

ARDELYX, INC.
Form DEF 14A
April 26, 2019
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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 under §240.14a-12

Ardelyx, Inc.

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if Other Than The Registrant)

Payment of Filing Fee (Check the appropriate box):

No fee required.

Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

- (1) Title of each class of securities to which transaction applies:
- (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:
-

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ARDELYX, INC.

34175 Ardenwood Blvd.

Suite 200

Fremont, CA 94555

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

TO BE HELD ON JUNE 13, 2019

To the Stockholders of Ardelyx, Inc.:

The 2019 Annual Meeting of Stockholders, or the 2019 Annual Meeting, of Ardelyx, Inc., a Delaware corporation, or the Company, will be held on June 13, 2019 at 8:30 a.m. local time at the Company's headquarters at 34175 Ardenwood Blvd., Suite 200 (2nd Floor), Fremont, CA 94555 for the following purposes:

1. To elect three Class II directors to hold office until the 2022 Annual Meeting of Stockholders and until their successors are elected and qualified;
2. To ratify the selection, by the Audit Committee of our Board of Directors, of Ernst & Young LLP as the independent registered public accounting firm of the Company for the fiscal year ending December 31, 2019; and
3. To transact such other business as may properly come before the 2019 Annual Meeting or any adjournment or postponement thereof.

The foregoing items of business are more fully described in the proxy statement accompanying this Notice of Annual Meeting of Stockholders. Only stockholders who owned the Company's common stock at the close of business on April 18, 2019 may vote at the 2019 Annual Meeting or any adjournments that take place.

We have elected to provide our proxy materials to our stockholders over the internet as permitted by the rules of the U.S. Securities and Exchange Commission. As a result, we are mailing most of our stockholders a paper copy of the Notice of Internet Availability of Proxy Materials, or the Notice, but not a paper copy of our proxy statement and our 2018 Annual Report to Stockholders. This process allows us to provide our proxy materials to our stockholders in a timelier and more readily accessible manner, while reducing the environmental impact and lowering the costs of printing and distributing our proxy materials. The Notice contains instructions on how to access those documents over the internet. The Notice also contains instructions on how to request a paper copy of our proxy materials, including this proxy statement, our 2018 Annual Report to Stockholders and a form of proxy card or voting instruction card. All stockholders who have previously requested a paper copy of our proxy materials will continue to receive a paper copy of the proxy materials by mail.

You are cordially invited to attend the 2019 Annual Meeting in person. Whether or not you plan to attend the 2019 Annual Meeting, please vote as soon as possible. You may vote over the internet or by a toll-free telephone number. If, however, you requested to receive paper proxy materials, then you may also vote by mailing a complete, signed and dated proxy card or voting instruction card in the envelope provided. Please note that any stockholder attending the 2019 Annual Meeting may vote in person, even if the stockholder has already voted over the internet or by phone or returned a proxy card or voting instruction card by mail.

Our board of directors recommends that you vote "FOR" the election of the director nominees named in Proposal No. 1 of the proxy statement and "FOR" the ratification of the appointment of Ernst & Young LLP as our independent

registered public accounting firm as described in Proposal No. 2 of the proxy statement.

By Order of the Board of Directors:

/s/ Elizabeth Grammer
Elizabeth Grammer
Executive Vice President and General Counsel

Fremont, California
April 26, 2019

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ARDELYX, INC.

34175 Ardenwood Blvd.

Suite 200

Fremont, CA 94555

PROXY STATEMENT

FOR THE ANNUAL MEETING OF STOCKHOLDERS

TO BE HELD ON JUNE 13, 2019

IMPORTANT NOTICE REGARDING THE INTERNET AVAILABILITY OF PROXY MATERIALS

FOR THE ANNUAL MEETING OF STOCKHOLDERS TO BE HELD ON JUNE 13, 2019

This proxy statement and our 2018 Annual Report to Stockholders, which includes our Annual Report on Form 10 K for the fiscal year ended December 31, 2018 are available at our website at www.ardelyx.com and at www.astproxyportal.com/ast/19476.

Unless the context requires otherwise, in this proxy statement the terms “Ardelyx,” “we,” “us,” “our” and “the Company” refer to Ardelyx, Inc.

QUESTIONS AND ANSWERS REGARDING THE PROXY MATERIALS AND THE VOTING PROCESS

Why am I receiving these proxy materials?

We have made these proxy materials available to you on the internet or, upon your request, have delivered paper proxy materials to you, because the board of directors of Ardelyx is soliciting your proxy to vote at the 2019 Annual Meeting of Stockholders, or the 2019 Annual Meeting, or any adjournments that take place. The 2019 Annual Meeting will be held on June 13, 2019 at 8:30 a.m. local time at the Company’s headquarters at 34175 Ardenwood Blvd., Suite 200 (2nd Floor), Fremont, CA 94555. As a stockholder, you are invited to attend the 2019 Annual Meeting and are requested to vote on the proposals described in this proxy statement. However, you do not need to attend the 2019 Annual Meeting to vote.

What is included in the proxy materials?

The proxy materials include:

- This proxy statement, which includes information regarding the proposals to be voted on at the 2019 Annual Meeting, the voting process, corporate governance, the compensation of our directors and certain executive officers, and other required information;
- Our 2018 Annual Report to Stockholders, which includes our Annual Report on Form 10 K for the fiscal year ended December 31, 2018; and
- The proxy card or a voting instruction card for the 2019 Annual Meeting.

The proxy materials are being mailed or made available to stockholders on or about April 26, 2019, and are available at www.ardelyx.com.

Why did I receive a Notice of Internet Availability of Proxy Materials, or the Notice, in the mail instead of a complete set of paper proxy materials?

We have elected to provide our proxy materials to our stockholders over the internet as permitted by the rules of the U.S. Securities and Exchange Commission, or SEC. As a result, we are mailing most of our stockholders a paper copy of the

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Notice, but not a paper copy of the proxy materials. This process allows us to provide our proxy materials to our stockholders in a timelier and more readily accessible manner, while reducing the environmental impact and lowering the costs of printing and distributing our proxy materials. The Notice contains instructions on how to access the proxy materials over the internet, and how to request a paper copy of the proxy materials. All stockholders who have previously elected to receive a paper copy of our proxy materials will continue to receive a paper copy of the proxy materials by mail until the stockholder terminates such election.

Why did I receive a complete set of paper proxy materials in the mail instead of a Notice of Internet Availability of Proxy Materials?

We are providing stockholders who have previously requested to receive paper copies of the proxy materials with paper copies of the proxy materials instead of the Notice. If you would like to reduce the environmental impact and the costs incurred by us in printing and distributing the proxy materials, you may elect to receive all future proxy materials electronically via email or the internet. To sign up for electronic delivery, please follow the instructions provided with your proxy materials and on your proxy card or voting instruction card.

Who can vote at the 2019 Annual Meeting?

Only stockholders of record at the close of business on April 18, 2019 will be entitled to vote at the 2019 Annual Meeting. On this record date, there were 62,600,443 shares of common stock outstanding and entitled to vote.

Stockholder of Record: Shares Registered in Your Name

If, at the close of business on April 18, 2019, your shares were registered directly in your name with our transfer agent, American Stock Transfer & Trust Company, LLC, then you are a stockholder of record. As a stockholder of record, you may vote in person at the 2019 Annual Meeting or vote by proxy. Whether or not you plan to attend the 2019 Annual Meeting, please vote as soon as possible by internet, telephone or by mail as instructed below to ensure your vote is counted.

Beneficial Owner: Shares Registered in the Name of a Broker or Bank

If, at the close of business on April 18, 2019, your shares were not held in your name, but rather in an account at a brokerage firm, bank, dealer or other similar organization, then you are the beneficial owner of shares held in “street name” and these proxy materials are being forwarded to you by that organization. The organization holding your account is considered to be the stockholder of record for purposes of voting at the 2019 Annual Meeting. As a beneficial owner, you have the right to direct your broker or other agent how to vote the shares in your account. You are also invited to attend the 2019 Annual Meeting. However, because you are not the stockholder of record, you may not vote your shares in person at the 2019 Annual Meeting unless you request and obtain a valid proxy from your broker or other agent.

What proposals are scheduled for a vote?

There are two proposals scheduled for a vote at the 2019 Annual Meeting:

- Proposal No. 1 — To elect three Class II directors to hold office until the 2022 Annual Meeting of Stockholders and until their successors are elected and qualified; and
- Proposal No. 2 — To ratify the selection, by the Audit Committee of our Board of Directors, of Ernst & Young LLP as the independent registered public accounting firm of the Company for the fiscal year ending December 31, 2019.

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How do I vote?

For Proposal No. 1, you may either vote “FOR” all nominees to the board of directors or you may “WITHHOLD” your vote for any nominee you specify. For Proposal No. 2, you may either vote “FOR” or “AGAINST” or you may abstain from voting.

The procedures for voting are as follows:

Stockholder of Record: Shares Registered in Your Name

If you are a stockholder of record, you may vote in person at the 2019 Annual Meeting or vote by internet, telephone or by mail. Whether or not you plan to attend the 2019 Annual Meeting, please vote as soon as possible to ensure your vote is counted. You may still attend the 2019 Annual Meeting and vote in person even if you have already voted by proxy.

- To vote in person. You may attend the 2019 Annual Meeting and we will give you a ballot when you arrive. If you need directions to the meeting, please visit www.ardelyx.com/contact.
- To vote by proxy by internet or telephone. If you have internet or telephone access, you may submit your proxy by following the instructions provided in the Notice, or if you received paper proxy materials by mail, by following the instructions provided with your proxy materials and on your proxy card or voting instruction card.
- To vote by proxy by mail. If you received paper proxy materials, you may submit your proxy by mail by completing and signing your proxy card and mailing it in the enclosed envelope. Your shares will be voted as you have instructed.

Beneficial Owner: Shares Registered in the Name of Broker or Bank

If you are a beneficial owner of shares registered in the name of your broker, bank, dealer or other similar organization, you should have received a proxy card and voting instructions with these proxy materials from that organization rather than from us. Simply complete and mail the proxy card to ensure that your vote is counted. Alternatively, you may vote by internet or telephone as instructed by your broker or other agent. To vote in person at the 2019 Annual Meeting, you must obtain a valid proxy from your broker or other agent. Follow the instructions from your broker or other agent included with these proxy materials, or contact your broker or bank to request a proxy form.

Can I vote my shares by completing and returning the Notice?

No. The Notice will, however, provide instructions on how to vote by internet, by telephone, by requesting and returning a paper proxy card or voting instruction card, or by submitting a ballot in person at the 2019 Annual Meeting.

How many votes do I have?

On each matter to be voted upon, you have one vote for each share of the Company’s common stock you owned as of April 18, 2019.

What if I return a proxy card but do not make specific choices?

If you return a signed and dated proxy card without marking any voting selections, your shares will be voted “FOR” the election of each nominee for director (Proposal No. 1) and “FOR” the ratification of the selection of Ernst & Young LLP as the independent registered public accounting firm of the Company for the fiscal year ending December 31, 2019

(Proposal No. 2). If any other matter is properly presented at the 2019 Annual Meeting, your proxyholder (one of the individuals named on your proxy card) will vote your shares using his or her best judgment.

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Who is paying for this proxy solicitation?

We will pay for the entire cost of soliciting proxies. In addition to these mailed proxy materials, our directors, officers and employees may also solicit proxies in person, by telephone, or by other means of communication. Directors, officers and employees will not be paid any additional compensation for soliciting proxies.

What does it mean if I receive more than one Notice or proxy card?

If you receive more than one Notice or proxy card, your shares are registered in more than one name or are registered in different accounts. In order to vote all the shares you own, you must vote pursuant to the instructions on each Notice or return each proxy card.

Can I change my vote after submitting my proxy?

Yes. You can revoke your proxy at any time before the final vote at the 2019 Annual Meeting. If you are the stockholder of record of your shares, you may revoke your proxy in any one of three ways:

- You may submit another properly completed proxy, bearing a date later than the date of the original proxy.
- You may send a timely written notice, bearing a date later than the date of the original proxy, that you are revoking your proxy to the Company's General Counsel at Ardelyx, Inc., 34175 Ardenwood Blvd., Suite 200, Fremont, CA 94555.
- You may attend the 2019 Annual Meeting and vote in person. Simply attending the 2019 Annual Meeting will not, by itself, revoke your proxy.

If your shares are held in "street name" by your broker or other agent, you should follow the instructions provided by your broker or agent to change your vote.

What is the quorum requirement?

A quorum of stockholders is necessary to hold a valid meeting. A quorum will be present if stockholders holding at least a majority of the outstanding shares entitled to vote are present at the 2019 Annual Meeting. On the record date, there were 62,600,443 shares outstanding and entitled to vote. Accordingly, the holders of 31,300,222 shares must be present at the 2019 Annual Meeting to have a quorum. Your shares will be counted toward the quorum at the 2019 Annual Meeting only if you vote in person at the meeting, or you submit a valid proxy vote.

Abstentions and broker non-votes (as described below) will be counted towards the quorum requirement. If there is no quorum, the chairperson of the meeting or the holders of a majority of shares present and entitled to vote at the meeting in person or represented by proxy may adjourn the 2019 Annual Meeting to another date.

How are votes counted?

With respect to the election of directors (Proposal 1), you may vote "FOR" or "WITHHOLD" authority to vote for each of the nominees for the Board. If you "WITHHOLD" authority to vote with respect to one or more director nominees, your vote will have no effect on the election of such nominees. Broker non-votes will have no effect on the election of the nominees.

With respect to the ratification of Ernst & Young LLP as of our independent registered public accounting firm for the year ending December 31, 2019 (Proposal 2), you may vote "FOR," "AGAINST" or "ABSTAIN." If you "ABSTAIN" from voting with respect to this proposal, your vote will have the same effect as a vote "AGAINST" the proposal. Broker non-votes will have no effect on the vote for this proposal.

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Votes will be counted by the Inspector of Elections appointed for the 2019 Annual Meeting. The Inspector of Elections will separately count “FOR” votes for the election of directors (Proposal 1) and “FOR” and “AGAINST” votes, abstentions and, if any, broker non-votes for the ratification of the selection of Ernst & Young LLP as the independent registered accounting firm of the Company for the fiscal year ending December 31, 2019 (Proposal 2).

If your shares are held by your broker or other agent as your nominee (that is, held beneficially in “street name”), you will need to obtain a proxy form from the institution that holds your shares and follow the instructions included on that form regarding how to instruct your broker or other agent to vote your shares. If you do not give voting instructions to your broker or other agent, your broker or other agent can only vote your shares with respect to “routine” matters (as described below).

What are “broker non-votes”?

If you hold shares beneficially in street name and do not provide your broker with voting instructions, your shares may constitute “broker non-votes.” Broker non-votes occur on a matter when a broker is not permitted to vote on that matter without instructions from the beneficial owner and instructions are not given. These matters are referred to as “non-routine” matters. Proposal No. 1 to elect directors is a non-routine matter, but Proposal No. 2 to ratify the selection of Ernst & Young LLP as the independent registered public accounting firm for the Company for the fiscal year ending December 31, 2019 is a “routine” matter.

How many votes are needed to approve each proposal?

· Proposal No. 1 — To elect three Class II directors to hold office until the 2022 Annual Meeting of Stockholders and until their successors are elected and qualified. Directors shall be elected by a plurality of the votes cast, which means that the three nominees receiving the most “FOR” votes (from the votes of shares present in person or represented by proxy and entitled to vote on the election of directors) will be elected. “WITHHOLD” votes and broker non-votes will not be counted towards the vote total for this proposal.

· Proposal No. 2 — To ratify the selection of Ernst & Young LLP as the independent registered public accounting firm of the Company for the fiscal year ending December 31, 2019. The ratification of our Ernst & Young LLP as independent registered public accounting firm for the year ending December 31, 2019 requires the affirmative vote of the majority of the votes cast, which means the number of shares voted “FOR

87,818	20.78	12/31/2012	292,434	1,546,475
439,091	22.86	12/31/2012	110,651	1,365,570
<hr/>				
439,091	20%			

Harry
Engelstein
J. Eric
Rome
Mark R.
Upton

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The following table provides information regarding the options exercised by the Named Executive Officers during fiscal 2002 and the value of options outstanding for such individuals at December 31, 2002:

Aggregated Option Exercises in Last Fiscal Year and Fiscal Year-End Option Values

Name	Shares Acquired on Exercise(#)	Value Realized(\$)	Number of Securities Underlying Unexercised Options at Fiscal Year-End(#)		Value of Unexercised In-The-Money Options at Fiscal Year-End\$(1)	
			Exercisable	Unexercisable	Exercisable	Unexercisable
Antonio B. Mon			228,320	1,528,044		
Lonnie M. Fedrick						
Tommy L. McAden			57,082	382,009		
Harry Engelstein						
J. Eric Rome						
Mark R. Upton						

(1) Based on the closing price of TOUSA's common stock on December 31, 2002 of \$14.81.

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Employment Agreements

Antonio B. Mon

Upon the consummation of the merger on June 25, 2002, Antonio B. Mon became our Chief Executive Officer, President, and Executive Vice-Chairman, as well as one of our directors. Pursuant to the terms of the employment agreement between Mr. Mon and us, which became effective on the date of the merger and expires on December 31, 2006, Mr. Mon will receive a minimum base salary of \$800,000 for the first year with an increase of 10% per year thereafter until the agreement expires or is terminated. Mr. Mon will be eligible to receive an annual bonus and equity awards under our Annual and Long-Term Incentive Plan, and Mr. Mon was granted 1,756,364 options to purchase shares of our common stock. In the event of termination by us without cause and not as a result of his disability or death, or in the event Mr. Mon terminates for good reason or due to a change in control, we will pay Mr. Mon the greater of (a) three times the sum of his base salary, his highest annual cash bonus, and the value of his fringe benefits, or (b) the aggregate amount of his base salary, his annual cash bonuses, and the value of the fringe benefits that would be payable for the remainder of the agreement term. He will also receive continued health plan coverage until age 65 or until he becomes covered under another plan. In addition, if payments are deemed to constitute excess parachute payments, and Mr. Mon becomes liable for any tax penalties imposed thereon, we will make a cash payment to him in an amount equal to the tax penalties. The agreement contains non-compete provisions in the event of termination of employment.

Tommy L. McAden

Upon the consummation of the merger on June 25, 2002, Tommy L. McAden became our Vice President of Finance and Administration, Chief Financial Officer, and Treasurer. Pursuant to the terms of the employment agreement between Mr. McAden and us, which became effective on the date of the merger and expires on June 25, 2005, Mr. McAden will receive a minimum base salary of \$380,000, with annual salary increases. Mr. McAden will receive an annual bonus and equity awards under our Annual and Long-Term Incentive Plan with respect to each of the years 2002, 2003, and 2004, and Mr. McAden was granted 439,091 options to purchase shares of our common stock. In the event of termination by us without cause, or by Mr. McAden for good reason, we will pay Mr. McAden a termination payment in the amount of the sum of his base salary and annual bonus, the value of any benefits and perquisites that would have been provided during the remainder of the agreement term, and accrued obligations. In the event of a change in control and Mr. McAden's termination of the agreement on this basis, he will receive the greater of (a) the termination payment due above, or (b) two times the sum of his salary and annual bonus, plus the value of any benefits and perquisites that would have been provided during the remainder of the agreement term and accrued compensation. In addition, if payments are deemed to constitute excess parachute payments, and Mr. McAden becomes liable for any tax penalties imposed thereon, we will make a cash payment to him in an amount equal to the tax penalties. The agreement contains non-compete provisions in the event of termination of employment.

Yannis Delikanakis

On January 1, 2003, Yannis Delikanakis became our Executive Vice President, pursuant to the terms of an employment agreement between Mr. Delikanakis and us, which became effective on January 1, 2003 and expires on January 1, 2008. Mr. Delikanakis will receive a minimum base salary of \$75,000 per year, and was granted 900,000 options to purchase shares of our common stock. Mr. Delikanakis will not receive any bonus or other compensation unless approved by the Board of Directors. In the event of any termination, Mr. Delikanakis will receive only unreimbursed business expenses incurred by Mr. Delikanakis. In addition, if payments are deemed to constitute excess parachute payments, and Mr. Delikanakis becomes liable for any tax penalties imposed thereon, we will make a cash payment to him in an amount equal to the tax penalties. The employment agreement contains non-compete provisions in the event of termination of employment.

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Harry Engelstein

Effective November 12, 2000, Engle Homes, Inc. and Mr. Engelstein entered into an employment agreement with a term ending on December 31, 2003. Pursuant to that agreement, Mr. Engelstein would serve as Executive Vice President and Chief Construction Officer of Engle Homes, Inc. The continuing relationship between TOUSA and Mr. Engelstein in his role as an Executive Vice President of our homebuilding operations are on terms substantially similar to those set forth in the employment agreement. In 2002, Mr. Engelstein received a base salary of \$415,000 and received an annual bonus based on a specific formula set forth in the agreement. If Mr. Engelstein's employment is terminated for cause, disability, or death, Mr. Engelstein will be entitled to receive salary, together with any accrued, vested, or earned obligations, through the termination date. If Mr. Engelstein's employment is terminated by the Company for any other reason, or by Mr. Engelstein for good reason, Mr. Engelstein will be entitled to receive salary, bonus, all accrued obligations, deferred compensation, and insurance and related benefits as would have been payable for the remainder of the employment term. In the event of a change in control and a resulting termination of the agreement by Mr. Engelstein for good reason or by the Company for any reason other than for cause, death, or disability, he will receive a lump sum cash payment of two times the aggregate of his salary and recent bonus, plus certain other accrued and deferred compensation.

J. Eric Rome

Effective January 1, 1998, Newmark Homes Corporation and Mr. Rome entered into an employment agreement with a term ending on December 31, 2002. Pursuant to that agreement, Mr. Rome would serve as President of the Newmark Homes Texas homebuilding operations. On April 1, 2003, the Company and Mr. Rome amended and extended the agreement to reflect his responsibilities as an Executive Vice President of our homebuilding operations and an increase in his base salary to \$420,000. In 2002, Mr. Rome received a base salary of \$408,846 and received an annual bonus in accordance with the terms of the agreement. If Mr. Rome's employment is terminated for cause, Mr. Rome will be entitled to receive accrued salary and any accrued obligations. If Mr. Rome's employment is terminated due to disability or death, Mr. Rome will be entitled to receive accrued salary and a pro-rated bonus. If Mr. Rome's employment is terminated for any other reason, or if Mr. Rome terminates for good reason, Mr. Rome will be entitled to receive salary, bonus, all accrued obligations, deferred compensation, and insurance and related benefits as would have been payable for the remainder of the employment term. The employment agreement contains non-compete provisions in the event of Mr. Rome's termination of employment.

Mark R. Upton

Effective November 12, 2000, Engle Homes, Inc. and Mr. Upton entered into an employment agreement with a term ending on December 31, 2003. Pursuant to that agreement, Mr. Upton would serve as President of the Engle Homes Arizona homebuilding operations. On April 1, 2003, the agreement was amended to reflect his new responsibilities as an Executive Vice President of our homebuilding operations and an increase in his base salary to \$420,000. In 2002, Mr. Upton received a base salary of \$239,850 and received quarterly bonuses based on a specific formula set forth in his agreement. If Mr. Upton's employment is terminated for cause, incapacity, or death, Mr. Upton will be entitled to receive accrued salary and any accrued obligations. If Mr. Upton's employment is terminated for any other reason, or if Mr. Upton terminates for good reason, Mr. Upton will be entitled to receive salary, accrued obligations, a portion of the quarterly bonus, and deferred compensation as would have been payable for the remainder of the employment term. In the event of a change in control and a resulting termination of the agreement by Mr. Upton for good reason or by the Company for any reason other than for cause, incapacity, or death, he will receive a lump sum cash payment of two times the aggregate of his salary and recent bonus, plus certain other accrued and deferred compensation. The employment agreement contains non-compete provisions in the event of Mr. Upton's termination of employment.

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The following table gives information about our common stock that may be issued upon the exercise of options, warrants, and rights under all existing equity compensation plans as of December 31, 2002.

Plan Category	Number of securities to be issued upon exercise of outstanding options, warrants, and rights (a)	Weighted-average exercise price of outstanding options, warrants, and rights (b)	Number of securities available for future issuance under equity compensation plans (excluding securities reflected in column(a)) (c)
Equity compensation plans approved by security holders	2,195,455	\$ 19.37	1,804,545
Equity compensation plans not approved by security holders	*	*	*
Total	2,195,455	\$ 19.37	1,804,545

COMMITTEE REPORT ON EXECUTIVE COMPENSATION

During the fiscal year ended December 31, 2002, our Special Benefits Committee was responsible for both the establishment and administration of the policies that govern annual compensation programs and for the compensation and bonus arrangement for the Chief Executive Officer and other top executive officers, as well as administration of our stock incentive program, while our Compensation Committee was responsible for the establishment of compensation of all other officers and employees. During 2002, the Special Benefits Committee was comprised of Messrs. Hasler, Poulos, and Stevens, and the Compensation Committee was comprised of Messrs. Horner, Hasler, Delikanakis, Andreas Stengos, and George Stengos. Commencing on February 3, 2003, our Board decided to merge the Special Benefits Committee and the Compensation Committee to form the Compensation and Benefits Committee, which is comprised solely of independent directors.

This report, regarding our compensation policies and the implementation of these policies during 2002, is furnished by the Special Benefits Committee.

Determination of Executive Officer Compensation

Our compensation policies are intended to:

reward executives for long-term strategic management that results in the enhancement of stockholder values;

support a performance oriented environment which rewards achievement of both our internal goals and enhanced company performance as measured against performance levels of comparable companies in the industry; and

attract and retain executives whose abilities are critical to our long-term success and competitiveness.

Components of Executive Officer Compensation

For 2002, the executive compensation program consisted of three key components:

base salary;

incentive compensation (bonus); and

stock options.

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Base salaries paid to Named Executive Officers were paid pursuant to agreements described in Employment Agreements above. Each Named Executive Officer's base salary was determined by the

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individual officer's level of responsibility and comparisons to similar positions within TOUSA as well as with other companies in the industry.

In 2002, the Special Benefits Committee evaluated and approved an annual bonus program for our senior officers. The program was designed to reward personal contribution and performance, measured as achievement of specified profit goals, regional contribution targets, and overall performance. Each bonus was also to be a percentage of the officer's base salary based on job position and experience with TOUSA. In the budgeting process, a profit goal or regional contribution target was set for each division and region. The amount of bonus earned by the officer will be determined with each factor and actual performance of such factor evaluated.

Minimum threshold performance criteria must be reached before any bonus awards will be granted. In addition, the individual performance of executive officers may be taken into consideration in making any awards.

Determination of Chief Executive Officer Compensation

Antonio B. Mon

In connection with our principal stockholders' decision to merge the operations and businesses of Newmark and Engle, we determined that it was necessary to bring on a new Chief Executive Officer who had significant experience in our industry. Upon review of industry compensation standards, we entered into an employment agreement with Mr. Mon, which provided for a base salary and an annual bonus that was strictly tied to the performance of the Company. We determined that the best way to align the interests of our Chief Executive Officer with the long-term interests of our stockholders was to align his annual bonus with the Company's results of operations, thereby providing meaningful downside risk and upside opportunity for variations in our financial performance. In addition to his base salary and annual bonus, the Special Benefits Committee determined that the compensation of our Chief Executive Officer should have an equity component to further align the Chief Executive Officer's interests with those of our stockholders by providing a direct link between executive compensation and long-term performance of TOUSA. Stock options were to be granted to our Chief Executive Officer at various premiums to then fair market price. In accordance with these policies, the Special Benefits Committee approved the employment agreement of Mr. Mon described under "Employment Agreements" above. During fiscal year 2002, Mr. Mon received stock options to purchase 1,756,364 shares of our common stock as shown on the Stock Option Grants Table pursuant to our incentive plan. The Special Benefits Committee also provided Mr. Mon with a bonus based upon the formula set forth in the employment agreement.

Lonnie M. Fedrick

As Chief Executive Officer from January 2002 to June 25, 2002, Mr. Fedrick was compensated during fiscal year 2002 pursuant to an employment agreement which expired on December 31, 2002. Mr. Fedrick was paid a base salary and an annual bonus in 2002. Mr. Fedrick's compensation was substantially related to the Company's performance because he received an annual bonus, determined pursuant to a specific formula, which was based on the achievement of defined net income levels by Newmark Home Corporation and its subsidiaries. Mr. Fedrick was entitled to receive a cash bonus based on his base salary multiplied by a percentage of an achieved target amount set by the Special Benefits Committee.

Annual and Long-Term Incentive Plan

The Plan provides that any employee, consultant, or director of the Company, its subsidiaries, its parent corporation, and affiliated entities is eligible to receive stock options, restricted stock, performance awards, phantom shares, bonus shares, or other stock-based awards, either separately or in combination. The number of shares of common stock with respect to which awards may be granted under the Plan is 4,000,000, subject to adjustment. The Plan is intended to promote the interests of the Company by encouraging employees, consultants, and directors of the Company, its parent corporation, its subsidiaries,

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and affiliated entities to acquire or increase their equity interest in the Company and to provide a means whereby they may develop a sense of proprietorship and personal involvement in the development and financial success of the Company, and to encourage them to remain with and devote their best efforts to the Company's business, thereby advancing the interests of the Company and its stockholders. As of December 31, 2002, there were 2,195,455 awards granted under the Plan.

Compliance with Section 162(m)

Section 162(m) of the Internal Revenue Code generally disallows a tax deduction to public companies for annual compensation over \$1.0 million paid to their Chief Executive Officer and certain other highly compensated executive officers. Generally, the Code excludes from the calculation of the \$1.0 million cap compensation that is based on the attainment of pre-established, objective performance goals. Where practicable, it is the Special Benefits Committee's policy to establish compensation practices that are both cost-efficient from a tax standpoint and effective as a compensation program. The Special Benefits Committee considers it important to be able to utilize the full range of incentive compensation tools, even though some compensation may not be fully deductible.

This report furnished by the Special Benefits Committee of the Board of Directors.

Messrs. Hasler, Poulos, and Stevens

CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Tax Allocation Agreements

Pursuant to a Tax Allocation Agreement between us and TOI, effective for taxable periods commencing on or after December 15, 1999, and a Tax Allocation Agreement between TOI and Engle Holdings Corp., effective for tax periods commencing on or after November 22, 2000, our and Engle's earnings may be included in the consolidated federal income tax returns filed by TOI. The amount of our and Engle's liability to (or entitlement to payment from) TOI equals the amount of taxes that each would respectively owe (or refund that each would receive) had we or Engle, as the case may be, prepared its federal tax returns on a stand-alone basis. Pursuant to the Tax Allocation Agreements, TOI has agreed to indemnify us and Engle for payments which TOI has already received from us or Engle, respectively, or with respect to any tax liabilities of TOI or its affiliated entities other than us or Engle, as the case may be. With respect to the Tax Allocation Agreements, we made payments totaling \$37.7 million for the year ended December 31, 2002. The Tax Allocation Agreement between TOI and Engle was terminated after the merger.

Management Services Agreement

Pursuant to a Management Services Agreement between us and Techolym L.P., dated June 1, 2000, Techolym provided us with certain advisory, administrative, and other services. Techolym L.P. was merged into TOI on December 31, 2002. Under this agreement, TOI provides consultation with, and assistance to, our Board of Directors and management in connection with issues involving our business. In addition, as of January 1, 2001, TOI provided plan administration of a self-funded group medical and dental plan for us and our subsidiaries. We made payments totaling \$1.4 million for the year ended December 31, 2002, related to this agreement. In future years, TOI is entitled to receive the greater of (i) 107.5% of the actual consideration paid to TOI in the prior year and (ii) an amount equal to TOI's budgeted operating costs for those services that will actually be provided to us, subject to a maximum of 125% of the consideration paid in the prior year. We may terminate the Management Services Agreement upon 60 days' prior written notice.

Purchasing Agreements

In order to consolidate the purchasing function, we and our subsidiary TOUSA Homes, Inc. entered into non-exclusive purchasing agreements with Technical Olympic S.A., an affiliate of TOI, in November

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2000. Under the purchasing agreements, Technical Olympic S.A. would purchase certain materials and supplies necessary for operations on our respective behalves pursuant to third-party contracts assigned to Technical Olympic S.A. by us. These materials and supplies bought by Technical Olympic S.A. under the purchasing agreements are provided to us and TOUSA Homes, Inc. at cost. These agreements may be terminated upon 60 days' prior notice. Technical Olympic S.A. purchased an aggregate of \$191.6 million of materials and supplies on behalf of us and TOUSA Homes, Inc. for the year ended December 31, 2002. Constantine Stengos, our Chairman of the Board of Directors, is President and Managing Director of Technical Olympic S.A. Yannis Delikanakis, one of our directors, is General Manager - Real Estate of Technical Olympic S.A.

During the year ended December 31, 2002, one of our subsidiaries purchased approximately \$932,000 of lots from Willow Park Green, Ltd. Michael Stevens, one of our directors, has an indirect limited partnership interest in such entity.

Certain Land Bank Transactions

During 2001, Engle sold certain undeveloped real estate tracts to, and entered into a number of agreements, including option contracts and construction contracts, with an investment limited liability company owned by several of Engle's then current and former executive officers, including related trusts of management. As a result of the merger, we became the successor to Engle in these transactions. By their terms, we can cancel these agreements to purchase the land by forfeiture of the deposit. As of December 31, 2002, the remaining value of lots that we can acquire under the various agreements was approximately \$7.0 million. We believe that the terms of the agreements are comparable to those available from unaffiliated parties.

Merger Agreement

On June 25, 2002 we completed the merger with Engle. At the time of the merger, each issued and outstanding share of Engle common stock was exchanged for 1,724.08294 shares of Newmark common stock and we changed our name to Technical Olympic USA, Inc. At the date of the merger, there were 9,500 shares of Engle common stock issued and outstanding, all of which were held by TOI. As a result of the merger, 16,378,787 additional shares were issued to TOI. As a result of the exchange of equity interests in the merger, TOI currently owns 91.72% of our outstanding capital stock.

Table of Contents**PERFORMANCE GRAPH**

The graph below compares the cumulative total return on our common stock with the cumulative total return of the Standard and Poor's 500 Index and the Standard and Poor's Homebuilding Index for the last five fiscal years (assuming the investment of \$100 in each vehicle on March 12, 1998 and the reinvestment of all dividends).

**Comparison of Five-Year Cumulative Total Return of Technical Olympic USA, Inc.,
the S&P 500 Index, and the S&P Homebuilding Index**

	<u>March 12, 1998</u>	<u>Dec. 31, 1998</u>	<u>Dec. 31, 1999</u>	<u>Dec. 31, 2000</u>	<u>Dec. 31, 2001</u>	<u>Dec. 31, 2002</u>
Technical Olympic USA, Inc.	\$ 100	\$ 66.67	\$ 57.14	\$ 97.62	\$ 143.59	\$ 147.27
S&P 500 Index	\$ 100	\$ 116.33	\$ 140.81	\$ 127.99	\$ 112.78	\$ 87.85
S&P 600 Homebuilding	\$ 100	\$ 96.08	\$ 96.08	\$ 90.57	\$ 130.18	\$ 135.67

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INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

Relationship with Independent Certified Public Accountants

The Audit Committee has selected Ernst & Young LLP, independent certified public accountants, to audit our consolidated financial statements for fiscal year 2003. Ernst & Young LLP has served as our independent certified public accountants since October 1, 2001. A member of Ernst & Young LLP will be present at the Annual Meeting, will have the opportunity to make a statement, and will be available to respond to appropriate questions you may ask.

On October 1, 2001, upon recommendation and approval by our Audit Committee, we dismissed BDO Seidman, LLP as our independent certified public accountant and engaged Ernst & Young LLP as our independent certified public accountant. We did not consult with any other independent certified public accountants prior to the Ernst & Young LLP engagement. Prior to our engagement of Ernst & Young LLP, we had not consulted Ernst & Young LLP on any accounting issues.

The reports of BDO Seidman, LLP on the financial statements for the years ended December 31, 1999 and December 31, 2000 contained no adverse opinion or disclaimer of opinion and were not qualified or modified as to uncertainty, audit scope, or accounting principle.

In connection with its audits for the years ended December 31, 1999 and December 31, 2000 and the interim period through October 1, 2001, there had been no disagreements with BDO Seidman, LLP on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements if not resolved to the satisfaction of BDO Seidman, LLP would have caused them to make reference thereto in their report on the financial statements for such years.

During the years ended December 31, 1999 and December 31, 2000 and for the interim period through October 1, 2001, there were no reportable events of the type described in Item 304(a)(1)(v) of Regulation S-K.

We provided BDO Seidman, LLP with a copy of the foregoing disclosures. We filed with our Form 8-K, on October 5, 2001, as Exhibit 99.1, a copy of BDO Seidman, LLP's letter, dated October 3, 2001, stating its agreement with such statements.

Independent Certified Public Accountants Fees

The aggregate fees billed to TOUSA for the year ended December 31, 2002, by our principal accounting firm Ernst & Young LLP, are as follows:

Audit Fees: The aggregate fees for professional services rendered by Ernst & Young LLP in connection with the audit of our annual financial statements (Form 10-K) and reviews of our quarterly financial statements (Forms 10-Q) for the year ended December 31, 2002, were approximately \$292,000.

Financial Information Systems Design and Implementation Fees: There were no fees billed by Ernst & Young LLP for services rendered in connection with financial information systems design and implementation during the fiscal year ended December 31, 2002.

All Other Fees:

Audit Related Fees Fees billed for statutory audits of subsidiaries, assisting us with the preparation and review of our various financing documents during the fiscal year 2002, and evaluating the effects of various accounting issues and changes in professional standards were approximately \$690,000.

Other Fees The aggregate fees billed by Ernst & Young LLP for professional services, other than services covered in the preceding paragraphs, rendered for the fiscal year ended December 31, 2002, were approximately \$961,000. These fees were for tax consulting and compliance services.

Ernst & Young LLP advised the Audit Committee that it did not believe its audit was impaired by providing such services. As a result, Ernst & Young LLP confirmed that, as of December 31, 2002, it was

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an independent accountant with respect to TOUSA within the meaning of the Securities Act of 1933 and the requirements of the Independence Standards Board.

GENERAL INFORMATION

Other Matters. The Board of Directors does not intend to present any matter for action at this meeting other than the matters described in this proxy statement. If any other matters properly come before the Annual Meeting, it is intended that the holders of the proxies hereby solicited will act in respect to such matters in accordance with their best judgment.

Multiple Stockholders Sharing the Same Address. Recent changes in the regulations regarding the delivery of copies of proxy materials and annual reports to stockholders permit us, banks, brokerage firms, and other nominees to send one annual report and proxy statement to multiple stockholders who share the same address under certain circumstances. This practice is known as householding. Stockholders who hold their shares through a bank, broker, or other nominee may have consented to reducing the number of copies of materials delivered to their address. In the event that a stockholder wishes to revoke a householding consent previously provided to a bank, broker, or other nominee, the stockholder must contact the bank, broker, or other nominee, as applicable, to revoke such consent. In the event that a stockholder wishes to receive a separate proxy statement for the 2003 Annual Meeting or a 2002 Annual Report, the stockholder may receive printed copies by contacting Technical Olympic USA, Inc., Attention: Secretary, at 4000 Hollywood Boulevard, Suite 500 N, Hollywood, Florida 33021 or by calling (954) 364-4000.

Any stockholders of record sharing an address who now receive multiple copies of our annual reports and proxy statements and who wish to receive only one copy of these materials per household in the future should also contact us by mail or telephone as instructed above. Any stockholders sharing an address whose shares of common stock are held by a bank, broker, or other nominee who now receive multiple copies of our annual reports and proxy statements, and who wish to receive only one copy of these materials per household, should contact the bank, broker, or other nominee to request that only one set of these materials be delivered in the future.

Stockholder Proposals for 2004 Annual Meeting. Stockholder proposals for inclusion in the proxy materials related to the 2004 Annual Meeting of Stockholders must be received by TOUSA at its principal executive offices, 4000 Hollywood Boulevard, Suite 500 N, Hollywood, Florida 33021 by December 13, 2003. Such proposals should be sent by certified mail, return receipt requested.

TOUSA must receive notice of any stockholder proposal to be submitted at the 2004 Annual Meeting of Stockholders (but not required to be included in our proxy statement) by February 26, 2004, or such proposal will be considered untimely pursuant to Rule 14a-4 and 14a-5(e) under the Exchange Act and the persons named in the proxies solicited by management may exercise discretionary voting authority with respect to such proposal.

Expenses of Solicitation. Proxies will be solicited by mail, telephone, or other means of communication. Solicitation also may be made by our directors, officers, and regular employees. The entire cost of solicitation will be borne by TOUSA.

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Form 10-K

Stockholders entitled to vote at the meeting may obtain a copy of our Annual Report on Form 10-K for the fiscal year ended December 31, 2002, including the financial statements required to be filed with the SEC, without charge, upon written or oral request to Technical Olympic USA, Inc., Attention: Secretary, 4000 Hollywood Blvd., Suite 500 N, Hollywood, Florida 33021 or (954) 364-4000.

By Order of the Board of Directors,

CONSTANTINE STENGOS

Chairman

Hollywood, Florida
April 11, 2003

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**REVOCABLE PROXY
TECHNICAL OLYMPIC USA, INC.
ANNUAL MEETING OF STOCKHOLDERS**

MAY 8, 2003

12:00 P.M. EASTERN TIME

THIS PROXY IS SOLICITED ON BEHALF OF THE BOARD OF DIRECTORS

The undersigned hereby appoints Constantine Stengos and Yannis Delikanakis, each with full power of substitution, to act as proxies for the undersigned and to vote all shares of Common Stock of the Company that the undersigned is entitled to vote only at the Annual Meeting of Stockholders, to be held on May 8, 2003, at 12:00 p.m. Eastern Time, at the Marriott Harbor Beach Resort, 3030 Holiday Drive, Fort Lauderdale, Florida 33316 and at any and all adjournments thereof, as set forth on the reverse side.

This proxy is revocable and will be voted as directed, but if no instructions are specified on an executed proxy that is returned, then this proxy will be voted FOR the proposals listed. If any other business is presented at the Annual Meeting, including whether or not to adjourn the meeting, this proxy will be voted by those named in this proxy in their best judgment. At the present time, the Board of Directors knows of no other business to be presented at the Annual Meeting.

PLEASE VOTE, DATE AND SIGN THIS PROXY ON THE OTHER SIDE AND RETURN PROMPTLY IN THE ENCLOSED ENVELOPE.

HAS YOUR ADDRESS CHANGED?

DO YOU HAVE ANY COMMENTS?

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x Please mark votes as in this example.

THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR EACH OF THE LISTED NOMINEES.

1. The election as directors of all nominees listed (except as marked to the contrary below).

<input type="radio"/>	FOR Nominees: (01) Constantine Stengos, (02) Antonio B. Mon, (03) Yannis Delikanakis, (04) Lonnie B. Fedrick, (05) William A. Hasler, (06) Larry D. Horner, (07) Michael J. Poulos, (08) Andreas Stengos and (09) George Stengos	<input type="radio"/>	WITHHELD
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To withhold your vote for any individual nominee, write that nominee's number on the line provided above:

The undersigned acknowledges receipt from the Company prior to the execution of this proxy of a Notice of Annual Meeting of Stockholders and the accompanying Proxy Statement relating to the Annual Meeting.

PLEASE COMPLETE, DATE, SIGN, AND PROMPTLY MAIL THIS PROXY IN THE ENCLOSED POSTAGE-PAID ENVELOPE.

Mark box at right if you plan to attend the Annual Meeting. Date _____ 2003

Mark box at right if an address change or comment has been noted on the reverse side of this card. _____
Signature of Stockholder

Signature of Stockholder

Please sign exactly as your name appears on this card. When signing as attorney, executor, administrator, trustee or guardian, please give your full title. If shares are held jointly, each holder may sign but only one signature is required.