

HARSCO CORP  
Form DEF 14A  
March 22, 2013  
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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 20549

**SCHEDULE 14A INFORMATION**

**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 under Rule 14a-12

**Harsco Corporation**  
(Name of registrant as specified in its charter)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(4) and 0-11.

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

## Edgar Filing: HARSCO CORP - Form DEF 14A

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

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

.. Fee paid previously with preliminary materials.

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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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**Notice of  
2013 Annual  
Meeting of Stockholders  
and Proxy Statement  
Harsco Corporation**

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**Harsco Corporation**

350 Poplar Church Road  
Camp Hill, PA 17011 USA  
Telephone: 717.763.7064  
Fax: 717.763.6424  
www.harsco.com

March 22, 2013

To Our Stockholders:

You are cordially invited to attend the 2013 Annual Meeting of Stockholders (the Annual Meeting ) of Harsco Corporation (the Company ), which will be held on Tuesday, April 23, 2013, beginning at **8:00 a.m.**, local time, at the Radisson Hotel Harrisburg, Camp Hill, Pennsylvania.

Information about the Annual Meeting, including a listing and discussion of the various matters on which you, as our stockholders, will act, may be found in the formal Notice of Annual Meeting of Stockholders and Proxy Statement included with this mailing. We look forward to greeting as many of our stockholders as possible.

The Company is providing you with the opportunity to vote your shares by calling a toll-free number, by mailing the enclosed Proxy Card or via the Internet as explained in the instructions on the enclosed Proxy Card.

Whether you plan to attend the Annual Meeting or not, we urge you to fill in, sign, date and return the enclosed Proxy Card in the postage-paid envelope provided, or vote by telephone or via the Internet, in order to help ensure that as many shares as possible may be represented at the Annual Meeting. The vote of every stockholder is important and your cooperation in promptly returning your executed Proxy Card, or voting by telephone or via the Internet, is appreciated.

Sincerely,

Patrick K. Decker

*President and Chief Executive Officer*

This document is intended to be mailed to stockholders on or about March 22, 2013.

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**HARSCO CORPORATION**

350 Poplar Church Road

Camp Hill, Pennsylvania 17011 USA

**NOTICE OF 2013 ANNUAL MEETING OF STOCKHOLDERS**

The 2013 Annual Meeting of Stockholders (the Annual Meeting ) of Harsco Corporation (the Company ) will be held on Tuesday, April 23, 2013, beginning at **8:00 a.m.**, local time, at the Radisson Hotel Harrisburg, Camp Hill, Pennsylvania, to consider and act upon the following matters:

1. Election of the 10 nominees named in the Proxy Statement to serve as Directors until the 2014 Annual Meeting of Stockholders;
2. Ratification of the appointment of PricewaterhouseCoopers LLP as independent auditors for the fiscal year ending December 31, 2013;
3. Advisory vote to approve named executive officer compensation;
4. Approval of the 2013 Equity and Incentive Compensation Plan; and
5. Such other business as may properly come before the Annual Meeting.

The Board of Directors of the Company has fixed the close of business on March 1, 2013 as the record date for the determination of stockholders who are entitled to notice of, and to vote at, the Annual Meeting and at any adjournments thereof. Proxies will be accepted continuously from the time of mailing until the closing of the polls at the Annual Meeting.

**Stockholders who do not expect to attend the Annual Meeting in person are requested to fill in, sign, date and return the enclosed Proxy Card in the postage-paid envelope provided, or vote by telephone or via the Internet, as explained in the instructions on the enclosed Proxy Card.**

By order of the Board of Directors,

A. Verona Dorch

*Vice President, General Counsel and*

*Corporate Secretary*

March 22, 2013



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**PROXY STATEMENT**

**ANNUAL MEETING INFORMATION**

**General**

This Proxy Statement and the accompanying form of proxy are being furnished in connection with the solicitation of proxies on behalf of the Board of Directors (the Board) of Harsco Corporation, a Delaware corporation (the Company, we or us), for use at the Annual Meeting of Stockholders of the Company to be held on April 23, 2013 (the Annual Meeting), or at any adjournment of the Annual Meeting.

The following information relates to the Annual Meeting and the voting of your shares at the Annual Meeting:

Type of shares entitled to vote at the Annual Meeting:	Our common stock, par value \$1.25
Record date for stockholders entitled to notice of, and to vote at, the Annual Meeting ( Record Date ):	Close of business on March 1, 2013
Shares of our common stock issued and outstanding as of the Record Date (does not include treasury shares, which are not entitled to be voted at the Annual Meeting):	80,648,802 shares
Proxy Statements, Notices of Annual Meeting and Proxy Cards are intended to be mailed to stockholders:	On or about March 22, 2013
Location of our executive offices:	350 Poplar Church Road,  Camp Hill, Pennsylvania 17011

To obtain directions to attend the Annual Meeting and vote in person, please contact Kenneth D. Julian, Senior Director Corporate Communications, by telephone at (717) 730-3683 or by e-mail at [kjulian@harsco.com](mailto:kjulian@harsco.com).

Information contained on our website is not incorporated by reference into this Proxy Statement, and you should not consider information contained on our website as part of this Proxy Statement. Copies of our Corporate Governance Principles, Code of Conduct and charters of the Board's committees are posted on our website at [www.harsco.com/about-us](http://www.harsco.com/about-us).

**Important Notice Regarding the Availability of Proxy Materials for the Annual Meeting of Stockholders To Be Held on April 23, 2013**

The Notice of 2013 Annual Meeting of Stockholders and Proxy Statement, our Proxy Card, our Annual Report on Form 10-K and our 2012 Summary Annual Report are available free of charge at [www.envisionreports.com/hsc](http://www.envisionreports.com/hsc) (for registered stockholders) or [www.edocumentview.com/hsc](http://www.edocumentview.com/hsc) (for all other stockholders), by calling toll-free (800) 652-8683 or by e-mailing [kjulian@harsco.com](mailto:kjulian@harsco.com).

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### **Voting**

All shares of our common stock entitled to vote at the Annual Meeting are of one class, with equal voting rights. Each share of our common stock held by a stockholder is entitled to cast one vote on each matter voted on at the Annual Meeting. In order for the Annual Meeting to be valid and the actions taken binding, a quorum of stockholders must be present at the meeting, either in person or by proxy. A quorum consists of a majority of the issued and outstanding shares of our common stock as of the Record Date. Assuming that a quorum is present, (i) the 10 nominees who receive the greatest number of votes for election will be elected as Directors, and (ii) the affirmative vote of the holders of at least a majority of our outstanding common stock present in person or by proxy and entitled to vote on matters at the Annual Meeting will be required for (a) ratification of the appointment of PricewaterhouseCoopers LLP as independent auditors for the fiscal year ending December 31, 2013, (b) approval, on an advisory basis, of our named executive officer compensation and (c) approval of the 2013 Equity and Incentive Compensation Plan, provided that the total shares voted on the proposal to approve the 2013 Equity and Incentive Compensation Plan must represent at least a majority of the issued and outstanding shares of our common stock as of the Record Date. The vote required to act on all other matters to come before the Annual Meeting will be determined in accordance with the voting requirements established by Delaware law and our certificate of incorporation and by-laws, each as amended to date.

Stockholder votes will be tabulated by an independent inspector of election for the Annual Meeting. The shares of our common stock represented by each properly submitted proxy received by the Board will be voted as follows at the Annual Meeting:

**If instructions are provided**, in accordance with such instructions; or

**If no instructions are provided**, (1) FOR the election as Directors of each of the 10 nominees of the Board, (2) FOR the ratification of the appointment of PricewaterhouseCoopers LLP as independent auditors for the fiscal year ending December 31, 2013, (3) FOR approval, on an advisory basis, of our named executive officer compensation, (4) FOR approval of the 2013 Equity and Incentive Compensation Plan, and (5) in accordance with the best judgment of the named proxies on any other matters properly brought before the Annual Meeting.

### **Revocation of Proxies**

Any proxy granted pursuant to this solicitation may be revoked by the person granting the proxy at any time before it is voted at the Annual Meeting. Proxies may be revoked by (i) delivering to the Secretary of the Company a written notice of revocation bearing a date later than that of the proxy, (ii) duly executing and delivering a later dated written proxy relating to the same shares, or (iii) attending the Annual Meeting and voting in person. If you hold your shares through a bank, broker or other nominee, only that bank, broker or other nominee can revoke your proxy on your behalf.

### **Withheld Votes, Abstentions and Broker Non-Votes**

In certain circumstances, a stockholder will be considered to be present at the Annual Meeting for quorum purposes but will not be deemed to have cast a vote on a matter. This occurs when a stockholder is present but specifically withholds a vote or abstains from voting on a matter, or when shares are represented at the Annual Meeting by a proxy conferring authority to vote only on certain matters. The ratification of our auditors is a

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routine matter and, therefore, brokers and other nominees have the authority to vote shares for which no instructions are given with respect to that matter. In accordance with Delaware law and our certificate of incorporation and by-laws, each as amended to date, votes withheld and broker non-votes will not be treated as votes cast with respect to the election of Directors, and therefore will not affect the outcome of Director elections. With respect to the approval of the compensation of our named executive officers and the approval of the 2013 Equity and Incentive Compensation Plan, abstentions will have the effect of negative votes but broker non-votes will not have any effect on determining the outcome. With respect to the ratification of our auditors, abstentions will have the effect of negative votes.

### **Other Business**

The Board knows of no other business to come before the Annual Meeting. However, if any other matters are properly presented at the Annual Meeting, or any adjournment of the Annual Meeting, the persons voting the proxies will vote them in accordance with their best judgment.

## **CORPORATE GOVERNANCE**

We have a long-standing commitment to good corporate governance practices. These practices come in many different forms and apply at all levels of our organization. They provide the Board and our senior management with a framework that defines responsibilities, sets high standards of professional and personal conduct and promotes compliance with our various financial, ethical, legal and other obligations and responsibilities.

### **Corporate Governance Principles**

The Board has adopted Corporate Governance Principles that, along with the charters of the Board committees, provide the framework for our Board's operation and governance. The Board's Nominating and Corporate Governance Committee (the Nominating Committee) is responsible for overseeing and reviewing our Corporate Governance Principles at least annually and recommending any proposed changes to the Board for approval. The Corporate Governance Principles are available on our website at [www.harsco.com/about-us](http://www.harsco.com/about-us) in the Corporate Governance section.

### **Code of Conduct**

We have adopted a Code of Conduct applicable to our Directors, officers and employees worldwide. The Code of Conduct is issued in booklet form and an online training program facilitates new employee orientation and individual refresher training. Our Code of Conduct is produced in over 20 languages. The Code of Conduct, including amendments thereto or waivers thereof granted to a Director or officer, if any, can be viewed at the Corporate Governance section of our website at [www.harsco.com/about-us](http://www.harsco.com/about-us).

### **Stockholder and Interested Party Communications with Directors**

The Board has a formal process for stockholders and interested parties to communicate directly with the Non-Executive Chairman, the non-management Directors or with any individual member of the Board. Stockholders and interested parties may contact any member of the Board by writing to the specific Board member in care of our Corporate Secretary at our Corporate Headquarters (350 Poplar Church Road, Camp Hill, PA 17011).

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Our Corporate Secretary will forward any such correspondence to the applicable Board member; provided, however, that any such correspondence that is considered by our Corporate Secretary to be improper for submission to the intended recipients will not be provided to such Directors. In addition, Board members, including the Non-Executive Chairman, can be contacted by e-mail at [BoardofDirectors@harsco.com](mailto:BoardofDirectors@harsco.com).

### **Independence Standards for Directors**

The following NYSE Euronext standards, which are also posted under the Corporate Governance section of our website at [www.harsco.com/about-us](http://www.harsco.com/about-us), have been applied by the Board in determining whether individual Directors qualify as independent. References to us include our consolidated subsidiaries.

No Director will be qualified as independent unless the Board affirmatively determines that the Director has no material relationship with us, either directly or as a partner, stockholder or officer of an organization that has a relationship with us. We will disclose these affirmative determinations.

No Director who is a former employee of ours can be deemed independent until three years after the end of his or her employment relationship with us, although certain past employment as an interim Chairman or Chief Executive Officer ( CEO ) or other executive officer will not disqualify a Director from being considered independent following that employment.

No Director whose immediate family member is or has been an executive officer of ours can be deemed independent until three years after such family member has ceased to be an executive officer.

No Director who receives, or whose immediate family member receives, more than \$120,000 during any twelve-month period in direct compensation from us, other than director and committee fees and deferred compensation for prior service (provided such compensation is not contingent in any way on continued service), can be independent until three years after he or she ceases to receive more than \$120,000 during any twelve-month period in such compensation.

No Director can be independent:

- i who is a current partner or employee of our internal or external auditor;
- i whose immediate family member is a current partner of our internal or external auditor;
- i whose immediate family member is a current employee of our internal or external auditor and personally works on our audit; or
- i who, or whose immediate family member, was within the last three years a partner or employee of such auditor and personally worked on our audit within that time.

No Director who is employed, or whose immediate family member is employed, as an executive officer of another company where any of our present executive officers serve on that company's compensation committee can be independent until three years after the

end of such service or employment relationship.

No Director who is an employee, or whose immediate family member is an executive officer, of a company that makes payments to, or receives payments from, us for

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property or services in an amount which, in any single fiscal year, exceeds the greater of \$1 million, or 2% of such other company's consolidated gross revenues, can be independent until three years after falling below such threshold.

The Board has affirmatively determined that the following nine Directors who are standing for election or re-election are independent: Messrs. Earl, Everitt, Graham, Growcock, Knueppel, Loree, Sordoni, and Wilburn and Ms. Eddy.

**Executive Sessions of Independent Directors**

Independent Directors regularly meet in executive session without management. Our Non-Executive Chairman, Henry W. Knueppel, presides over each session of the independent Directors. Prior to Mr. Knueppel's appointment as Non-Executive Chairman, Kathy G. Eddy served as Lead Director and presided at sessions of the independent Directors. During the 2012 fiscal year, the independent Directors held 10 meetings. Each of the 10 meetings was attended by the complete group of independent Directors serving on our Board at the time of the meeting.

**Director Attendance at Annual Meeting**

It is our policy to request that all Board members attend annual stockholder meetings. However, we also recognize that personal attendance by all Directors is not always possible. All of our then-current Directors attended the Annual Meeting of Stockholders in 2012.

**Current Structure of the Board**

Information regarding the structure of our Board immediately following our Annual Meeting:

Size of Board:	10 members
Size of Board authorized in the By-laws:	No fewer than five nor more than 12
Number of independent Directors:	Nine
Size of Board established by:	Board and the Company's by-laws

As of September 10, 2012, we separated the roles of CEO and Chairman in recognition of the differences between the two roles. Our CEO is responsible for planning, formulating and coordinating the development and execution of our corporate strategy, policies, goals and objectives. He is accountable for Company performance and reports directly to the Board.

Our CEO, Patrick K. Decker, became a member of the Board on October 29, 2012. The Board unanimously elected Mr. Decker as a Director in consideration of the insights he brings to the Board in light of his day-to-day leadership of the Company and intimate knowledge of our business and operations.

Our Non-Executive Chairman's responsibilities include the following:

serving as a resource to the CEO in connection with his transition;

serving as a resource to the CEO in connection with strategic planning and other matters of strategic importance to the Company;

receiving reports from the CEO, organizing and facilitating the CEO evaluation process and providing ongoing, constructive feedback to the CEO;

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consulting with the CEO regarding the Company's relations and communications with stockholders of the Company, analysts and the investor community;

chairing meetings of the Board;

setting the schedule and agenda for Board meetings in consultation with the CEO;

determining the information that is sent to the Board in consultation with the CEO;

presiding over the executive sessions and other meetings of the independent Directors; and

communicating the results of meetings of the independent Directors to the CEO and other members of management, as appropriate. We believe this Board leadership structure recognizes the time, effort and commitment that our CEO is required to devote to his position in the current business environment and the commitment required to fulfill his responsibilities.

**Enterprise Risk Management**

Our management is responsible for assessing and managing our exposure to risk. We have established an enterprise risk management process to identify, assess and manage the most significant risks facing us. As part of this process, we provide periodic updates to and receive feedback from the Board regarding the risks identified by the enterprise risk management process. In addition, the Audit Committee has oversight responsibility for financial risks. Our Audit Committee regularly meets with and discusses with management and our independent auditors major financial risks and the steps management has taken to monitor and control these risks. The Board is regularly advised of financial risks through discussions with management and the reports of the Audit Committee. We believe that our leadership structure, discussed in detail above, supports the risk oversight function of the Board.

**Meeting Attendance and Committees**

The Board held 10 meetings during the fiscal year ended December 31, 2012. Each Director attended at least 75% of the aggregate number of Board and applicable committee meetings held during the period of 2012 for which he or she served as a Director.

We have standing Audit, Management Development and Compensation, and Nominating and Corporate Governance committees.

**Audit Committee**

Meetings in 2012: five

Members: Mr. Loree (Chairman), Messrs. Earl, Graham and Everitt and Ms. Eddy (Mr. Knueppel served as Chairman until February 2012)

Duties: Established in accordance with Section 3(a)(58)(A) of the Securities Exchange Act of 1934, as amended (the Exchange Act). Oversees our financial reporting processes, including meeting with members of management, the external auditors and the internal auditors, reviewing and approving both audit and non-audit services, reviewing the results of the annual audit





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and reviewing the adequacy of our internal controls. The Audit Committee also discusses with management and the independent auditors our guidelines, policies and controls with respect to risk assessment and risk management. The Audit Committee is also responsible for managing the relationship with the external auditors and has established a direct reporting relationship with our Internal Audit Group (i.e., our Vice President, Internal Audit reports directly to the Audit Committee). The Audit Committee also oversees our compliance program, in conjunction with the Nominating Committee. The Audit Committee meets with management and with the independent auditors each quarter to review and discuss our Quarterly Report on Form 10-Q or Annual Report on Form 10-K prior to its filing with the Securities and Exchange Commission (the "SEC"), and the full Audit Committee meets with management and our independent auditors to review and discuss our Quarterly Earnings Releases prior to their release. See also the Report of the Audit Committee below. The Audit Committee completed a review of its charter in 2013 and determined that certain changes were desirable. A copy of the Audit Committee charter can be viewed at the Corporate Governance section of our website at [www.harsco.com/about-us](http://www.harsco.com/about-us).

**Management Development and Compensation Committee**

Meetings in 2012: seven

Members: Messrs. Growcock (Chairman), Everitt, Sordoni and Wilburn

Duties: Administers our executive compensation policies and plans and advises the Board regarding management succession and compensation levels for members of management. The Management Development and Compensation Committee (the "Compensation Committee") approves compensation and cash incentives for our senior officers and makes recommendations to the Board regarding equity-based and incentive compensation plans. The Compensation Committee's responsibilities include: (i) evaluating and approving the compensation of our executive officers, including reviewing and approving corporate performance goals and objectives related to the compensation of our executive officers; (ii) evaluating the executive officers and their performance relative to compensation goals and objectives; (iii) determining and approving the executive officers' compensation levels based on the Compensation Committee's evaluation of their performance; (iv) evaluating and approving, or

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recommending to the Board for approval, compensation grants to executive officers under our annual and incentive compensation plans, policies and procedures, including equity-based compensation and incentive compensation plans; (v) overseeing our policies on structuring compensation programs for executive officers to preserve tax deductibility; (vi) delegating authority to subcommittees and to the Company's management for administration or other duties when the Compensation Committee deems it appropriate; (vii) adopting procedures and guidelines as the Compensation Committee deems appropriate to carry out its oversight functions; (viii) producing any Compensation Committee reports on executive compensation required to be included in our filings with the SEC; (ix) reviewing and discussing with our management the Compensation Discussion and Analysis (referred to herein as the CD&A) to be included in our filings with the SEC; (x) determining whether to recommend to the Board that the CD&A be included in our filings with the SEC; (xi) making regular reports to the full Board on the activities of the Compensation Committee; and (xii) performing such other duties as may be assigned to the Compensation Committee by law or the Board. The Compensation Committee completed a review of its charter in 2012 and determined that certain changes were desirable. A copy of the Compensation Committee's charter can be viewed at the Corporate Governance section of our website at [www.harsco.com/about-us](http://www.harsco.com/about-us).

**Nominating and Corporate Governance Committee**

Meetings in 2012: five

Members: Messrs. Graham (Chairman), Growcock, Loree, Sordoni and Wilburn

Duties: Recommends Director candidates to the Board for election, reviews and recommends potential new Director candidates, reviews Director candidates recommended by our stockholders, makes recommendations to the Board regarding compensation for our Directors, oversees our corporate governance program and, in conjunction with the Audit Committee, oversees our compliance program. The role of the Nominating Committee is described in greater detail under the section entitled "The Nominating Process" below. The Nominating Committee completed a review of its charter in 2012 and determined that certain changes were desirable. A copy of the Nominating Committee's charter can be viewed at the Corporate Governance section of our website at [www.harsco.com/about-us](http://www.harsco.com/about-us).

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### **THE NOMINATING PROCESS**

The Nominating Committee is responsible for overseeing the selection of qualified nominees to serve as members of the Board and for guiding our corporate governance philosophy and practices. The Nominating Committee is composed of five Directors, each of whom is considered independent under the rules of the NYSE Euronext. The Nominating Committee operates pursuant to a written charter that complies with the guidelines established by the NYSE Euronext.

The Nominating Committee has not adopted formal procedures in selecting individuals to serve as members of the Board. Instead, it utilizes general guidelines that allow it to adjust the process to best satisfy the objectives established for any director search. The first step in the director search process is to identify the type of Director candidate the Nominating Committee may desire for a particular opening. This may involve identifying a specific background, skill set or set of experiences. Once the type of Director candidate is identified, the Nominating Committee next determines the best method of finding a Director candidate who satisfies the specified criteria. The Nominating Committee may consider Director candidates recommended by management, by other members of the Nominating Committee or the Board, or by stockholders, or it may engage a third party to conduct a search for possible Director candidates. The Nominating Committee has used independent search firms in the past to assist in the identification and evaluation of possible Director candidates. In 2012, the search firm RSR Partners was paid an aggregate fee of \$25,000 (plus \$3,553 in expenses) for services relating to the development of a Director profile report.

The Nominating Committee will consider all Director candidates in the same manner, regardless of the source of the recommendation of such Director candidate. The Nominating Committee will consider recommendations for Director candidates from stockholders if such recommendations are in writing and set forth the following information:

1. The full legal name, address and telephone number of the stockholder recommending the Director candidate for consideration and whether that stockholder is acting on behalf of or in concert with other beneficial owners, and, if so, the same information with respect to them.
2. The number of shares held by the recommending stockholder as of a recent date and how long such shares have been held, or, if such shares are held in street name, reasonable evidence satisfactory to the Nominating Committee of such stockholder's ownership of such shares as of a recent date.
3. The full legal name, address and telephone number of the proposed nominee for Director.
4. A reasonably detailed description of the proposed nominee's background, experience and qualifications, financial literacy and expertise, as well as any other information required to be disclosed in the solicitation of proxies for election of directors pursuant to the rules of the SEC, and the reasons why, in the opinion of the recommending stockholder, the proposed nominee is qualified and suited to be one of our Directors.
5. Disclosure of any direct or indirect relationship (or arrangements or understandings) between the recommending stockholder and the proposed nominee (or any of their respective affiliates).

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6. Disclosure of any direct or indirect relationship between the proposed nominee and the Company, any of our employees or Directors, any beneficial owner of more than 5% of our common stock, or any of their respective affiliates.
7. Disclosure of any direct or indirect interest that the recommending stockholder or proposed nominee may have with respect to any pending or potential proposal or other matter to be considered at this Annual Meeting or any subsequent meeting of our stockholders.
8. A written, signed and notarized acknowledgement from the proposed nominee consenting to such recommendation by the recommending stockholder, confirming that he or she will serve as a Director, if so elected, and consenting to our undertaking of an investigation into his or her background, experience and qualifications, any direct or indirect relationship with the recommending stockholder, the Company, our Directors or management or 5% stockholders, or interests in proposals or matters, and any other matter reasonably deemed relevant by the Nominating Committee to its considerations of such person as a potential Director candidate.

This information must be submitted as provided under the heading STOCKHOLDER PROPOSALS AND NOMINATIONS FOR PRESENTATION AT 2014 ANNUAL MEETING OF STOCKHOLDERS.

There were no material changes to the procedures relating to stockholder nominations during 2012, and there have been no such changes to date in 2013. The Nominating Committee believes that these procedural requirements are intended solely to ensure that it has a sufficient basis on which to assess potential Director candidates and are not intended to discourage or interfere with appropriate stockholder nominations. The Nominating Committee does not believe that any such requirements subject any stockholder or proposed nominee to any unreasonable burden. The Nominating Committee and the Board reserve the right to change the above procedural requirements from time to time and/or waive some or all of the foregoing requirements with respect to certain nominees, but any such waiver shall not preclude the Nominating Committee from insisting upon compliance with any and all of the above requirements by any other recommending stockholder or proposed nominees.

Once a Director candidate is identified by the Nominating Committee or recommended by a stockholder, the Nominating Committee conducts an evaluation of the Director candidate. The evaluation generally includes interviews and background and reference checks. Director candidates recommended by a stockholder are evaluated in the same manner as Director candidates identified by any other means. While the Nominating Committee has not established minimum criteria for a Director candidate, it has established important factors for consideration when evaluating a Director candidate. These factors include the following (although Director candidates need not possess all of the following characteristics, and not all factors are necessarily weighted equally):

integrity and strength of character;

mature judgment;

strategic thinker;

demonstrated leadership skills;

business experience, including relevant industry experience;