

EXIDE TECHNOLOGIES

Form DEF 14A

July 29, 2005

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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**

Filed by the Registrant ☐

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EXIDE TECHNOLOGIES

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**NOTICE OF ANNUAL MEETING OF SHAREHOLDERS
TO BE HELD AUGUST 30, 2005**

To our Shareholders:

The 2005 annual meeting of shareholders of Exide Technologies will be held at the Hilton Garden Inn Atlanta North/ Alpharetta at 4025 Windward Plaza Drive, Alpharetta, Georgia 30005, on Tuesday, August 30, 2005, beginning at 9:00 a.m. local time. At the meeting, the holders of the Company's outstanding common stock will act on the following matters:

(1) The election of nine directors to serve a term of one year if Item (2) below is approved, or the election of three Class I directors for a term of three years if Item (2) below is *not* approved;

(2) A proposal to amend the Company's Certificate of Incorporation to eliminate the classified Board of Directors;

(3) A proposal to amend the Company's Certificate of Incorporation to remove the limitation on the maximum number of directors that can serve on the Board;

(4) A proposal to amend the Company's Certificate of Incorporation to permit holders of outstanding shares representing at least 15% of the voting power of the Company's capital stock to call special meetings of shareholders;

(5) A proposal to approve the Company's 2004 Stock Incentive Plan;

(6) The ratification of the appointment of the Company's independent auditors for fiscal 2006; and

(7) Any other matters that properly come before the meeting.

All holders of record of shares of the Company's common stock (NASDAQ: XIDE) at the close of business on July 22, 2005 are entitled to vote at the meeting and any postponements or adjournments of the meeting.

You are cordially invited to attend the meeting. Please note that space limitations make it necessary to limit attendance to shareholders and one guest. Admission to the meeting will be on a first-come, first-served basis. Registration will begin at 7:30 a.m., and seating will begin at 8:00 a.m. Each shareholder may be asked to present valid picture identification, such as a driver's license or passport. Shareholders holding stock in brokerage accounts (street name holders) will need to bring a copy of a brokerage statement reflecting stock ownership as of the record date. Cameras (including cellular phones with photographic capabilities), recording devices and other electronic devices will not be permitted at the meeting.

By order of the Board of Directors,

Stuart H. Kupinsky
*Executive Vice President, General Counsel and
Corporate Secretary*

August 1, 2005
Atlanta, Georgia

YOUR VOTE IS IMPORTANT

If you are unable to attend the meeting in person, you may vote on the proposals by proxy. To do so, please complete, date, sign and return the enclosed proxy card. We have enclosed a prepaid envelope to expedite the

return of your proxy card. You may also vote by telephone or over the Internet as noted in the proxy card instructions. If you have voted by telephone, Internet or mail and later decide to attend and vote at the meeting, you may do so.

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13000 DEERFIELD PARKWAY
BUILDING 200
ALPHARETTA, GEORGIA 30004

PROXY STATEMENT

The Board of Directors of Exide Technologies is soliciting proxies from its shareholders to be used at the annual meeting of shareholders to be held on Tuesday, August 30, 2005, beginning at 9:00 a.m., at the Hilton Garden Inn Atlanta North/ Alpharetta at 4025 Windward Plaza Drive, Alpharetta, Georgia 30005, and at any postponements or adjournments thereof. This proxy statement contains information related to the annual meeting. This proxy statement, a proxy card and the Company's Annual Report on Form 10-K for the fiscal year ended March 31, 2005 are being mailed to shareholders on or about August 1, 2005. The fiscal year ended March 31, 2005 is referred to as fiscal 2005 in this proxy statement.

ABOUT THE ANNUAL MEETING

Why did I receive these materials?

Shareholders of the Company as of the close of business on July 22, 2005, which is referred to as the Record Date, are entitled to vote at the Company's annual meeting of shareholders, which will be held on August 30, 2005. As a shareholder, you are invited to attend the annual meeting and are requested to vote on the items of business described in this proxy statement. The Company is required by law to distribute these proxy materials to all shareholders as of the Record Date. This proxy statement provides notice of the annual meeting of shareholders, describes the proposals presented for shareholder action and includes information required to be disclosed to shareholders. The accompanying proxy card enables shareholders to vote on the matters without having to attend the annual meeting in person.

Who is entitled to vote at the meeting?

Only shareholders of record at the close of business on the Record Date are entitled to receive notice of and to participate in the annual meeting. If you were a shareholder of record on the Record Date, you will be entitled to vote all of the shares that you held on that date at the meeting, or any postponements or adjournments of the meeting.

How many votes do I have?

You will be entitled to one vote for each outstanding share of Exide common stock you own as of the Record Date. As of the Record Date, there were 24,522,760 shares of the Company's common stock outstanding and eligible to vote.

Who can attend the meeting?

Subject to space availability, all shareholders as of the Record Date, or their duly appointed proxies, may attend the meeting, and each may be accompanied by one guest. Since seating is limited, admission to the meeting will be on a first-come, first-served basis. Registration will begin at 7:30 a.m., and seating will begin at 8:00 a.m. If you attend, please note that you may be asked to present valid picture identification, such as a driver's license or passport. Cameras (including cell phones with photographic capabilities), recording devices and other electronic devices will not be permitted at the meeting.

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Please also note that if you hold your shares in street name (that is, through a broker, bank or other nominee), you will need to bring a copy of a brokerage statement reflecting your stock ownership as of the Record Date and check in at the registration desk at the meeting.

Please let us know if you plan to attend the meeting by marking the appropriate box on the enclosed proxy card or, if you vote by telephone or Internet, indicating your plans when prompted.

How many shares must be present or represented to conduct business at the annual meeting?

The presence at the meeting, in person or by proxy, of the holders of a majority of the aggregate voting power of the common stock outstanding on the Record Date will constitute a quorum, permitting the conduct of business at the meeting. As of the Record Date, 24,522,760 shares of common stock, representing the same number of votes, were outstanding. Thus, the presence of the holders of common stock representing at least 12,261,381 votes will be required to establish a quorum.

Proxies received but marked as abstentions and broker non-votes will be included in the calculation of the number of votes considered to be present at the meeting.

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

Shares held in your name as the shareholder of record may be voted by you in person at the annual meeting. Shares held by you beneficially in street name through a broker, bank or other nominee may be voted by you in person at the annual meeting only if you obtain a legal proxy from the broker, bank or other nominee that holds your shares giving you the right to vote the shares.

How can I vote my shares without attending the meeting?

Whether you hold shares directly as the shareholder of record or beneficially in street name, you may direct how your shares are voted without attending the annual meeting. If you are a shareholder of record (that is, if your shares are registered directly in your name with the Company's transfer agent), you must complete and properly sign and date the accompanying proxy card and return it to the Company and it will be voted as you direct. A pre-addressed envelope is included for your use. If you are a shareholder of record and attend the meeting, you may deliver your completed proxy card in person. If you hold shares beneficially in street name, you may vote by submitting voting instructions to your broker, bank or other nominee.

Can I vote by telephone or electronically?

If you are a shareholder of record, you may vote by telephone, or electronically through the Internet, by following the instructions included with your proxy card. If your shares are held in street name, please check your proxy card or contact your broker, bank or other nominee to determine whether you will be able to vote by telephone or electronically. The deadline for voting by telephone or electronically is 11:59 p.m., Eastern Standard Time, on August 29, 2005.

Can I change my vote after I return my proxy card?

Yes. If you are a shareholder of record, you may revoke or change your vote at any time before the proxy is exercised by filing with the Corporate Secretary of the Company a notice of revocation or a duly executed proxy bearing a later date or by attending the annual meeting and voting in person. For shares you hold beneficially in street name, you may change your vote by submitting new voting instructions to your broker, bank or other nominee or, if you have obtained a legal proxy from your broker, bank or other nominee giving you the right to vote your shares, by attending the meeting and voting in person. In either case, the powers of the proxy holders will be suspended if you attend the meeting in person and so request, although attendance at the meeting will not by itself revoke a previously granted proxy.

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Who counts the votes?

Votes will be counted and certified by the Inspectors of Election, who are employees of American Stock Transfer & Trust Company (AST), the Company's transfer agent. If you are a shareholder of record, your signed proxy card is returned directly to AST for tabulation. If you hold your shares in street name through a broker, bank or other nominee, your broker, bank or other nominee will return one proxy card to AST on behalf of its clients.

What are the Board's recommendations?

Unless you give other instructions on your proxy card, the persons named as proxy holders on the proxy card will vote in accordance with the recommendations of the Board. The Board's recommendation is set forth together with the description of each item in this proxy statement. In summary, the Board recommends a vote FOR each of the proposals.

Will shareholders be asked to vote on any other matters?

To the knowledge of the Company and its management, shareholders will vote only on the matters described in this proxy statement. However, if any other matters properly come before the meeting, the persons named as proxies for shareholders will vote on those matters in the manner they consider appropriate.

What vote is required to approve each item?

Election of Directors. The affirmative vote of a plurality of the votes cast at the meeting is required for the election of directors (Item 1), whether the election occurs upon the elimination of the classified Board or for the Class I directors. A properly executed proxy marked withhold authority with respect to the election of one or more directors will not be voted with respect to the director or directors indicated, although it will be counted for purposes of determining whether there is a quorum.

Amendments to Certificate of Incorporation. The affirmative vote of the holders of outstanding shares representing at least a majority of the voting power of all of the shares of the Company's common stock issued and outstanding on the Record Date is required to amend the Company's Certificate of Incorporation to eliminate the classified Board (Item 2), to remove the limitation on the maximum number of directors that can serve on the Board (Item 3) and to permit holders of shares representing 15% of the voting power of the Company's capital stock to call special meetings of shareholders (Item 4).

Other Items. For each other item, including the proposal to approve the Company's 2004 Stock Incentive Plan (Item 5) and the ratification of the appointment of the Company's independent auditors for fiscal 2006 (Item 6), the affirmative vote of the holders of a majority of the votes cast in person or represented by proxy, and entitled to vote on the item will be required for approval.

A properly executed proxy marked abstain with respect to any matter will not be voted, although it will be counted for purposes of determining whether there is a quorum. Accordingly, an abstention will have the effect of a negative vote.

How are votes counted?

In the election of directors, you may vote FOR all or some of the nominees or your vote may be WITHHELD with respect to one or more of the nominees. You may not cumulate your votes for the election of directors.

For the other items of business, you may vote FOR, AGAINST or ABSTAIN. If you elect to ABSTAIN, the abstention has the same effect as a vote AGAINST. If you provide specific instructions with regard to certain items, your shares will be voted as you instruct on such items.

If you hold your shares in street name through a broker, bank or other nominee rather than directly in your own name, then your broker, bank or other nominee is considered the shareholder of record, and you are considered the beneficial owner of your shares. The Company has supplied copies of its proxy materials for its

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2005 annual meeting of shareholders to the broker, bank or other nominee holding your shares of record, and they have the responsibility to send these proxy materials to you. As the beneficial owner, you have the right to direct your broker, bank or other nominee on how to vote your shares at the annual meeting. The broker, bank or other nominee that is the shareholder of record for your shares is obligated to provide you with a voting instruction card for you to use for this purpose. If you hold your shares in a brokerage account but you fail to return your voting instruction card to your broker, your shares may constitute broker non-votes. Generally, 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. In tabulating the voting result for any particular proposal, shares that constitute broker non-votes are not considered present and entitled to vote on that proposal. If a quorum is present at the annual meeting, the persons receiving the greatest number of votes will be elected to serve as directors. As a result, broker non-votes will not affect the outcome of the voting on the election of directors (Item 1). The approval of the 2004 Stock Incentive Plan (Item 5) and the ratification of the appointment of the Company's independent auditors (Item 6) require the affirmative vote of a majority of the shares of common stock present in person or represented by proxy at the annual meeting and entitled to vote on the proposal. A broker non-vote is treated as not being entitled to vote on the matter and, therefore, is not counted for purposes of determining whether the proposal has been approved. However, broker non-votes will have the same effect as a negative vote on the proposals to amend the Company's Certificate of Incorporation to eliminate the classified Board (Item 2), to remove the limitation on the maximum number of directors that can serve on the Board (Item 3) and to permit shareholders to call special meetings of shareholders (Item 4) because these items are approved by a majority of the voting power of all of the shares of the Company's common stock issued and outstanding on the Record Date, regardless of whether all of such shares are present and entitled to vote at the meeting. Shares represented by such broker non-votes will, however, be counted in determining whether there is a quorum.

If you are a beneficial owner and your broker, bank or other nominee holds your shares in its name, it is permitted to vote your shares on the election of directors, the amendments to the Company's Certificate of Incorporation and the ratification of the appointment of PricewaterhouseCoopers LLP as the Company's independent auditor, even if the broker, bank or other nominee does not receive voting instructions from you. Your broker, bank or other nominee may not vote your shares, absent instructions from you, on the approval of the Company's 2004 Stock Incentive Plan. Without your voting instructions on these items a broker non-vote will occur.

What should I do if I receive more than one set of voting materials?

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

Where can I find the voting results of the annual meeting?

The Company intends to announce the preliminary voting results at the annual meeting and publish the final results in its quarterly report on Form 10-Q for the quarter ending September 30, 2005.

PROPOSALS SUBMITTED FOR SHAREHOLDER VOTE

Commitment to Submit Certain Proposals

In January and February of 2005, members of the Company's Board and senior management held discussions with representatives of two of its then major shareholders, Sandell Asset Management Corp. (Sandell) and Soros Fund Management LLC (Soros), regarding a number of issues, including the composition and structure of the Board and items to be recommended by the Board for approval by the

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Company's shareholders at the 2005 annual meeting. Based on these discussions, the Board affirmatively voted to expand contemporaneously its membership by two directors to a total of nine directors and continued to receive and review additional candidates for membership to the Board. These two directorships were filled with nominees independently proposed by each of Sandell and Soros. Mark C. Demetree was elected to the Board based on nominations submitted by Sandell and Jerome B. York was elected to the Board based on nominations submitted by Soros.

In consultation with these major shareholders, the Board also agreed to recommend the following proposals to shareholders at the 2005 annual meeting: (1) a proposal to amend the Company's Certificate of Incorporation to eliminate the classified Board (Item 2 below); (2) a proposal to amend the Company's Certificate of Incorporation to remove the limitation on the maximum number of directors that can serve on the Board (Item 3 below); and (3) a proposal to amend the Company's Certificate of Incorporation to permit holders of outstanding shares representing at least 15% of the voting power of the Company's capital stock to call special meetings of shareholders (Item 4 below). The Board believes that each of these proposals is in the best interest of the shareholders as a whole. The Board unanimously recommends that shareholders vote FOR each of the proposals and items described below.

ITEM 1 ELECTION OF DIRECTORS**Directors for Election if Item 2 is Approved by Shareholders**

If Item 2 (the elimination of a classified Board) is approved by the shareholders, each of the following nine directors will be nominees for election to serve a one-year term set to expire at the annual meeting in 2006 and until their successors are duly elected and qualified. The Board expects that all of the nominees will be able and willing to serve as directors. If any nominee is not available to serve as a director at the time of the annual meeting, the persons named on the proxy will vote for another candidate nominated by the Board, or the Board may reduce the number of directors serving on the Board. The Board has determined that each of the director nominees below, except Gordon A. Ulsh, is an independent director as defined in the listing standards of The Nasdaq Stock Market, as currently in effect. See Governance of the Company Director Independence.

Each of the nominees named below is currently a director of the Company. Biographical information about each director nominee, as of July 1, 2005, appears below.

Michael R. D Appolonia

Director since 2004

Mr. D Appolonia, 56, is Principal and President of Nightingale & Associates, LLC, a global management consulting firm providing financial and operational restructuring services to both publicly and privately held middle-market companies. In his consulting capacity, Mr. D Appolonia is currently the President of Reorganized Cone Mills Corporation and from October 2003 to May 2005 served as Chief Restructuring Officer of Cone Mills Corporation. From September 2002 to October 2003, Mr. D Appolonia was President and Director of Moll Industries, Inc. Mr. D Appolonia previously served as President and Chief Executive Officer of McCulloch Corporation, Ametech, Inc., Halston Borghese, Inc. and Simmons Upholstered Furniture Inc. Mr. D Appolonia is a member of the board of directors of The Washington Group International, Inc. and of Reorganized Cone Mills Corporation. Mr. D Appolonia is a member of the Audit Committee and is a Class III director.

Mark C. Demetree

Director since 2005

Mr. Demetree, 48, is Chairman and CEO of US Salt Holdings, LLC, a producer of inorganic chemicals. From 1993 to 1997, Mr. Demetree was President of North American Salt Company. From 1983 to 1987, Mr. Demetree was president of Demetree Brothers, Inc., an investment group involved in real estate investment, venture capital investments and corporate acquisitions. Mr. Demetree is non-executive Chairman of the Board of Texas Petrochemical, Inc. and is a director of American Italian Pasta Company, where he is

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Chairman of the Compensation Committee. Mr. Demetree is also a director and non-executive Chairman of the Board of Pinnacle Properties Holdings. Mr. Demetree is a member of the Nominating and Corporate Governance Committee and is a Class II director.

David S. Ferguson

Director Nominee

Mr. Ferguson, 60, is the principal of his own retail consulting business, DS Ferguson Enterprises, LLC, based in Atlanta, Georgia. Mr. Ferguson is the retired President and Chief Executive Officer of Wal*Mart Europe. He served in that capacity from September 2000 through July 2003. Prior to that, he was President and Chief Executive Officer of Wal*Mart Canada from February 1996 to September 2000. Mr. Ferguson was President and Chief Operating Officer as well as on the Board of Directors of Stuarts Department Stores in Franklin, Massachusetts from August 1994 through October 1995. He has over 30 years experience in the retail business and is currently Vice Chairman of the Board of Advisors of Miller Zell.

Phillip M. Martineau

Director since 2004

Mr. Martineau, 57, is currently an independent business advisor. Most recently, he was President and CEO of High Voltage Engineering Corporation from December 2004 through February 2005. Prior to that, Mr. Martineau was Executive Vice President and Group President for HON Industries from 2000 to 2003. From 1996 through 1999, Mr. Martineau was CEO and President of ITW-Arcsmith. Mr. Martineau was a senior executive for Pacific Dunlop Ltd. from 1988 to 1994, as President of Ansell Industrial from 1994 to 1996, and CFO and Vice President Finance for GNB Technologies from 1988 to 1994. Mr. Martineau is a member of the board of directors of the Minnesota Parks and Trails Council. Mr. Martineau is a member of the Audit Committee and is a Class II director.

John P. Reilly

Director since 2004

Mr. Reilly, 61, is the retired Chairman, President and Chief Executive Officer of Figgie International. He has more than thirty years of experience in the automotive industry, where he has served as President and CEO of a number of automotive suppliers, including Stant Corporation and Tenneco Automotive. He has also held leadership positions at the former Chrysler Corporation and Navistar, and has served as President of Brunswick Corporation. Mr. Reilly is currently on the board of directors of Material Sciences Corporation and Marshfield Door Systems. Mr. Reilly currently serves as Chairman of the Board, a member of the Compensation Committee, and is a Class I director.

Michael P. Ressler

Director since 2004

Mr. Ressler, 56, is a retired Nortel Networks executive who, between 1981 and 2003, served in a number of senior financial and operational management positions. Mr. Ressler was an Adjunct Professor of Applied Financial Management at North Carolina State University between 2002 and 2004. He is currently an adviser within the College of Management at North Carolina State University. Mr. Ressler currently serves as a member of the board of directors for the following companies: Arsenal Digital Solutions, Entrust, Magellan Health Services, Proxim Corporation and Riverstone Networks. Mr. Ressler is Chairman of the Audit Committee and a member of the Nominating and Corporate Governance Committee, and is a Class II director.

Carroll R. Wetzel

Director Nominee

Mr. Wetzel, 62, most recently served as Chairman of the Board of Safety Components International, Inc., a supplier of automotive airbag fabric and cushions and technical fabrics from 2000 to 2005. From 1988 until

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the merger with Chase Manhattan Bank Mr. Wetzel was the Head of the Mergers and Acquisition Group of Chemical Banks, and Co-Head of the Group following that merger. Mr. Wetzel currently serves as a member of the board of directors of Laidlow International, Inc.

Jerome B. York

Director since 2005

Mr. York, 67, is Chief Executive Officer of Harwinton Capital Corporation, a private investment company he founded in 2000. From 2000 until 2003, he was Chairman, President and Chief Executive Officer of MicroWarehouse Inc. Earlier, Mr. York served as Vice Chairman of Tracinda Corporation and as Senior Vice President and Chief Financial Officer of IBM Corporation. Prior to joining IBM, he was Executive Vice President-Finance and Chief Financial Officer of Chrysler Corporation. Mr. York currently serves on the board of directors of Apple Computer Inc. and Tyco International Ltd. Mr. York is Chairman of the Nominating and Corporate Governance Committee, and is a Class III director.

Gordon A. Ulsh

Director since 2005

Mr. Ulsh, 59, is the Company's President and Chief Executive Officer. Mr. Ulsh was appointed to his current position in April 2005. From 2001 until March 2005, Mr. Ulsh was Chairman, President and CEO of Texas-based FleetPride Inc., the nation's largest independent aftermarket distributor of heavy-duty truck parts. Prior to joining FleetPride in 2001, Mr. Ulsh worked with Ripplewood Equity Partners, providing analysis of automotive industry segments for investment opportunities. Earlier, he served as President and Chief Operating Officer of Federal-Mogul Corporation in 1999 and as head of its Worldwide Aftermarket Division in 1998. Prior to Federal-Mogul, he held a number of leadership positions with Cooper Industries, including Executive Vice President of its automotive products segment. Mr. Ulsh joined Cooper's Wagner Lighting business unit in 1984 as Vice President of Operations, following 16 years in manufacturing and engineering management at Ford Motor Company, and is a Class I director.

If Item 2 is approved by the shareholders, the Board recommends that the shareholders vote FOR the election of each of the nine director nominees named above.

Directors for Election if Item 2 is Not Approved by Shareholders

If Item 2 (the elimination of a classified Board) is *not* approved by the shareholders, the Class I directors standing for reelection, John P. Reilly and Gordon A. Ulsh, as well as director nominee, Carroll R. Wetzel, will be nominees for election to serve a term set to expire at the annual meeting in 2008 and until their successors are duly elected and qualified. Mr. Eugene I. Davis has decided not to seek reelection to the Board.

If Item 2 is not approved by the shareholders, the Board recommends that the shareholders vote FOR the election of each of the three Class I director nominees named above.

ITEM 2 A PROPOSAL TO AMEND THE COMPANY'S CERTIFICATE OF INCORPORATION TO ELIMINATE THE CLASSIFIED BOARD OF DIRECTORS

The Company's Certificate of Incorporation currently provides that the Board is divided into three classes designated as Class I, Class II and Class III, with each class as evenly divided in number as possible and with each class serving a three-year term. Currently, the term of the Class I directors is set to expire in 2005, the term of the Class II directors is set to expire in 2006 and the term of the Class III directors is set to expire in 2007.

The Board is proposing an amendment to the Company's Certificate of Incorporation to eliminate the classified Board structure. The election of directors is the primary means for shareholders to influence corporate governance policies and to hold management accountable for its implementation of these policies. Although the Board has agreed with certain of its major shareholders to recommend that this proposal be adopted by shareholders, the Board believes there are independent reasons that the proposal is in the best

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interest of the shareholders. Recent corporate governance reforms initiated by The Nasdaq Stock Market place heavy emphasis on the independence of directors and, in certain circumstances, may require corporations to adjust the composition of their boards of directors and committees of the board to comply with independence requirements. Some investors have come to view classified boards as having the effect of insulating directors from being accountable to a corporation's shareholders. A classified board of directors prevents shareholders from electing directors on an annual basis and exercising influence over a corporation and may discourage proxy contests in which shareholders have an opportunity to vote for a competing slate of nominees. The Board is also sensitive to these issues and to the growing sentiment of the Company's shareholders that an annual election of directors would increase the Board's accountability to shareholders. Thus, the Board has determined that the Company's classified Board structure should be eliminated.

If this proposal is adopted, the language of Article V, Sections 3(a) and 3(b) of the Company's Certificate of Incorporation would be deleted in their entirety and the following substituted:

At each annual meeting of stockholders, including the annual meeting of stockholders in 2005, the terms of all directors shall expire upon the election and qualification of their successors and all directors shall be elected to hold office for a term expiring at the next succeeding annual meeting of stockholders and until their successors are duly elected and qualified.

Additionally, if the proposal is adopted, cross references to Sections 3(a) and 3(b) will be appropriately changed.

If this proposed amendment is adopted, it will become effective upon filing the amendment with the Secretary of State for the State of Delaware. Upon acceptance by the Secretary of State's office, shareholders will be asked to vote on the election of nine directors to serve a one-year term, as described in Item 1. If this proposal is not adopted, shareholders will be asked to vote on the election of three Class I directors, each for a three-year term, as described in Item 1.

The Board recommends that the shareholders vote FOR the proposal to amend the Company's Certificate of Incorporation to eliminate the classified Board.

ITEM 3 A PROPOSAL TO AMEND THE COMPANY'S CERTIFICATE OF INCORPORATION TO REMOVE THE LIMITATION ON THE MAXIMUM NUMBER OF DIRECTORS THAT CAN SERVE ON THE BOARD

The Company's Certificate of Incorporation currently provides that the number of directors on the Board shall be not less than seven and not more than nine as shall be fixed from time to time by the Board. The Board is proposing an amendment to the Company's Certificate of Incorporation to remove the limitation on the maximum number of directors that can serve on the Board.

The Board believes that the proposed removal of the limitation on the maximum number of directors on the Board will provide flexibility for the addition of future director candidates whose background and skills would prove beneficial to the Company and its shareholders. However, the proposed amendment may make it easier for a shareholder or group of shareholders to quickly acquire control of the Company, for example, through an increase in the number of directors and election of nominees to fill the newly-created vacancies.

If this proposal is adopted, the first sentence of Article V, Section 2 of the Company's Certificate of Incorporation would be deleted and replaced with the following:

The number of directors shall not be less than seven. Subject to such minimum number, the exact number of directors shall be fixed from time to time by the Board.

The remaining portions of Article V, Section 2 will remain unchanged.

If this proposed amendment is approved by the shareholders, it will become effective upon the filing of the amendment with the Secretary of State for the State of Delaware.

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The Board recommends that the shareholders vote FOR the proposal to amend the Company's Certificate of Incorporation to remove the limitation on the maximum number of directors that can serve on the Board.

ITEM 4 A PROPOSAL TO AMEND THE COMPANY'S CERTIFICATE OF INCORPORATION TO PERMIT HOLDERS OF OUTSTANDING SHARES REPRESENTING AT LEAST 15% OF THE VOTING POWER OF THE COMPANY'S CAPITAL STOCK TO CALL SPECIAL MEETINGS OF SHAREHOLDERS

The Company's Certificate of Incorporation currently provides that meetings of shareholders may be called only by the Chairman of the Board, the Chief Executive Officer, the Secretary or the Board pursuant to a resolution adopted by a majority of the Board, and explicitly denies shareholders the ability to call special meetings of shareholders.

The Board believes that, in certain circumstances, shareholders should have the ability to call special meetings of shareholders. However, the Board is concerned that granting shareholders holding only a nominal amount of the voting power of the Company's capital stock the ability to call special meetings could result in an unnecessary number of meetings which would be of little or no benefit to the shareholders as a whole and which would impose significant administrative and financial burdens on the Company. Accordingly, to strike an appropriate balance, the Board is proposing an amendment to the Company's Certificate of Incorporation to permit holders of outstanding shares representing at least 15% of the voting power of the Company's capital stock to call special meetings of shareholders.

If this proposal is adopted, the last two sentences of Article VI, Section 1 of the Company's Certificate of Incorporation shall be deleted in their entirety and replaced with the following:

Meetings of holders of capital stock of the Corporation may be called only by the Chairman of the Board, the Chief Executive Officer, the Secretary, or the Board pursuant to a resolution adopted by the affirmative vote of a majority of the entire Board; provided that special meetings of stockholders may be called at any time by written request to the Corporate Secretary by the holders of outstanding shares representing at least 15% of the voting power of all of the shares of capital stock of the Corporation then entitled to vote in the election of directors.

The remaining portions of Article VI, Section 1 will remain unchanged.

If this proposal is adopted, it will become effective upon filing of the amendment with the Secretary of State for the State of Delaware. In addition, if this proposal is adopted, the Board will approve conforming changes to the Company's Bylaws.

The Board recommends that the shareholders vote FOR the proposal to amend the Company's Certificate of Incorporation to permit holders of outstanding shares representing at least 15% of the voting power of the Company's capital stock to call special meetings of shareholders.

ITEM 5 A PROPOSAL TO APPROVE THE 2004 STOCK INCENTIVE PLAN

The Board of Directors recommends that shareholders approve the Company's 2004 Stock Incentive Plan (the "2004 Plan"). Based on the recommendation of the Compensation Committee (the "Committee"), on September 7, 2004, the Board unanimously approved the 2004 Plan, subject to shareholder approval. The 2004 Plan provides for grants of stock options, restricted shares and performance awards to select key management employees, directors and consultants of the Company. The 2004 Plan is intended to assist the Company in attracting and retaining valuable executive leadership while providing long-term value to the Company's shareholders. Although all of the Company's employees, directors, consultants and individuals to whom offers of employment are extended are eligible to receive awards under the 2004 Plan, awards will generally be limited to approximately 100 executive and management employees and the Company's directors.

The following is a summary of the material terms of the 2004 Plan, but it does not include all of the provisions of the plan. The full text of the 2004 Plan is attached as Annex I to this proxy statement, and the following summary is qualified in its entirety by reference to such Annex.

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Plan Administration

The 2004 Plan will be administered by the Compensation Committee of the Board. The Board also has the authority to administer the 2004 Plan and to take all actions that the Committee is otherwise authorized to take under the 2004 Plan. The Committee has the authority to determine eligible individuals to whom awards may be granted, the number of shares or options awarded and the fair market value of the shares. The Committee is also responsible for determining the terms and conditions of awards and for approving the form of award agreements. The Committee will have the authority to interpret the 2004 Plan, to prescribe, amend and rescind rules and procedures relating to the 2004 Plan and to make all other determinations necessary or advisable for the administration of the 2004 Plan. The Committee may delegate authority to administer the 2004 Plan to reporting persons, officers or employees of the Company or its affiliates, subject to the applicable law and the restrictions set forth in the 2004 Plan.

The Board retains the right to add additional members or replace members of the Committee with or without cause at any time.

Limits on Plan Awards

A maximum of 3,125,000 shares of the Company's common stock will be available for grants of all equity awards under the 2004 Plan all of which may be granted as incentive stock options. This represents approximately 9% of the Company's diluted common shares outstanding as of March 31, 2005 and the Board believes that this number represents a reasonable amount of potential equity dilution. This maximum number is subject to adjustment in the event of a stock split, reverse stock split, stock dividend, combination, recapitalization or reclassification or other increase or decrease in the number of issued shares of common stock without receipt of consideration by the Company. In the event of any of these occurrences, the Committee may make such adjustments that it determines to be necessary to prevent dilution or enlargement of benefits intended to be made available under the 2004 Plan.

The Company may not issue more than 850,000 shares of common stock pursuant to awards in the form of restricted shares and performance awards. In addition, during the term of the 2004 Plan, no participant may receive options for more than 600,000 shares and no participant may receive performance awards in a performance period that together exceed 600,000 shares and \$2,000,000 in cash.

Shares delivered under the 2004 Plan may be authorized but unissued shares or shares that the Company has reacquired or otherwise holds in treasury. To the extent that any award payable in shares of common stock expires, is forfeited, is cancelled, becomes unexercisable or for any other reason is not paid or delivered under the 2004 Plan, the shares subject to that award may be used for subsequent awards to the extent not prohibited by applicable law. Any shares withheld from a participant as full or partial payment to the Company of the exercise price or the tax withholding upon grant, exercise, vesting or distribution of an award may also be used for future awards under the 2004 Plan.

Eligibility and Participation

Employees of the Company and its affiliates, directors of the Company and its affiliates, consultants and non-employees to whom an offer of employment has been extended will be eligible to receive grants under the 2004 Plan. However, only employees (including officers who are employees) may receive grants of incentive stock options. The Committee will determine who will receive awards, the number of shares of common stock subject to each award, the price (if any) to be paid for the award and all other terms of the award.

As described under Governance of the Company Board Compensation, each non-employee director of the Company is currently awarded stock options valued at \$20,000 and restricted shares valued at \$20,000, on an annual basis.

Types of Awards Available under the 2004 Plan

The type of awards available under the 2004 Plan include stock options, restricted shares and performance awards.

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Stock Options

Stock options granted under the 2004 Plan may be either non-qualified stock options or incentive stock options qualifying under Section 422 of the Internal Revenue Code of 1986, as amended. Incentive stock options may be granted only to employees of the Company and its affiliates. Stock options granted under the 2004 Plan will vest on the schedule determined by the Committee. The Committee may accelerate the vesting of stock options under certain circumstances. Most of the awards which have been granted under the 2004 Plan to date have a three-year vesting schedule, all of which are subject to shareholder approval. To the extent that the aggregate fair market value of shares of common stock underlying incentive stock options exceeds \$100,000 when those options first become exercisable by a participant in any calendar year, the options in excess of \$100,000 will be treated as non-qualified stock options.

The exercise price of any stock option granted under the 2004 Plan may not be less than the fair market value of the Company's common stock on the date the option is granted. However, with respect to incentive stock options granted to employees who own stock representing more than 10% of the combined voting power of all classes of stock of the Company or any affiliate, the exercise price may not be less than 110% of the fair market value of the Company's common stock on the date the option is granted. The Committee may allow the exercise price to be paid in cash or check, with other shares of the Company's common stock or through a cashless exercise program using a broker-dealer.

The Committee will determine the term of each stock option granted under the 2004 Plan. The Committee has discretion to provide for a term of up to ten years. However, for incentive stock options granted to employees who own stock representing more than 10% of the combined voting power of all classes of stock of the Company or any affiliate, the term of the option may not exceed five years.

To the extent the award agreement governing a grant does not specify the terms and conditions upon which a stock option will terminate in the event of the termination of a participant: (1) if a termination results from disability within the meaning of Section 22(e)(3) of the Internal Revenue Code of 1986, as amended, the participant may exercise the option at any time within one year following the termination, to the extent the participant was entitled to exercise the option at the date of termination; (2) if a termination results from the participant's death, or if death of the participant occurs within thirty days following the termination, the participant's estate or person with rights to exercise the option may exercise the option at any time within one year following the date of the participant's death, to the extent the option had vested at the date of the participant's death or termination, as applicable; (3) if the participant is terminated for cause, the right to exercise the option is immediately forfeited and considered null and void; and (4) if a termination occurs for any other reason, the participant may exercise the option at any time within 90 days following the termination, to the extent the participant was entitled to exercise the option at the date of termination.

No stock option granted under the 2004 Plan may be re-priced or surrendered in exchange for a replacement option having a lower exercise price except in connection with a stock split, stock dividend or similar event in order to prevent dilution or enlargement of benefits intended to be made available under the 2004 Plan.

Restricted Shares

Restricted shares represent shares of the Company's common stock. The Committee will determine the terms and conditions under which restricted shares will vest. Prior to the lapse of any restrictions with respect to restricted shares, the Company will issue stock certificates evidencing the shares that bear a legend referencing the applicable restrictions. These restricted shares and any dividends that accrue on the shares will be held by the Company or a third party designated by the Company until the restricted shares vest. Upon the vesting of restricted shares and the participant's satisfaction of any applicable tax withholding requirements, the Company will release to the participant, free of any restrictions, one share of the Company's common stock for each restricted share, but will pay cash in lieu of fractional shares. Subject to the Committee's discretion, following the vesting of restricted shares, the participant may be eligible to receive cash dividends, simple interest and any stock dividends with respect to the vested shares which were declared and paid between the grant date and the vesting date.

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Performance awards may be granted in the discretion of the Committee and such awards may be designated by the Committee as performance compensation awards which constitute qualified performance-based compensation under Section 162(m) of the Internal Revenue Code of 1986, as amended. With respect to each performance compensation award, the Committee will establish: (1) a performance period (of not less than one fiscal year) over which the attainment of the selected performance measure will be measured; (2) a performance measure to gauge the performance of the Company or a business unit, which, whether in absolute or relative terms including, without limitation, terms relative to a peer group or index, may be based on basic, diluted, or adjusted earnings per share; sales or revenue; earnings before interest, taxes, and other adjustments (in total or on a per share basis); basic or adjusted net income; returns on equity, assets, capital, revenue or similar measure; economic value added; working capital; total shareholder return; and product development, product market share, research, licensing, litigation, human resources, information services, mergers, acquisitions, sales of assets of affiliates or business units. Each such measure shall be to the extent applicable, determined in accordance with generally accepted accounting principles as consistently applied by the Company (or such other standard applied by the Committee) and, if so determined by the Committee, and in the case of a performance compensation award, to the extent permitted under Code Section 162(m), adjusted to omit the effects of extraordinary items, gain or loss on the disposal of a business segment, unusual or infrequently occurring events and transactions and cumulative effects of changes in accounting principles. Performance measures may vary from performance period to performance period and from participant to participant, and may be established on a stand-alone basis, in tandem or in the alternative; or (3) a performance formula for purposes of determining whether an award has been earned based on the level of performance attached with respect to a performance measure. The participant will be eligible to receive payment on a performance compensation award to the extent the performance measures are achieved and the performance formula as applied against the performance measures determine that the award has been earned for the relevant performance period.

Effect of Change in Control

In the event of a change in control (as such term is defined in the 2004 Plan), the Committee has the discretion, without the need for further approval, to make arrangements for the successor corporation to assume or provide a substantially similar substitution for awards that have been granted, to accelerate the vesting for awards, to arrange for payment in exchange for cancellation of awards or make other modifications to the awards that the Committee deems necessary. If the awards are assumed or substituted by the successor corporation and the participant is involuntarily terminated within twelve months following the change in control, all of the participant's awards will become fully vested and, with respect to options, fully exercisable.

Limited Transferability

Awards granted under the 2004 Plan, including awards of restricted shares with restrictions that have not lapsed, generally may not be sold, pledged or otherwise transferred other than by will or by the laws of descent and distribution. However, the Committee may provide that an award (other than an incentive stock option) may be transferred to a member of the participant's immediate family, to an inter vivos or testamentary trust for the benefit of designated beneficiaries or by gift to charitable institutions.

Term, Amendment and Termination of the 2004 Plan

The 2004 Plan will continue in effect for a term of ten years from the September 7, 2004 effective date, unless earlier terminated by the Board. However, if the 2004 Plan is not approved by the shareholders by September 7, 2005, all awards under the 2004 Plan shall become null, void and of no force or effect. The Board may from time to time amend, discontinue or terminate the 2004 Plan, subject to applicable law requiring shareholder approval. No amendment, suspension or termination of the 2004 Plan will materially and adversely affect any outstanding award without the consent of the participant, unless such amendment, suspension or termination relates to an adjustment necessary in connection with a change in control, dissolution, liquidation or change in capitalization.

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New Plan Benefits

Because future awards under the 2004 Plan will be granted in the discretion of the Committee, the type, number, recipients and other terms of such awards cannot be determined at this time. In addition, because the 2004 Plan was not in effect for all of fiscal 2005, the benefits or amounts which would have been received by participants during fiscal 2005, if the plan had been in effect for the entire fiscal year, are not determinable. For the period of fiscal 2005 during which the 2004 Plan was in effect: 195,500 options were granted and 35,500 restricted shares were approved to be granted to the Company's executive officers as a group; 12,672 options were granted and 7,584 restricted shares were approved to be granted to the Company's non-executive directors as a group; and 277,600 options were granted and 54,700 restricted shares were approved to be granted to all of the Company's non-executive employees as a group. Awards of options under the 2004 Plan which were granted to the Company's named executive officers during fiscal 2005 are summarized under Executive Compensation Summary Compensation Table. All of the foregoing options were granted subject to shareholder approval of the 2004 Plan at the 2005 annual meeting. All of the foregoing awards of restricted shares were approved by the Compensation Committee subject to and to be issued as of the date of shareholder approval of the 2004 Plan.