

DEAN FOODS CO
Form DEF 14A
April 15, 2011
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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:

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| <input type="checkbox"/> | Preliminary Proxy Statement | <input type="checkbox"/> | Confidential, for Use of the Commission Only (as permitted by |
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Dean Foods Company

(Name of Registrant as Specified In Its Charter)

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

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No fee required.

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- 3) Filing Party:

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NOTICE OF STOCKHOLDERS MEETING

We will hold this year's annual stockholders meeting on Thursday, May 19, 2011, at 10:00 a.m. at the Dallas Museum of Art, 1717 North Harwood, Dallas, Texas 75201.

At the meeting, we will ask you to consider and vote on the following proposals recently adopted by our Board of Directors:

Proposal One: A proposal to re-elect Stephen L. Green, Joseph S. Hardin, Jr. and John R. Muse as members of our Board of Directors for a three-year term.

Proposal Two: A proposal to amend our 2007 Stock Incentive Plan to increase the shares available for grant by 2.34 million shares.

Proposal Three: A proposal to approve our executive compensation.

Proposal Four: A proposal to approve the frequency of stockholder votes on our executive compensation.

Proposal Five: A proposal to ratify the selection of Deloitte & Touche LLP as our independent auditor for 2011. In addition, we will ask you to consider and vote on a stockholder proposal related to tax gross-ups that is opposed by our Board of Directors, as described on pages 17-19 in the accompanying Proxy Statement.

We will also discuss and take action on any other business that is properly brought before the meeting.

If you were a stockholder of record on March 23, 2011, you are entitled to vote on the proposals to be considered at this year's meeting.

This Notice and the accompanying Proxy Statement are first being mailed to stockholders on or about April 15, 2011.

By order of the Board of Directors,
Steven J. Kemps
Executive Vice President,
General Counsel and Corporate Secretary

IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS

FOR THE ANNUAL STOCKHOLDERS MEETING TO BE HELD ON MAY 19, 2011

The Company's Proxy Statement and Annual Report to Security Holders for the fiscal year ended December 31, 2010 are available at www.deanfoods.com/proxymaterials

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YOU ARE INVITED

April 15, 2011

Dear Fellow Stockholders,

We hope that you will attend our annual stockholders' meeting on Thursday, May 19, 2011. At the annual meeting, after we vote on the proposals described in this Proxy Statement, we will present a brief report on our 2010 results and an update on our business. As always, we will conclude the meeting by inviting you to ask questions and make comments. For your convenience, we will present a live webcast of the annual meeting, which you can access through our corporate website at www.deanfoods.com.

If you have questions regarding any of the matters contained in this Proxy Statement, please contact our Investor Relations Department at 800.431.9214. We look forward to seeing you at this year's meeting.

Sincerely,
Gregg L. Engles
Chairman of the Board and

Chief Executive Officer

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QUESTIONS AND ANSWERS

Why did I receive this Proxy Statement?

On April 15, 2011, we began mailing this Proxy Statement to everyone who was a stockholder of record of our Company on March 23, 2011, the record date for our annual stockholders meeting. One purpose of this Proxy Statement is to let our stockholders know when and where we will hold our annual stockholders meeting.

More importantly, this Proxy Statement:

Includes detailed information about the matters that will be discussed and voted on at the meeting, and

Provides updated information about our Company that you should consider in order to make an informed decision at the meeting.

I received more than one Proxy Statement. Why?

If you received more than one Proxy Statement, your shares are probably registered differently or are in more than one account. Please vote each proxy card or voting card that you received.

How can I change the number of copies of the Annual Report and Proxy Statement being delivered to my household for future mailings?

Family members who are registered owners of our stock and who live in the same household generally receive only one copy per household of the Annual Report, Proxy Statement, and most other mailings. The only item that is separately mailed for each registered stockholder or account is a proxy card. If you would like to start receiving separate copies in your name, apart from others in your household, please contact our Investor Relations Department at 800.431.9214 and request that action. Within 30 days after your request is received, we will start sending you separate mailings. If for any reason you and members of your household are receiving multiple copies and you want to eliminate duplications, please contact our Investor Relations Department at 800.431.9214 and request that action. That request must be made by each registered stockholder in the household.

How can I obtain my own separate copy of the Annual Report and Proxy Statement for the meeting in May?

For multiple stockholders who live in the same household and want separate copies of the Annual Report and Proxy Statement for review prior to the meeting in May, you may download them from www.deanfoods.com/proxymaterials. We will also have materials available at the meeting. If you want copies mailed to you and you are a beneficial owner, you must request them from your broker, bank, or other nominee. If you would like copies mailed to you and you are a registered stockholder, such materials will be mailed promptly if you request them from our transfer agent at 866.557.8698. We cannot guarantee you will receive mailed copies before the meeting.

What will occur at the annual meeting?

First we will determine whether enough stockholders are present at the meeting to conduct business. A stockholder will be deemed to be present at the meeting if the stockholder:

Is present in person, or

Is not present in person but has voted by proxy either by telephone, online or mail prior to the meeting.

According to our bylaws, holders of at least 91,584,262 shares of our common stock (which is a majority of the shares of our common stock that were outstanding on March 23, 2011) must be present at this year's meeting

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in order to conduct the meeting. Abstentions and broker non-votes are counted as present and entitled to vote for purposes of determining if enough stockholders are present (in person or by proxy) to conduct the meeting. A broker non-vote occurs when a bank, broker or other holder of record holding shares for a beneficial owner does not vote on a particular proposal because that holder does not have discretionary voting power for that particular item and has not received instructions from the beneficial owner.

If holders of fewer than 91,584,262 shares are present at the meeting, we will adjourn the meeting and reschedule it. The new meeting date will be announced at the meeting. If enough stockholders are present at the meeting to conduct business, then we will vote on:

Proposal One: A proposal to re-elect Stephen L. Green, Joseph S. Hardin, Jr. and John R. Muse as members of our Board of Directors for a three-year term.

Proposal Two: A proposal to amend our 2007 Stock Incentive Plan to increase the shares available for grant by 2.34 million shares.

Proposal Three: A proposal to approve our executive compensation.

Proposal Four: A proposal to approve the frequency of stockholder votes on our executive compensation.

Proposal Five: A proposal to ratify the selection of Deloitte & Touche LLP as our independent auditor for 2011.

Proposal Six: A stockholder proposal related to tax gross-ups as described on pages 17-19.

Proposals One, Two, Three, Four and Five have been approved by our Board of Directors. The Board of Directors is now soliciting your vote on these proposals and recommends that you vote FOR each of Proposals One, Two, Three and Five. The Board of Directors recommends that you vote in favor of holding an advisory vote on our executive compensation EVERY TWO YEARS on Proposal Four. The Board of Directors recommends that you vote AGAINST Proposal Six.

On each proposal, you are entitled to one vote for each share of stock that you owned on March 23, 2011. Cumulative voting is not permitted.

Our common stock was the only class of stock outstanding on March 23, 2011. As of that date, there were 183,168,522 shares of common stock issued and outstanding.

After each proposal has been voted on at the meeting, we will discuss and take action on any other matter that is properly brought before the meeting. Also, our management team will present a brief report on our 2010 results and an update on our business.

How many votes are necessary to re-elect the nominees for director?

In 2009, we implemented majority voting for the election of our directors, which became effective following our 2009 annual meeting of stockholders. Our bylaws currently provide that in an uncontested election of directors (an election in which the number of nominees does not exceed the number of directors to be elected), if the number of votes cast for a director's election exceeds the number of votes cast against that director's election, that director shall be elected. Abstentions or broker non-votes will not be counted as votes cast either for or against any director's election. If an incumbent director does not receive a majority of the votes cast for election, then the director must follow the guidelines set forth in the Board's Corporate Governance Principles related to director elections, which provide that the director shall offer to tender his or her resignation to the Board. The Board then makes a determination of whether to accept the resignation, based on the recommendation of the Governance Committee.

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What if a nominee for director is unwilling or unable to stand for re-election?

Each of the persons nominated for re-election has agreed to stand for re-election. However, if unexpected events arise which cause one or more of them to be unable to stand for re-election, then either:

The Board of Directors can vote at the meeting to reduce the size of the Board of Directors, or

The Board of Directors may, during the meeting, nominate another person for director.

If our Board of Directors nominates someone at the meeting, the person(s) to whom you have given your proxy will be able to use his or her discretion to vote on your behalf.

How many votes are necessary to pass the other proposals?

Proposal Two: The proposed amendment to our 2007 Stock Incentive Plan must receive the affirmative vote of a majority of shares present (in person and by proxy) and entitled to vote at the meeting in order to pass.

Proposal Three: The Compensation Committee of our Board of Directors has responsibility for designing our compensation program, which is described in the Compensation Discussion and Analysis section of this Proxy Statement and the related compensation tables. Stockholder approval of compensation is not binding on the Board of Directors, the Compensation Committee or the Company. However, the Board of Directors is soliciting your opinion regarding our compensation program. The Compensation Committee will take your opinion into account when considering future compensation arrangements for our Named Executive Officers. The proposal must receive the affirmative vote of a majority of the shares present (in person and by proxy) and entitled to vote at the meeting in order to pass.

Proposal Four: The Board of Directors has responsibility for selecting the frequency with which it conducts an advisory vote related to the compensation of our Named Executive Officers. Stockholder approval of this selection is not binding on the Board of Directors or the Company. However, the Board of Directors is soliciting your opinion regarding this selection. The Board of Directors will take your opinion into account when considering the frequency with which it conducts future advisory votes on our executive compensation. Stockholders will choose between holding advisory votes every one, two, or three years, or to abstain from voting. The frequency choice receiving the most stockholder votes will be deemed to be the choice of the stockholders.

Proposal Five: The Audit Committee of our Board of Directors has responsibility for the selection of our independent auditor and has selected Deloitte & Touche LLP to serve as our independent auditor for 2011. Stockholder ratification of this selection is not required. However, the Board of Directors is soliciting your opinion regarding the selection of Deloitte & Touche LLP. The Audit Committee of the Board of Directors plans to take your opinion into account in selecting our independent auditor for 2012. The proposal must receive the affirmative vote of a majority of the shares present (in person and by proxy) and entitled to vote at the meeting in order to pass.

Proposal Six: The stockholder proposal must receive the affirmative vote of a majority of the shares present (in person and by proxy) and entitled to vote at the meeting in order to pass.

How do I vote?

To vote, follow the instructions on the enclosed proxy card or voting card. You may vote by telephone, online or by mail.

If you are a registered stockholder, you can also vote in person at the meeting. If your shares are held in a brokerage account, you are probably not a registered stockholder. In this case, your shares would not be officially registered in your name; rather, they would be registered in your broker's name (which is sometimes called

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street name). If your shares are in street name, you cannot vote in person at the meeting unless you have a proper power of attorney from your broker. You should therefore vote by telephone, online or mail according to the instructions on the enclosed voting card in order to ensure that your vote is counted.

Voting by any means other than voting in person at the meeting has the effect of appointing Gregg L. Engles, our Chairman of the Board and Chief Executive Officer, and Steven J. Kemps, our Executive Vice President, General Counsel and Corporate Secretary, as your proxies. They will be required to vote on the proposals described in this Proxy Statement exactly as you have voted.

However, if any other matter requiring a stockholder vote is properly raised at the meeting, then Mr. Engles and Mr. Kemps will be authorized to use their discretion to vote on such issues on your behalf.

If you sign your proxy card, but do not specify how you want to vote on a proposal, your shares will be voted FOR Proposals One, Two, Three and Five, AGAINST Proposal Six and will be voted in favor of holding an advisory vote on the compensation of our Named Executive Officers EVERY TWO YEARS with respect to Proposal Four.

We encourage you to vote now (by telephone, online or by mail) even if you plan to attend the meeting in person.

Can I access Dean Foods Company's Proxy Statement and Annual Report electronically?

Yes. Dean Foods Company delivers a full set of proxy materials to stockholders, unless you previously consented to receive electronic delivery of proxy materials. In addition, this Proxy Statement and the 2010 Annual Report are available online at www.deanfoods.com/proxymaterials. Most stockholders can elect to view future proxy statements and annual reports over the Internet instead of receiving hard copies in the mail. You can choose this option by following the instructions when you vote over the Internet.

I previously consented to receive electronic delivery of my proxy materials. Can you send me a hard copy of these proxy materials?

For stockholders of record: We will deliver promptly, upon written or oral request, a separate copy of these proxy materials. Contact our transfer agent either by writing BNY Mellon Shareowner Services, P.O. Box 358015, Pittsburgh, PA 15252-8015, or by telephoning 866.557.8698.

For holders in street name: You must contact your bank, broker or other intermediary to receive copies of these materials.

Where can I find the voting results of the meeting?

We will announce preliminary voting results at the meeting. We will publish the final results in a Current Report on Form 8-K filed with the Securities and Exchange Commission (SEC) within four days following the meeting. You can also obtain a copy on our website at www.deanfoods.com, on the SEC's website at www.sec.gov, or by contacting our Investor Relations Department at 800.431.9214 or the SEC at 800.SEC.0330.

What if I want to change my vote?

You can revoke your vote on a proposal at any time before the meeting for any reason. To revoke your proxy before the meeting, either:

Write to our Corporate Secretary at 2711 North Haskell Avenue, Suite 3400, Dallas, Texas 75204, or

Vote again, either by telephone or online (your last vote before the meeting begins will be counted).

If you are a registered stockholder (or if you hold your shares in street name and have a proper power of attorney from your broker), you may also come to the meeting and change your vote in writing or orally.

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What if I do not vote?

If you do not vote, your failure to vote could affect whether there are enough stockholders present at the meeting to hold the meeting. Holders of a majority of the outstanding shares of our common stock must be present (in person or by proxy) in order to conduct the meeting. Proxies received but marked as abstentions, if any, will be included in the calculation of the number of shares considered to be present at the meeting for quorum purposes. Because abstentions represent shares entitled to vote, the effect of an abstention will be the same as a vote against a proposal. However, abstentions will have no effect on Proposal One, regarding the election of directors.

Broker non-votes will be considered present for quorum purposes but will not be considered present and entitled to vote on any matter for which a broker does not have authority. Brokers have authority to vote on matters considered to be routine. Pursuant to changes in the rules of the New York Stock Exchange (NYSE), brokers may not cast votes for director elections without instructions from the holder. In response to federal legislation adopted in 2010, the SEC has approved additional changes to the NYSE rules that make executive compensation matters, such as those presented in Proposals Three and Four, non-routine matters. Accordingly, broker non-votes will not have any impact on the outcome of Proposals One, Two, Three, Four or Six.

If your shares are held in street name and you do not vote, your brokerage firm could:

Vote for you, if it is permitted by the exchange or organization of which your broker is a member, or

Leave your shares unvoted.

Your broker will be permitted to vote for you without instruction on Proposal Five regarding the ratification of Deloitte & Touche LLP.

How do I raise an issue for discussion or vote at the annual meeting?

According to our bylaws, if a stockholder wishes to present a proposal for consideration at an annual meeting, he or she must send written notice of the proposal to our Corporate Secretary by no earlier than the 120th day prior and no later than the 90th day prior to the first anniversary of the date of the preceding year's annual meeting. For our annual meeting of stockholders to be held in 2012, such notice must be received no earlier than January 20, 2012 and no later than February 20, 2012.

If you would like your proposal to be included in next year's Proxy Statement, you must submit it to our Corporate Secretary in writing no later than December 17, 2011. We will include your proposal in our next annual Proxy Statement if it is a proposal that we are required to include in our Proxy Statement pursuant to the rules of the SEC.

You may write to our Corporate Secretary at 2711 North Haskell Avenue, Suite 3400, Dallas, Texas 75204.

According to our bylaws, any proposal properly raised at the meeting by a stockholder will require the affirmative vote of a majority of the shares deemed present at the meeting (whether in person or by proxy).

Who will pay for this solicitation?

We have engaged Georgeson Inc. to assist in the distribution of proxy materials and the solicitation of votes. In addition, certain of our officers may solicit proxies by mail, telephone, fax, e-mail or in person. We will pay Georgeson Inc. a fee of \$10,000, plus certain out-of-pocket expenses. We will also pay all other costs associated with this Proxy Statement and the solicitation of proxies. Upon request, we will reimburse stockbrokers, dealers, banks and trustees, or their nominees, for reasonable expenses incurred by them in forwarding proxy materials to beneficial owners of shares of our common stock.

Our transfer agent, BNY Mellon Shareowner Services, will count the votes and act as inspector of election.

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PROPOSALS BY OUR BOARD OF DIRECTORS

Proposal One: Re-Election of Directors

Our Board of Directors is divided into three classes serving three-year terms.

This year's nominees for re-election to the Board of Directors for a three-year term are the following Class I directors:

Stephen L. Green

Director since October 1994

Mr. Green, age 60, has been a partner with Canaan Partners, a venture capital firm, since November 1991. From October 1985 until November 1991, Mr. Green served as Managing Director of GE Capital's Corporate Finance Group. In addition to our Board, Mr. Green also serves on the Boards of Directors of The Active Network, a software firm, where he serves on the Audit and Compensation Committees; Caris Life Sciences, the parent company of Caris Diagnostics and Caris Molecular Diagnostics, where he serves on the Audit Committee; BiddingForGood, Inc., an online auction fundraising platform, where he serves on the Audit and Compensation Committees; and Verance Corporation, a media technology developer, where he serves on the Audit Committee, all of which are privately held.

Mr. Green has a broad background in financing companies involved in manufacturing, retail, radio, television, cable broadcasting and financial services. During his 25 year career in private equity, he has analyzed hundreds of financial statements and served on many boards. In addition, Mr. Green held a variety of financial roles over a 12 year period at General Electric, including a five year term as Corporate Auditor. Mr. Green also served as Chairman of the Audit Committee at Advance PCS, a NYSE listed Fortune 500 company, from 1993 to 2005. Mr. Green's comprehensive experience and responsibility for financial and accounting issues serves the Company well in his role as Chairman of the Audit Committee and as a member of the Company's Board of Directors.

Joseph S. Hardin, Jr.

Director since May 1998

Mr. Hardin, age 66, currently retired, served as Chief Executive Officer of Kinko's, Inc., a leading provider of printing, copying, and binding services, from May 1997 until January 2001. Mr. Hardin held a variety of positions from 1986 to April 1997 with increasing responsibility at Wal-Mart Stores, Inc., ultimately as an Executive Vice President and as the President and Chief Executive Officer of Sam's Club, the wholesale division of Wal-Mart Stores, Inc. In addition to our Board, Mr. Hardin also serves on the Board of Directors of PetSmart, Inc., where he serves on the Corporate Governance Committee.

Mr. Hardin's qualifications include serving as Chief Executive Officer of three different companies with market capitalizations ranging from \$2 billion to \$22 billion. He has served on the board of, and also served as a supply chain consultant to, American Greetings Corporation. Mr. Hardin's wide-ranging leadership experience, including leadership roles with Wal-Mart, our largest customer, is an invaluable asset in his role as our Board's Lead Director.

John R. Muse

Director since November 1997

Mr. Muse, age 60, is co-founder and Chairman of HM Capital Partners LLC (formerly known as Hicks, Muse, Tate & Furst Incorporated, which he co-founded in 1989), a private equity firm. From 1984 to 1989, he was employed at Prudential Securities Inc., where Mr. Muse headed the investment banking operations for the

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Southwestern region of the United States. Mr. Muse also serves on the Board of Visitors of the UCLA Anderson School of Management. Mr. Muse was a member of the Board of Directors of The Morningstar Group Inc. prior to our acquisition of that company in November 1997.

Mr. Muse has approximately 30 years of experience in investment banking, including experience in the food and beverage, energy, and media sectors. Mr. Muse's experience in the food and beverage sector includes service on the boards of several companies, including Earthbound Farms, Inc., an organic farming company, and Advanced H2O, LLC, one of the producers of private label bottled water and water-based beverages in the United States. In addition to his industry knowledge, Mr. Muse has extensive knowledge of the capital markets and finance which is invaluable to our Board's planning for the Company's capital and liquidity needs.

Information on our other directors, including biographies, other board service and particular qualifications, can be found on pages 20-22 of this Proxy Statement.

Our Board of Directors recommends that you vote FOR Mr. Green, Mr. Hardin and Mr. Muse.

Proposal Two: Amendment to 2007 Stock Incentive Plan

In May 2007, our stockholders approved the Dean Foods Company 2007 Stock Incentive Plan (the "2007 Plan") at our Annual Meeting of Stockholders. In May 2009, our stockholders approved an amendment to the 2007 Plan to increase the number of shares available for grant by 4,000,000. The Company has determined that, as of February 24, 2011, there are approximately 3,235,317 million shares remaining under the 2007 Plan including shares available for grant under the Old Plans (as defined below), of which approximately 947,842 shares can be granted as restricted stock awards or restricted stock units. The number of shares currently available for issuance under the 2007 Plan is now less than the number of shares necessary for the next two years in accordance with our current compensation practices. The Board of Directors has approved, and recommends to stockholders for their approval, an amendment to the 2007 Plan to increase the number of shares available under the 2007 Plan by an additional 2.34 million shares, of which not more than an additional 1.35 million shares may be used for grants of awards other than stock options and stock appreciation rights.

Equity awards are an important part of our compensation program and align the interests of our directors and key employees with the long-term interests of our stockholders through the awards of stock options, restricted stock units and other equity awards. Equity participation plans are significant factors in attracting and retaining management talent, causing key employees to identify more closely with the interests of the stockholders, and providing incentive and reward for long-term growth and performance. Our Board of Directors also believes that amending the 2007 Plan and thereby increasing the total number of shares available for awards is necessary to ensure that a sufficient number of shares will be available to continue to attract and retain executive officers, directors, and other key employees. If the amendment to the 2007 Plan is not approved, the Company expects that it will not have enough shares available in the 2007 Plan to continue to provide key employees and directors with future annual equity grants consistent with our prior practices and compensation policies. Accordingly, the Board of Directors has approved the amendment to the 2007 Plan to become effective immediately following approval of the amendment by our stockholders at the Annual Meeting to be held on May 19, 2011. The 2007 Plan will expire on March 1, 2017, unless earlier terminated or extended by the Compensation Committee.

If the amendment to the 2007 Plan is approved by our stockholders, we plan to register the offer and sale of the additional shares of common stock underlying the awards on a registration statement on Form S-8. In addition to requiring stockholder approval of the amendment to the 2007 Plan under requirements of the New York Stock Exchange ("NYSE"), stockholder approval is necessary for us to meet requirements for tax deductibility of certain awards under the 2007 Plan pursuant to Section 162(m) of the Internal Revenue Code of 1986, as amended (the "Code"). Section 162(m) of the Code limits the annual federal tax deduction for compensation paid to our Chief Executive Officer and the other four most highly compensated executive officers to \$1 million. Certain performance-based compensation is excluded from this limitation.

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The following is a summary of the 2007 Plan. For a more complete understanding of the 2007 Plan, please refer to the entire text of the 2007 Plan, which is attached to this Proxy Statement as *Appendix A*.

The purposes of the 2007 Plan are to attract and retain non-employee directors, consultants, executive personnel and other key employees of outstanding ability, to motivate them by means of performance-related incentives and to enable them to participate in our growth and financial success. Eligibility to participate in the 2007 Plan is limited to our non-employee directors, consultants and employees (including officers and directors who are employees), and the non-employee directors, consultants and employees of our subsidiaries.

The 2007 Plan is administered by our Compensation Committee, which consists entirely of independent directors. The Compensation Committee determines, from time to time, the specific persons to whom awards under the 2007 Plan are granted, the extent of any such awards and the terms and conditions of each award. The Compensation Committee has delegated limited authority to grant awards to the Chief Executive Officer and two designated Executive Vice Presidents, but only with respect to individuals who are not executive officers of the Company. Pursuant to the terms of the 2007 Plan, the Compensation Committee or its designee makes all other necessary decisions and interpretations under the 2007 Plan.

Under the 2007 Plan, the Compensation Committee may grant awards of various types of equity-based compensation, including stock options, stock appreciation rights (SARs), restricted stock awards, restricted stock units, performance shares, performance units and other types of stock-based awards. The maximum number of shares that were available to be awarded under the 2007 Plan, as amended by our stockholders in 2009, was ten million shares of common stock of the Company, plus any shares that were remaining for issuance under the 1997 Stock Option and Restricted Stock Plan and the 1989 Stock Awards Plan (collectively referred to as the Old Plans). The maximum number of shares of our common stock that may be issued under the 2007 Plan with respect to incentive stock options may not exceed one million shares. In addition, no participant may be granted awards of restricted stock, restricted stock units, performance shares and performance units covering an aggregate of more than one million shares in any calendar year and no participant may be granted stock options and SARs on more than one million shares of our common stock in any calendar year under the 2007 Plan. No more than \$5,000,000 may be paid to any one participant with respect to cash-based awards made during a calendar year under the 2007 Plan.

Performance Shares and Performance Units; Performance Awards; Performance Criteria

The Compensation Committee may grant awards of performance shares or performance units under the 2007 Plan based upon the achievement of specified performance objectives or the occurrence of other events, such as a change in control, as determined by the Compensation Committee in its discretion. The Compensation Committee has the authority to determine other terms and conditions of the performance shares and performance units. The Compensation Committee may also grant performance awards under the 2007 Plan. Performance awards may be payable in cash or in shares of common stock, and may relate to a single-year performance period, such as an annual bonus award, or multi-year periods.

The Compensation Committee may establish performance goals applicable to any award, including performance awards, performance shares and performance units. When establishing a performance goal, the Compensation Committee will determine the performance period over which performance against the goal will be measured and the amount of cash or number or value of shares earned based on the level of the performance goal achieved. Additional provisions relating to (i) establishing the performance goal, (ii) certifying achievement of performance against the goal and the amount earned, and (iii) the ability to use negative discretion to reduce the amount earned apply to awards made to executive officers, are intended to meet the tax deductibility rules for performance-based compensation under Section 162(m) of the Code.

The 2007 Plan provides that the Compensation Committee may base the performance goals upon the relative or comparative attainment of one or more of the following performance criteria (whether in absolute terms or relative to the performance of one or more similarly situated companies or a published index covering

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the performance of a number of companies): total stockholder return, stock price, operating earnings or margins, net earnings, return on equity, income, market share, return on investment, return on capital employed, level of expenses, revenue, cash flow and, in the case of persons who are not executive officers, such other criteria as may be determined by the Compensation Committee. Performance criteria may be established on a Company-wide basis or with respect to one or more business units or divisions or subsidiaries. When establishing performance criteria for a performance period, the Compensation Committee may exclude any or all charges or costs associated with restructurings of the Company or any subsidiary, mergers, acquisitions, divestitures, discontinued operations, other unusual or non-recurring items, the cumulative effects of accounting changes or such other objective factors as the Compensation Committee deems appropriate. Beginning in 2010, the Compensation Committee began granting awards pursuant to a performance cash plan. See Compensation Discussion and Analysis Long-Term Incentive Compensation Performance Cash Plan for more information on this plan.

Restricted Stock and Restricted Stock Units

The Compensation Committee may grant awards of restricted stock and restricted stock units under the 2007 Plan. The restricted stock and restricted stock units are forfeitable until they vest. Prior to 2009, the Compensation Committee granted restricted stock and restricted stock units that generally vested ratably over five years on each anniversary of the date of grant (subject to the participant's continued service with us) or upon satisfaction of any additional conditions to vesting, such as the achievement of specified performance objectives or changes in control, as determined by the Compensation Committee in its discretion. Beginning in 2009, grants of restricted stock units generally vest ratably over three years on each anniversary of the date of grant. In general, if a participant's service is terminated by reason of death, disability or retirement during the restricted period, any restricted stock or restricted stock units held by the participant will vest as of the date of termination. If a participant's service is terminated for any other reason, any restricted stock or restricted stock units held by the participant will be immediately forfeited and canceled (unless otherwise determined by the Compensation Committee or provided in an employment or individual severance agreement), and, in any event, all such restricted stock and restricted stock units will be immediately forfeited and canceled upon termination of service for cause.

Stock Options and Stock Appreciation Rights

The Compensation Committee may grant awards of stock options and SARs under the 2007 Plan. The stock options may be either incentive stock options (as that term is defined in Section 422 of the Code), which provide the recipient with favorable tax treatment, or stock options that are not incentive stock options (non-qualified stock options). The Compensation Committee has the authority to determine the terms and conditions of the stock options, including the number of shares subject to each stock option and SAR, the exercise price per share, which must be at least the fair market value of a share of our common stock on the date of grant (as determined in accordance with the 2007 Plan), and when the stock option or SAR will become exercisable. Unless otherwise determined by the Compensation Committee, the stock options and SARs will vest and become exercisable in three approximately equal installments on each of the first three anniversaries of the date of grant. Stock options and SARs may also become exercisable upon satisfaction of any additional conditions to vesting, such as the achievement of specified performance objectives or changes in control, as determined by the Compensation Committee in its discretion. The exercise period for any stock options and SARs awarded under the 2007 Plan may not extend beyond ten years from the date of grant.

Stock options and SARs awarded under the 2007 Plan that vest and become exercisable may be exercised in whole or in part. The exercise price of a stock option award may be paid either in cash or cash equivalents or, if permitted by the Compensation Committee, with previously acquired shares of our common stock, by means of a brokered cashless exercise or by a combination of the foregoing provided that the consideration tendered, valued as of the date tendered, is at least equal to the exercise price for the stock options being exercised. Additionally, to the extent permitted by the Compensation Committee, stock options may be net exercised, that is, the

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excess, if any, of the full market value of the shares being exercised at the date of exercise over the exercise price for such shares will be delivered in shares without any requirement that the participant pay the exercise price.

Stock appreciation rights, or SARs, are similar to stock options, except that no exercise price is required to be paid. Upon exercise of a SAR, the participant will receive payment equal to the increase in the fair market value of a share of common stock on the date of exercise over the exercise price (fair market value on date of grant) times the number of shares as to which the SAR is being exercised. The payment will be made in cash or shares of common stock of equivalent value.

Unless otherwise determined by the Compensation Committee or provided for in an employment or individual severance agreement, if a participant's service is terminated by reason of death, disability or retirement, all stock options and SARs held by the participant at the date of termination will vest and become exercisable and will remain exercisable until the earlier of (i) the first anniversary of such termination (or, for incentive stock options, the first anniversary of such termination) or (ii) the expiration date of the stock option or SAR. If a participant's service is terminated for any other reason, any stock options held by the participant that have not vested and become exercisable will be immediately canceled and any stock options that have vested and become exercisable will remain exercisable for 90 days following such termination. In any event, all stock options and SARs (whether or not then vested and exercisable) will be immediately canceled upon termination of service for cause.

Other Stock-Based Awards

The 2007 Plan permits the Compensation Committee to grant other forms of stock-based awards with such terms and conditions as the Compensation Committee determines, including provisions relating to the impact of termination of service and a change in control. Such awards may include grants of shares without restriction or awards structured to meet the requirements of non-U.S. law or practice. Such awards may be settled by the issuance of shares or by a cash payment equal to the value of the shares earned under the award. For fiscal 2011, the Compensation Committee granted phantom shares with three-year ratable vesting for employees at the Vice President level and below. For more information on these awards, see Compensation Discussion and Analysis Changes to Long-Term Incentive Compensation Effective in 2011.

Change in Control

Except as otherwise provided in an employment or individual severance agreement or award agreement, upon a change in control (as defined in the 2007 Plan) of the Company, (i) all outstanding stock options and SARs will immediately vest and become exercisable; (ii) the restricted period of all outstanding restricted stock and restricted stock units will immediately lapse; (iii) all deferred cash and phantom share awards will immediately vest; and (iv) each outstanding performance share and performance unit will be canceled in exchange for the greater of (a) target or (b) actual performance to date. In addition, the Compensation Committee may provide that in connection with a change in control:

each stock option and SAR will be canceled in exchange for an amount equal to the excess, if any, of the fair market value of our common stock over the exercise price for such stock option or SAR; and

each share of restricted stock and each restricted stock unit will be canceled in exchange for an amount equal to the fair market value multiplied by the number of shares of our common stock covered by such award. All amounts payable as a result of a change in control will be paid in cash or, at the discretion of the Compensation Committee, in shares of stock of any new employer.

If a change in control occurs as a result of a merger, reorganization, consolidation or sale of all or substantially all of our assets, any participant whose service is involuntarily terminated (other than for cause) on or after the date on which our stockholders approve the transaction giving rise to the change in control will be treated for purposes of the 2007 Plan as continuing service with us until the consummation of the change in control. For purposes of the 2007 Plan, such participant will be treated as if terminated immediately after the consummation of the change in control.

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Amendment and Termination

The Board may terminate or suspend the 2007 Plan at any time and, from time to time, may amend or modify the 2007 Plan, provided that without the approval by a majority of the votes cast at a duly constituted meeting of stockholders, no amendment or modification to the 2007 Plan may (i) materially increase the benefits accruing to participants under the 2007 Plan, (ii) except as a result of an adjustment in capitalization or similar adjustments, materially increase the number of shares of stock subject to awards under the 2007 Plan or the number of awards or amount of cash that may be granted to a participant under the 2007 Plan, (iii) materially modify the requirements for participation in the 2007 Plan, or (iv) materially modify the 2007 Plan in any way that would require stockholder approval under any regulatory requirement that the Compensation Committee determines to be applicable. Consequently, the 2007 Plan cannot be amended to permit the grant of stock options or SARs at exercise prices that are below fair market value without shareholder approval. No amendment, modification or termination of the 2007 Plan shall in any material way adversely affect any award previously granted under the 2007 Plan without the consent of the participant. The 2007 Plan shall continue in effect, unless sooner terminated by the Board, until March 1, 2017, the tenth anniversary of the date on which the 2007 Plan was adopted by the Board of Directors, after which time no additional awards may be granted.

Summary of Federal Tax Consequences

The following is a brief description of the federal income tax treatment that generally applies to 2007 Plan awards. The description is based on current federal tax laws, rules and regulations, which are subject to change, and does not purport to be a complete description of the federal income tax aspects of the 2007 Plan. A participant may also be subject to state, local and foreign taxes.

Non-Qualified Stock Options. The grant of a non-qualified stock option will not result in taxable income to the participant. The participant will realize ordinary income at the time of exercise in an amount equal to the excess, if any, of the then fair market value of the stock acquired over the exercise price for those shares, and we will be entitled to a corresponding deduction. Gains or losses realized by the participant upon disposition of such shares will be treated as capital gains or losses, with the basis in such stock equal to the fair market value of the shares at the time of exercise.

Incentive Stock Options. The grant of an incentive stock option will not result in taxable income to the participant. The exercise of an incentive stock option will not result in taxable income to the participant if the participant was, without a break in service, employed by us or an affiliate from the date of the grant of the option until the date three months prior to the date of exercise (one year prior to the date of exercise if the participant is disabled). The excess, if any, of the fair market value of the stock at the time of the exercise over the exercise price is an adjustment that is included in the calculation of the participant's alternative minimum taxable income for the tax year in which the incentive stock option is exercised.

If the participant does not sell or otherwise dispose of the stock within two years from the date of the grant of the incentive stock option or within one year after the transfer of such stock to the participant, then, upon disposition of such stock, any amount realized in excess of the exercise price will be taxed to the participant as capital gain, and we will not be entitled to a corresponding deduction. A capital loss will be recognized to the extent that the amount realized is less than the exercise price. If the foregoing holding period requirements are not met, the participant will generally realize ordinary income at the time of the disposition of the shares, in an amount equal to the lesser of (i) the excess, if any, of the fair market value of the stock on the date of exercise over the exercise price, or (ii) the excess, if any, of the amount realized upon disposition of the shares over the exercise price, and we will be entitled to a corresponding deduction. If the amount realized exceeds the value of the shares on the date of exercise, the additional amount will be capital gain. If the amount realized is less than the exercise price, the participant will recognize no income, and a capital loss will be recognized equal to the excess of the exercise price over the amount realized upon the disposition of the shares.

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Stock Appreciation Rights. The grant of a stock appreciation right will not result in taxable income to the participant. The participant will realize ordinary income at the time of exercise in an amount equal to the amount of cash or the fair market value of the shares paid upon