

J C PENNEY CO INC
Form DEF 14A
March 21, 2014
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SCHEDULE 14A

(Rule 14a-101)

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

Filed by the Registrant

Filed by a party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material under §240.14a-12

J. C. Penney Company, Inc.

(Name of Registrant as Specified in Its Charter)

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

Payment of Filing Fee (Check the appropriate box):

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(3) Filing Party:

(4) Date Filed:

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March 21, 2014

Dear Stockholders:

On behalf of your Board of Directors, I invite you to attend JCPenney's 2014 Annual Meeting of Stockholders. The meeting will be held on Friday, May 16, 2014, at 10:00 A.M., local time, at JCPenney's Home Office, located at 6501 Legacy Drive, Plano, Texas 75024. We will be asking you to vote on and to support several important proposals for our Company and it is important that your shares be represented. We urge you to vote your shares via the toll-free telephone number, over the Internet, or by mail, as provided in the enclosed materials.

I wanted to take this opportunity to highlight some of the proposals to be voted upon at the Annual Meeting. We are asking stockholders to approve the 2014 Long-Term Incentive Plan, which will ensure that shares of JCPenney common stock are available to hire and retain the necessary talent to drive our turnaround. We are also asking stockholders to approve amendments to the Company's Restated Certificate of Incorporation and to approve our Amended Rights Agreement, both of which are designed to protect the Company's ability to use its net operating loss carryforwards in the future. The Proxy Statement includes key information about these proposals and we hope that you will support the Board's recommendation to vote for each of these critical items.

We appreciate your support of JCPenney.

Thomas J. Engibous

Chairman of the Board

JCPenney

6501 Legacy Drive

Plano, TX 75024

jcp.com

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J. C. PENNEY COMPANY, INC.

6501 Legacy Drive

Plano, Texas 75024-3698

J. C. PENNEY COMPANY, INC.

Notice of 2014 Annual Meeting of Stockholders

Date and Time: Friday, May 16, 2014

10:00 A.M., local time

Place: JCPenney Home Office

6501 Legacy Drive

Plano, Texas 75024-3698

- Business:**
1. To elect ten directors nominated by the Board of Directors for a one-year term as described in the accompanying proxy materials;
 2. To ratify the appointment of KPMG LLP as independent auditor for the fiscal year ending January 31, 2015;
 3. To approve the adoption of the J. C. Penney Company, Inc. 2014 Long-Term Incentive Plan;
 4. To approve amendments to the Company's Restated Certificate of Incorporation, as amended, to restrict certain transfers of our common stock in order to protect the tax benefits of our net operating loss carryforwards;
 5. To approve the adoption of the Amended Rights Agreement in order to protect the tax benefits of our net operating loss carryforwards;
 6. To hold an advisory vote on executive compensation; and
 7. To consider any other business properly brought before the meeting.

Record Date: In order to vote, you must have been a stockholder at the close of business on March 17, 2014.

Voting By Proxy: It is important that your shares be represented and voted at the meeting. If you received the proxy materials by mail, you can vote your shares by completing, signing, dating, and returning your completed proxy card, by telephone or over the Internet. If you received the proxy materials over the Internet, a proxy card was not sent to you, and you may vote your shares only by telephone or over the Internet. To vote by telephone or Internet, follow the instructions included in the proxy statement or on the Internet. You can revoke a proxy at any time prior to its exercise at the meeting by following the instructions in the proxy statement.

**Important Notice Regarding the Availability of Proxy Materials for the 2014 Annual Meeting of
Stockholders to be held on May 16, 2014.**

**The Notice of Annual Meeting, Proxy Statement and Annual Report on Form 10-K for the fiscal
year ended February 1, 2014 are available at www.proxyvote.com.**

Janet Dhillon, Secretary

Plano, Texas

March 21, 2014

YOUR VOTE IS IMPORTANT

PLEASE SIGN, DATE, & RETURN YOUR PROXY CARD OR

VOTE BY TELEPHONE OR INTERNET

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2014 PROXY STATEMENT

This proxy statement and the accompanying materials are being made available to JCPenney stockholders beginning on or about March 21, 2014. In this proxy statement, you will find information on the matters to be presented at the Annual Meeting and information to assist you in voting your shares.

ABOUT THE ANNUAL MEETING

Who is soliciting my vote?

JCPenney's Board of Directors is soliciting your vote at the 2014 Annual Meeting of Stockholders.

What will I be voting on?

You will be voting on:

- Election of ten directors nominated by the Board of Directors;
- Ratification of the appointment of KPMG LLP as JCPenney's independent auditor for the fiscal year ending January 31, 2015;
- Approval of the 2014 Long-Term Incentive Plan;
- Approval of amendments to the Company's Restated Certification of Incorporation, as amended, to restrict certain transfers of our common stock in order to protect the tax benefits of our net operating loss carryforwards;
- Approval of the Amended Rights Agreement in order to protect the tax benefits of our net operating loss carryforwards;
- Advisory vote on executive compensation; and
- Any other business that may properly come before the meeting.

What are the Board of Directors' voting recommendations?

The Board of Directors recommends that you vote your shares For each of the Board's nominees for director, For the ratification of the appointment of KPMG LLP as independent auditor for the fiscal year ending January 31, 2015, For the approval of the 2014 Long-Term Incentive Plan, For the approval of the Amended Rights Agreement, For the approval of amendments to the Company's Restated Certificate of Incorporation, as amended, and For the approval of our executive compensation in connection with the advisory vote on executive compensation.

Who is entitled to vote?

All stockholders who owned JCPenney common stock at the close of business on the record date, March 17, 2014, are entitled to attend and vote at the Annual Meeting.

How many votes do I have?

You will have one vote for every share of JCPenney common stock you owned on the record date.

How many votes can be cast by all stockholders?

Each share of JCPenney common stock is entitled to one vote. There is no cumulative voting. On March 17, 2014, JCPenney had 304,693,329 shares of common stock outstanding and entitled to vote.

How many shares must be present to hold the Annual Meeting?

A majority of the outstanding shares of JCPenney common stock as of the record date, or 152,346,665 shares, must be present at the Annual Meeting in order to hold the meeting and conduct business. This is called a quorum.

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Shares are counted as present at the Annual Meeting if stockholders are present and vote in person or a proxy card has been properly submitted by or on behalf of stockholders. Abstentions and broker non-votes are counted for purposes of determining the presence of a quorum.

How many votes are required to elect directors and adopt the other proposals?

You may vote For or Against with respect to the election of directors. Our Bylaws provide that in a non-contested election, each director must be elected by the affirmative vote of the majority of the votes cast with respect to that director's election. Accordingly, abstentions and broker non-votes will have no effect on the election of a director. Any director nominee who is an incumbent director and is not re-elected must promptly tender his or her resignation, and the Board of Directors, excluding the director who tenders his or her resignation, must promptly decide whether to accept or reject the resignation.

Ratification of the appointment of KPMG LLP as JCPenney's independent auditor requires the affirmative vote of a majority of the shares of JCPenney common stock present in person or by proxy that are entitled to vote on such matter. If you abstain from voting on this matter, your shares will be counted as present for purposes of establishing a quorum, and the abstention will have the same effect as a vote *against* the proposal. Broker non-votes will also have the same effect as a vote *against* the proposal.

Approval of the amendments to the Company's Restated Certificate of Incorporation, as amended, requires the affirmative vote of a majority of the shares of JCPenney common stock outstanding as of the record date. If you abstain from voting on this matter, your shares will be counted as present for purposes of establishing a quorum, and the abstention will have the same effect as a vote *against* the proposal. Broker non-votes will also have the same effect as a vote *against* the proposal.

Approval of the 2014 Long-Term Incentive Plan, the Amended Rights Agreement and our executive compensation in connection with the advisory vote on executive compensation requires the affirmative vote of a majority of the shares of JCPenney common stock present in person or by proxy that are entitled to vote on such matter. If you abstain from voting on this matter, your shares will be counted as present for purposes of establishing a quorum, and the abstention will have the same effect as a vote *against* the proposal. Broker non-votes are not entitled to be cast for this matter and accordingly will have no effect on the approval.

Why did I receive a one-page notice in the mail regarding the Internet availability of proxy materials instead of a full set of proxy materials?

In accordance with rules adopted by the Securities and Exchange Commission (SEC), rather than mailing a printed copy of our proxy materials to each stockholder of record, we may send some or all of our stockholders a Notice of Internet Availability of Proxy Materials (Notice), which indicates how our stockholders may:

- access their proxy materials and vote their proxies over the Internet;
- make a one-time request to receive a printed set of proxy materials by mail; or
- make a permanent election to receive all of their proxy materials in printed form by mail or electronically by email.

How can I get electronic access to the proxy materials?

The Notice provides you with instructions regarding how to:

view our proxy materials for the Annual Meeting over the Internet; and
instruct us to send our future proxy materials to you electronically by email instead of sending you printed
copies by mail.

Choosing to receive your future proxy materials by email will save us the cost of printing and mailing documents to
you and will reduce the impact of our annual meetings of stockholders on the environment. If you

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choose to receive future proxy materials by email, you will receive an email next year with instructions containing a link to those materials and a link to the proxy voting site. Your election to receive proxy materials by email will remain in effect until you terminate it. The Form 10-K accompanies these proxy materials but is not considered part of the proxy soliciting materials.

How do I vote?

You can vote either in person at the Annual Meeting or by proxy whether or not you attend the Annual Meeting. To obtain directions to attend the Annual Meeting and vote in person, please call 972-431-1000. You can vote by proxy in three ways:

- by mail If you received your proxy materials by mail, you can vote by mail by using the enclosed proxy card;
- by telephone In the United States and Canada, you can vote by telephone by following the instructions on the Internet or on your proxy card if you received your materials by mail; or
- by Internet You can vote by Internet by following the instructions on the Notice or on your proxy card if you received your materials by mail.

If you vote by proxy, your shares will be voted at the Annual Meeting in the manner you indicate. If you sign your proxy card, but do not specify how you want your shares to be voted, they will be voted as the Board of Directors recommends.

How do I attend the Annual Meeting?

Admission to the Annual Meeting is limited to JCPenney stockholders or their proxy holders. Each stockholder will be asked to present proof of stock ownership and a valid, government-issued photo identification, such as a driver's license, before being admitted to the Annual Meeting. Proof of stock ownership may consist of the top portion of the proxy card or if shares are held in the name of a broker, bank or other nominee, an account statement or letter from the nominee indicating that the individual beneficially owned shares of JCPenney common stock on March 17, 2014, the record date for the Annual Meeting.

Can I change my vote after I execute my proxy?

You can revoke a proxy at any time prior to its exercise at the Annual Meeting. You can send in a new proxy card with a later date if you received your proxy materials by mail, or cast a new vote by telephone or Internet, or send a written notice of revocation to JCPenney's Corporate Secretary at the address on the cover page of this proxy statement. If you attend the Annual Meeting and want to vote in person, you can request that any previously submitted proxy not be used.

How do I vote my shares of JCPenney common stock in the Savings Plan?

If you are a participant in the J. C. Penney Corporation, Inc. Savings, Profit-Sharing and Stock Ownership Plan (the Savings Plan), you will receive a separate voting instruction card for the shares allocated to your account in the Savings Plan. This voting instruction card will allow you to instruct State Street Bank and Trust Company, as trustee for the Savings Plan, how to vote your shares. If you do not vote your shares in the Savings Plan, State Street Bank and Trust Company will vote them in the same proportion as those shares for which it has received voting instructions.

Will my vote be kept confidential?

Yes. JCPenney's policy is that all proxy or voting instruction cards, ballots, and vote tabulations which identify the vote of an individual stockholder are to be kept secret. Your vote will only be disclosed:

to allow the independent election inspectors to certify the results of the vote;
if JCPenney is legally required to disclose your vote or is defending or asserting claims in a lawsuit;

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if there is a proxy contest involving the Company; or
if you make a written comment on your proxy or voting instruction card or ballot.

Who pays for this proxy solicitation?

JCPenney does. In addition to soliciting proxies by mail, JCPenney may solicit proxies by telephone, personal contact, and electronic means. No director, officer, or employee of JCPenney will be specially compensated for these activities. JCPenney has hired Innisfree M&A Incorporated, a proxy solicitation firm, to assist in soliciting proxies for an estimated fee of \$15,000 plus reimbursement for reasonable expenses.

JCPenney will also reimburse brokers, fiduciaries, and custodians for their costs in forwarding proxy materials to beneficial owners of JCPenney common stock.

Could other matters be decided at the Annual Meeting?

We do not know of any other matters that will be considered at the Annual Meeting. If any matter other than those described in this proxy statement arises at the Annual Meeting, the proxies will be voted at the discretion of the proxy holder.

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CORPORATE GOVERNANCE

More than a century ago, James Cash Penney founded this Company on the principle of the Golden Rule: treat others the way you would like to be treated. While JCPenney has gone through many changes throughout its history, the foundation built by honesty, trust and integrity has never wavered. Our corporate governance principles continue to reflect the highest ethical standards rooted in our rich heritage as we seek to achieve excellence in our work, products, and services for our customers and our stockholders.

Governing Documents

The key documents that make up our corporate governance framework are our:

- Corporate Governance Guidelines, including our Standards for the Determination of Director Independence, Lead Independent Director Policy and our Policy on Review and Consideration of Related Person Transactions;
- Restated Certificate of Incorporation, as amended;
- Bylaws, as amended;
- Audit Committee Charter;
- Finance and Planning Committee Charter;
- Corporate Governance Committee Charter;
- Human Resources and Compensation Committee Charter;
- Charter of the Committee of the Whole;
- Statement of Business Ethics; and
- Standards and Procedures for Director Nominations.

You can access each of these documents on our website at www.jcp.com by clicking on Investors, then Corporate Governance. You can also obtain a free copy of any of these documents by sending a written request to JCPenney's Corporate Secretary at P.O. Box 10001, Dallas, Texas 75301.

Corporate Governance Guidelines

This document sets forth the Company's primary principles and policies regarding corporate governance, which are the foundation of our commitment to best practices. You can access our Corporate Governance Guidelines at www.jcp.com. The Guidelines are reviewed annually by the Corporate Governance Committee and the Board. The matters covered by the Guidelines include:

- director responsibilities;
- the size of the Board;
- director independence and minimum qualifications;
- factors to be considered in selecting candidates to serve on the Board;
- the Company's voting standard for the election of directors;
- director retirement;
- director resignations upon change of principal employment or personal circumstances;
- directors' outside directorships and outside audit committee service;

Board organization, including committees of the Board and the role and responsibilities of the lead independent director;
policies relating to Board meetings;
executive sessions for directors;
ethical principles to be followed by directors;
policies and procedures for reviewing related person transactions and conflicts of interest;
claw-back policy on recovery of compensation in the event of a financial restatement;
the Board's access to management and independent advisors;

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stockholders and other interested parties communications to non-employee directors;
director orientation and continuing education;
prohibition of loans to directors and executive officers;
stock ownership goals for directors and members of the Company's senior management team;
prohibition on hedging and pledging of Company stock;
management succession and CEO evaluation; and
annual self-assessments of the Board and each of the Audit, Corporate Governance, Finance and Planning and Human Resources and Compensation Committees.

Board Leadership Structure

Thomas J. Engibous, a non-employee, independent director, serves as the Company's Non-Executive Chairman of the Board. The duties of the Non-Executive Chairman of the Board include:

presiding over all meetings of the Board and regular executive sessions of the non-employee, independent members of the Board;
approving the scheduling of Board meetings as well as the agenda and materials for each Board meeting and executive session of the Board's non-employee, independent directors;
calling and presiding over meetings of the non-employee, independent directors;
meeting regularly with the CEO and serving as a liaison and channel of communication between the non-employee, independent directors and the CEO; and
presiding over all meetings of stockholders and communicating with stockholders as appropriate.

The Board of Directors, as part of its continuing review of corporate governance matters, decided to separate the Chairman and CEO roles in January 2012 and elect a Non-Executive Chairman of the Board after careful consideration and upon recommendation by the Corporate Governance Committee. The Board believes that JCPenney's current leadership structure enhances the Board's ability to ensure that the appropriate level of independent oversight is applied to all management decisions.

Board of Directors Role in Risk Oversight

The Board of Directors oversees an enterprise-wide approach to risk management, designed to support the achievement of organizational objectives, including strategic objectives, to improve long-term organizational performance and to enhance stockholder value. A fundamental part of risk management is not only understanding the risks a company faces and what steps management is taking to manage those risks but also understanding what level of risk is appropriate for the company. The involvement of the full Board of Directors in reviewing the Company's business strategy is an integral aspect of its assessment of management's tolerance for risk and also its determination of what constitutes an appropriate level of risk for the Company. In addition to management's discussion of risk with the full Board of Directors throughout the year, the independent directors also discuss risk management during their executive sessions without management present over which the Non-Executive Chairman presides. The Board's Committees also consider risk appropriate to their respective jurisdictions throughout the year.

Policies and Procedures with Respect to Related Person Transactions

The Board of Directors recognizes that related person transactions can present a heightened risk of conflicts of interest. Accordingly, as a general matter, our directors and executive officers are to avoid any activity, interest, or relationship that would create, or might appear to others to create, a conflict with the interests of JCPenney.

Our written Policy on Review and Consideration of Related Person Transactions (Policy) is included as Appendix C to our Corporate Governance Guidelines, which can be accessed at www.jcp.com. For purposes of SEC rules as well as our Policy, a related person transaction is any transaction in which the Company was, is

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or will be a participant and the amount involved exceeds \$120,000 and in which any related person had, has or will have a direct or indirect material interest. The term "related person" means (a) any person who is, or at any time since the beginning of the Company's last fiscal year was, a director or executive officer of the Company or a nominee to become a director of the Company, (b) any person who is known to be the beneficial owner of more than 5% of any class of the Company's voting securities, and (c) any immediate family member of any of the foregoing persons. We review all relationships and transactions in which the Company and a related person are participants to determine whether such persons have a direct or indirect material interest. To identify potential related person transactions, we request certain information from our directors and executive officers. We then review the information provided for any related person transactions. The Corporate Governance Committee reviews and determines whether to approve or ratify any related person transaction that is required to be disclosed. Any member of the Corporate Governance Committee who is a related person with respect to a transaction under review may not participate in the deliberations or vote respecting approval or ratification of the transaction.

Board Independence

The Board reviews the independence of each non-employee director annually to confirm that the director continues to meet our standards as well as the requirements of the NYSE. No member of the Board will be considered independent unless the Board determines that he or she has no material relationship with the Company that would affect his or her independence and that he or she otherwise satisfies JCPenney's director independence standards as well as all applicable laws, rules and regulations. Our "Standards for the Determination of Director Independence" are included as Appendix A to our Corporate Governance Guidelines, which can be accessed at www.jcp.com.

The factors the Board considers in determining whether a director is independent include:

Whether within the preceding three years,

- the director is or was an employee of JCPenney;
- a member of the director's immediate family is or was an executive officer of JCPenney;
- the director or an immediate family member of the director received more than \$120,000 per year in direct compensation from JCPenney (other than compensation for service as a director or pension or other forms of deferred compensation for prior service);
- the director or an immediate family member of the director was a partner or employee of JCPenney's external auditor and personally worked on JCPenney's audit within that time;
- the director or an immediate family member of the director is or was employed as an executive officer of another company where any of JCPenney's present executive officers serve on the compensation committee of that company's board of directors;
- the director or an immediate family member of the director is or was an employee or executive officer of another company that makes payments to, or receives payments from, JCPenney in excess of the greater of \$1,000,000 or 2% of that company's consolidated gross revenues;

Whether the director or an immediate family member of the director is a current partner of JCPenney's external auditor;

Whether the director is a current employee of JCPenney's external auditor;

Whether an immediate family member of the director is a current employee of JCPenney's external auditor and personally works on JCPenney's audit; and

Whether the director serves as an officer, director or trustee of a charitable organization or as a member of that organization's fund-raising entity or committee that received contributions from JCPenney in excess of the greater of \$1,000,000 or 2% of the charity's gross revenues.

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The Board has reviewed each director's independence for fiscal 2014. Applying the standards listed above as well as the requirements of the NYSE, the Board has determined that each of the directors, except for Mr. Ullman, is independent.

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Meeting Attendance

During fiscal 2013, the Board held 24 meetings and committees of the Board held a total of 40 meetings. Each director attended at least 75% of the total number of meetings of the Board and committees on which he or she served.

All directors are strongly encouraged to attend the Annual Meeting, but we do not have a formal attendance requirement. In 2013, all of the members of the Board attended the Annual Meeting.

Executive Sessions

The non-employee, independent directors meet in executive session with no Company associates present as a part of each regularly scheduled Board meeting. The Company's Non-Executive Chairman of the Board, Thomas J. Engibous, presides over these sessions.

Communications with the Board of Directors

Any Company stockholder or other interested party who wishes to communicate with the Board of Directors or with an individual director may direct such communications by telephone to 1-800-527-0063, by facsimile to 972-431-1977, by email to jcpdirectors@jcpenny.com, or by writing to:

Corporate Secretary

J. C. Penney Company, Inc.

P.O. Box 10001

Dallas, TX 75301

The communication must be clearly addressed to the Board of Directors or to a specific director(s). If a response is desired, the individual should also provide contact information such as name, address and telephone number.

All such communications will be reviewed initially by the Company's Corporate Secretary and entered into a log for tracking purposes. The Board has asked the Corporate Secretary to forward to the appropriate director(s) all correspondence, except for items unrelated to the Board's functions, business solicitations, advertisements, and materials that are profane. The Corporate Secretary prepares a periodic summary report of all such communications for the Board.

Communications with the Audit Committee

Complaints and concerns relating to the Company's accounting, internal accounting controls or auditing matters should be communicated to the Audit Committee of the Board of Directors. Any such communication may be made on an anonymous basis and may be reported to the Audit Committee through the Company's Senior Vice President-Audit by calling 1-800-527-0063, by website at www.jcpline.com or by writing to:

Senior Vice President Audit

J. C. Penney Company, Inc.

P.O. Box 250335

Plano, TX 75025-0335

All such concerns will be reviewed under the direction of the Audit Committee and oversight by the Senior Vice President-Audit, the General Counsel, or such other persons as the Audit Committee determines to be appropriate. Confidentiality is maintained to the fullest extent possible, consistent with the need to conduct an adequate review. Prompt and appropriate corrective action will be taken when and as deemed appropriate in the judgment of the Audit Committee. The Senior Vice President-Audit will prepare a periodic summary report of all such communications for the Audit Committee.

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Board Diversity, Director Qualifications and Process for Nominations

JCPenney is committed to creating an inclusive work environment where everyone is respected and valued. A workforce that understands JCPenney's diverse customer base helps ensure that the Company's products, services and message are relevant in every community where the Company does business.

The Board's philosophy on diversity mirrors the Company's philosophy. In connection with the selection of nominees for director, the Corporate Governance Committee strives to identify and recruit high-caliber individuals whose diverse talents, perspectives, experiences and backgrounds would preserve and enhance the inclusive environment in which the Board currently functions.

As provided in the Company's Corporate Governance Guidelines, nominees for director, including those directors who are eligible to stand for re-election, are selected based on, among other things, consideration of the following factors:

- character and integrity;
- business and management experience;
- demonstrated competence in dealing with complex problems;
- familiarity with the Company's business;
- diverse talents, backgrounds, and perspectives;
- freedom from conflicts of interest;
- regulatory and stock exchange membership requirements for the Board;
- sufficient time to devote to the affairs of the Company; and
- reputation in the business community.

In considering whether to nominate directors who are eligible to stand for re-election, the Committee also considers the quality of past director service, attendance at Board and committee meetings, compliance with the Company's Corporate Governance Guidelines (including satisfying the expectations for individual directors), as well as input from other Board members concerning the director's performance and independence.

Although the Board retains ultimate responsibility for approving candidates for election, the Corporate Governance Committee conducts the initial screening and evaluation process. In doing so, the Committee considers candidates recommended by directors and the Company's management, as well as any recommendations from Company stockholders. Additionally, the Committee takes into account the Board's current composition and the capabilities and attributes of serving Board members, as well as additional capabilities and attributes considered necessary or desirable in light of existing Company needs and the goal of preserving and enhancing Board diversity. The Committee periodically engages one or more search firms to assist in the identification and recruitment of director candidates.

To recommend a candidate for election to the Board, a stockholder must submit the following information to the Corporate Secretary of the Company at least 90 days in advance of the Annual Meeting:

- The stockholder's name and address;
- A representation that the stockholder is a holder of record and intends to appear in person or by proxy at the Annual Meeting;
- The name and address of the stockholder's nominee for director;