KORN FERRY INTERNATIONAL
Form DEF 14A
August 29, 2008

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**UNITED STATES**
**SECURITIES AND EXCHANGE COMMISSION**
**Washington, D.C. 20549**
**SCHEDULE 14A**
**(Rule 14a-101)**
**INFORMATION REQUIRED IN PROXY STATEMENT**
**Proxy Statement Pursuant to Section 14(a) of the Securities**
**Exchange Act of 1934 (Amendment No. )**

Filed by the Registrant þ
Filed by a Party other than the Registrant o
Check the appropriate box:
o Preliminary Proxy Statement
o Confidential, For Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
þ Definitive Proxy Statement
o Definitive Additional Materials
o Soliciting Material Pursuant to (§) 240.14a-12

(Name of Registrant As Specified In Its Charter)
**KORN/FERRY INTERNATIONAL**

(Name of Person(s) Filing Proxy Statement)
Payment of Filing Fee (Check the appropriate box):
þ No Fee required
o 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 transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

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o Fee paid previously with preliminary materials.

o Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount previously paid:

(2) Form Schedule or Registration Statement No.:

(3) Filing Party:

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Notes:

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**1900 Avenue of the Stars, Suite 2600**
**Los Angeles, California 90067**

August 29, 2008

Dear Stockholders:

It is my pleasure to invite you to attend the 2008 Annual Meeting of Stockholders (the Annual Meeting ) of Korn/Ferry International. The Annual Meeting will be held on September 23, 2008 at 10:00 a.m. Pacific time at the Intercontinental Hotel in Century City located at 2151 Avenue of the Stars, Los Angeles, California 90067.

At the Annual Meeting we will discuss the items of business discussed in the attached notice and give a report on our business operations.

We are delighted that you have chosen to invest in Korn/Ferry International and hope that, whether or not you attend the Annual Meeting, you will vote as soon as possible by completing, signing, dating and returning the enclosed proxy card in the envelope provided. *Your vote is important*, and voting by written proxy will ensure your representation at the Annual Meeting. You may revoke your proxy in accordance with the procedures described in the Proxy Statement at any time prior to the time it is voted. If you attend the Annual Meeting, you may vote in person even if you previously mailed your proxy card.

Sincerely,

Paul C. Reilly
*Chairman of the Board*

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**1900 Avenue of the Stars, Suite 2600**
**Los Angeles, California 90067**

**NOTICE OF 2008 ANNUAL MEETING**
**To Be Held On September 23, 2008**

**Important Notice Regarding the Availability of Proxy Materials for the Stockholder Meeting to be Held on September 23, 2008**
**The Proxy Statement and accompanying Annual Report to Stockholders are available at www.kornferry.com**

To the Stockholders:

On September 23, 2008, Korn/Ferry International (the Company , we , its and our ) will hold its 2008 Annual Meetin of Stockholders (the Annual Meeting ) at the Intercontinental Hotel in Century City located at 2151 Avenue of the Stars, Los Angeles, California 90067. The meeting will begin at 10:00 a.m. Pacific time.

Only stockholders who owned our common stock at the close of business on July 25, 2008 can vote at this meeting or any adjournments or postponements that may take place. The purposes of the Annual Meeting are to:

1. Elect three directors to serve on the Board of Directors (the Board ) until the 2011 Annual Meeting of Stockholders;

2. Ratify the appointment of Ernst & Young LLP as the Company s independent registered public accounting firm for the Company s 2009 fiscal year;

3. Approve the Korn/Ferry International 2008 Stock Incentive Plan; and

4. Transact any other business properly presented at the Annual Meeting.

**The Board of Directors recommends that you vote FOR the approval of each of the three proposals outlined in the Proxy Statement accompanying this notice.**

A quorum comprised of the holders of a majority of the outstanding shares of our common stock on the record date must be present or represented for the transaction of business. Accordingly, it is important that your shares be represented at the Annual Meeting. Whether or not you plan to attend the Annual Meeting, please complete, date and sign the enclosed proxy card and return it in the envelope provided. You may revoke your proxy at any time prior to the time it is voted by (1) notifying the Corporate Secretary in writing; (2) returning a later-dated proxy card; or (3) attending the Annual Meeting and voting in person.

This Proxy Statement is first being mailed to our stockholders on or about August 29, 2008. Please read the proxy materials carefully. Your vote is important and we appreciate your cooperation in considering and acting on the matters presented.

By Order of the Board of Directors,

Peter L. Dunn
*Corporate Secretary and*
*General Counsel*

August 29, 2008

Los Angeles, California

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## QUESTIONS AND ANSWERS ABOUT THE PROXY MATERIALS AND THE ANNUAL MEETING

**1. Q: Why am I receiving this Proxy Statement and the other enclosed materials?**

A: The Board is providing these materials to you in connection with, and soliciting proxies for use at, the Annual Meeting, which will take place on September 23, 2008. As a stockholder on the record date, you are invited to attend the Annual Meeting and you are requested to vote on each of the proposals described in this Proxy Statement. You do not need to attend the Annual Meeting to vote your shares.

**2. Q: What information is included in this mailing?**

A: The information included in this Proxy Statement relates to, among other things, the proposals to be voted on at the Annual Meeting, the voting process and the compensation of the Company s directors and executive officers.

**3. Q: What proposals will be voted on at the Annual Meeting?**

A: (1) The election of directors to serve on the Board until the 2011 Annual Meeting of Stockholders;

(2) The ratification of the appointment of Ernst & Young LLP as the Company s independent registered public accounting firm for the Company s 2009 fiscal year; and

(3) The approval of the Korn/Ferry International 2008 Stock Incentive Plan.

**4. Q: How does the Board recommend I vote on each of the proposals?**

A: The Board recommends that you vote your shares FOR all of its nominees to the Board, FOR the ratification of the appointment of the independent registered public accounting firm for the Company s 2009 fiscal year, and FOR the approval of the Korn/Ferry International 2008 Stock Incentive Plan.

**5. Q: Who is entitled to vote at the Annual Meeting?**

A: Holders of the Company s common stock as of the record date, which is the close of business on July 25, 2008, are entitled to vote at the Annual Meeting.

**6. Q: How many votes are provided to each share of common stock?**

A: Each share of the common stock of the Company outstanding as of the record date is entitled to one vote. As of the record date on July 25, 2008, 46,989,792 shares of the common stock of the Company were issued and outstanding.

**7. Q: How do I vote?**

A: You can vote either by completing, signing and dating each proxy card you received and returning it in the envelope provided or by attending the Annual Meeting and voting in person. Once you have submitted your proxy, you have the right to revoke your proxy at any time before it is voted by:

(1) notifying the Corporate Secretary in writing;

(2) returning a later-dated proxy card; or

(3) attending the Annual Meeting and voting in person.

**8. Q: Who will count the votes?**

A: Representatives of Mellon Investor Services will count the votes and act as the inspector of election at the Annual Meeting.

**9. Q: What does it mean if I receive more than one proxy card?**

A: It means that your shares are registered differently and are in more than one account. Sign and return all proxy cards to ensure that all your shares are voted.

**10. Q: What shares are covered by the enclosed proxy card(s)?**

A: The shares on the enclosed proxy card(s) represent all shares owned by you as of the record date. These shares include shares (1) held directly in your name as the stockholder of record and (2) held for you as the beneficial owner through a stockbroker, bank or other nominee. If you do not return your proxy card(s) with respect to these shares, your shares may not be voted. If you own shares that are held in our

401(k) plan, you will receive a proxy card for those shares also. While the trustees of the 401(k) plan will vote those shares, you are requested to return that proxy card to advise the trustees of your wishes with respect to the matters to be voted on.

**11. Q: What is the difference between holding shares as a stockholder of record and as a beneficial owner ?**

A: Those terms refer to the following. You are a:

Stockholder of record , if your shares are registered directly in your name with the Company s transfer agent, Mellon Investor Services. You are considered, with respect to those shares, to be the stockholder of record, and these proxy materials have been sent directly to you by the Company. As the stockholder of record, you have the right to grant your voting proxy to the Company or to vote in person at the Annual Meeting. We have enclosed a proxy card for you to use.

Beneficial owner , if your shares are held in a stock brokerage account, including an Individual Retirement Account, or by a bank or other nominee. If you are considered to be the beneficial owner of shares held in street name , these proxy materials are being forwarded to you by your broker or nominee, who is considered, with respect to those shares, to be the stockholder of record. As the beneficial owner, you have the right to direct your broker or nominee on how to vote (your broker or nominee has enclosed a voting instruction card for you to use) and you are invited to attend the Annual Meeting. However, because you are not the stockholder of record, you may not vote your shares in person at the Annual Meeting.

**12. Q: What if a beneficial owner does not provide the stockholder of record with voting instructions for a particular proposal?**

A: If you are a beneficial owner and you do not provide the stockholder of record with voting instructions for a particular proposal, your shares may constitute broker non- votes, as described below, with respect to that proposal.

**13. Q: What are broker non- votes ?**

A: Broker non- votes are shares held by a broker or nominee with respect to which the broker or nominee does not have discretionary power to vote on a particular proposal or with respect to which instructions were never received from the beneficial owner. Shares which constitute broker non-votes with respect to a particular proposal will not be considered present and entitled to vote on that proposal at the Annual Meeting, even though the same shares will be considered present for quorum purposes and may be entitled to vote on other proposals.

**14. Q: How are votes counted?**

A: For Proposal No. 1, you may vote FOR all of the nominees or your vote may be WITHHELD with respect to one or more of the nominees. For Proposal Nos. 2 and 3, you may vote FOR, AGAINST or ABSTAIN. If you sign your proxy card or broker voting instruction card without voting FOR, AGAINST or ABSTAIN for any of the proposals, your shares will be voted in accordance with the recommendations of the Board. With respect to Proposal Nos. 2 and 3, abstentions will be equivalent to AGAINST votes, while broker non-votes will be disregarded and will have no effect on the approval or rejection of Proposal Nos. 1-3.

**15. Q: What is the voting requirement to approve each proposal?**

A: In order to conduct business at the Annual Meeting, a quorum, as described below, must be established. In the election of directors, the Board s nominees will become directors so long as they receive a plurality of FOR votes; however, if any additional nominees for director are properly brought before the stockholders for consideration, only the nominees who receive the highest number of FOR votes will become directors. Approval of Proposal Nos. 2 and 3 will require affirmative FOR votes from a majority of those shares present (either in person or by proxy) and entitled to vote at the Annual Meeting.

**16. Q: What is a quorum ?**

A: A quorum is a majority in voting power of the outstanding shares of common stock entitled to vote. A quorum must be present or represented by proxy at the Annual Meeting for business to be conducted. Abstentions and broker non-votes will be counted as present for quorum purposes.

17. **Q: What happens if additional matters (other than the proposals described in this Proxy Statement) are presented at the Annual Meeting?**

A: The Board is not aware of any additional matters to be presented for a vote at the Annual Meeting; however, if any additional matters are properly presented at the Annual Meeting, your signed proxy card gives authority to Paul C. Reilly and Gary D. Burnison to vote on those matters in their discretion.

18. **Q: How much did this proxy solicitation cost?**

A: We hired Mellon Investor Services to assist in the distribution of proxy materials and solicitation of votes for approximately $23,000. The fees include out of pocket expenses. We also reimburse brokerage houses and other custodians, nominees and fiduciaries for their reasonable out-of-pocket expenses for forwarding proxy and solicitation materials to beneficial owners.

## PROPOSAL NO. 1 ELECTION OF DIRECTORS

The Board is divided into three classes, with one class elected at each annual meeting of stockholders. Directors of each class are elected to serve for three year terms. At the Annual Meeting, we will elect three directors and the Board for the coming year will be composed of ten directors. The Board s nominees for election as directors will be elected to serve as Class 2011 Directors for a term of three years. The nominees for election at the Annual Meeting to serve as Class 2011 Directors are Gerhard Schulmeyer, Harry You and Debra Perry. Detailed information regarding each of these nominees is provided on pages 16-17 of this Proxy Statement. We do not expect any of the nominees to become unavailable to stand for election, but should this happen the Board will designate a substitute for each unavailable nominee. Proxies voting for any unavailable nominee will be cast for that nominee s substitute. Each of the nominees has consented to be named as a nominee in this Proxy Statement.

### Required Vote

The Board s nominees will become directors so long as they receive a plurality of FOR votes. If, however, any additional nominees for director are properly brought before the stockholders for consideration, only the nominees who receive the highest number of FOR votes will become directors.

### Recommendation of the Board

**The Board unanimously recommends that you vote FOR each of the nominees named above for election as a director. Proxies will be voted FOR each of the nominees named above unless you otherwise specify on your proxy card.**

## PROPOSAL NO. 2 RATIFICATION OF THE APPOINTMENT OF ERNST & YOUNG LLP AS INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Audit Committee has approved the appointment of Ernst & Young LLP as the Company s independent registered public accounting firm for fiscal 2009. Ernst & Young LLP has served as the Company s independent registered public accounting firm since March 2002. Ernst & Young LLP has unrestricted access to the Audit Committee to discuss audit findings and other financial matters. Neither the Company s certificate of incorporation nor its bylaws requires that the stockholders ratify the selection of Ernst & Young LLP as the Company s independent registered public accounting firm. We are requesting ratification because we believe it is a matter of good corporate practice. If the

Company s stockholders do not ratify the selection, the Audit Committee will reconsider whether or not to retain Ernst & Young LLP, but may, nonetheless, retain such independent registered public accounting firm. Even if the selection is ratified, the Audit Committee in their discretion may change the appointment at any time during the year if they determine that such change would be in the best interests of the Company and its stockholders. Representatives of Ernst & Young LLP will attend the Annual Meeting to answer appropriate questions and may also make a statement if they so desire.

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The following table sets forth fees for services Ernst & Young LLP provided during fiscal 2007 and 2008:

| | 2008 | 2007 |
|---|---|---|
| Audit fees(1) | $ 1,599,870 | $ 1,588,000 |
| Audit-related fees(2) | 24,161 | 28,400 |
| Tax fees(3) | 349,102 | 536,000 |
| All other fees | 0 | 0 |
| Total | $ 1,973,133 | $ 2,152,400 |

(1) Represents fees for audit services, including fees associated with the annual audit, the reviews of the Company s quarterly financial statements, statutory audits required internationally, for attestation services related to compliance with Section 404 of the Sarbanes-Oxley Act and statutory audits required by governmental agencies for regulatory, legislative and financial reporting requirements.

(2) Represents fees for assurance and related services that are reasonably related to the performance of the audit or review of the Company s financial statements or that are traditionally performed by the independent registered public accounting firm that are not included in Audit Fees, fees for employee benefits plan audit, due diligence related to mergers and acquisitions, internal control reviews and consultation concerning financial accounting and reporting standards not classified as Audit Fees.

(3) Represents fees for tax compliance, planning and advice. These services included tax return compliance.

**Audit Committee s Pre-Approval Policies and Procedures**

The Audit Committee is directly responsible for the appointment, compensation, retention and oversight of the work of the independent registered public accounting firm. As part of this responsibility, the Audit Committee is required to pre-approve the audit and non-audit services performed by the independent registered public accounting firm in order to help assure that they do not impair the registered public accounting firm s independence from the Company. The Audit Committee may either approve the engagement of the independent registered public accounting firm to provide services or pre-approve services to be provided on a case by case basis. The Audit Committee believes the combination of these two approaches will result in an effective and efficient procedure to pre-approve services performed by the independent registered public accounting firm. The Audit Committee will also consider whether the independent registered public accounting firms is best positioned to provide the most effective and efficient service, for reasons such as its familiarity with the Company s business, people, culture, accounting systems, risk profile and other factors, and whether the service might enhance the Company s ability to manage or control risk or improve audit quality. All such factors will be considered as a whole, and no one factor is determinative. The Audit Committee requires the rotation of its independent registered public accounting firm s audit partners as required by the Sarbanes-Oxley Act and the related rules of the Securities and Exchange Commission ( SEC ).

All requests or applications for Ernst & Young LLP services are submitted to the Internal Audit Director and include a detailed description of services to be rendered. The detailed descriptions are then reviewed against a list of approved services, re-confirmed with the Vice President of Finance and sent to the Audit Committee for final approval. All requests or applications for Ernst & Young LLP services receive approval from the Internal Audit Director and the Vice President of Finance, prior to the Audit Committee s review and approval.

**Required Vote**

Ratification of the approval of the independent registered public accounting firm will require affirmative FOR votes from a majority of those shares present, either in person or by proxy, and entitled to vote at the Annual Meeting.

**Recommendation of the Board**

**The Board unanimously recommends that you vote FOR the ratification of Ernst & Young LLP s appointment as the Company s independent registered public accounting firm for fiscal 2009. Proxies solicited by the Board will be so voted unless stockholders specify otherwise on their proxy cards.**

## Proposal No. 3 APPROVAL OF THE KORN/FERRY INTERNATIONAL 2008 STOCK INCENTIVE PLAN

In order to continue to provide qualified employees, officers, non-employee directors and other service providers with stock-based incentives, the Board approved, subject to stockholder approval, the Korn/Ferry International 2008 Stock Incentive Plan (the 2008 Plan ) on August 22, 2008, to make available 1,620,000 additional shares of the Company s common stock for stock-based awards (provided that the issuance of full value awards (awards other than options and stock appreciation rights) count approximately 1.8 times as much as options and stock appreciation rights against the authorized number of shares issuable under the 2008 Plan). The Board is submitting the 2008 Plan to the stockholders for their approval at the Annual Meeting.

As of July 25, 2008, an aggregate of 240,531 shares of common stock remained available under the Company s existing equity plan, the Performance Award Plan, for the grant of stock-based incentives. In addition, as of such date, awards covering 6,122,956 shares were outstanding under the Company s Performance Award Plan. However, the Performance Award Plan expired on August 8, 2008, and no awards may be granted under the existing incentive plan after this date.

The Company believes a compensation policy that includes a balanced mix of cash and equity is the most effective way to attract and retain talented employees whose interests are aligned with stockholders. After the expiration of the existing incentive plan on August 8, 2008, without approval of the 2008 Plan, the Company will not have the ability to use equity as a component of its compensation philosophy, a result that would put the Company at a considerable competitive disadvantage to its direct and indirect competitors for high level professional employees who make up the bulk of the Company s current and prospective employee base.

### Why You Should Vote For the 2008 Plan

The Board unanimously recommends that the Company s stockholders approve the 2008 Plan. The Company s ability to grant an appropriate number of equity-based awards continues to be crucial in allowing the Company to effectively compete for key employee talent against other executive search, leadership and consulting firms. It is in the long-term interest of the Company and its stockholders to strengthen the ability to attract, motivate and retain employees, officers, directors, consultants, agents, advisors and independent contractors, and to provide additional incentive for those persons through stock ownership and other incentives to improve operations, increase profits and strengthen the mutuality of interest between those persons and the Company s stockholders.

The Company believes that its compensation philosophy, including the balanced use of equity-based rewards, has contributed to the Company s growth and profitability. Since fiscal 2004, the Company s fee revenues have improved from $326 million to $791 million in fiscal 2008, a compound average growth rate of 25%. Over the same period, its earnings per share have improved from $0.35 in fiscal 2003 to $1.46 in fiscal 2008, a compound average growth rate of 43%. During that period, the size of the Company s professional headcount has grown from 1,163 to 1,894. Equity awards are granted to a significant number of the Company s current and prospective employees. These long term incentives are aimed at aligning employees interests with stockholders and to aid in retention, since long term awards generally vest over a four year period.

The Company s restricted shares and stock options currently outstanding as of July 25, 2008 represent approximately 9.8% of the Company s market capitalization. If the 2008 Plan is approved, the plan participants interest would increase to approximately 11%. This compares favorably to the peer group of companies listed on page 21, whose stockholder value transfer ranges from 5% to 24%, with the Company s primary public competitor at the top of that range.

For purposes of determining recommended stockholder value transfer metrics, the Company understands corporate governance companies use peer companies as defined by GIC codes established by Standard and Poors. Standard and Poors currently includes the Company in a broad GIC category called Commercial Service and Supplies. Many of the companies in this broad category are not, in management s opinion, comparable to the Company: the sector includes, for example, printing companies, waste management companies, and office service and supplies companies. It also includes companies with substantially larger market capitalization than the Company. These types of companies do not generally compete with the Company for employees, and they tend not to use equity as a significant component of their compensation philosophy. Standard and Poors is in the process of

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redefining subsets of the Commercial Services and Supplies GIC code which is expected to result in the creation of a subsidiary category of companies called Professional Services. This new categorization is expected to be put into effect in August 2008. The Company anticipates that it will be included in this subsidiary category in the future, and that the other companies to be included in this subsidiary category will more closely parallel the Company s past and prospective use of equity compensation. The Company also believes that when this category is established, the corporate governance companies recommended amount of stockholder value transfer for companies in this subsidiary category may be greater than that recommended for the broad Commercial Services and Supplies sector.

In order to address potential stockholder concerns regarding the number of options, stock appreciation rights or other awards that the Company intends to grant in a given year, the Board commits to the Company s stockholders, subject to discretion for special circumstances (such as an acquisition, reorganization or group hires) that might lead the Company to determine that additional awards are in the best interests of the stockholders, that for fiscal years 2009, 2010 and 2011, the Company s average annual burn rate for the aforementioned three fiscal years will not exceed 4.0%. For this purpose, the burn rate for any fiscal year means the total number of shares of Company common stock issuable upon exercise or payment, as the case may be, of the equity-based awards granted by the Company under the 2008 Plan in that year, divided by the Company s total number of shares of common stock issued and outstanding as of the end of that particular fiscal year. For purposes of calculating the number of shares granted in a fiscal year, stock awards will count as equivalent to 2.0 option shares.

The Company is also committed to returning capital to stockholders. The Board has authorized the Company to repurchase up to $175.0 million of the Company s outstanding shares of common stock pursuant to issuer repurchase programs. Over the last two and a half years, the Company has repurchased 6.5 million shares in the open market, an aggregate return of capital of $131.5 million. The Company has approximately $43 million remaining under the Board s approved stock repurchase plan. Although the timing of completing the approved repurchases and of subsequent additional plans for returning capital to stockholders depends on many factors, among which are the safety and soundness of the Company s balance sheet and availability of capital for strategically relevant acquisitions, the Board and management of the Company are committed to consistently returning excess capital to stockholders.

***Promotion of Good Corporate Governance Practices***

The Board believes the use of equity incentive awards promotes best practices in corporate governance by maximizing stockholder value. By providing participants in the 2008 Plan with a stake in the Company s success, the interests of the participants are aligned with those of the Company s stockholders. The 2008 Plan will provide incentives to plan participants to operate the Company in the most efficient way possible.

Specific features of the 2008 Plan that are consistent with good corporate governance practices include, but are not limited to:

- options may not be granted with exercise prices lower than the fair market value of the underlying shares on the grant date;

- there can be no repricing of options or stock appreciation rights without stockholder approval, either by canceling the award in exchange for another award, option or stock appreciation right with an exercise price that is less than the exercise price of the original award, or by reducing the exercise price of the option or stock appreciation right, other than in connection with a change in the Company s capitalization;

- the ability to issue full-value awards (awards other than options and stock appreciation rights) is limited by requiring that these awards count approximately 1.8 times as much as options and stock appreciation rights against the authorized number of shares issuable under the 2008 Plan;

the administrator of the 2008 Plan has discretion to pay to holders of restricted stock and restricted stock units their awards in cash or shares of common stock, according to the current cash or capitalization needs of the Company; and

there can be no recycling of shares from exercised awards, meaning shares of common stock subject to an award cannot be made available for issuance if the shares were subject to a stock-settled stock appreciation

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right and were not issued in the net settlement, were used to pay the exercise price of an option, were delivered or withheld to pay the withholding taxes related to an award, or were repurchased on the open market with the proceeds of an option award.

***Need to Remain Competitive***

The Board believes the use of incentive equity awards is an integral component of compensation for the Company s employees. Employees consider equity awards an important part of their total compensation, and they expect these awards when they join the Company. Consequently, the Board believes the Company must continue to award its employees with equity awards to maintain its competitive position.

***Section 162(m) of the Code***

The Board continues to believe that it is in the best interests of the Company and its stockholders to provide for an incentive plan under which stock-based and qualifying cash compensation awards made to the Company s executive officers can qualify for deductibility by the Company for federal income tax purposes. Accordingly, the 2008 Plan has been structured in a manner such that awards under it can satisfy the requirements for performance-based compensation within the meaning of Section 162(m) of the Code ( Section 162(m) ). In general, under Section 162(m), in order for the Company to be able to deduct compensation in excess of $1 million paid in any one year to the Company s Chief Executive Officer or any of the Company s three other most highly compensated executive officers (other than the Company s Chief Financial Officer), such compensation must qualify as performance-based. One of the requirements of performance-based compensation for purposes of Section 162(m) is that the material terms of the performance goals under which compensation may be paid be disclosed to and approved by the Company s stockholders. For purposes of Section 162(m), the material terms include (i) the employees eligible to receive compensation, (ii) a description of the business criteria on which the performance goal is based and (iii) the maximum amount of compensation that can be paid to an employee under the performance goal. With respect to the various types of awards under the 2008 Plan, each of these aspects is discussed below, and stockholder approval of the 2008 Plan will be deemed to constitute approval of each of these aspects of the 2008 Plan for purposes of the approval requirements of Section 162(m).

**Summary of the Plan**

The following is a description of the material features of the 2008 Plan. The description does not purport to be complete and is qualified in its entirety by reference to the full text of the 2008 Plan which is attached to this Proxy Statement as Appendix A and incorporated herein by reference. Stockholders are encouraged to read the text of the 2008 Plan in its entirety.

***Purpose***

The purpose of the 2008 Plan is to enable the Company and its subsidiaries to attract, retain and motivate their directors, officers, employees and service providers, and to further align the interests of such persons with those of the stockholders of the Company by providing for or increasing the proprietary interest of such persons in the Company.

***Eligible Participants***

Any person who is a current or prospective officer or employee of the Company or its subsidiaries, and any non-employee director of the Company or other service provider retained to provide consulting, advisory or other services to the Company or its subsidiaries, is eligible to be considered for the grant of awards under the 2008 Plan. As of July 25, 2008, approximately 830 employees and 9 non-employee directors were eligible to participate in the

2008 Plan.

***Available Shares***

The maximum number of shares of common stock of the Company that may be issued pursuant to awards granted under the 2008 Plan will be 1,620,000 (subject to adjustments to prevent dilution), plus any shares subject to

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outstanding awards under the Performance Award Plan as of July 25, 2008 that on or after such date cease for any reason to be subject to such awards (other than by reason of exercise or settlement of the awards to the extent they are exercised for or settled in vested and nonforfeitable shares). No awards will be made under the Performance Award Plan after August 8, 2008. The aggregate number of shares issued under the 2008 Plan will equal only the number of shares actually issued upon exercise or settlement of an award and will not include shares subject to awards that have been canceled, expired or forfeited.

***Tax Code Limitations***

The aggregate number of shares subject to awards granted under the 2008 Plan during any calendar year to any one participant shall not exceed 500,000. The aggregate number of shares that may be issued pursuant to the exercise of incentive stock options granted under the 2008 Plan shall not exceed 1,620,000 (which is equal to the 1,620,000 shares being authorized), which number is subject to antidilution adjustment to the extent that such adjustment will not affect the status of any option intended to qualify as an Incentive Stock Option under Code Section 422. The maximum cash amount payable pursuant to that portion of an incentive bonus granted in any calendar year to any participant under the 2008 Plan that is intended to satisfy the requirements for performance-based compensation under Section 162(m) of the Code shall not exceed $5,000,000.

***Administration***

The 2008 Plan is administered by the Compensation and Personnel Committee of the Board, provided, however, that the Board may exercise any power of the Compensation and Personnel Committee, except to the extent that the grant or exercise of any such authority by the Board would cause any award or transaction to become subject to Section 16 of the Securities Exchange Act of 1934 or cause an award designated as a performance award not to qualify for treatment as performance-based compensation under Section 162(m) of the Code. To the extent that any action taken by the Board conflicts with the action taken by the Compensation and Personnel Committee, the Board s action shall control. The Compensation and Personnel Committee may delegate any or all aspects of day-to-day administration of the 2008 Plan to one or more officers or employees of the Company or any subsidiary, and/or to one or more agents.

***Amendments***

The Board may amend, alter or discontinue the 2008 Plan or any agreement or other document evidencing an award made under the 2008 Plan, but, except as provided pursuant to the anti-dilution adjustment provisions of the 2008 Plan, no such amendment may be made without the approval of the stockholders of the Company if it would:

- increase the maximum number of shares of common stock for which awards may be granted under the 2008 Plan;

- reduce the price at which options or stock appreciation rights may be granted below the price provided for in the 2008 Plan;

- reduce the exercise price of outstanding options;

- extend the term of the 2008 Plan;

- change the class of persons eligible to participate in the 2008 Plan;

- increase the maximum awards that may be granted during any calendar year to any one eligible person; or otherwise amend the 2008 Plan in any manner requiring stockholder approval by law or under the New York Stock Exchange listing requirements.

No amendment may impair the rights of any holder of an award without their consent, provided that no consent is required if the administrator determines in its sole discretion and prior to any change of control of the Company if the amendment is advisable in order for the Company, plan or award to satisfy any law or regulation, or meet the requirements of or avoid adverse financial accounting consequences under any accounting standard.

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### *Awards*

The 2008 Plan authorizes the administrator to grant awards to eligible participants in the form of incentive and nonqualified stock options, stock appreciation rights, restricted stock and restricted stock units, any of which may be performance-based, and for incentive bonuses, which may be paid in cash or stock or a combination thereof.

### *Stock Options*

The administrator of the 2008 Plan may grant an option to purchase common stock of the Company, from time to time in the discretion of the administrator. Options may be incentive stock options that qualify under Code Section 422 ( Incentive Stock Options ) or nonstatutory stock options ( Nonqualified Stock Options ).

The exercise price per share of common stock subject to an option granted under the 2008 Plan must equal or exceed 100% of the fair market value of such common stock on the date the option is granted, except that:

- the exercise price of an option may be higher or lower in the case of options granted to an employee of a company acquired by the Company in assumption and substitution of options held by such employee at the time such company is acquired; and

- the exercise price of an incentive stock option granted to an individual owning more than 10% of the combined voting power of all classes of Company stock must equal or exceed 110% of the fair market value of such common stock on the date of grant.

In no event will the exercise price per share of common stock subject to an option that is intended to qualify as performance based compensation under Code Section 162(m) be less than 100% of the fair market value of such common stock on the date the option is granted. On July 25, 2008, the fair market value of a share of common stock of the Company was $15.77.

Unless the administrator provides for a shorter period, the maximum term of an option granted under the 2008 Plan, including any Incentive Stock Options, will be 7 years from the date of its grant, except that Incentive Stock Options granted to an individual who, at the time the option is granted to such individual, owns more than 10% of the combined voting power of all classes of stock of the Company will have a term no greater than 5 years from the date of grant. Options granted under the 2008 Plan will vest according to a schedule determined by the administrator, provided however, that no option, other than non-employee director options, may first become exercisable within one year from the date of grant, other than upon the death or disability of a participant or a change of control of the Company.

The administrator will determine the acceptable forms of payment of the exercise price of an option, which may include: (1) cash, (2) shares of capital stock of the Company, (3) irrevocable commitment by a broker to pay over the amount from a sale of shares issuable under an option, (4) delivery of previously owned shares, (5) withholding of shares or (6) any combination of the above.

### *Incentive Bonus*