

CHEESECAKE FACTORY INC
Form PRE 14A
March 18, 2009

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

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of
the Securities Exchange Act of 1934 (Amendment No.)

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

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

The Cheesecake Factory Incorporated

(Name of Registrant as Specified In Its Charter)

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

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- Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.
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(1) Amount Previously Paid:

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

(3) Filing Party:

(4) Date Filed:

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_____, 2009

Dear Stockholder:

You are cordially invited to attend The Cheesecake Factory Incorporated Annual Meeting of Stockholders on Wednesday, May 20, 2009 at 10:00 a.m. (Pacific Daylight Time). The meeting will be held at the Janet and Ray Scherr Forum Theatre, Thousand Oaks Civic Arts Plaza, 2100 Thousand Oaks Boulevard, Thousand Oaks, California 91362.

The matters to be acted upon at the meeting are described in the attached Notice of Annual Meeting and Proxy Statement.

Regardless of whether or not you will attend, please vote by signing, dating and returning the enclosed Proxy Card, or you can vote by telephone or Internet (see below). Voting by mail will not prevent you from voting in person at the meeting.

Sincerely,

David Overton
*Chairman of the Board and Chief Executive
Officer*

YOUR VOTE IS VERY IMPORTANT

Whether or not you plan to attend the Annual Meeting of Stockholders, and to ensure that a quorum is present, you are urged to vote your proxy by telephone or the Internet, or by returning the enclosed Proxy Card by mail. If you are able to attend the meeting and you wish to vote your shares in person, the proxy is revocable.

Voting by telephone or the Internet is fast, convenient and your vote is immediately confirmed and posted. To vote by telephone or Internet, first read the accompanying Proxy Statement and then follow the instructions below:

VOTE BY TELEPHONE

1. Using a touch-tone telephone, call 1-800-690-6903.
2. Follow the step-by-step instructions provided.

VOTE BY INTERNET

1. Go to www.proxyvote.com.
2. Follow the step-by-step instructions provided.

IF YOU PLAN TO ATTEND THE MEETING

Attendance will be limited to stockholders. Admission will be on a first-come, first-served basis. Stockholders may be asked to present valid picture identification, such as a driver's license or passport.

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Stockholders 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, recording devices and other electronic devices will not be permitted at the Annual Meeting.

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THE CHEESECAKE FACTORY INCORPORATED

26901 Malibu Hills Road
Calabasas Hills, California 91301

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS
on
May 20, 2009

The 2009 Annual Meeting of Stockholders of THE CHEESECAKE FACTORY INCORPORATED (the "Company") will be held at the Janet and Ray Scherr Forum Theatre, Thousand Oaks Civic Arts Plaza, 2100 Thousand Oaks Boulevard, Thousand Oaks, California 91362, on Wednesday, May 20, 2009, beginning at 10:00 a.m. Pacific Daylight Time, for the following purposes:

1. To elect three nominees to serve as directors of the Company for a term to expire at the Company's 2011 Annual Meeting of Stockholders and until respective successors shall be elected and qualified;
2. To approve amendments to the Company's Certificate of Incorporation to eliminate certain supermajority voting requirements and to allow stockholders holding not less than eighty percent (80%) of the outstanding shares of the Company to take action by written consent.
3. To ratify the selection of PricewaterhouseCoopers LLP as the Company's independent registered public accounting firm for the fiscal year ending December 29, 2009; and
4. To transact such other business as may properly come before the meeting or any adjournment thereof.

At the Annual Meeting, the Board of Directors intends to present Alexander L. Cappello, Jerome I. Kransdorf, and David B. Pittaway for election to the Board of Directors.

The Board of Directors has fixed the close of business on March 27, 2009 as the record date for the determination of stockholders entitled to notice of and to vote at the Annual Meeting or any adjournment or postponement thereof.

By Order of the Board of Directors,

Debby R. Zurzolo

Secretary

Calabasas Hills, California

_____, 2009

YOUR VOTE IS VERY IMPORTANT REGARDLESS OF THE NUMBER OF SHARES THAT YOU OWN. PLEASE READ THE ATTACHED PROXY STATEMENT CAREFULLY AND VOTE BY TELEPHONE, INTERNET OR BY COMPLETING, DATING AND SIGNING THE ENCLOSED PROXY CARD, AND RETURNING IT AS SOON AS POSSIBLE.

IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS FOR THE STOCKHOLDER MEETING TO BE HELD ON MAY 20, 2009: THIS PROXY STATEMENT AND OUR 2008 ANNUAL REPORT TO STOCKHOLDERS ARE

AVAILABLE AT WWW.PROXYVOTE.COM.

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THE CHEESECAKE FACTORY INCORPORATED

**PROXY STATEMENT
FOR THE ANNUAL MEETING OF STOCKHOLDERS
TO BE HELD ON MAY 20, 2009**

INTRODUCTION

General

This Proxy Statement is furnished to the stockholders of THE CHEESECAKE FACTORY INCORPORATED (the "Company" and "we," "us" or "our") in connection with the solicitation of proxies by our Board of Directors for use at the Annual Meeting of Stockholders to be held at the Janet and Ray Scherr Forum Theatre, Thousand Oaks Civic Arts Plaza, 2100 Thousand Oaks Boulevard, Thousand Oaks, California 91362, on May 20, 2009, beginning at 10:00 a.m. Pacific Daylight Time, and at any adjournment or postponement thereof. We intend to cause this Proxy Statement and form of proxy to be mailed to stockholders on or about _____, 2009.

Voting; Quorum; Abstentions and Broker Non-Votes

On March 27, 2009, the record date fixed by the Board of Directors for the Annual Meeting, _____ shares of our common stock were outstanding and there were no outstanding shares of any other class of stock. Each holder of common stock is entitled to one vote for each share of such stock held of record. Only stockholders of record at the close of business on March 27, 2009 will be entitled to notice of and to vote at the Annual Meeting.

The required quorum for the transaction of business at the Annual Meeting is a majority of the issued and outstanding shares of our common stock entitled to vote at the Annual Meeting, whether present in person or represented by proxy. Our Bylaws provide that unless otherwise provided by law, by the Certificate of Incorporation or the Bylaws, all elections and questions shall be decided by the vote of the holders of a majority of the outstanding shares of stock entitled to vote thereon present in person or by proxy at the Annual Meeting. Shares of stock represented by a properly signed and returned proxy will be treated as present at the Annual Meeting for purposes of determining a quorum, regardless of whether the proxy is marked as casting a vote or abstaining. Shares of voting stock represented by "broker non-votes" shall be treated as present for purposes of determining a quorum, but shall not be counted or deemed present for the purpose of determining whether stockholders approve a proposal. "Broker non-votes" are shares of stock held in record name by brokers or nominees as to which (i) instructions have not been received from the beneficial owners or persons entitled to vote; (ii) the broker or nominee does not have discretionary voting power under applicable rules or the instrument under which it serves in such capacity; or (iii) the record holder has indicated on the Proxy Card or has executed a proxy and otherwise notified us that it does not have authority to vote such shares on that matter.

For Proposal 1, our Bylaws require that in an uncontested election each director will be elected by the vote of the majority of votes cast. A majority of votes cast means that the number of shares cast "for" a director's election exceeds the number of votes cast "against" that director. A stockholder whose ballot is marked as "abstain" or broker non-votes to which a stockholder otherwise gives no authority or direction shall not be considered a vote cast and therefore will have no effect on the outcome of the vote.

Proposal 2 requires the affirmative vote of at least eighty percent (80%) of the outstanding shares of stock. Accordingly, abstentions and broker non-votes will have the same effect as voting against this proposal.

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Proposal 3 requires the approval of a majority of the outstanding shares of stock entitled to vote. Accordingly, abstentions as to this proposal will count as votes against the proposal. Broker non-votes as to Proposal 3, however, will be deemed shares not entitled to vote on the proposal, will not be counted as votes for or against the proposal and therefore will have no effect on the vote.

Proxies

Proxies delivered pursuant to this solicitation are revocable at the stockholder's option, prior to their exercise, by attendance and voting at the Annual Meeting (although attendance at the Annual Meeting itself will not revoke a proxy) or by filing a written notice to Debby R. Zurzolo, our Secretary, revoking the proxy or another duly executed proxy bearing a later date. Unless previously revoked, all proxies representing shares entitled to vote that are delivered pursuant to this solicitation will be voted at the Annual Meeting by the named attorneys-in-fact and agents, to the extent authorized, in accordance with the directions contained therein.

If no directions are given, the shares represented by such proxies will be voted **FOR** the election of the nominees for directors, Alexander L. Cappello, Jerome I. Kransdorf and David B. Pittaway; **FOR** the amendment to our Certificate of Incorporation; and **FOR** the ratification of the selection of PricewaterhouseCoopers LLC as our independent registered public accounting firm for the fiscal year ending December 29, 2009. The named proxies may vote in their discretion upon such other matters as may properly come before the Annual Meeting, including any motion made for adjournment or postponement (including for purposes of soliciting additional votes).

Solicitation

We will pay for the cost of preparing, assembling and mailing the Notice of Annual Meeting and Proxy Statement and the cost of this solicitation. Our directors, officers and other staff members may solicit proxies, without additional remuneration, in person or by telephone or facsimile transmission. We may also choose to retain a proxy soliciting firm, but to date we have not done so for the voting related to the proposals in this year's Proxy Statement. Banks, brokerage houses and other custodians, nominees or fiduciaries will be requested to forward soliciting material to their principals and to obtain authorization for the execution of proxies, and will be reimbursed for their reasonable out-of-pocket expenses incurred in that regard.

ITEMS TO BE VOTED ON

Proposal 1: Election of Directors

Our Bylaws provide for a Board of Directors consisting of no less than five and no more than thirteen members, the exact number within this range being determined by the Board of Directors. The Board of Directors has currently set the number of directors at eight. The Board of Directors is currently classified into three classes with each director serving a three-year term. At the 2008 Annual Meeting of Stockholders, stockholders approved amendments to our Certificate of Incorporation to eliminate our classified board structure. As a result, all directors will stand for election to one-year terms beginning with the 2011 Annual Meeting of Stockholders. Alexander L. Cappello, Jerome I. Kransdorf and Wayne H. White are serving terms that will expire at the Annual Meeting of Stockholders to be held this year. On February 4, 2009, Mr. White notified the Board that he will not stand for reelection as a director when his current term ends at this year's Annual Meeting of Stockholders. As such, Mr. White will retire from our Board of Directors and the Compensation Committee, effective May 20, 2009. Allen J. Bernstein, Thomas L. Gregory and David R. Klock are serving terms that will expire at the Annual Meeting of Stockholders to be held in 2010.

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The Corporate Governance and Nominating Committee of the Board of Directors ("Governance Committee") has recommended the nomination of Alexander L. Cappello, Jerome I. Kransdorf, and David B. Pittaway for election to the Board of Directors for a term that will expire at the Annual Meeting of Stockholders to be held in 2011. Mr. Cappello was recommended by a non-management director for consideration by the Governance Committee and was appointed by the Board of Directors in fiscal 2008 when the size of the Board was expanded to its current size of eight directors. Mr. Kransdorf has been a non-management director since 1997. Mr. Pittaway was recommended by a non-management director for consideration by the Governance Committee and nominated by the Board of Directors in March, 2009 for stockholders' consideration at the 2009 Annual Meeting to fill the vacancy resulting from Mr. White's retirement.

Mr. Pittaway, age 57, is Senior Managing Director, Senior Vice President and Secretary of Castle Harlan, Inc. a private equity firm. He has been with Castle Harlan since 1987. Mr. Pittaway also has been Vice President and Secretary of Branford Castle, Inc., an investment company, since October, 1986. From 1987 to 1998, Mr. Pittaway was Vice President, Chief Financial Officer and a director of Branford Chain, Inc., a marine wholesale company, where he is now a director and Vice Chairman. Previously, Mr. Pittaway was Vice President of Strategic Planning and Assistant to the President of Donaldson, Lufkin & Jenrette, Inc., an investment banking firm. Mr. Pittaway is also a member of the Boards of Directors of Morton's Restaurant Group, Inc., McCormick & Schmick's Seafood Restaurants, Perkins & Marie Callender's Inc., United Malt Holdings, Caribbean Restaurants, LLC, Bravo Development, Inc. and the Dystrophic Epidermolysis Bullosa Research Association of America. In addition, he is a director and co-founder of the Armed Forces Reserve Family Assistance Fund. The Board of Directors has determined that Mr. Pittaway would be an "independent director" as such term is defined in NASD Marketplace Rule 4200(a)(15) if he were elected to the Board of Directors.

The Board of Directors approved the Governance Committee's recommendations and nominated Mr. Cappello, Mr. Kransdorf and Mr. Pittaway, each of whom has indicated his willingness to serve. Unless a stockholder specifies otherwise, the shares represented by each returned proxy will be voted **FOR** the election of Mr. Cappello, Mr. Kransdorf and Mr. Pittaway.

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS A VOTE FOR THE ELECTION OF MR. CAPPELLO, MR. KRANSDORF AND MR. PITTAWAY TO THE BOARD OF DIRECTORS.

Proposal 2: Approval of Amendments to the Company's Certificate of Incorporation to Remove Certain Supermajority Voting Provisions and Permit Stockholder Action by Written Consent

Our Board of Directors has approved and adopted, and recommends for stockholder approval, amendments to the Company's Certificate of Incorporation to eliminate certain "supermajority" voting provisions contained in our Certificate of Incorporation and to permit stockholders to take action by written consent.

Reasons FOR the Proposal

Supermajority Voting Provisions. As with many public companies, the supermajority voting requirements in our Certificate of Incorporation were originally implemented when we became a public company in 1992 to broadly protect the interests of our stockholders.

Our Board is firmly committed to ensuring effective corporate governance and it desires to be responsive to evolving standards of corporate governance and to the concerns of our stockholders. In recent years, stockholders of many public companies have requested the elimination of the supermajority voting standard for stockholder actions. Our Board has on several occasions considered the advantages of

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maintaining the supermajority voting requirements and, in the past, has concluded that maintaining them was in the best interest of the Company and our stockholders. This year the Board requested that the Governance Committee review our supermajority voting provisions in light of continual stockholder interest. The Governance Committee consulted management and outside advisors as part of its review.

In making its recommendation, the Governance Committee and the Board carefully considered the advantages and disadvantages of eliminating the supermajority voting provisions. They considered that the provisions requiring a supermajority vote to amend certain provisions of the Certificate of Incorporation facilitate corporate governance stability by requiring broad stockholder consensus to effect changes and are designed to protect minority stockholder interests. Many investors and others, however, have come to perceive supermajority voting provisions as conflicting with principles of good corporate governance because they can, either in appearance or practice, be viewed as making it more difficult for stockholders to effect change and participate in important company decisions that are properly within the realm of stockholders under state corporate law. According to some investors, the requirement of a supermajority vote can limit the ability of a majority of the stockholders at any particular time to effect change by essentially providing a veto to a large minority stockholder or group of stockholders. In addition, a lower threshold for stockholder votes can increase stockholders' ability to participate effectively in corporate governance.

After weighing all of these considerations, the Governance Committee recommended the elimination of certain of the supermajority vote requirements in the Company's Certificate of Incorporation, and the Board agreed and determined that the elimination of certain of those provisions is advisable and in the best interests of the Company and our stockholders.

In accordance with Delaware law these changes will be accomplished by amendments to Articles SEVENTH and TENTH of the Company's Certificate of Incorporation.

The amendments to Article TENTH will not eliminate the supermajority vote requirement in Article TENTH relating to the amendment of the provisions in the Certificate of Incorporation that provide either for action by written consent or the call of a special meeting only by the Chairman of the Board or a majority of the Board. With the steps taken by the Board in the proposals set forth at this meeting (including action by written consent as discussed below) and the actions taken in 2008 (to require majority voting for election to the Board) and at the 2008 Annual Meeting of Stockholders (the elimination of a classified board and adding provisions for removal of directors without cause), the Board has taken effective steps to enhance our corporate governance and does not believe that the elimination of the supermajority vote in these limited circumstances is appropriate.

The proposed amendments to Articles SEVENTH and TENTH are described in greater detail below under "Amendments to Supermajority Voting Requirements."

Action By Written Consent. The General Corporation Law of the State of Delaware provides that unless a company's certificate of incorporation provides otherwise, stockholders may take action without a meeting if the holders of stock having the minimum number of votes necessary to authorize such action sign a written consent. Our Certificate of Incorporation currently requires that any action permitted to be taken by stockholders may only be taken at an annual meeting or special meeting of stockholders. As with many public companies, this provision was implemented when we became a public company in 1992. The proposed amendments to the Certificate of Incorporation would permit action that is required to be taken or which may be taken at any annual or special meeting of stockholders of the Company to be taken by the written consent of stockholders, without a meeting, if such action is taken by a written consent signed by the holders of eighty percent (80%) of the voting power of all of the capital stock of the Company entitled to vote with respect to the subject matter thereof.

Along with its review of the Company's supermajority provisions discussed above, the Board also requested the Governance Committee to review the Company's provisions precluding action by written

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consent. The Governance Committee and the Board reviewed the advantages of limiting action by written consent. Requiring stockholder action only at regularly scheduled shareholder meetings (i) increases the likelihood that the Company and all of our stockholders will be given an opportunity to consider carefully and respond prudently to important shareholder proposals, and (ii) avoids untimely action in a context that might not permit stockholders to have the full benefit of the knowledge, advice and participation of our management and Board of Directors. The Governance Committee and the Board also considered the views of investors who believe that these provisions are inconsistent with principles of good corporate governance because they can, either in appearance or practice, limit stockholders' ability to participate effectively in corporate governance. In addition to concerns expressed about the role of action by written consent in corporate governance, the Governance Committee also considered the advantages of permitting action by written consent. For example, the expense of holding a meeting of stockholders can be considerable, and it is inefficient to hold a stockholders meeting if the holders of a significant number of voting stock have already determined how a matter will be decided. The ability to obtain stockholder approval by written consent also facilitates transactions by the Company without the delays in calling a meeting and distributing meeting materials. Actions taken by written consent, however, would not relieve the Company of complying with federal state securities laws with respect to the solicitation of written consents.

In making its recommendation, the Governance Committee and the Board balanced the various interests of those stockholders who view the right to act by written consent as good corporate governance and the attendant advantages of acting by written consent, and the protections afforded stockholders by precluding action by written consent. The Governance Committee and the Board concluded that the best interests of the Company and our stockholders would be served by amending our Certificate of Incorporation to permit action by written consent (and without a meeting of stockholders) when the action taken receives the support of at least 80% of the voting shares entitled to vote on the matter. This balance is further maintained by retaining a supermajority vote requirement to amend the provisions authorizing action by written consent as discussed above under "*Supermajority Voting Provisions.*"

In accordance with Delaware law, these changes will be accomplished by amendments to Article SIXTH of the Company's Certificate of Incorporation.

The proposed amendments to Article SIXTH are described in greater detail below under "Amendments to Action by Written Consent."

Amendments to Supermajority Voting Requirements

Article SEVENTH of our Certificate of Incorporation currently requires the affirmative vote of the holders of eighty percent (80%) or more of the combined voting power of all outstanding shares of capital stock entitled to vote generally in election of directors, voting together as a single class, for stockholders to make, adopt, alter, amend and repeal any provision of our Bylaws. The proposed amendment, if adopted, would replace the eighty percent (80%) supermajority vote requirement with a requirement that holders of a majority or more of the combined voting power of the then outstanding shares of voting stock, voting together as a single class, would be able to make, adopt, alter, amend and repeal any provision of our Bylaws.

The Board has also committed to amend our Bylaws to provide for the same majority vote standard with respect to stockholder's initiated Bylaw amendments if stockholders vote to approve the proposed amendment to Article SEVENTH of the Certificate of Incorporation. If the amendments are adopted, the Bylaws would continue to permit amendments to the Bylaws adopted by a majority of the Board.

Article TENTH of the Certificate of Incorporation currently provides that the affirmative vote of holders of at least eighty percent (80%) of the combined voting power of all the then outstanding shares of capital stock, entitled to vote generally in the election of directors, voting together as a single class, is required to amend, alter, repeal or adopt any provision inconsistent with the following articles of the

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Certificate of Incorporation: (a) Article SIXTH (action by written consent, call of special meetings and removal of directors); (b) Article SEVENTH (amendment of the Bylaws); (c) Article EIGHTH (indemnification of officers and directors); (d) Article NINTH (limitation of monetary damages); and (e) Article TENTH itself; or to add an article or provision imposing cumulative voting in the election of directors.

The proposed amendments to our Certificate of Incorporation, if adopted, would eliminate the requirement in Article TENTH that would require an eighty percent (80%) vote to amend, alter, repeal or adopt any provision inconsistent with Articles SEVENTH, EIGHTH and NINTH; or to add an article or provision imposing cumulative voting in the election of directors. The proposed amendments, if adopted, would also eliminate the requirement in Article TENTH that would require an eighty percent (80%) vote to amend, alter, repeal or adopt any provisions inconsistent with the provisions in Article SIXTH relating to the removal of directors. The proposed amendments, however, would retain the requirement in Article TENTH that would require an eighty percent (80%) vote to amend, alter, repeal or adopt any provision inconsistent with the provisions in Article SIXTH relating to actions by written consent and the call of special stockholder meetings.

Amendment to Action by Written Consent

Article SIXTH of our Certificate of Incorporation currently provides that any actions required or permitted to be taken by our stockholders must be effected at an annual or special meeting of stockholders and may not be effected by written consent. The proposed amendments to our Certificate of Incorporation, if adopted, would permit any action required or permitted to be taken at any annual or special meeting of stockholders of the Company, to be taken without a meeting if a consent or consents in writing are signed by holders of at least eighty percent (80%) of the combined voting power of all then outstanding shares of capital stock entitled to vote with respect to the subject matter presented.

The Board unanimously adopted a resolution, subject to shareholder approval, and declaring the advisability of amendments to Articles SIXTH, SEVENTH and TENTH to the Certificate of Incorporation in the manner discussed above.

The text of Articles SIXTH, SEVENTH and TENTH of our Certificate of Incorporation as proposed to be amended is set forth below, with additions indicated by underlining and deletions indicated by strike-out.

* * *

SIXTH: (a) Any action required or permitted to be taken ~~by the stockholders of the Corporation must be effected at an~~ any annual or special meeting of stockholders of the Corporation ~~and may not be effected by any,~~ may only be taken without a meeting if a consent or consents in writing ~~by such stockholders,~~ setting forth the action so taken, shall be signed by holders of eighty percent (80%) of the combined voting power of all the then outstanding shares of capital stock entitled to vote with respect to the subject matter thereof, voting together as a single class. (b) Special meetings of stockholders of the Corporation may be called only by the Chairman of the Board, if there be one, or the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board of Directors for adoption). ~~(c)~~ Prior to the 2011 Annual Meeting, directors of the Corporation may be removed by stockholders only for cause and only by the affirmative vote of the holders of a majority of the voting power of the capital stock of the Corporation outstanding and entitled to vote thereon. At and after the 2011 Annual Meeting, a director may be removed without cause by the affirmative vote of the holders of a majority of the voting power of the capital stock of the Corporation outstanding and entitled to vote thereon.

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SEVENTH: All the powers of the Corporation, insofar as the same may be lawfully vested by this Certificate of Incorporation in the Board of Directors, are hereby conferred upon the Board of Directors. In furtherance and not in limitation of such powers, the Board of Directors shall have the power to make, adopt, alter, amend and repeal from time to time bylaws of the Corporation, subject to the right of the stockholders entitled to vote with respect thereto to adopt, alter, amend and repeal bylaws made by the Board of Directors; provided, however, that bylaws shall not be adopted, altered, amended or repealed by the stockholders of the Corporation except by the vote of the holders of ~~not less than eighty percent (80%) of the~~ at least majority of the combined voting power of all of the then outstanding shares of capital stock entitled to vote upon generally in the election of directors, voting together as a single class.

TENTH: The Corporation reserves the right to amend, alter or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed herein or by statute, and all rights and powers conferred herein are subject to this reserved power, provided, however, that subject to the powers and rights provided for herein with respect to Preferred Stock issued by the Corporation, if any, but notwithstanding anything else contained in this Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least eighty percent (80%) of the combined voting power of all of the then outstanding shares of capital stock entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend, alter, repeal or adopt any provision inconsistent with this Article TENTH or ~~Articles SIXTH, SEVENTH, EIGHT or NINTH of this Certificate of Incorporation or to add an article or provision imposing cumulative voting in the election of directors of subsections (a) or (b) of Article SIXTH.~~

* * *

To be approved, the proposed amendments require the affirmative vote of the holders of at least eighty percent (80%) of the combined voting power of our common stock. If approved, these amendments will become effective upon the filing of a certificate setting forth the amendments with the Secretary of the State of Delaware, which we would file promptly after the Annual Meeting of Stockholders.

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS A VOTE FOR THE APPROVAL OF AMENDMENTS TO OUR CERTIFICATE OF INCORPORATION.

Proposal 3: Ratification of Selection of Independent Registered Public Accounting Firm

The Audit Committee appointed PricewaterhouseCoopers LLP ("PwC") as our independent registered public accounting firm to conduct the audit of our books and records for the fiscal year ending December 30, 2008. PwC has served as our independent registered public accounting firm since our inception in 1992. The Audit Committee has initially selected PwC as our independent auditors for fiscal 2009. Although our governing documents do not require submission of this matter to stockholders, the Board of Directors believes that submission is consistent with current best practices in corporate governance and is seeking ratification of the appointment by stockholders. In the event that stockholders fail to ratify the selection of PwC, it will be considered a direction to the Audit Committee to consider the selection of a different independent registered public accounting firm. Even if the selection of PwC is ratified by the stockholders at the Annual Meeting, the Audit Committee in its discretion may select a different independent registered public accounting firm at any time if it determines that a change would be in the best interests of the Company and our stockholders. Representatives of PwC are expected to be present at the Annual Meeting of Stockholders to respond to appropriate questions and to make a statement should they so desire.

Table of Contents**Independent Registered Public Accounting Firm Fees and Services**

The following table sets forth the aggregate fees billed by PwC to us during the last two fiscal years:

	Fiscal 2008	Fiscal 2007
Audit Fees	\$ 581,400	\$ 586,500
Audit-Related Fees		
Tax Fees	21,450	29,627
All Other Fees	8,500	86,074
Total	\$ 611,350	\$ 702,201

Audit Fees represent the aggregate fees billed by PwC for the audit of our annual financial statements included in the Annual Report on Form 10-K, review of financial statements included in the Quarterly Reports on Form 10-Q, the audit of our internal control over financial reporting with the objective of obtaining reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects, and services normally provided by our independent registered public accounting firm in connection with statutory and regulatory filings or engagements.

Tax Fees represent the aggregate fees billed by PwC for tax compliance services.

All Other Fees represent the aggregate fees billed by PwC for services other than those reported in the above categories. For fiscal 2008 and 2007, the nature of services provided consisted primarily of review and consultation related to our stock-based compensation procedures.

Policy on Audit Committee Pre-Approval of Audit and Permissible Non-Audit Services of Our Independent Registered Public Accounting Firm

The Audit Committee is responsible for appointing, setting compensation for and overseeing the work of our independent registered public accounting firm. The Audit Committee has established a policy requiring that it pre-approve all audit and permissible non-audit services provided by the independent auditor. The Audit Committee considers whether such services are consistent with the rules of the Securities and Exchange Commission ("SEC") on auditor independence as well as whether the independent auditor is best positioned to provide the most effective and efficient service, for reasons such as familiarity with our business, staff members, culture, accounting systems, risk profile and other factors, and input from our management. The Audit Committee's charter authorizes the Audit Committee to delegate to one or more of its members the pre-approval of audit and permissible non-audit services provided that those members report any pre-approvals to the full committee. Pursuant to this authority, the Audit Committee has delegated to its Chair the authority to address any requests for pre-approval of services between Audit Committee meetings provided that the amount of fees for any particular services requested does not exceed \$10,000, and the Chair reports any pre-approval decisions to the Audit Committee at its next scheduled meeting. The policy prohibits the Audit Committee from delegating to management the Audit Committee's responsibility to pre-approve permitted services of the independent registered public accounting firm. In addition, the policy prohibits our auditors from providing internal control related services to us unless such engagement has been specifically pre-approved by the Audit Committee. None of the services related to the *Audit-Related Fees* or *Tax Fees* described above was approved by the Audit Committee pursuant to the waiver of pre-approval provisions set forth in applicable rules of the SEC.

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS A VOTE FOR THE RATIFICATION OF THE SELECTION OF PRICEWATERHOUSECOOPERS LLC AS THE INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM OF THE COMPANY FOR FISCAL 2009.

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BOARD OF DIRECTORS AND CORPORATE GOVERNANCE

Our Board of Directors

DAVID OVERTON, age 63, co-founded our predecessor company with his parents. He has served as our Chairman of the Board and Chief Executive Officer since its incorporation in February 1992.

ALLEN J. BERNSTEIN, age 63, became a director of the Company in February, 2008. Mr. Bernstein is the President of Endeavor Restaurant Group, Inc. He founded and served as Chairman and Chief Executive Officer of Morton's Restaurant Group, Inc. from 1989 through 2005 and presently serves as its Chairman Emeritus. He currently serves on the boards of directors of a number of privately held companies, including Caribbean Restaurants, LLC; Bravo Development, Inc; and as non-executive Chairman of the Board of Perkins & Marie Callender's, Inc. Previously, Mr. Bernstein served as a director on the boards of Charlie Brown's Steakhouse, McCormick & Schmick's Seafood Restaurants and Dave & Busters, Inc. He also serves as Director Emeritus of the American Film Institute.

ALEXANDER L. CAPPELLO, age 53, became a director of the Company in February, 2008. Mr. Cappello is Chairman and Chief Executive Officer of Cappello Capital Corp., a global merchant banking firm, which has conducted business in 50 countries where its principals have completed over \$110 billion in transactions. Mr. Cappello has more than 30 years of global experience in corporate management, corporate finance, and investment banking and merchant banking. He currently serves as a Trustee for the University of Southern California and past President of its Alumni Association Board of Governors. In addition, he serves as a Trustee of the City of Hope, and a director of California Republic Bank and the RAND Corporation Center for Middle East Public Policy. Mr. Cappello previously served as Chairman of the International Board of the Young Presidents Organization, Chairman of Inter-Tel (Delaware), Incorporated and has served as a director for a number of public companies prior to their acquisition or privatization, including Koo Koo Roo, Inc., Cytrx Corp., and Genius Products, Inc.

THOMAS L. GREGORY, age 73, became a director of the Company upon the consummation of our initial public offering in September, 1992. Mr. Gregory has over 50 years of experience in the food service industry. He served as Vice Chairman of the Board of Directors of Sizzler International, Inc., a restaurant chain, until August 1994. Mr. Gregory served as President, Chief Executive Officer and a member of the Board of Directors of Sizzler from 1982 to 1991, and then served as President of its successor company until his retirement in 1992. From 1974 to 1991, he served as Vice President for Collins Foods International, Inc., a food service company, and retained such position concurrently with his positions at Sizzler. Mr. Gregory is a member of the Board of Directors of Regis Corporation, the world's largest chain of retail hair care operations.

DAVID R. KLOCK, Ph.D., age 64, became a director of the Company in December, 2006. He is currently the Wachovia Chair in Business and Dean of the School of Business at the University of Alabama at Birmingham. From 2005 until 2008, Dr. Klock was Dean of the College of Business Administration at California State Polytechnic University in Pomona, California. In 2004, Dr. Klock was appointed Chairman of CompBenefits Corporation, an Atlanta, Georgia-based provider of dental and vision plans to over 4.5 million members in the United States. CompBenefits was sold to Humana Inc. in October 2007. From 1993 to 2004, Dr. Klock served as Chairman and Chief Executive Officer of CompBenefits and from 1991 to 1993, he served as President.

JEROME I. KRANSDORF, age 70, became a director of the Company in March, 1997. Mr. Kransdorf has more than 40 years of investment management experience. He currently serves as President of JaK Direct, a division of Muriel Siebert & Co., Inc. From 1997 to 2001, Mr. Kransdorf served as Senior Vice President of J. & W. Seligman & Co. Incorporated, an investment advisory firm. From 1959 to 1997, he was employed in investment and senior management positions at Wertheim & Co. and its successor companies.

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WAYNE H. WHITE, age 71, became a director of the Company upon the consummation of our initial public offering in September, 1992. From 1983 until his retirement in June, 2002, Mr. White was an investment banker specializing in gaming and restaurant companies. Mr. White has approximately 20 years of senior management experience in the restaurant industry, including Victoria Station (seven years) and Famous Restaurants (two years). He is also a member of the Board of Directors of Nevada Gold & Casinos, Inc. On February 4, 2009, Mr. White notified the Board of Directors that he will not stand for reelection as a director when his current term ends at this year's Annual Meeting of Stockholders. As such, Mr. White will retire from our Board of Directors and the Compensation Committee, effective May 20, 2009.

AGNIESZKA WINKLER, age 63, became a director of the Company in May, 2007. Ms. Winkler is the founder and Chairperson of The Winkler Group, a San Francisco-based management consultancy specializing in branding and marketing efficiency and effectiveness. She is also the founder and former Chairperson and Chief Executive Officer of Winkler Advertising, founded in 1984, and Team Toolz Inc., founded in 1999, both of which were acquired. Ms. Winkler has served on the Boards of Directors of the following NASDAQ-listed companies before they were acquired: Inter-Tel (Delaware), Incorporated, Reno Air, Inc. and SuperCuts, Inc. In addition, she served as Vice Chairperson of the Board of Directors of IPLocks, Inc., a privately held company. Ms. Winkler currently serves on the Board of Trustees of Santa Clara University and is Vice Chair of the Committee of 200 Foundation. Ms. Winkler is the author of "Warp Speed Branding," published by Wiley in the United States, China, and Turkey.

Director Independence

The Board of Directors has determined each of the following directors to be an "independent director" as such term is defined in NASD Marketplace Rule 4200(a)(15): Allen J. Bernstein; Alexander L. Cappello; Thomas L. Gregory; David R. Klock; Jerome I. Kransdorf; Wayne H. White; and Agnieszka Winkler. In this Proxy Statement, these seven directors are referred to individually as an "Independent Director" and collectively as the "Independent Directors."

Lead Director

Prior to July, 2008, the Independent Directors of the Board of Directors selected one coordinating director, annually, from among their group. Mr. Gregory served in this position in fiscal 2008 through July, 2008. In July, 2008, the Independent Directors of the Board of Directors extended the duties and responsibilities of the coordinating director and renamed the position that of "Lead Director." One Independent Director is selected annually by the Independent Directors from among their group to serve as "Lead Director." The role of the Lead Director is to preside at executive sessions of the Independent Directors, serve as principle liaison between the Independent Directors and the Chairman of the Board, coordinate the agenda and materials for meetings of the Board of Directors, advise the Chairman of the Board of Directors concerning scheduling of meetings, make recommendations to the Chairman of the Board regarding the retention of advisors and consultants who report directly to the Board of Directors, make recommendations to the Board of Directors and the Chairman regarding significant corporate governance issues, oversee the Governance Committee's review of our compliance with corporate governance policies adopted by the Board, and oversee the annual evaluation of the Board of Directors and its committees. Mr. Cappello currently serves as Lead Director and has served in that position since July, 2008.

Audit Committee Financial Expert

With the assistance of our legal counsel, the Board of Directors reviewed the applicable legal standards for independence and criteria for determination of "audit committee financial expert" as well as responses to annual questionnaires completed by the directors and has further determined that

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Thomas L. Gregory, chair of the Audit Committee of the Board of Directors, Alexander L. Cappello and David R. Klock is each an "audit committee financial expert" as such term is defined in Item 407(d)(5)(ii) of Regulation S-K adopted by the SEC.

Corporate Governance

The Board of Directors is committed to ethical business practices and believes that good corporate governance is important to ensure that the Company is managed for the long-term benefit of its stockholders.

The Independent Directors meet regularly in executive session without management. The Lead Director presides at these executive session meetings. Currently, all directors except for one, David Overton, are Independent Directors. In addition, each member of all five committees of the Board of Directors in service for part or all of fiscal 2008 is an Independent Director. Additional information regarding Board committees appears in the section of this Proxy Statement entitled "Committees of the Board of Directors and Composition of Committees."

We make available on our website the policy that the Board of Directors has adopted for stockholders and employees who wish to communicate any concern directly with the Board of Directors. The policy can be found at www.thecheesecakefactory.com by clicking on the links for "Investors," "Corporate Governance" and "Governance Principles and Guidelines," and the document entitled "Corporate Governance Principles and Guidelines."

Director Nominations Process

The Board of Directors has adopted a policy and procedure regarding Board of Director candidates (the "Nominations Policy"). The purpose of the Nominations Policy is to describe the process by which candidates are selected for possible inclusion in the Board of Director's recommended slate of director nominees. The Governance Committee of the Board of Directors administers the Nominations Policy.

The Governance Committee is responsible for identifying candidates for nomination or appointment to the Board of Directors. To fulfill this function, the Governance Committee will at least annually review the size and composition of the Board of Directors and its committees, including the number of directors eligible for election at the annual meeting of stockholders, in accordance with our Articles of Incorporation and Bylaws. The Governance Committee may solicit recommendations for nominees from other directors, members of management or others. In addition, the Governance Committee will consider recommendations of a stockholder of record who timely complies with these policies and procedures.

In fiscal 2008, the Board of Directors adopted amendments to our Bylaws to implement a majority vote policy such that in order to be considered for nomination by the Board of Directors, an individual must agree that if elected he or she will submit an irrevocable resignation effective upon (i) the director's failure to receive a majority vote in an uncontested election at which he or she is subject to reelection; and (ii) acceptance of the resignation by the Board of Directors.

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Minimum Qualifications

The Governance Committee has identified the following minimum qualifications for candidates for nomination to the Board of Directors:

Each candidate must consent in writing to be named in our proxy statement as a nominee and to serve as a director of the Company if nominated, elected or appointed, and qualified.

Each candidate must agree that if elected he or she will submit an irrevocable resignation to the Secretary of the Company promptly following his or her election or reelection that will be effective upon (i) such director's failure to receive a "majority vote" for reelection in any "uncontested election" (as those terms are defined in the Company's Bylaws) at which he or she is subject to reelection; and (ii) acceptance of that resignation by the Board of Directors in accordance with the Bylaws and any policies and procedures adopted by the Board of Directors for such purposes.

Each candidate's service as a director must not cause us or any of our subsidiaries to lose, or to be threatened with the loss of any application for, right to the use of, or entitlement to, any material governmental license, authorization or permit.

Each candidate shall be an individual who has demonstrated integrity and ethics in his/her personal and professional life and has established a record of professional accomplishment in his/her chosen field.

Each candidate shall be prepared to represent the best interests of all of our stockholders and not just one particular constituency.

No candidate or family member (as defined in the NASD rules) of a candidate may have any current material personal, financial or professional interest in any company which is determined by the Committee to be a significant competitor of ours.

Each candidate must be prepared to participate fully in Board activities, including active membership on at least one Board committee, and not have other personal or professional commitments that would, in the Governance Committee's sole judgment, interfere with or limit his or her ability to do so.

Each candidate shall be prepared not to serve as a member of the board of directors of more than two publicly traded companies in addition to ours without prior approval of the majority of the Independent Directors.

Each candidate shall not have attained the age of 72 as of the date of appointment or election to the Board.

Criteria for Evaluating Candidates

In evaluating nominations, the Governance Committee will seek to achieve a balance of different capabilities and overall diversity in the areas of personal and professional experiences and backgrounds, financial, managerial and operational knowledge; variety of opinions and perspectives; and other differentiating characteristics with the goal of seeking and selecting candidates that will enhance the Board's ability to adequately perform its responsibilities, increase stockholder value, and adhere to good corporate governance practices. The Governance Committee will consider the following criteria in evaluating candidates for nomination in light of the size and composition of the Board of Directors and its committees:

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Satisfaction of the minimum qualifications established by the Governance Committee.

Education and other training.

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Relevant personal and professional background, including financial, managerial and operational skills and knowledge and experience in both corporate and non-traditional environments, such as government, academia and non-profit organizations.

Whether the candidate is a party to any action or arbitration adverse to us or any of our subsidiaries.

Whether the candidate would qualify as an "independent" director as defined by The NASDAQ Stock Market's listing standards.

Whether the candidate would qualify as an "audit committee financial expert."

Whether the candidate has been involved in any legal proceeding that would be required to be disclosed by us pursuant to Item 401(f) of Regulation S-K.

Whether any business relationships exist, or have existed, that would be required to be disclosed pursuant to Item 404 of Regulation S-K.

The candidate's reputation for judgment and honesty.

Whether we would be required to disclose any of the relationships described in Section 407(e) of Regulation S-K.

The number and identity of any other boards of directors of which the candidate is a member.

Other professional and personal commitments that could affect the candidate's ability to serve.

Whether the candidate has provided accurate and complete responses to any requests for additional information by the Governance Committee.

Other relevant characteristics that would enhance the Board's ability to adequately perform its responsibilities, increase stockholder value, and adhere to good corporate governance practices.

Any history of criminal convictions.

Whether the candidate has agreed to be interviewed by the Governance Committee, if requested.

In addition, the Governance Committee may consider the following criteria:

Whether the nomination and election of the candidate would result in less than two-thirds of the Board of Directors being "independent directors" as defined in our policies and procedures.

General Nomination Right of All Stockholders

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Stockholders may nominate one or more persons for election as a director of the Company at an annual meeting of stockholders if the stockholder complies with the advance notice, information and consent provisions contained in our Bylaws. Stockholder nominations for the election of directors may only be made by a stockholder of record on both the date of giving notice and on the record date for such meeting by giving timely written notice to our Secretary at our principal offices. Such notice must be received no less than 90 days or more than 120 days prior to the anniversary date of the immediately preceding annual meeting of stockholders. If notice or prior public disclosure of the date of the annual meeting is given or made to the stockholders for a meeting date that is not within 30 days before or after the anniversary of the immediately preceding annual meeting of stockholders, notice by the stockholder will be timely if received not later than the close of business on the tenth day following the day on which such notice was mailed or such public disclosure was made, whichever is first, or no less than 90 days or more than 120 days prior to the annual meeting. In the event that the number of a class of directors to be elected is increased and we make no public announcement, at least 100 days prior to the first anniversary of the preceding year's annual meeting, in which we name all of the nominees for director or specify the size of the increased Board of Directors, a stockholder's notice will be considered timely, but only with

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respect to nominees for any new positions created by the increase, if the notice is delivered to, or mailed and received at, our principal executive offices (addressed to our Secretary) no less than 10 calendar days following the day on which we make the public announcement. In the case of a special meeting of stockholders called for the purpose of electing directors, notice will be timely if the stockholder provides written notice to our Secretary not later than the close of business on the tenth day following the day on which notice of the date of the special meeting was mailed or public disclosure of the meeting date was made, whichever first occurs, or no less than 90 or more than 120 days prior to the meeting. The stockholder's notice must include all of the information required by our Bylaws. If the stockholder provides a statement that the stockholder intends to deliver a proxy statement and form of proxy, the nomination may not be brought before the meeting unless the stockholder has delivered a proxy statement and form of proxy to holders of a percentage of our voting shares reasonably believed by the stockholder to be sufficient to elect the nominee or nominees proposed by the stockholder.

The foregoing summary is not a complete description of the provisions of our Bylaws pertaining to stockholder nominations and proxies. Stockholders may obtain, without charge, a copy of our Bylaws upon written request to our Secretary at our principal executive offices. Our Bylaws are also available on our website at www.thecheesecakefactory.com by clicking on the links for "Investors," "Corporate Governance" and "Bylaws."

Stockholder Recommendations to the Governance Committee

A stockholder of record may also recommend a candidate for consideration by the Governance Committee. In order to give the Governance Committee sufficient time to evaluate a recommended candidate, the recommendation should be received by our Secretary at our principal executive offices no later than the 120th calendar day before the date of our proxy statement released to stockholders in connection with the previous year's annual meeting of stockholders. With respect to the 2010 Annual Meeting of Stockholders, recommendations must be received by _____, 2009. The stockholder's recommendation must include all of the following:

The stockholder's name, address and telephone number.

The recommended candidate's name, address and telephone number.

The written consent of the recommended candidate to be named in our proxy statement and to serve as a director if nominated, elected or appointed, and qualified to serve.

A description of all arrangements or understandings in connection with such recommendation between the stockholder and the recommended candidate or between the stockholder and any other person or persons (including their names).

A description of any business, familial or other financial or personal relationship between the stockholder and the recommended candidate.

Information regarding the recommended candidate as to each of the criteria identified above for evaluating recommendations.

Evaluation of Candidates

The Governance Committee will consider all candidates identified through the process outlined above and will evaluate each of them, including incumbents, based on the same criteria. If, based on the Governance Committee's initial evaluation, a candidate continues to be of interest to the Governance Committee, the Chair of the Governance Committee will interview the candidate and communicate his or her evaluation to the other committee members and the Chairman of the Board of Directors. Other members of the Governance Committee and senior Company management will conduct subsequent interviews. Ultimately, background and reference checks will be conducted and the

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Committee will meet to finalize its list of recommended candidates for consideration by the full Board of Directors. If an incumbent is nominated, the interview process may be abbreviated at the discretion of the Chair of the Governance Committee. If the Chair of the Governance Committee is being considered for re-nomination, the other Governance Committee members shall appoint another member of the Governance Committee to head the review process for the Chair's reconsideration.

Future Revisions to the Nominations Policy

The Governance Committee's Nominations Policy is intended to provide a flexible set of guidelines for the effective functioning of the director nomination process. The Governance Committee intends to review this policy and procedure at least annually and anticipates that modifications will be necessary from time to time as our needs and circumstances evolve, and to conform with changes in applicable legal or listing standards.

Committees of the Board of Directors and Composition of Committees

The Board of Directors has three standing committees the Audit Committee, the Compensation Committee, and the Governance Committee. In fiscal 2007, the Board of Directors appointed a Special Litigation Committee to facilitate timely and orderly consideration of the matters raised by stockholder derivative actions filed against us and related parties concerning claims arising out of certain misdated options. The Special Litigation Committee was dissolved in July 2008. Also in fiscal 2007, the Board of Directors appointed a Special Committee to evaluate certain corporate governance issues and the advisability of pursuing strategic alternatives intended to increase stockholder value including, but not limited to, a recapitalization, and to make recommendations to the full Board of Directors. The Special Committee was dissolved in July 2008. The Board of Directors has determined that each member of the five committees of the Board of Directors in service for part or all of fiscal 2008 meets the independence requirements applicable to those committees prescribed by the NASD Marketplace Rules. The members of each committee and the functions performed thereby are described below.

Audit Committee

The Audit Committee operates pursuant to a written charter, which is available on our website at www.thecheesecakefactory.com by clicking on the links for "Investors," "Corporate Governance" and "Committee Charters." The Audit Committee is primarily responsible for monitoring the quality and integrity of our financial statements and related disclosure and systems of internal controls regarding risk management, finance and accounting; monitoring our compliance with legal and regulatory requirements; monitoring our independent auditor's qualifications and independence; monitoring the performance of our internal audit function and independent auditors; providing an avenue of communication among the independent auditors, management and the Board of Directors; and issuing the report of the Audit Committee required by the SEC to be included in our Proxy Statement.

The Audit Committee conducts an annual performance evaluation of its charter, composition, complaint procedures, financial oversight responsibilities, and other matters. The Audit Committee is directly responsible for the appointment, compensation, retention and oversight of the work of our public accounting firm engaged to issue an audit report or perform other audit, review or attest services. The Audit Committee pre-approves the audit work, as well as all non-audit work, to be performed by our external auditors after considering its permissibility under SEC rules and its impact on auditor independence. The Audit Committee also reviews material written communications the external auditors may provide to management and discusses any concerns with the auditors and management.

Pursuant to its charter, the Audit Committee also reviews our policies and procedures relating to conflicts of interest and approves any proposed "related party transaction." For this purpose, "related party transaction" means a transaction required to be disclosed pursuant to Item 404 of Regulation S-K

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adopted by the SEC. We also have adopted a written Code of Ethics for our directors, executive officers and senior financial officers (also available on our website) which, among other things, requires prompt reporting of potential conflicts to the Audit Committee. In addition, management reviews related party transactions with the Audit Committee at least annually. Our internal auditor reports directly to the Audit Committee and is responsible for conducting comprehensive audits of our internal financial controls and the operational effectiveness of related activities and systems.

Messrs. Gregory and Cappello, Dr. Klock, and Ms. Winkler served on the Audit Committee in fiscal 2008, with Mr. Gregory serving as Chair. Mr. Cappello was appointed to the Audit Committee in February, 2008 concurrently with his appointment to our Board of Directors.

Compensation Committee

The Compensation Committee operates pursuant to a written charter, which is available on our website at www.thecheesecakefactory.com by clicking on the links for "Investors," "Corporate Governance" and "Committee Charters." The Compensation Committee is responsible for determining the compensation of our Chief Executive Officer and all other Named Executive Officers. The Compensation Committee reviews and approves all employment, retention and severance agreements for executive officers and prepares, or causes to be prepared, the Compensation Committee Report in our Proxy Statement. Our Chief Executive Officer makes recommendations to the Compensation Committee concerning the compensation of our executive officers, other than himself. The Compensation Committee also makes recommendations to the Board of Directors concerning non-employee director compensation. The Compensation Committee directly engaged Farient Advisors ("Farient") in fiscal 2008 to conduct an assessment of and make recommendations concerning our non-employee director compensation, our Chief Executive Officer's and Chief Financial Officer's compensation, and our short-and long-term compensation and equity incentive plans.

The Compensation Committee approves and administers our incentive compensation programs, including our equity incentive plans and our Amended and Restated Performance Incentive Plan ("Incentive Plan"). The Committee makes recommendations to the Board of Directors with respect to incentive and equity compensation plans and periodically reviews and makes recommendations concerning existing or new executive compensation, performance incentives, employee benefits, stock plans or management perquisites. The Compensation Committee conducts an annual evaluation of its charter. The Compensation Committee authorizes and approves all grants of equity compensation to our employees under our equity compensation plans.

Messrs. Bernstein, Cappello, Kransdorf and White served on the Compensation Committee in fiscal 2008. In addition, Mr. Gregory served on the Compensation Committee from January, 2008 through May, 2008. Mr. White served as Chair from January, 2008 through May, 2008. Mr. Bernstein was appointed to the Compensation Committee in February, 2008. Mr. Cappello was appointed on the Compensation Committee and appointed to serve as Chair in May, 2008.

Governance Committee

The Governance Committee operates pursuant to a written charter which is available on our website at www.thecheesecakefactory.com by clicking on the links for "Investors," "Corporate Governance" and "Committee Charters." The Governance Committee is responsible for evaluating issues and developments related to corporate governance and making recommendations to the Board of Directors with respect to corporate governance standards, corporate governance proposals from stockholders, the establishment and composition of committees of the Board of Directors and potential candidates for nomination as Board members. The Governance Committee is responsible for overseeing and recommending programs and activities for the continuing education of directors. The Governance Committee also identifies potential candidates for nomination or appointment as directors and makes recommendations to the Board of

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Directors concerning nominees to be presented for stockholder approval and to fill any vacancies. The Governance Committee conducts an annual evaluation of its charter.

Messrs. Bernstein, Gregory, Kransdorf and White, Dr. Klock and Ms. Winkler served on the Governance Committee in fiscal 2008, with Mr. Kransdorf serving as Chair. Messrs. Gregory and White each served on the Governance Committee from January, 2008 through May, 2008. Mr. Bernstein was appointed to the Governance Committee in May, 2008.

Special Litigation Committee

In fiscal 2007, our Board of Directors established a Special Litigation Committee to facilitate timely and orderly consideration of the matters raised by certain stockholder derivative actions related to options misdating and appointed Dr. Klock to this committee. The Special Litigation Committee completed its investigations and, after negotiating a stipulation of settlement of such actions which was approved by the federal court and became effective June 4, 2008 (the "Stipulated Settlement"), the Special Litigation Committee was dissolved by our Board of Directors in July, 2008.

Special Committee

In fiscal 2007, our Board of Directors established a Special Committee comprised solely of Independent Directors to, among other matters, evaluate corporate governance issues and the advisability of pursuing strategic alternatives intended to increase stockholder value and to make recommendations to the full Board of Directors. The Special Committee operated pursuant to a charter adopted on December 4, 2007. Messrs. Gregory, Kransdorf and White and Ms. Winkler initially served on the Special Committee in fiscal 2007 and shortly thereafter, the committee membership was reduced to include Messrs. Gregory and Kransdorf, with Ms. Winkler serving as Chair. The Board of Directors dissolved the Special Committee in July, 2008 after receiving its recommendations.

Compensation Committee Interlocks and Insider Participation

Through the end of fiscal 2008, Messrs. Bernstein, Cappello, Kransdorf and White served on the Compensation Committee. Mr. Gregory also served on the Compensation Committee from January, 2008 through May, 2008. No member of the Compensation Committee was, during fiscal 2008, an officer or employee of ours, a former officer of ours or of our subsidiaries or had a relationship requiring disclosure by us under Item 407(e) of Regulation S-K. None of our executive officers have served on the board of directors or compensation committee of any other entity that has or has had one or more executive officers who served as a member of our Board of Directors or the Compensation Committee during fiscal 2008.

Board of Directors and Committee Meetings

During fiscal 2008, the Board of Directors held 20 meetings; the Audit Committee held 13 meetings; the Compensation Committee held 20 meetings; the Governance Committee held five meetings; and the Special Committee held 13 meetings. In addition, the Independent Directors held four executive sessions. Meetings include both in-person and telephonic meetings. No member of the Board of Directors attended fewer than 75% of the aggregate number of meetings of the Board of Directors and the committees on which he or she served. We make available on our website the policy that the Board of Directors has adopted regarding Board members' attendance at our Annual Meeting of Stockholders and our procedure for annual committee membership and chairperson assignments. The policy can be found at www.thecheesecakefactory.com by clicking on the links for "Investors," "Corporate Governance" and "Governance Principles and Guidelines," and the document entitled "Corporate Governance Principles and Guidelines." All of our directors then in office attended our 2008 Annual Meeting of Stockholders.

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In fiscal 2009, the Board of Directors approved changes to the compensation of non-employee Board members for their services as a director. The compensation structure for fiscal 2009 and 2008 is as follows:

	Fiscal 2009	Fiscal 2008
Annualized fee	\$ 35,000	\$ 35,000
Lead Director annual fee	\$ 15,000	\$ 7,500
Audit Committee chairperson annualized fee	\$ 10,000	\$ 5,000
Compensation Committee chairperson annualized fee	\$ 7,500	\$ 5,000
Governance Committee chairperson annualized fee	\$ 7,500	\$ 5,000
Special Litigation Committee annualized fee(1)	-	\$ 7,500
Special Committee chairperson fee(2)(3)	-	\$ 60,000
Special Committee member fee(2)(3)	-	\$ 40,000
Attendance at an in-person or telephonic Board or committee meeting, with the exception of regularly scheduled telephonic meetings of the Compensation Committee(4)(5)	\$ 1,500	\$ 1,500
Attendance at regularly scheduled telephonic meetings of the Compensation Committee(5)(6)	\$ 1,000	\$ 500
Attendance at in-person or telephonic meetings of the Special Committee(2)	-	\$ 1,500
Cash consideration for the first fiscal year after joining the Board of Directors(7)	\$ 75,000	\$ 100,000

- (1) The Special Litigation Committee was dissolved in July, 2008 and payment for fiscal 2008 was prorated for length of service.
- (2) The Special Committee's fees were authorized and paid through March 31, 2008. The Special Committee was dissolved in July, 2008.
- (3) Paid ratably per month at the beginning of each month through March 31, 2008. The Special Committee was dissolved in July, 2008.
- (4) The Board of Directors increased this fee effective July 23, 2008. Prior to this date, the fee was \$1,250 for each in person meeting and Independent Directors were not compensated for attendance at telephonic committee meetings.
- (5)

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If more than one meeting (in person or telephonic) occurs on any one day, only one attendance fee is paid for all such meetings.

- (6) The Board of Directors approved this fee for attendance at regularly scheduled telephonic meetings of the Compensation Committee effective July 23, 2008.
- (7) With respect to new directors appointed in fiscal 2008, the Board of Directors authorized a one-time cash payment of \$100,000 to each individual to retain his services as a new director and, with respect to new directors appointed in fiscal 2009, the Board authorized a one time cash payment of \$25,000 to each individual to retain his services as a new director, and \$18,750 payable quarterly, each fiscal quarter or portion thereof, in lieu of a stock option grant. In addition, the Board of Directors authorized a cash payment of \$75,000 to each of Messrs. Cappello and Bernstein for fiscal 2009, in lieu of a stock option grant. Stock options currently are not awardable to non-employee directors due

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to the expiration in May, 2007 of the 1997 Non-Employee Director Stock Option Plan (as amended) ("Non-Employee Director Plan"). Both Messrs. Cappello and Bernstein joined the Board of Directors after the expiration of the Non-Employee Director Plan.

Payments with respect to the annual fee, Lead Director fee, committee chairperson fees, and cash payment to Messrs. Cappello and Bernstein for fiscal 2009 are paid quarterly as earned, following the end of each quarter, unless otherwise noted. Payments with respect to Board of Directors or committee meeting attendance fees are paid monthly, following the end of each month, as earned. No fees are paid to Independent Directors with respect to attendance at executive sessions of the Board of Directors.

The following table sets forth certain information regarding the compensation earned by or awarded to each Independent Director who served on our Board of Directors in fiscal 2008. Mr. Overton is an employee of The Cheesecake Factory Incorporated and is not compensated for his services as a director.

DIRECTOR COMPENSATION TABLE

Name	Fees Earned or Paid in Cash \$	Option Awards \$(1)(2)(3)	Total \$
Allen J. Bernstein(4)(5)	152,375	-	152,375
Alexander L. Cappello(4)	160,500	-	160,500
Thomas L. Gregory(5)(6)	133,374	45,267	178,641
David R. Klock	62,625	45,267	107,892
Jerome I. Kransdorf(5)(6)	132,499	31,992	164,491
Wayne H. White(5)(6)(7)	62,000	31,992	93,992
Agnieszka Winkler	144,000	45,267	189,267

(1) The dollar amounts listed do not necessarily reflect the dollar amounts of compensation actually realized or that may be realized. In accordance with SEC regulations, these amounts reflect the dollar amounts recognized for financial statement reporting purposes for fiscal 2008 in accordance with the provisions of Financial Accounting Standards Board ("FASB") Statement No. 123(R), "Share-Based Payment" ("SFAS 123R"), ignoring estimates of forfeitures for service based vesting conditions. See Note 12 of the Notes to Consolidated Financial Statements in our Annual Report on Form 10-K for the fiscal year ended December 30, 2008 filed with the SEC on February 27, 2009 for information regarding assumptions underlying the valuation of equity awards.

(2) Under the terms of the Non-Employee Director Plan, Independent Directors were eligible to receive options to purchase shares of our common stock. Because the plan expired in May, 2007, no further options may be granted under that plan.

In May, 2007, the Board of Directors approved grants of 15,000 options to each Independent Director (other than Messrs. Bernstein and Cappello, both of whom were not on the Board of Directors at that time) under the Non-Employee Director Plan at exercise prices equal to the fair market value on the date of grant, of which 7,500 options were for services in fiscal 2008 and vested on December 31, 2007 and 7,500 options were for services in fiscal 2009 and vested on December 31, 2008.

(3)

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As of December 30, 2008 each Independent Director held options exercisable for the following number of shares of our common stock: Mr. Gregory, 76,911; Dr. Klock, 37,500; Mr. Kransdorf, 46,264; Mr. White, 85,639; and Ms. Winkler, 37,500.

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- (4) Mr. Bernstein and Mr. Cappello were appointed to the Board of Directors effective February 12, 2008.
- (5) Fees were earned, but not paid in cash, as Mr. Bernstein, Mr. Gregory, Mr. Kransdorf and Mr. White each elected to have his fees paid to a nonqualified deferred compensation plan account administered under The Cheesecake Factory Incorporated Executive Savings Plan ("Executive Savings Plan"), with the exception of \$100,000 paid in cash to Mr. Bernstein to initially retain his services as a new director.
- (6) In fiscal 2008, Messrs. Gregory, Kransdorf and White each received \$10,001 as consideration for the cancellation of stock option grants, which was then tendered to the Company in payment of obligations under the Stipulated Settlement. The cancellation of stock option grants were as follows: Mr. Gregory 3,714 shares; Mr. Kransdorf 2,486 shares; and Mr. White 2,486 shares.
- (7) On February 4, 2009, Mr. White notified the Board that he will not stand for reelection as a director when his current term ends at this year's Annual Meeting of Stockholders. As such, Mr. White will retire from our Board of Directors and the Compensation Committee, effective May 20, 2009.

Eligibility for Participation in the Executive Savings Plan

Members of the Board of Directors are eligible to participate in the Executive Savings Plan, a nonqualified deferred contribution plan, by contributing a portion of their director fees to this plan. Additional information regarding the Executive Savings Plan appears in the section of this Proxy Statement entitled "Nonqualified Deferred Compensation." We do not make matching contributions under the Executive Savings Plan with respect to contributions made by non-employee Board of Director members.

Reimbursement of Expenses

Each Independent Director is entitled to reimbursement for reasonable out-of-pocket expenses incurred in connection with travel to and from, and attendance at, meetings of the Board of Directors or its committees and related activities, including director education courses and materials.

Indemnification of Officers and Directors

As permitted by the Delaware General Corporation Law, our Certificate of Incorporation limits the personal liability of our directors for monetary damages for breach of fiduciary duty of care as a director. Liability is not eliminated for (a) any breach of the director's duty of loyalty to us or our stockholders, (b) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) unlawful payment of dividends or stock purchases or redemptions pursuant to Section 174 of the Delaware General Corporation Law, or (d) any transaction from which the director derived an improper personal benefit. Our Certificate of Incorporation also provides that we shall indemnify and advance indemnification expenses on behalf of all directors and officers of ours to the fullest extent permitted by Delaware law. Article VIII of our Bylaws also requires us, subject to certain limitations, to indemnify directors and officers and advance expenses. The indemnification and advancement of expenses provisions of Article VIII are not exclusive of any other rights of indemnification or advancement of expenses.

We have also entered into indemnification agreements with our directors and Named Executive Officers. Each indemnification agreement requires us to indemnify and hold harmless the director or Named Executive Officer to the fullest extent authorized by the laws of the State of Delaware. Each indemnification agreement also requires us, subject to specific terms and conditions, to advance expenses to the director or officer. Each indemnification agreement also sets forth various procedures and definitions with respect to indemnification and advancement of expenses. We are also obligated to maintain directors' and officers' liability insurance. With specified exceptions, we are not obligated to provide indemnification or advance expenses with respect to actions initiated by the director or officer or to indemnify the director or officer in connection with proceedings by us to enforce non-compete or non-disclosure agreements. To the extent the provisions of the indemnification agreements exceed the indemnification permitted by applicable law, such provisions may be unenforceable or may be limited to the extent they are found by a court of competent jurisdiction to be contrary to public policy.

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REPORT OF THE AUDIT COMMITTEE OF THE BOARD OF DIRECTORS

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

As more fully described in its charter, the Audit Committee oversees the Company's financial reporting and internal control processes on behalf of the Board of Directors, as well as the independent audit of the Company's consolidated financial statements by the Company's independent auditors. The Audit Committee approved the engagement of PricewaterhouseCoopers LLP ("PwC") as the Company's independent auditors for fiscal 2008. Management has the primary responsibility for the Company's financial statements and the financial reporting process, including the Company's system of internal controls. In fulfilling its oversight responsibilities, the Audit Committee reviewed and discussed the Company's audited financial statements for fiscal 2008 with management and PwC. Management and PwC have represented to the Audit Committee that the Company's consolidated financial statements were prepared in accordance with generally accepted accounting principles.

The Audit Committee reviewed with PwC such other matters as are required to be discussed with the Audit Committee under generally accepted auditing standards, including the matters required to be discussed by Statement on Auditing Standards No. 61, "Communication with Audit Committees," as amended. In addition, the Audit Committee has discussed with PwC the auditors' independence from management and the Company, including the matters in the written disclosures and the letter from the independent auditors required by applicable requirements of the Public Company Accounting Oversight Board regarding independent accountant's communications with the audit committee concerning independence. The Audit Committee discussed with PwC the overall scope and plans for its audit. The Audit Committee periodically meets with PwC, with and without management present, to discuss the results of its audit, its evaluation of the Company's internal controls and the overall quality of the Company's financial reporting.

Based upon these reviews and discussions, the Audit Committee has approved the recommendation of Company management that the audited consolidated financial statements for the fiscal year ended December 30, 2008 be included in the Company's Annual Report on Form 10-K filed with Securities and Exchange Commission.

Respectfully submitted,

Thomas L. Gregory, Chair
Alexander L. Cappello
David R. Klock
Agnieszka Winkler

EXECUTIVE COMPENSATION

Compensation Discussion and Analysis

This Compensation Discussion and Analysis ("CD&A") explains our strategy, design, and decision-making around our compensation programs and practices for our principal executive officer, our principal financial officer and our three other most highly compensated executive officers (together, the "Named Executive Officers"). While the principal purpose of this CD&A is to review Named Executive Officer compensation, many of the programs discussed apply to other members of senior management who, combined with the Named Executive Officers, are collectively referred to herein as "executive officers" or "executives." This CD&A also explains how the compensation of our Named Executive Officers is aligned

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with the interests of our stockholders, and is intended to place in perspective the compensation information contained in the tables that follow this discussion.

During fiscal 2008, our Named Executive Officers were:

David Overton, Chairman of the Board and Chief Executive Officer;

Cheryl Slomann, Interim Chief Financial Officer, Vice President, Controller and Chief Accounting Officer(1);

Michael J. Dixon, Senior Vice President and Chief Financial Officer(2);

Russell W. Bendel, President and Chief Operating Officer, The Cheesecake Factory Restaurants Inc.(3);

Max S. Byfuglin, President, The Cheesecake Factory Bakery Incorporated; and

Debby R. Zurzolo, Executive Vice President, General Counsel and Secretary.

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- (1) Ms. Slomann was appointed Interim Chief Financial Officer effective July 23, 2008. Her appointment ended on January 19, 2009 and she resumed her prior position as Vice President, Controller and Chief Accounting Officer.
- (2) Mr. Dixon resigned effective July 23, 2008.
- (3) Mr. Bendel resigned effective May 28, 2008.

Overview

The Cheesecake Factory Incorporated has experienced significant growth since its incorporation in 1992 and we will continue to expand our namesake concept, as well as selectively pursue other opportunities to leverage the competitive strengths of our restaurant and bakery operations. Our compensation philosophy and practices have reflected our growth, with an emphasis on aggressive financial performance goals and the use of stock options and restricted shares to motivate and reward our executives for success. The Compensation Committee, which is responsible for the oversight of our executive pay and equity compensation plans, continually evaluates and revises, as necessary, our compensation programs to ensure that they support our business objectives. These objectives include continued growth, sustainability of our brands, profitability, acceptable returns on our investments, and ultimately, the creation of value for our stockholders over the long-term.

Accordingly, the key objectives of our executive compensation program are to:

Pay competitively within the restaurant industry commensurate with our performance;

Tie compensation to our financial, operating, strategic and stock price performance to hold our executives accountable and reward appropriately for performance through compensation;

Reward individual performance and contribution to our success; and

Align the interests of our executives with the interests of our shareholders.

In fiscal 2008 and 2009, the Compensation Committee engaged Farient Advisors LLC ("Farient"), a compensation consulting firm, to complete a detailed evaluation of our executive compensation programs. The Compensation Committee made select changes for fiscal 2009 to further align the design of these programs with our key objectives. These changes are discussed in more detail below under "Principal Elements of Compensation."

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Oversight of Executive Compensation

The Compensation Committee has overall responsibility and authority for approving and evaluating the compensation programs and policies pertaining to our executives, including Named Executive Officers. The specific responsibilities of the Compensation Committee related to executive compensation include:

Overseeing development and implementation of our compensation plans for Named Executive Officers;

Overseeing development and implementation of our equity compensation plans;

Reviewing and approving our Chief Executive Officer and other Named Executive Officer compensation, including setting Incentive Plan goals, evaluating performance, verifying results, and determining pay levels;

Periodically reviewing and making recommendations to the Board of Directors concerning equity and incentive plans, including plan design, and other executive benefits, or perquisites;

Administering our equity-based incentive compensation plans, including the approval of all grants;

Overseeing regulatory compliance with respect to executive and equity compensation matters; and

Reviewing and approving all employment, retention and/or severance agreements for executive officers.

The Compensation Committee is also responsible for reviewing and submitting to the Board of Directors recommendations concerning Board of Director compensation.

When making individual compensation decisions for Named Executive Officers, the Compensation Committee takes many factors into account, including the executive's experience, responsibilities, management abilities and job performance, performance of the Company as a whole, current market conditions and competitive pay for similar positions at comparable companies. These factors are considered by the Compensation Committee in a subjective manner without any specific formula or weighting.

The Compensation Committee relies significantly on the input and recommendations of our Chief Executive Officer when evaluating these factors relative to the compensation of executive officers, excluding his own compensation, which is set according to the terms of his employment agreement. Our Chief Executive Officer provides the Compensation Committee with his assessment of the performance of each Named Executive Officer and his perspective on the factors described above in developing his recommendations for the executive's compensation, including salary adjustments, incentive bonuses, annual equity grants and equity grants awarded in conjunction with promotions. The Compensation Committee discusses our Chief Executive Officer's recommendations and then approves or modifies the recommendations in collaboration with the Chief Executive Officer.

Our Chief Executive Officer's compensation is determined solely by the Compensation Committee. Our Chief Executive Officer and others from our executive management team attend portions of the Compensation Committee meetings. Decisions relating to the Chief Executive Officer's pay are made by the Compensation Committee, without management present. The Compensation Committee reports its activities to our Board of Directors.

The Compensation Committee retains the services of executive compensation consultants to assess the competitiveness of our compensation programs, conduct other research as directed by the Compensation Committee, and support the Compensation Committee in the design and implementation of executive and Board of Director compensation. In fiscal 2008 and 2009, the Compensation Committee retained Fairient Advisors to assist the Compensation Committee and management in the review and assessment of multiple aspects of our compensation programs, including equity compensation practices,

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short-term and long-term incentive design, employment agreement terms for our Chief Executive Officer and Chief Financial Officer, and recommendations regarding our Board of Directors compensation practices. Farient reports directly to the Compensation Committee, while collaborating with management, including our Chief Executive Officer, on behalf of the Compensation Committee, to develop programs which are supportive of our business strategy and needs.

Overview of Program*Overview of Compensation Elements*

During fiscal 2008, our executive compensation and benefits consisted of the components listed in the table below, which provides a brief description of the principal types of compensation, how performance is factored into each type of compensation, and the objectives served by each element. A description of each of these elements is discussed in more detail in the "Principal Elements of Compensation" section below.

Fiscal 2008 Principal Elements of Executive Compensation

Element	Description	Performance Considerations	Primary Objectives
Base Salary	Fixed cash payment	Based on level of responsibility, experience and individual performance	Attract and retain talent Recognize career experience and individual performance
Performance Incentive Plan ("Incentive Plan")	Performance-based annual cash incentive(1)	Measured by consolidated income from operations ("Operating Income") for fiscal 2008, 2007 and 2006	Promote and reward achievement of aggressive Company and divisional annual financial objectives
Long-Term Incentive Plan	Stock options Restricted shares	Value of pay tied to stock price performance	Align executive interests with shareholder interests Attract and retain talent
Retirement and Welfare Benefits	Medical, dental, vision, life insurance and long-term disability insurance Non-qualified deferred compensation plan Defined benefit retirement agreement (for the Chief Executive Officer only)	Not applicable	Attract and retain talent Provide reasonable security to allow executives to perform at their best

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Executive Perquisites	Company-leased vehicle or car allowance Executive physical for Senior Vice President and above only	Not applicable	Attract and retain talent
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(1)

Our Incentive Plan also allows for the payment of discretionary bonuses based on factors such as financial results, advancements in research and development, technological achievements, performance beyond pre-established objectives, extraordinary tangible or intangible contributions to the Company or business unit performance, as well as other factors. Historically, we have not awarded discretionary bonuses except on a selective basis in fiscal 2008 as discussed in the "2008 *Discretionary Awards*" section below. According to the terms of the Incentive Plan, the amount of any discretionary bonus may not exceed 100% of the executive's base salary, among other limitations in our Incentive Plan.

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Market Positioning and Pay Benchmarking

The Compensation Committee has historically targeted base salaries for Named Executive Officers at between the 50th percentile and the 75th percentile of market practice for above average performance without size-adjusting the comparable companies used to determine market practice. With size-adjustments of comparable companies, our base salary target historically has been closer to the 50th percentile. The actual positioning of each Named Executive Officer's pay at target performance is dependent on consideration of the individual's experience, responsibilities, management abilities and job performance, and the performance of the Company as a whole, as outlined above. Actual pay is dependent upon the individual's performance, the Company's financial performance relative to our objectives and our stock price performance. Actual pay can and often does differ substantially from targeted pay based on performance.

The Compensation Committee assesses relative target pay compared to similar companies to support our objective of providing competitive pay commensurate with performance. In January 2008, the Compensation Committee reviewed a competitive executive compensation summary prepared by our Human Resources department using a variety of recognized compensation survey sources. The summary report contained data from comparable companies in the restaurant and hospitality/leisure industries, and for Mr. Byfuglin, from companies of comparable size, to identify a competitive market range for Named Executive Officer base salaries by position.

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In fiscal 2008 and 2009, the Compensation Committee reviewed a competitive analysis of market pay practices for our Chief Executive Officer and our Chief Financial Officer prepared by Farient at the request of the Compensation Committee. This assessment included pay comparisons from comparable companies in the restaurant and hospitality/leisure industries and from recognized survey sources. The specific group of comparable companies used for pay comparisons included public companies in the casual dining segment of the restaurant industry with revenues over \$300 million (as of fiscal 2007) as follows:

Darden Restaurants	Texas Roadhouse
Brinker International	California Pizza Kitchen
CBRL (Cracker Barrel) Group	DineEquity
Bob Evans Farms	McCormick & Schmick's Seafood Restaurants
Ruby Tuesday	Morton's Restaurant Group
Landry's Restaurants	Ruth's Hospitality Group
P.F. Chang's China Bistro	BJ's Restaurants
O'Charley's	Frisch's Restaurants
Denny's	Red Robin Gourmet Burgers

Due to the substantial size differences among these companies and the Company, Farient used regression analyses to size-adjust the results and corroborated the findings with data from survey sources.

The results of this analysis are being used to help determine the terms of a new employment agreement with our Chief Executive Officer, and were used to inform the terms of our employment agreement for our new Chief Financial Officer.

Pay Mix

Because our executives are in a position to directly influence the Company's overall performance, a significant portion of their compensation is at risk through short-and long-term incentive programs. We do not allocate between cash and non-cash compensation and short-term versus long-term compensation based on specific percentages. Instead, we believe that the compensation package for our executives should be generally in-line with the prevailing market, consistent with each executive's level of impact and responsibility.

Principal Elements of Compensation

As described in the table above, we use multiple components to provide a competitive overall compensation and benefits package that is reasonable relative to market and industry practices and tied appropriately to performance. The specific decisions related to each element are outlined in more detail below:

Base Salary

In accordance with our compensation objectives, salaries are set and administered to reflect the value of the position in the marketplace, the career experience of the individual, and the contribution and performance of the individual. For fiscal 2008, the salary of our Chief Executive Officer was set in accordance with his existing employment agreement. For other Named Executive Officers, excluding Ms. Slomann, the Compensation Committee made adjustments based on recommendations by the Chief Executive Officer and the considerations discussed above. Ms. Slomann's salary for fiscal 2008 was set prior to her appointment as our Interim Chief Financial Officer and no adjustment was made after her appointment.

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The following table sets forth the base salary rates for each of the Named Executive Officers for fiscal 2009, 2008 and 2007.

ANNUALIZED BASE SALARY

Name and Principal Position	Fiscal 2009		Fiscal 2008		Fiscal 2007
	\$	% Increase	\$	% Increase	\$
David Overton <i>Chairman of the Board and Chief Executive Officer</i>	(1)	(1)	\$782,000	6.8%	\$732,000
W. Douglas Benn <i>Executive Vice President and Chief Financial Officer(2)</i>	\$400,000	-	-	-	-
Cheryl M. Slomann <i>Interim Chief Financial Officer, Vice President, Controller and Chief Accounting Officer(3)</i>	\$210,000	0%	\$210,000	7.7%	\$195,000
Michael J. Dixon <i>Senior Vice President and Chief Financial Officer(4)</i>	-	-	\$335,000	8.1%	\$310,000
Russell W. Bendel <i>President and Chief Operating Officer The Cheesecake Factory Restaurants, Inc.(5)</i>	-	-	\$450,000	-	\$450,000
Max S. Byfuglin <i>President The Cheesecake Factory Bakery Incorporated</i>	\$327,500	0%	\$327,500	4.0%	\$315,000
Debby R. Zurzolo <i>Executive Vice President, General Counsel and Secretary</i>	\$375,000	0%	\$375,000	4.9%	\$357,500

(1) Mr. Overton's employment agreement is currently being negotiated and his fiscal 2009 salary will be determined pursuant to this negotiation.

(2) Mr. Benn joined the Company as an executive officer on January 19, 2009.

(3)

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Ms. Slomann was appointed Interim Chief Financial Officer effective July 23, 2008. Her appointment ended on January 19, 2009 and she resumed her prior position as Vice President, Controller and Chief Accounting Officer.

- (4) Mr. Dixon resigned effective July 23, 2008.
- (5) Mr. Bendel joined the Company as an executive officer effective September 3, 2007 and resigned effective May 28, 2008.

Table of Contents*Annual Incentive Compensation*

We believe that annual incentive compensation for Named Executive Officers should be based on actual performance against set performance objectives. Each of our executives, including the Named Executive Officers, is eligible to receive a cash bonus based on the achievement of certain performance objectives under the Company's Performance Incentive Plan ("Incentive Plan"). Annual performance bonuses are designed to focus participants on and reward them for the achievement of specific annual financial, strategic, and/or operational objectives of the Company. In the case of Mr. Byfuglin and other executives in our bakery division, the performance objectives include the performance of the bakery division in addition to the Company. Each executive is assigned a target and maximum bonus opportunity as a percentage of base salary.

Actual annual performance bonuses are based on the achievement of performance objectives that are reviewed and agreed to by the Compensation Committee. The performance objectives, and the formula for computing the performance bonus if the target is achieved, are established by the Compensation Committee early in each fiscal year. Performance bonuses are payable in the first quarter of the following year, after the Compensation Committee verifies performance relative to the pre-established objectives and to what extent performance bonuses have been earned.

Performance incentive ranges approved for the Named Executive Officers for fiscal 2008 were as follows:

Name	Performance Incentive Achievable as a Percentage of Salary			
	Below Threshold < 90%	Threshold 90%	Target 100%	Maximum 105%
David Overton	-	12%	48%	60%
W. Douglas Benn(1)	-	-	-	-
Cheryl M. Slomann(2)	-	7.5%	30%	42%
Michael J. Dixon(3)	-	9.0%	36%	48%
Russell W. Bendel(4)	-	10.5%	42%	54%
Max S. Byfuglin	-	10.5%	42%	54%