

SENECA FOODS CORP /NY/
Form DEF 14A
July 09, 2009

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

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of the
Securities Exchange Act of 1934

Filed by the Registrant
Filed by a party other than the Registrant

Check the appropriate box:

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

SENECA FOODS CORPORATION

(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)(4) and 0-11.

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

(2) Aggregate number of securities to which transactions applies:

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(4) Proposed maximum aggregate value of transaction:

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(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

SENECA FOODS CORPORATION

3736 South Main Street

Marion, New York 14505

July 9, 2009

Dear Shareholder:

You are cordially invited to the 2009 Annual Meeting of Shareholders of Seneca Foods Corporation (the "Company"), to be held on August 6, 2009 at 1:00 p.m., Eastern Daylight Time, at the Company's Offices, 3736 South Main Street, Marion, New York.

Information about the Annual Meeting is included in the Notice of Annual Meeting of Shareholders and Proxy Statement which follow.

It is important that your shares of Common Stock be represented at the Annual Meeting. Whether or not you plan to attend the Annual Meeting, I urge you to give your immediate attention to voting. Please review the enclosed materials, sign and date the enclosed proxy card and return it promptly in the enclosed postage-paid envelope.

Very truly yours,

/s/Kraig H. Kayser

KRAIG H. KAYSER

President and Chief Executive Officer

IT IS IMPORTANT THAT THE ENCLOSED PROXY BALLOT BE SIGNED, DATED AND PROMPTLY RETURNED IN THE ENCLOSED ENVELOPE, SO THAT YOUR SHARES WILL BE REPRESENTED WHETHER OR NOT YOU PLAN TO ATTEND THE MEETING.

SENECA FOODS CORPORATION

3736 South Main Street

Marion, New York 14505

NOTICE OF ANNUAL MEETING OF SHAREHOLDERS

TO BE HELD ON AUGUST 6, 2009

To the Shareholders:

The 2009 Annual Meeting of Shareholders of Seneca Foods Corporation (the "Company") will be held at the Company's Offices, 3736 South Main Street, Marion, New York, on Thursday, August 6, 2009 at 1:00 p.m., Eastern Daylight Time, for the following purposes:

1. To elect three directors to serve until the Annual Meeting of shareholders in 2012 and until each of their successors is duly elected and shall qualify;
2. To ratify the appointment of BDO Seidman, LLP as the Company's independent registered public accounting firm for the fiscal year ending March 31, 2010; and
3. To transact such other business as may properly come before the Annual Meeting or any adjournment thereof.

Only shareholders of record at the close of business on June 26, 2009 are entitled to notice of and to vote at the Annual Meeting and any adjournment thereof.

The prompt return of your proxy will avoid delay and save the expense involved in further communication. The proxy may be revoked by you at any time prior to its exercise, and the giving of your proxy will not affect your right to vote in person if you wish to attend the Annual Meeting.

By Order of the Board of Directors

/s/Jeffrey L. Van Riper

JEFFREY L. VAN RIPER

Secretary

DATED: July 9, 2009

Important Notice Regarding the Availability of Proxy Materials for the Annual Meeting of Shareholders to be held on August 6, 2009. This proxy statement, form of proxy and the Company's annual report are available at <http://www.senecafoods.com/companyprofile/investor.shtml>.

IT IS IMPORTANT THAT THE ENCLOSED PROXY BALLOT BE SIGNED, DATED AND PROMPTLY RETURNED IN THE ENCLOSED ENVELOPE, SO THAT YOUR SHARES WILL BE REPRESENTED

WHETHER OR NOT YOU PLAN TO ATTEND THE MEETING.

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PROXY STATEMENT
QUESTIONS AND ANSWERS
ABOUT THE 2009 ANNUAL MEETING

Why did I receive this proxy?

The Board of Directors of Seneca Foods Corporation (the “Company”) is soliciting proxies to be voted at the Annual Meeting of Shareholders. The Annual Meeting will be held Thursday, August 6, 2009, at 1:00 p.m., Eastern Daylight Time, at the Company’s Offices, 3736 South Main Street, Marion, New York. This proxy statement summarizes the information you need to know to vote by proxy or in person at the Annual Meeting. You do not need to attend the Annual Meeting in person in order to vote.

Who is entitled to vote?

All record holders of the Company’s voting stock as of the close of business on June 26, 2009 (the “Record Date”) are entitled to vote at the Annual Meeting. As of the Record Date, the following shares of voting stock were issued and outstanding: (i) 4,820,080 shares of Class A common stock, \$0.25 par value per share (“Class A Common Stock”); (ii) 2,760,903 shares of Class B common stock, \$0.25 par value per share (“Class B Common Stock”, and together with the Class A Common Stock, sometimes collectively referred to as the “Common Stock”); (iii) 200,000 shares of Six Percent (6%) Cumulative Voting Preferred Stock, \$0.25 par value per share (“6% Preferred Stock”); (iv) 407,240 shares of 10% Cumulative Convertible Voting Preferred Stock - Series A, \$0.25 stated value per share (“10% Series A Preferred Stock”); and (v) 400,000 shares of 10% Cumulative Convertible Voting Preferred Stock - Series B, \$0.25 stated value per share (“10% Series B Preferred Stock”).

How many votes do I have?

Each share of Class B Common Stock, 10% Series A Preferred Stock, and 10% Series B Preferred Stock is entitled to one vote on each item submitted to you for consideration. Each share of Class A Common Stock is entitled to one-twentieth (1/20) of one vote on each item submitted to you for consideration. Each share of 6% Preferred Stock is entitled to one vote, but only with respect to the election of directors.

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

It means that you have multiple accounts at the transfer agent or with stockbrokers. Please complete and return all proxy cards to ensure that all your shares are voted.

How do I vote?

- By Mail: Vote, sign, date your card and mail it in the postage-paid envelope.
- In Person: At the Annual Meeting.

How do I vote my shares that are held by my broker?

If you have shares held by a broker, you may instruct your broker to vote your shares by following the instructions that the broker provides to you.

What am I voting on?

You will be voting on Proposal One regarding the election of three directors of the Company and Proposal Two regarding the ratification of BDO Seidman, LLP as the Company's independent registered public accounting firm for the fiscal year ending March 31, 2010.

Will there be any other items of business on the agenda?

Pursuant to SEC rules, shareholder proposals must have been received by May 16, 2009 to be considered at the Annual Meeting. To date, we have received no shareholder proposals and we do not expect any other items of business. Nonetheless, in case there is an unforeseen need, your proxy gives discretionary authority to Arthur S. Wolcott and Kraig H. Kayser with respect to any other matters that might be brought before the Annual Meeting. Those persons intend to vote that proxy in accordance with their best judgment.

How many votes are required to act on the proposals?

Pursuant to our Bylaws, provided a quorum is present, directors will be elected by a plurality of all the votes cast at the Annual Meeting with each share of voting stock being voted for as many individuals as there are directors to be elected and for whose election the share is entitled to vote.

The ratification of the appointment of BDO Seidman, LLP as the Company's independent registered public accounting firm for the fiscal year ending March 31, 2010 requires the affirmative vote of a majority of the votes cast on the proposal, provided that a quorum is present at the Annual Meeting.

How are votes counted?

The Annual Meeting will be held if a quorum is represented in person or by proxy. The holders of voting shares entitled to exercise a majority of the voting power of the Company shall constitute a quorum at the Annual Meeting. If you return a signed proxy card, your shares will be counted for the purpose of determining whether there is a quorum. We will treat failures to vote, referred to as abstentions, as shares present and entitled to vote for quorum purposes. However, abstentions will not be counted as votes cast on a proposal and will have no effect on the result of the vote on such proposal. A withheld vote is the same as an abstention.

Broker non-votes occur when proxies submitted by a broker, bank or other nominee holding shares in “street name” do not indicate a vote for a proposal because they do not have discretionary voting authority and have not received instructions as to how to vote on the proposal. We will treat broker non-votes as shares that are present and entitled to vote for quorum purposes. However, broker non-votes will not be counted as votes cast on a proposal and will have no effect on the result of the vote on the proposal.

What happens if I return my proxy card without voting on all proposals?

When the proxy is properly executed and returned, the shares it represents will be voted at the Annual Meeting in accordance with your directions. If the signed card is returned with no direction on a proposal, the proxy will be voted in favor of (FOR) Proposals One and Two.

Who has paid for this proxy solicitation?

The Company has paid the entire expense of this proxy statement and any additional materials furnished to shareholders.

When was this proxy statement mailed?

This proxy statement and the enclosed proxy card were mailed to shareholders beginning on or about July 9, 2009.

How can I obtain a copy of this year’s Annual Report on Form 10-K?

A copy of our 2009 Annual Report to Shareholders, including financial statements for the fiscal year ended March 31, 2009, accompanies this Proxy Statement. The Annual Report, however, is not part of the proxy solicitation material. A copy of our Annual Report on Form 10-K filed with the Securities and Exchange Commission (“SEC”) may be obtained free of charge by writing to Seneca Foods Corporation, 3736 South Main Street, Marion, New York 14505, Attention: Secretary or by accessing the “Investor Information” section of the Company’s website at www.senecafoods.com.

Can I find additional information on the Company’s website?

Yes. Our website is located at www.senecafoods.com. Although the information contained on our website is not part of this proxy statement, you can view additional information on the website, such as our code of conduct, corporate governance guidelines, charters of board committees and reports that we file with the SEC. A copy of our code of ethics and each of the charters of our board committees may be obtained free of charge by writing to Seneca Foods Corporation, 3736 South Main Street, Marion, New York 14505, Attention: Secretary.

PROPOSAL ONE: ELECTION OF DIRECTORS

In accordance with our Bylaws, the Board of Directors has fixed the number of directors at ten, provided, however, that in the event of the consummation of the previously announced secondary offering of Class A Common Stock by certain shareholders of the Company and termination of the Shareholders Agreement, as discussed below, we expect that the size of our Board of Directors will be reduced to eight directors. If such reduction in the size of our Board of Directors in fact occurs, it will have no impact on the nominees standing for election at this meeting. The Board of Directors is divided into three classes, as equal in number as possible, having staggered terms of three years each. Therefore, at this annual meeting three directors will be elected to serve until the annual meeting in 2012 and until each of their successors is duly elected and shall qualify.

The Board of Directors unanimously recommends a vote FOR the election of each of the nominees listed below. All nominees are currently serving as directors of the Company and were elected at the 2006 Annual Meeting of Shareholders.

Unless instructed otherwise, proxies will be voted FOR the election of the three nominees listed below. Although the directors do not contemplate that any of the nominees will be unable to serve prior to the Meeting, if such a situation arises, the enclosed proxy will be voted in accordance with the best judgment of the person or persons voting the proxy.

Information Concerning Directors

The following provides certain information regarding the nominees for election to the Company's Board of Directors and the Directors whose terms continue beyond the Annual Meeting. Each individual's name, position with the Company and tenure is indicated. In addition, the principal occupation and business experience for the past five years is provided for each nominee and unless otherwise stated, each nominee has held the position indicated for at least the past five years.

Nominees Standing for Election at the Annual Meeting

Arthur H. Baer, age 62 – Mr. Baer has served as the Chairman of the Board of Supervisors of Columbia County, New York since January 2008. He was President of Hudson Valley Publishing from 2003 to 2008 and also held the position from 1998 to 1999. He was President of Arrow Electronics Europe from 2000 to 2002 and President of XYAN Inc. from 1996 to 1998. Mr. Baer has served as a director of the Company since 1998.

Kraig H. Kayser, age 48 – Mr. Kayser is the President and Chief Executive Officer of the Company and has served in that capacity since 1993. He has served as a director of the Company since 1985. Mr. Kayser also serves on the Board of Directors of Moog Inc.

Thomas Paulson, age 53 – Since March 2006, Mr. Paulson has been the Chief Financial Officer of Tennant Corporation (industrial cleaning company). He was Chief Financial Officer of Innovex, Inc. (flexible circuits) from February 2001 to March 2006 and Vice President of Finance of The Pillsbury Company from 1998-2000. He has served as a director of the Company since 2004.

Directors whose Terms Expire in 2010

Andrew M. Boas, age 54 – Mr. Boas is a General Partner of Carl Marks Management Company, L.P. (merchant banking firm), President of Carl Marks Offshore Management, Inc., Vice President of CM Capital and Vice President of Carl Marks & Co., Inc. He has served as a director of the Company since 1998.

Susan W. Stuart, age 54 – Ms. Stuart is a marketing consultant. She has served as a director of the Company since 1986.

Susan A. Henry, age 63 – Dr. Henry has been Dean of Cornell University's College of Agriculture and Life Sciences since July 2000. She has served as a director of the Company since 2007. Dr. Henry also serves on the Board of Directors of Agrium, Inc.

Directors whose Terms Expire in 2011

Robert T. Brady, age 68 – Mr. Brady is Chairman and Chief Executive Officer and a member of the Board of Directors of Moog, Inc. (manufacturer of control systems). He has served as a director of the Company since 1989. Mr. Brady also serves on the Board of Directors of National Fuel Gas Company, Astronics Corporation and M&T Bank Corporation.

G. Brymer Humphreys, age 68 – Mr. Humphreys is President of Humphreys Farm, Inc., and was State Executive Director, USDA Farm Services Agency, New York State Office from 2005 until 2009. He has served as a director of the Company since 1983.

Arthur S. Wolcott, age 83 – Mr. Wolcott has served as a director and as the Chairman of the Board of the Company since 1949.

James F. Wilson, age 51 – Mr. Wilson is a General Partner of Carl Marks Management Company, L.P. (merchant banking firm). He has served as a director of the Company since 2008.

On June 22, 1998 the Company entered into a Shareholders Agreement with the parties listed therein. Under the Shareholders Agreement, certain affiliates of Carl Marks Management Company, L.P. ("CMMC") were granted the right to designate two individuals to the Company's Board of Directors and certain substantial shareholders of the Company, including the Wolcott and Kayser families, have agreed to vote their respective shares of capital stock of the Company to elect CMMC director designees. Currently, Messrs. Wilson and Boas are the two CMMC director designees. On July 8, 2009, the Shareholders Agreement was amended to provide that the Shareholders Agreement will terminate in the event of the consummation of the previously announced secondary offering of Class A Common Stock by certain shareholders of the Company. In addition, the CMMC director designees have agreed to resign immediately upon termination of the Shareholders Agreement. If such secondary offering is consummated and such resignations become effective, we expect that the size of the Company's Board of Directors will be reduced to eight directors.

Arthur S. Wolcott, Chairman, is the father of Susan W. Stuart, a director of the Company. There are no other family relationships between any of the directors or executive officers of the Company.

Independent Directors

Under the NASDAQ Global Market listing standards, at least a majority of the Company's directors and all of the members of the Company's Audit Committee, Compensation Committee and Corporate Governance and Nominating Committee must meet the test of "independence" as defined by NASDAQ. The NASDAQ standards provide that, to qualify as an "independent" director, in addition to satisfying certain criteria, the Board of Directors must affirmatively determine that a director has no relationship which would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. The Board of Directors has determined that each current director and nominee for director, other than Mr. Wolcott, the Company's Chairman, his daughter, Ms. Stuart, Mr. Kayser, the Company's President and Chief Executive Officer, and Mr. Humphreys is "independent" as defined by the listing standards of the NASDAQ Global Market.

In making its determination with respect to Mr. Humphreys, the Board considered his relationship with the Company as fully described in "Certain Transactions and Related Relationships" below on page 19. It concluded that Mr. Humphreys does not satisfy the criteria under NASDAQ standards inasmuch as the Company purchased \$419,000 of raw vegetables from Mr. Humphreys under an arms length contract, above the \$200,000 threshold permitted under the NASDAQ standards in determining "independence". On August 10, 2007, the Board determined that although Mr. Humphreys is not considered independent under the NASDAQ listing standards, it was in the best interests of the Company and its shareholders for Mr. Humphreys to continue to serve on the Audit Committee, Compensation Committee and Corporate Governance and Nominating Committee pursuant to the "exceptional and limited circumstance" exception provided for under the NASDAQ listing standards. In making this determination, the Board considered his extensive experience in the vegetable farming industry, his knowledge and experience with the Company's compensation and nomination practices as well as his comprehensive knowledge of the Company's financial affairs developed in over 25 years of service on the Board.

With respect to the six independent directors, there are no transactions, relationships or arrangements not requiring disclosure pursuant to Item 404(a) of Regulation S-K that were considered by the Board in determining that these individuals are independent under the NASDAQ listing standards.

BOARD COMMITTEES AND MEETINGS

The Board of Directors has a standing Audit Committee, Compensation Committee and Corporate Governance and Nominating Committee. Except as discussed above with respect to Mr. Humphreys, each member of each of these committees is "independent" as that term is defined in the NASDAQ Global Market listing standards. The Board has adopted a written charter for each of these committees, which is available on our website at www.senecafoods.com.

Audit Committee

The Audit Committee consists of Messrs. Baer, Brady, Humphreys and Paulson. The Audit Committee met four times during the fiscal year ended March 31, 2009. The Audit Committee is directly responsible for the engagement of independent auditors, reviews with the auditors the scope and results of the audit, reviews with management the scope and results of the Company's internal auditing procedures, reviews the independence of the auditors and any non-audit services provided by the auditors, reviews with the auditors and management the adequacy of the Company's system of internal accounting controls and makes inquiries into other matters within the scope of its duties. Mr. Baer has been designated as the Company's "audit committee financial expert" in accordance with the SEC rules and regulations. Shareholders should understand that this designation is a disclosure requirement of the SEC related to Mr. Baer's experience and understanding with respect to certain accounting and auditing matters. The designation does not impose any duties, obligations or liability that are greater than are generally imposed on him as a member of the Audit Committee and the Board, and his designation as an audit committee financial expert pursuant to this SEC requirement does not affect the duties, obligations or liability of any other member of the Audit Committee or the Board. See "Report of the Audit Committee" below.

Compensation Committee

The Compensation Committee consists of Messrs. Paulson, Humphreys, Boas and Wilson and Ms. Henry. The Compensation Committee's function is to review and recommend to the Board of Directors appropriate executive compensation policy and compensation of the Company's directors and officers. The Compensation Committee also reviews and makes recommendations with respect to executive and employee benefit plans and programs. The Compensation Committee met two times during the fiscal year ended March 31, 2009.

Corporate Governance and Nominating Committee

The Corporate Governance and Nominating Committee consists of Messrs. Boas, Brady, Humphreys and Paulson. The responsibilities of the Corporate Governance and Nominating Committee include assessing Board membership needs and identifying, screening, recruiting, and presenting director candidates to the Board, implementing policies regarding corporate governance matters, making recommendations regarding committee memberships and sponsoring and overseeing performance evaluations for the Board as a whole and the directors.

The Board has not adopted specific minimum criteria for director nominees. The Corporate Governance and Nominating Committee identifies nominees by first evaluating the current members of the Board of Directors willing to continue in service. Current members of the Board with skills and experience that are relevant to the Company's business and who are willing to continue in service are considered for re-nomination. If any member of the Board does not wish to continue in service, or if the Corporate Governance and Nominating Committee decides not to nominate a member for re-election, the Committee first considers the appropriateness of the size of the Board. If the Committee determines the Board seat should remain and a vacancy exists, the Committee considers factors that it deems are in the best interests of the Company and its shareholders in identifying and evaluating a new nominee. The Corporate Governance and Nominating Committee will consider nominees suggested by incumbent Board members, management and shareholders.

Shareholder recommendations must be in writing and addressed to the Chairman of the Corporate Governance and Nominating Committee, c/o Corporate Secretary, 3736 South Main Street, Marion, New York 14505, and should include a statement setting forth the qualifications and experience of the proposed candidates and basis for nomination. Any person recommended by shareholders of the Company will be evaluated in the same manner as any other potential nominee for director.

Board Attendance at Meetings

The Board of Directors held four meetings during the fiscal year ended March 31, 2009. Each director attended at least 75% of the aggregate of the total number of meetings of the Board of Directors and meetings held by all committees of the Board of Directors on which he or she served. Each director is expected to attend the Annual Meeting of shareholders. In 2008, the Annual Meeting of Shareholders was attended by all nine directors who were serving of the Board at that time.

Shareholder Communication With the Board

The Company provides an informal process for shareholders to send communications to the Board of Directors. Shareholders who wish to contact the Board of Directors or any of its members may do so in writing to Seneca Foods Corporation, 3736 South Main Street, Marion, New York 14505. Correspondence directed to an individual board member will be referred, unopened, to that member. Correspondence not directed to a particular board member will be referred, unopened, to the Chairman of the Audit Committee.

Report of the Audit Committee

The following Report of the Audit Committee does not constitute soliciting material and should not be deemed filed or incorporated by reference into any other filing by the Company under the Securities Act of 1933 or the Securities Exchange Act of 1934 except to the extent the Company specifically incorporates this Report by reference therein.

The Audit Committee of the Company is composed of four directors, each of whom meets the current independence (other than Mr. Humphreys) and experience requirements of the NASDAQ Global Market and the SEC. The Audit Committee operates under a written charter which was adopted on May 27, 2004. A complete copy of the Audit Committee charter is available on the Company's website at www.senecafoods.com. The Board has determined that Arthur H. Baer is an "audit committee financial expert" as defined in the current rules of the SEC.

Management is primarily responsible for the Company's financial statements and reporting process. BDO Seidman, LLP is responsible for performing an independent audit of the Company's financial statements and internal control over the financial statements in accordance with the standards of the Public Company Accounting Oversight Board and issuing a report on those statements and internal controls over those financial statements. The Audit Committee's responsibilities include oversight of the Company's independent registered public accounting firm and internal audit department, as well as oversight of the Company's financial reporting process on behalf of the full Board of Directors. It is not the duty or the responsibility of the Audit Committee to conduct auditing or accounting reviews or related procedures.

The Audit Committee meets at least quarterly and at such other times as it deems necessary or appropriate to carry out its responsibilities. Those meetings include, whenever appropriate, executive sessions with BDO Seidman without management being present. The Committee met four times during the fiscal year ended March 31, 2009. In the course of fulfilling its oversight responsibilities, the Audit Committee met with management, internal audit personnel and BDO Seidman to review and discuss all annual financial statements and quarterly operating results prior to their issuance. Management advised the Audit Committee that all financial statements were prepared in accordance with GAAP. The Audit Committee also discussed with BDO Seidman matters required to be discussed, pursuant to Statement on Auditing Standards No. 61, Communication with Audit Committees, including the reasonableness of judgments and the clarity and completeness of financial disclosures. In addition, the Audit Committee discussed with BDO Seidman matters relating to its independence and has received from BDO Seidman the written disclosures and letter required by the Independence Standards Board Standard No. 1, Independence Discussions with Audit Committees.

On the basis of the reviews and discussions the Audit Committee has had with BDO Seidman and management, the Audit Committee recommended to the Board of Directors that the Board approve the inclusion of the Company's audited financial statements in the Company's Annual Report on Form 10-K for the fiscal year ended March 31, 2009, for filing with the SEC.

Submitted by:

THE AUDIT COMMITTEE

Arthur H. Baer, Chair

Robert T. Brady

G. Brymer Humphreys

Thomas Paulson