, our board may at any time exercise any rights and duties of the committee under the plan except with respect to matters which under Rule 16b-3 under the Exchange Act or Section 162(m) of the Code are required to be determined in the sole discretion of the committee.

The plan administrator will have the exclusive authority to administer the plan, including, but not limited to, the power to determine award recipients, the types and sizes of awards, the price and timing of awards and the acceleration or waiver of any vesting restriction. Only our employees and employees of our qualifying corporate subsidiaries are eligible to be granted options that are intended to qualify as "incentive stock options" under Section 422 of the Code.

Eligibility

Persons eligible to participate in the 2007 Incentive Award Plan include all members of our board of directors (six individuals) and all employees and consultants of our company and our subsidiaries, as determined by the plan administrator (approximately 500 individuals).

Forfeiture of Unvested Awards

Except as otherwise determined by the plan administrator, in the event that the employment or services of the holder of an award is terminated, the unvested portion of the award will generally be forfeited and will cease to vest or become exercisable after the termination. However, the plan administrator may provide in any award agreement that an award will vest in whole or in part in the event of a termination in certain cases.

Foreign Participants

In order to comply with the laws in other countries in which we and our subsidiaries operate or have persons eligible to participate in the plan, the plan administrator will have the power to determine which of our subsidiaries will be covered by the plan, determine which of our directors, employees and consultants outside the United States are eligible to participate in the plan, modify the terms and conditions of any award granted to such eligible individuals to comply with applicable foreign laws, establish subplans and modify any terms and procedures (with certain exceptions), and take any action that it deems advisable with respect to local governmental regulatory exemptions or approvals. For example, in May 2007, our board of directors approved subplans pursuant to which options and restricted stock units may be granted to our employees in France. We may adopt additional subplans pursuant to which stock options or restricted stock units may be granted to employees in other countries

Adjustments

If there is any stock dividend, stock split, combination or exchange of shares, merger, consolidation, spin-off, recapitalization or other distribution (other than normal cash dividends) of our assets to stockholders, or any other change affecting the shares of our stock or the share price of our stock, the plan administrator will make proportionate adjustments to any or all of the following in order to reflect such change: (i) the aggregate number and type of shares that may be issued under the plan, (ii) the terms and conditions of any outstanding awards (including, without limitation, any applicable performance targets or criteria with respect thereto), and (iii) the grant or exercise price per share for any outstanding awards under the plan. Any adjustment affecting an award intended as "qualified performance-based compensation" will be made consistent with the requirements of Section 162(m) of the Code. The plan administrator also has the authority under the 2007 Incentive Award Plan to take certain other actions with respect to outstanding awards in the event of a corporate transaction, including provision for the cash-out, termination, assumption or substitution of such awards.

Change of Control

Except as may otherwise be provided in any written agreement between the participant and us, in the event of a change of control of our company in which awards are not converted, assumed, or replaced by the successor, such awards will become fully exercisable and all forfeiture restrictions on such awards will lapse. Upon, or in anticipation of, a change of control, the plan administrator may cause any and all awards outstanding under the 2007 Incentive Award Plan to terminate at a specific time in the future and will give each participant the right to exercise such awards during a period of time as the plan administrator, in its sole and absolute discretion, determines.

Termination or Amendment

With the approval of our board of directors, the plan administrator may terminate, amend, or modify the 2007 Incentive Award Plan at any time. However, stockholder approval will be required for any amendment to the extent necessary and desirable to comply with any applicable law, regulation or stock exchange rule, to increase the number of shares available under the plan, to permit the grant of

options with an exercise price below fair market value on the date of grant, or to extend the exercise period for an option beyond ten years from the date of grant. In addition, absent stockholder approval, no option may be amended to reduce the per share exercise price of the shares subject to such option below the per share exercise price as of the date the option was granted and, except to the extent permitted by the plan in connection with certain changes in capital structure, no option may be granted in exchange for, or in connection with, the cancellation or surrender of an option having a higher per share exercise price.

United States Federal Income Tax Consequences Associated With the Plan

The federal income tax consequences of the 2007 Incentive Award Plan under current federal income tax law are summarized in the following discussion which deals with the general tax principles applicable to the 2007 Incentive Award Plan and is intended for general information only. The following discussion of federal income tax consequences does not purport to be a complete analysis of all of the potential tax effects of the 2007 Incentive Award Plan. It is based upon laws, regulations, rulings and decisions now in effect, all of which are subject to change. Foreign, state and local tax laws, and estate and gift tax considerations are not discussed, and may vary depending on individual circumstances and from locality to locality.

Section 409A of the Code. Certain types of awards under the 2007 Incentive Award Plan, including deferred stock and restricted stock units, may constitute, or provide for, a deferral of compensation subject to Section 409A of the Code. Unless certain requirements set forth in Section 409A are complied with, holders of such awards may be taxed earlier than would otherwise be the case (e.g., at the time of vesting instead of the time of payment) and may be subject to an additional 20% penalty tax (and, potentially, certain interest penalties). To the extent applicable, the 2007 Incentive Award Plan and awards granted under the plan will be structured and interpreted to comply with Section 409A of the Code and the Department of Treasury regulations and other interpretive guidance that may be issued under Section 409A. To the extent determined necessary or appropriate by the plan administrator, the 2007 Incentive Award Plan and applicable award agreements may be amended to exempt the applicable awards from Section 409A of the Code or to comply with Section 409A.

Non-qualified stock options. For federal income tax purposes, if a participant is granted non-qualified stock options under the 2007 Incentive Award Plan, he or she will not have taxable income on the grant of the option, nor will we be entitled to any deduction. Generally, upon the exercise of a non-qualified stock option, the grantee will recognize ordinary income, and we will be entitled to a deduction, in an amount equal to the difference between the fair market value of our common stock on the date of exercise and the option exercise price. The grantee's basis for the stock for purposes of determining his or her gain or loss on subsequent disposition of such shares generally will be the fair market value of our common stock on the date the option is exercised. Any subsequent gain or loss will be generally taxable as capital gain or loss.

Incentive stock options. There is no taxable income to the grantee when an incentive stock option is granted or when the option is exercised. However, the amount by which the fair market value of the shares at the time of exercise exceeds the option exercise price will be an "item of adjustment" for the grantee for purposes of the alternative minimum tax. Gain realized by the grantee on the sale of an incentive stock option is taxable at capital gains rates, and no tax deduction is available to us, unless the grantee disposes of the shares within (a) two years after the date of grant of the option or (b) one year after the date the shares were transferred to the grantee. If the shares of our common stock are sold or otherwise disposed of before the end of either the one-year or two-year period specified above, the difference between the option exercise price and the fair market value of the shares on the date of the option's exercise will be taxed at ordinary income rates, and we will be entitled to a deduction to the extent the grantee must recognize ordinary income. If such a sale or disposition takes place in the

year in which the option is exercised, the income the grantee recognizes upon the sale or disposition of the shares will not be considered income for alternative minimum tax purposes. Otherwise, if the grantee sells or otherwise disposes the shares before the end of either the one-year or two-year period specified above, the maximum amount that will be included as alternative minimum tax income is the gain, if any, the grantee recognizes on the disposition of the shares.

An incentive stock option exercised more than three months after the grantee terminates employment, other than by reason of death or disability, will be taxed as a non-qualified stock option, and the grantee will have been deemed to have received income on the exercise taxable at ordinary income rates. We will be entitled to a tax deduction equal to the ordinary income, if any, realized by the grantee.

Restricted stock. For federal income tax purposes, the grantee generally will not have taxable income on the grant of restricted stock, nor will we then be entitled to any deduction, unless the grantee makes a valid election under Section 83(b) of the Code. However, when restrictions on shares of restricted stock lapse, such that the shares are no longer subject to a substantial risk of forfeiture, the grantee generally will recognize ordinary income, and we will be entitled to a corresponding deduction, for an amount equal to the difference between the fair market value of the shares at the date such restrictions lapse over the purchase price for the restricted stock.

Stock appreciation rights. No taxable income is realized upon the receipt of a SAR, but upon exercise of the SAR, the fair market value of the shares received, determined on the date of exercise of the SAR, or the amount of cash received in lieu of shares, must be treated as compensation taxable as ordinary income to the grantee in the year of such exercise. We will be entitled to a deduction for compensation paid in the same amount which the grantee realized as ordinary income.

Performance shares. The grantee generally will not realize taxable income at the time of the grant of the performance shares, and we will not be entitled to a deduction at that time. When the award is paid, whether in cash or our common stock, the grantee will have ordinary income, and we will be entitled to a corresponding deduction.

Performance stock units. The grantee generally will not realize taxable income at the time of the grant of the performance stock units, and we will not be entitled to a deduction at that time. When the award is paid, whether in cash or our common stock, the grantee will have ordinary income, and we will be entitled to a corresponding deduction.

Dividend equivalents. The grantee generally will not realize taxable income at the time of the grant of the dividend equivalents, and we will not be entitled to a deduction at that time. When a dividend equivalent is paid, the grantee will recognize ordinary income, and we will be entitled to a corresponding deduction.

Stock payments. If the grantee receives a stock payment in lieu of a cash payment that would otherwise have been made, he or she generally will be taxed as if the cash payment has been received, and we will have a deduction in the same amount.

Deferred stock. The grantee generally will not have taxable income upon the issuance of the deferred stock and we will not then be entitled to a deduction. However, when deferred stock vests and is issued to the grantee, he or she will realize ordinary income and we will be entitled to a deduction in an amount equal to the difference between the fair market value of the shares at the date of issuance over the purchase price, if any, for the deferred stock. Deferred stock may be subject to Section 409A of the Code, and the failure of any award of deferred stock that is subject to Section 409A to comply with Section 409A may result in taxable income to the grantee upon the grant or vesting of the award. Furthermore, an additional 20% penalty tax may be imposed pursuant to Section 409A of the Code, and certain interest penalties may apply.

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Restricted stock units. The grantee generally will not realize taxable income at the time of the grant of the restricted stock units, and we will not be entitled to a deduction at that time. When an award is paid, whether in cash or our common stock, the grantee will have ordinary income, and we will be entitled to a corresponding deduction. Restricted stock units may be subject to Section 409A of the Code, and the failure of any restricted stock unit that is subject to Section 409A to comply with Section 409A may result in taxable income to the grantee upon vesting (rather than at such time as the award is paid). Furthermore, an additional 20% penalty tax may be imposed under Section 409A of the Code, and certain interest penalties may apply.

Section 162(m) of the Code. As described above, in general, under Section 162(m) of the Code, income tax deductions of publicly-held corporations may be limited to the extent total compensation (including base salary, annual bonus, stock option exercises and non-qualified benefits) for certain executive officers exceeds \$1.0 million (less the amount of any "excess parachute payments" as defined in Section 280G of the Code) in any taxable year of the corporation. However, under Section 162(m) of the Code, the deduction limit does not apply to certain "qualified performance-based compensation."

In order to qualify for the exemption for qualified performance-based compensation, Section 162(m) of the Code generally requires that:

The compensation be paid solely upon account of the attainment of one or more pre-established objective performance goals;

The performance goals must be established by a compensation committee comprised of two or more "outside directors";

The material terms of the performance goals must be disclosed to and approved by the shareholders; and

The compensation committee of "outside directors" must certify that the performance goals have indeed been met prior to payment.

Pursuant to a special rule under Section 162(m), stock options and stock appreciation rights will satisfy the "qualified performance-based compensation" exception if (1) the awards are made by a qualifying compensation committee, (2) the plan sets the maximum number of shares that can be granted to any person within a specified period and (3) the compensation is based solely on an increase in the stock price after the grant date. The 2007 Incentive Award Plan has been designed to permit the Committee to grant stock options and stock appreciation rights which will qualify as "qualified performance-based compensation." In addition, performance-based awards are intended to qualify as "qualified performance-based compensation."

Under the transition rule described above, the deduction limit under Section 162(m) of the Code does not apply to any remuneration paid pursuant to a plan that existed during the period in which the corporation was not publicly held. This transition rule may be relied on until the Transition Date as described above.

After the Transition Date, the maximum number of shares of our common stock which may be subject to awards granted to each such officer under the 2007 Incentive Award Plan will be 500,000 and the maximum amount that may be paid to each such officer in cash during any calendar year with respect to cash-based awards under the plan will be \$1,000,000.

Other Considerations

Awards that are granted, accelerated or enhanced upon the occurrence of a change in control may give rise, in whole or in part, to excess parachute payments within the meaning of Section 280G of the Code to the extent that such payments, when aggregated with other payments subject to Section 280G, exceed the limitations contained in that provision. Such excess parachute payments are not deductible by us and are subject to a 20% excise tax payable by the recipient.

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The 2007 Incentive Award Plan is not subject to any provision of the Employee Retirement Income Security Act of 1974, as amended, and is not qualified under Section 401(a) of the Code. Special rules may apply to a participant who is subject to Section 16 of the Exchange Act. Certain additional special rules apply if the exercise price for an option is paid in shares of our stock previously owned by the participant rather than in cash.

Plan Benefits

In August 2007, our compensation committee approved option grants of 60,000 shares and restricted stock unit awards of 10,000 shares to each of our Chief Operating Officer, Chief Financial Officer and Chief Marketing Officer. Our compensation committee also approved an option grant of 175,000 shares to Dr. Thomson, our Chief Executive Officer, of which options for 40,000 shares were considered by our compensation committee to have been granted in satisfaction of provisions of Dr. Thomson's employment agreement with us which provides that he is entitled to a 40,000 share option grant not later than the first regularly scheduled meeting of the board of directors in each calendar year during the period of his employment. In addition, Mr. Hampton has a provision in his employment agreement with us that provides that we will recommend that our board of directors approve a 100,000 share option grant for him no later than the September 30 following each of the first, second and third anniversaries of his commencement of employment with us.

Generally awards under the 2007 Incentive Award Plan are subject to the discretion of the plan administrator and no determination has been made as to the types or amounts of stock-based awards that will be granted in the future to specific individuals pursuant to the plan, other than the contractual provisions for Dr. Thomson and Mr. Hampton described above. Therefore, other than with respect to the option grants that may be made to Dr. Thomson and Mr. Hampton in accordance with their employment agreements as described above, it is not possible to determine the future stock-based benefits that will be received by participants in the 2007 Incentive Award Plan.

The employment agreements for our individual named officers provide for annual bonus awards based on the attainment of performance goals in accordance with the terms of our executive bonus plan. Our compensation committee will establish the target bonus amounts for our individual named officers on an annual basis and will oversee the administration of our executive bonus plan in accordance with the terms of the 2007 Incentive Award Plan for fiscal year 2008 and thereafter. Below is a description of the cash incentive bonuses payable to employees who are or may be "covered employees" under Section 162(m) of the Code for our 2007 and 2008 fiscal years. We intend to rely on the Section 162(m) transition rule for these bonuses and other bonus awards made prior to the Transition Date.

Fiscal year 2007. For fiscal year 2007, the compensation committee of our board of directors approved a bonus plan for our named executive officers under which target bonus percentages were set at 60% of base salary for our Chief Executive Officer and 40% of base salary for our Chief Financial Officer, Chief Marketing Officer and Chief Operating Officer for our 2007 fiscal year. The target bonus percentage for our Chief Sales Officer was set at 75% of base salary for our 2007 fiscal year. The bonus plan approved by our compensation committee was based in part on achievement of quantitative financial metrics established by the committee and in part on achievement of qualitative goals. The quantitative financial metrics utilized for fiscal year 2007 bonuses were revenue, profit before stock compensation charges, cash