

BSD MEDICAL CORP
Form DEF 14A
December 28, 2009

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

SCHEDULE 14A

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

Filed by the Registrant

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

BSD MEDICAL CORPORATION
(Name of Registrant as Specified in Its Charter)

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

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- No fee required.
- 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:

BSD MEDICAL CORPORATION
2188 West 2200 South, Salt Lake City, Utah 84119

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS OF
BSD MEDICAL CORPORATION

February 3, 2010

TO THE STOCKHOLDERS OF BSD MEDICAL CORPORATION:

The annual meeting of the stockholders (the “Annual Meeting”) of BSD Medical Corporation (the “Company”) will be held on February 3, 2010, at The Little America Hotel located at 500 South Main Street, Salt Lake City, Utah 84101. The Annual Meeting will convene at 9:00 a.m. Mountain Time, to consider and take action on the following proposals, which are more fully described in the Proxy Statement:

1. to elect seven members to the Board of Directors to serve until the next annual meeting or until their successors are duly elected and qualified;
2. to approve an amendment and restatement of the Company’s Third Amended and Restated 1998 Director Stock Plan;
3. to approve an amendment and restatement of the Company’s Second Amended and Restated 1998 Stock Incentive Plan;
4. to ratify the selection of Tanner LC as the Company’s independent registered public accountants for the fiscal year ending August 31, 2010; and
5. to transact such other business as may properly come before the Annual Meeting or any adjournment or postponement thereof.

Only owners of record of the Company’s issued and outstanding common stock as of the close of business on December 18, 2009 (the “Record Date”) will be entitled to notice of and to vote at the Annual Meeting. Each share of common stock is entitled to one vote.

The Company’s Proxy Statement is attached hereto. Financial and other information concerning the Company is contained in the Company’s Annual Report on Form 10-K for the fiscal year ended August 31, 2009, which accompanies this Proxy Statement.

THE ATTENDANCE AT AND/OR VOTE OF EACH STOCKHOLDER AT THE ANNUAL MEETING IS IMPORTANT, AND EACH STOCKHOLDER IS ENCOURAGED TO ATTEND. TO ASSURE THAT YOUR VOTE IS COUNTED, PLEASE COMPLETE, SIGN, DATE AND PROMPTLY MAIL THE ENCLOSED PROXY WHETHER OR NOT YOU PLAN TO ATTEND THE ANNUAL MEETING.

Important Notice Regarding the Availability of Proxy Materials for the
Stockholders Meeting to be Held February 3, 2010:

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The proxy statement and annual report to stockholders are available at
<https://materials.proxyvote.com/055662>.

BSD MEDICAL CORPORATION
BY ORDER OF THE BOARD OF
DIRECTORS

Salt Lake City, Utah, December 29, 2009

Dennis P. Gauger, Secretary

BSD MEDICAL CORPORATION
2188 West 2200 South, Salt Lake City, Utah 84119

PROXY STATEMENT

BSD MEDICAL CORPORATION

ANNUAL MEETING OF STOCKHOLDERS
TO BE HELD ON FEBRUARY 3, 2010

This Proxy Statement is furnished in connection with the solicitation of proxies by and on behalf of the Board of Directors (the "Board of Directors" or the "Board") of BSD Medical Corporation, a Delaware corporation (the "Company" or "BSD"), for use at the annual meeting of the stockholders (the "Annual Meeting") to be held February 3, 2010 at The Little America Hotel located at 500 South Main Street, Salt Lake City, Utah 84101, at 9:00 a.m., Mountain Time. Directions to the annual meeting can be obtained by calling Michelle Cisneros at (801) 972-5555.

THIS PROXY STATEMENT, THE NOTICE OF ANNUAL MEETING OF STOCKHOLDERS AND FORM OF PROXY ARE FIRST BEING MAILED TO THE COMPANY'S STOCKHOLDERS ON OR ABOUT DECEMBER 29, 2009.

At the Annual Meeting, the stockholders of the Company will be asked to vote on four proposals. Proposal 1 is the annual election of seven directors to serve on the Company's Board of Directors. Proposal 2 is an amendment and restatement of the Company's Third Amended and Restated 1998 Director Stock Plan to increase the number of shares of common stock reserved for issuance under the plan from 1,500,000 to 1,750,000, to extend the termination date of the plan from August 31, 2011 to August 31, 2015, and to make certain other changes. Proposal 3 is an amendment and restatement of the Company's Second Amended and Restated 1998 Stock Incentive Plan to increase the number of shares of common stock reserved for issuance under the plan from 3,427,300 to 6,337,300. Proposal 4 is the ratification of the selection of Tanner LC as the Company's independent registered public accountants for the fiscal year ending August 31, 2010.

A proxy for use at the Annual Meeting is enclosed. If you execute and deliver a proxy by mailing a proxy card, or by voting via the internet or telephone, you have the right to revoke your proxy at any time before it is exercised by delivering to the Secretary of the Company an instrument revoking it or a duly executed proxy bearing a later date, or by attending the Annual Meeting and voting in person. Subject to revocation, the proxy holders will vote all shares represented by a properly executed proxy received in time for the Annual Meeting in accordance with the instructions on the proxy. If no instruction is specified with respect to a matter to be acted upon, the shares represented by the proxy will be voted FOR the proposal in accordance with the recommendation of the Board of Directors.

We will bear the expenses of preparing, assembling, printing and mailing this Proxy Statement and the materials used in the solicitation of proxies. Proxies will be solicited through the mail and may be solicited by our officers, directors and employees in person or by telephone. They will not receive additional compensation for this effort. We do not anticipate paying any compensation to any other party for the solicitation of proxies, but may reimburse brokerage firms and others for their reasonable expenses in forwarding solicitation material to beneficial owners.

RECORD DATE AND QUORUM REQUIREMENTS

December 18, 2009 has been fixed as the record date (the "Record Date") for the determination of stockholders entitled to notice of and to vote at the Annual Meeting. As of the Record Date, 22,014,970 shares of our common stock ("Common Stock") were issued and outstanding. Each outstanding share of common stock will be entitled to one vote on each matter submitted to a vote of the stockholders at the Annual Meeting.

The holders of one-third of the shares of the Common Stock outstanding on the Record Date, present in person or by proxy, will constitute a quorum for the transaction of business at the Annual Meeting and at any adjournment or postponement thereof. Any abstentions and broker non-votes will be deemed as present for purposes of determining a quorum at the Annual Meeting. The seven individuals receiving the most votes will be elected to serve as directors of the Company. Abstentions and broker non-votes will not have the effect of being counted as voted in favor of or against the election of directors. All proposals, except for the election of directors, must be approved by a majority of the votes present in person or represented by proxy at the Annual Meeting, at which a quorum is present. Abstentions will have the effect of being counted as voted against any of these proposals. Broker non-votes will not have the effect of being counted as voted in favor of or against any of these proposals.

MAIL VOTING PROCEDURES

To vote by mail, you should complete, sign and date your proxy card and mail it in the pre-addressed postage-paid envelope that accompanies the delivery of the proxy card. A proxy card submitted by mail must be received by the time of the Annual Meeting in order for the shares to be voted.

TELEPHONE VOTING PROCEDURES

The telephone authorization procedure is designed to authenticate identity to allow you to vote your shares and confirm that your instructions have been properly recorded. Specific instructions to be followed are set forth on the enclosed proxy card. Telephone voting facilities for stockholders of record are available 24 hours a day and will close at 11:59 p.m. Eastern Time on February 2, 2010.

INTERNET VOTING PROCEDURES

The internet authorization procedure is designed to authenticate identity to allow you to vote your shares and confirm that your instructions have been properly recorded. Specific instructions to be followed are set forth on the enclosed proxy card. Internet voting facilities for stockholders of record are available 24 hours a day and will close at 11:59 p.m. Eastern Time on February 2, 2010.

PROPOSAL 1: ELECTION OF DIRECTORS

At the Annual Meeting, seven directors are to be elected to serve until the next annual meeting of stockholders or until a successor for such director is elected and qualified, or until the death, resignation, or removal of such director. It is intended that the proxies will be voted for the seven nominees named below for election to our Board of Directors unless authority to vote for any such nominee is withheld. Each of the nominees is currently a director of the Company. Each person nominated for election has agreed to serve if elected, and the Board of Directors has no reason to believe that any nominee will be unavailable or will decline to serve. In the event, however, that any nominee is unable or declines to serve as a director at the time of the Annual Meeting, the proxies will be voted for any nominee who is designated by the current Board of Directors to fill the vacancy. Unless otherwise instructed, the proxy holders will vote the proxies received by them FOR the nominees named below. The seven candidates receiving the highest number of affirmative votes of the shares entitled to vote at the Annual Meeting will be elected as directors.

DIRECTORS

The names of the nominees, their ages and their respective business backgrounds are set forth below as of August 31, 2009.

Name	Position(s) With the Company	Age	Director Since
Timothy C. McQuay	Independent Director and Chairman of the Board	58	2008
Harold R. Wolcott	President and Director	63	2009
Paul F. Turner, MSEE	Senior Vice President, Chief Technology Officer and Director	62	1994
Gerhard W. Sennewald, Ph.D.	Director	73	1994
Michael Nobel, Ph.D.	Independent Director	69	1998
Douglas P. Boyd, Ph.D.	Independent Director	67	2005
Steven G. Stewart	Independent Director and Financial Expert	61	2006

NOMINEES FOR ELECTION TO THE BOARD OF DIRECTORS

Timothy C. McQuay has served as a director of BSD since February 2008 and currently serves as Chairman of the Board of Directors. He is a Managing Director with B Riley & Co., a Los Angeles based investment banking firm. Prior to joining B Riley in September 2008, Mr. McQuay served for ten years as Managing Director Investment Banking at A. G. Edwards & Sons, Inc., where he specialized in Healthcare, including medical technology, biotechnology and specialty pharmaceuticals. He previously served as Partner and Managing Director Investment Banking at Crowell, Weedon & Company; as Vice President Corporate Development at Kerr Group, Inc.; as Managing Director Merchant Banking at Union Bank of California; as Senior Vice-President Corporate Finance at Wedbush Morgan Securities, and as Vice-President Brokerage Services at Alexander & Alexander, Inc. Mr. McQuay holds an AB in Economics from Princeton University and an MBA from UCLA.

Harold R. Wolcott has served as a director of BSD since April 2009. Mr. Wolcott also has served as President of BSD since April 2009. Mr. Wolcott has 40 years experience managing and growing newly-formed venture capital financed corporations as well as multi-million dollar medical device businesses with international operations. He has a wide

range of experience in the areas of product research, product engineering, manufacturing and plant management, as well as expertise in all aspects of sales and marketing, acquisition/integration and the sale of medical device businesses. Prior to joining the Company, Mr. Wolcott served for a period of time as President and Chief Operating Officer and later as Director of Dimicron Inc., a development stage medical company utilizing synthetic diamond for orthopedic applications, from August 2006 until March 2009. From March 2001 until June 2005, Mr. Wolcott served as Chief Operating Officer and Director of Rubicon Medical, Inc., a company focusing on proprietary technology in embolic protection for interventional cardiology and interventional neurology.

Paul F. Turner, MSEE, has served as a director of BSD since 1994. Mr. Turner also has served as the Senior Vice President and Chief Technology Officer of BSD since August 1999. From October 1995 to August 1999, Mr. Turner served as the Acting President of BSD. From 1978 to October 1995, Mr. Turner served in various capacities with BSD, including Staff Engineer, Staff Scientist, Senior Scientist, Vice President of Research, and Senior Vice President of Research. Mr. Turner has led the design of microwave treatment systems for tumors, including the development of external phased array antenna technology to focus radiated microwave energy deep into the central area of the body to treat deep tumors. He has also integrated this technology with magnetic resonance imaging to non-invasively monitor treatments within the patient's body.

Gerhard W. Sennewald, Ph.D., has served as a director of BSD since 1994. From April 1985 to the present, Dr. Sennewald has served as the President and Chief Executive Officer of Medizin-Technik GmbH, of Munich, Germany, a firm which is engaged in the business of distributing hyperthermia equipment and diagnostic imaging equipment and services. In connection with his service to Medizin-Technik GmbH, Dr. Sennewald has been BSD's key European representative and distributor for 17 years and has been instrumental in obtaining the majority of BSD's foreign sales. He also serves on the Board of Directors of TherMatrix, Inc.

Michael Nobel, Ph.D., has served as a director of BSD since January 1998. Dr. Nobel participated in the introduction of magnetic resonance imaging as European Vice President of Fonar Corp. From 1991 to 2007, Dr. Nobel served as the Executive Chairman of the MRAB Group, a company providing diagnostic imaging services to Sweden. From 1995 to 2006, Dr. Nobel was Chairman of the Board of the Nobel Family Society and the American Non-Violence Project Inc. He has also been a consultant to Unesco in Paris and the United Nations Social Affairs Division in Geneva. Today, Dr. Nobel is chairman or board member of ten international companies in medical diagnostics, treatment and information systems; other areas included banking, IT, oil exploration and environmental management. He is visiting professor at the Tokyo Institute of Technology in Japan.

Douglas P. Boyd, Ph.D., has served as a director of BSD since 2005. From January 2007 to the present, Dr. Boyd has served as Chief Executive Officer of TeleSecurity Sciences, Inc., a privately-held company in the business of developing solutions for increasing the effectiveness and automation of airport explosives detection systems. From 1983 to 2005, Dr. Boyd was an adjunct professor of radiology at the University of California, San Francisco. From 1980 to 2004, Dr. Boyd served as Chairman of the Board, Chief Executive Officer and Chief Technology Officer of Imatron Inc., a public company that developed and manufactured ultrafast electron beam CT scanners for use in hospitals and clinics. He is internationally known as an expert in radiology and computed tomography ("CT") imaging systems, and has pioneered the development of fan-beam CT scanners, Xenon detector arrays and EBT scanners. Dr. Boyd has been awarded 16 U.S. patents. He has published more than 100 scientific papers and is a frequent speaker at universities and symposia.

Steven G. Stewart has served as a director of BSD since 2006. He is currently the Chief Financial Officer for Headwaters, Inc. (a New York Stock Exchange company). Mr. Stewart served as Headwaters' Chief Financial Officer from July 1998 until October 2005 when he became the Treasurer and subsequently the Director of Financial Affairs. He was re-appointed as the Chief Financial Officer of Headwaters on September 4, 2007. Prior to joining Headwaters, Mr. Stewart served as a business assurance partner for PricewaterhouseCoopers LLP (formerly Coopers & Lybrand LLP), and as an audit partner with Ernst & Young (formerly Arthur Young), including service as the Salt Lake City office Director of High Technology and Entrepreneurial Services.

COMPOSITION OF THE BOARD OF DIRECTORS

Our Board of Directors currently consists of seven directors. Directors are elected at each annual meeting of stockholders to serve until the next annual meeting of stockholders or until their successors are duly elected and qualified. There are no family relationships among any of our directors, officers or key employees.

CODE OF ETHICS

We have adopted a Code of Ethics that applies to all of our directors, officers and employees. Our Code of Ethics is available on our website (www.bsdmc.com) on our corporate governance page of the investor section of our website. We intend to post amendments to or waivers from our Code of Ethics (to the extent applicable to our chief executive officer, principal financial officer or principal accounting officer) on our website.

AFFIRMATIVE DETERMINATIONS REGARDING DIRECTOR INDEPENDENCE

The Board of Directors has determined each of the following directors to be an “independent director” as such term is defined in the NASDAQ Stock Market Listing Standards: Timothy C. McQuay, Michael Nobel, Douglas P. Boyd and Steven G. Stewart.

In this Proxy Statement, these four directors are referred to individually as an “Independent Director” and collectively as the “Independent Directors.”

MEETINGS AND COMMITTEES OF THE BOARD OF DIRECTORS

During fiscal year 2009, the Board of Directors met five times and no director attended fewer than 75% of the meetings of the Board or any of the Board committees of which a director was a member. Although we do not have a formal policy regarding attendance by directors at our annual meeting, we encourage directors to attend and all directors attended the last annual meeting.

The Board of Directors has formed an audit committee and a compensation committee. A copy of the charter of our audit committee is available on our website (www.bsdmc.com) on our corporate governance page of the investor section of our website.

The Audit Committee. The Audit Committee, which held four meetings during fiscal year 2009, is responsible for reviewing and monitoring our financial statements and internal accounting procedures, recommending the selection of independent auditors by the Board, evaluating the scope of the annual audit, reviewing audit results, consulting with management and our independent auditor prior to presentation of financial statements to stockholders and, as appropriate, initiating inquiries into aspects of our internal accounting controls and financial affairs. The Board of Directors has adopted a written audit committee charter.

The members of the Audit Committee are Messrs., Boyd, Stewart, Nobel and McQuay. Mr. Stewart is currently serving as the audit committee chairman and financial expert. All members of the Audit Committee are Independent Directors.

The Nominating Committee. The Company does not have a standing nominating committee or nominating committee charter. Each director participates in decisions relating to nominations for directors. The Board of Directors believes that, considering the size of the Company and the Board of Directors, nominating decisions can be easily made on a case-by-case basis and there is no need for the added formality of a nominating committee. Based on criteria established by the NASDAQ Stock Market relating to director independence, Messrs. Stewart, Boyd, Nobel and McQuay are the Company’s only independent directors.

The Board of Directors does not have an express policy with regard to the consideration of any director candidates since the Board believes that it can adequately evaluate nominees on a case-by-case basis. The Board has not previously received any recommendations for director candidates from stockholders, and has not adopted a formal process for considering director candidates who may be recommended by stockholders. However, the Company’s

policy is to give due consideration to any and all such candidates, and in evaluating director nominees, the Board considers the appropriate size of the Board, the needs of the Company, the skills and experience of its directors, and a candidate's familiarity with our industry. A stockholder may submit a recommendation for director candidates to us at our corporate offices, to the attention of Harold R. Wolcott. We do not pay fees to any third parties to assist us in identifying potential nominees.

The Compensation Committee. The members of the Compensation Committee are Messrs. Boyd, Stewart, Nobel and McQuay. Mr. Boyd is currently serving as the Compensation Committee chairman. All members of the Compensation Committee are Independent Directors. Our Compensation Committee, which met three times during fiscal year 2009, does not currently have a charter. The Compensation Committee has responsibility for establishing and monitoring our executive compensation programs and for making decisions regarding the compensation of our Named Executive Officers (as defined below). The agenda for meetings of the Compensation Committee is determined by the Chairman of the Compensation Committee. The Compensation Committee sets the compensation package of the Named Executive Officers and their annual bonus. For a further description of the Compensation Committee's role, and the use of a compensation consultant, see "Executive Compensation" below.

DIRECTOR COMPENSATION 2009

Our 1998 Director Stock Plan, as amended effective March 1, 2009, provides an annual retainer ("Annual Retainer") in the amount of \$60,000 to each non-employee director other than the Audit Committee Financial Expert, who is to receive \$65,000. Of the Annual Retainer, \$30,000 is to be paid in cash to each such director, other than the Audit Committee Financial Expert, who is to receive \$35,000 in cash (the "Cash Payment"). The Cash Payment is payable in equal installments on May 1 and November 1 of each year in which each non-employee director continues to serve as a member of the Board. Each non-employee director is to receive the balance of the Annual Retainer in the form of shares of Common Stock (the "Common Stock Payment"). The portion of the annual retainer that is paid in common stock will be determined by reference to the fair market value of our Common Stock. The fair market value of the Common Stock will be determined by reference to the closing price, as reported by the NASDAQ Stock Market, of the Common Stock on May 1 of each year, the payment date of the Common Stock Payment.

Prior to March 1, 2009, our 1998 Director Stock Plan provided an annual retainer in the amount of \$30,000 to each non-employee director other than the Audit Committee Financial Expert, who was to receive \$35,000. Of the annual retainer, \$15,000 was to be paid in cash to each such director, other than the Audit Committee Financial Expert, who was to receive \$20,000 in cash. Each non-employee director was to receive the balance of the annual retainer in the form of restricted shares of our Common Stock. In addition, each non-employee director was to receive an annual stock option to purchase 30,000 shares of our Common Stock.

On September 1, 2008, all non-employee directors were issued a stock option grant for 30,000 shares with an exercise price of \$7.95 per share for their services for fiscal 2008. In addition, for fiscal 2009, each of these directors was paid \$23,536 cash and 6,583 shares of common stock, other than Mr. Stewart, the Audit Committee Chairman and Financial Expert, who received \$28,536 cash and 6,583 shares of common stock.

DIRECTOR COMPENSATION TABLE

The table below summarizes the compensation paid by the Company to, or earned by, our non-employee directors for the year ended August 31, 2009.

Name (1) (a)	Fees Earned or Paid in Cash (\$) (b)	Stock Awards (\$)(2) (c)	Option Awards (\$)(3) (d)	Total (\$) (h)
Douglas P. Boyd	23,536	21,036	88,818	133,390
Timothy C. McQuay	23,536	21,036	39,909	84,481
Michael Nobel	23,536	21,036	98,169	142,741
Gerhard W. Sennewald	23,536	21,036	98,169	142,741
Steven G. Stewart	28,536	21,036	84,085	133,657

- (1) Harold R. Wolcott, Paul F. Turner and Hyrum A. Mead served as directors in fiscal year 2009, but are omitted from the Director Compensation Table because of their status as a Named Executive Officer. No additional remuneration was paid to Messrs. Wolcott, Turner and Mead for their services as directors.
- (2) The amounts shown in column (c) reflect the value of the 6,583 shares of Common Stock issued to the non-employee directors during fiscal year 2009 in accordance with SFAS 123(R).
- (3) The amounts shown in column (d) reflect the dollar amount recognized for financial statement reporting purposes with respect to non-employee director stock options for the year ended August 31, 2009 in accordance with SFAS 123(R). The amounts are computed based upon the portion of option awards vesting during 2009, including option awards that were granted in prior years. The grant date value under SFAS 123(R) of stock options awarded to each non-employee director in 2009 was \$142,461 (based on the grant of an option for 30,000 shares with a per share Black-Scholes value of \$4.75 per share). Assumptions used in the calculation of these amounts are included in Note 10 to the Company's audited financial statements for the year ended August 31, 2009, included in our Annual Report on Form 10-K. As of the end of fiscal year 2009, each non-employee director had outstanding options for the following number of shares of Common Stock: Douglas P. Boyd, 115,000 shares; Timothy C. McQuay 47,457 shares; Michael Nobel, 165,000 shares; Gerhard W. Sennewald, 140,000 shares; and Steven G. Stewart, 106,368 shares.

COMMUNICATIONS WITH DIRECTORS

We have not adopted a formal process for stockholder communications with the Board. Nevertheless, we have tried to ensure that the views of stockholders are heard by the Board or individual directors, as applicable, and that appropriate responses are provided to stockholders in a timely manner. We believe our responsiveness to stockholder communications to the Board has been good. A stockholder may submit any communication with directors to us at our corporate offices, to the attention of Harold R. Wolcott.

RECOMMENDATION OF THE BOARD OF DIRECTORS

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT THE STOCKHOLDERS OF THE
COMPANY
VOTE FOR THE ELECTION OF ALL THE DIRECTOR NOMINEES LISTED ABOVE.

PROPOSAL 2: AMENDMENT AND RESTATEMENT OF THE THIRD AMENDED AND RESTATED 1998 DIRECTOR STOCK PLAN

At the Annual Meeting, our stockholders will be asked to approve an amendment and restatement to the Third Amended and Restated 1998 Director Stock Plan (the “Director Stock Plan”) in order to increase the number of shares of Common Stock reserved for issuance under the Director Stock Plan from 1,500,000 to 1,750,000 shares, to extend the termination date of the plan from August 31, 2011 to August 31, 2015, and to make certain other changes.

The affirmative vote of the holders of a majority of the shares of Common Stock present, in person or by proxy, and entitled to vote at the Annual Meeting is required to amend and restate the Director Stock Plan. If the amendment and restatement of the Director Stock Plan is not so approved, it will not become effective.

The five directors who are not employees of the Company (the “Non-Employee Directors”) have an interest in the amendment and restatement of the Director Stock Plan because they are eligible for awards under the Director Stock Plan.

INTRODUCTION TO DIRECTOR STOCK PLAN

The Board believes that the availability of stock, stock options and other incentives is an important factor in our ability to attract and retain qualified directors and to provide incentives for them to exert their best efforts on our behalf. This section includes a summary of the material proposed changes to the Director Stock Plan.

The Board believes that the remaining number of shares of Common Stock is not sufficient for future granting needs under the Director Stock Plan. Accordingly, the proposed amendment and restatement of the Director Stock Plan increases the number of shares of Common Stock authorized for issuance under the Director Stock Plan from 1,500,000 shares to 1,750,000 shares. The Board believes that these additional shares would result in an adequate number of shares of Common Stock being available for grant under the Director Stock Plan.

The Director Stock Plan is set to terminate as of August 31, 2011. The amendment and restatement extends the termination date to August 31, 2015. The Board believes that the availability of stock options and other incentives is an important factor in our ability to attract and retain qualified non-employee directors and to provide incentives for them to exert their best efforts on our behalf. The Board believes this extension will allow us to continue this incentive program.

The Director Stock Plan awards shares of Common Stock to each of the Non-Employee Directors each May 1. The number of shares granted is \$30,000 divided by the “Fair Market Value” of our Common Stock on the date of the award. At present, the Director Stock Plan defines “Fair Market Value” as the preceding 20 day average closing price of our Common Stock, the average of prices quoted by market makers on those dates, or by such amount as the Board or committee who administers the plan determines in good faith. The amendment and restatement will change the definition of “Fair Market Value” to the closing price of our Common Stock on May 1. The amendment and restatement also clarifies that if options are granted, the grant date exercise price will be the closing price of our Common Stock on the date of grant.

As of November 30, 2009, options to purchase 573,825 shares of Common Stock were outstanding under the Director Stock Plan and 161,952 shares were available for issuance under the Director Stock Plan. The outstanding options

had a weighted average exercise price of \$5.18.

Certain provisions of the Director Stock Plan are summarized below. The complete text of the proposed amendment and restatement of the Director Stock Plan is attached to this Proxy Statement as Appendix A. Because this summary may not contain all of the information that is important to you, you should review the Proxy Statement, including the appendices, before deciding how to vote.

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SUMMARY OF PRINCIPAL PROVISIONS OF THE DIRECTOR STOCK PLAN

The purpose of the Director Stock Plan is to provide for a method of compensation for the Non-Employee Directors that will strengthen the alignment of their financial interests with those of the Company's stockholders.

Our 1998 Director Stock Plan, as amended effective March 1, 2009, provides an annual retainer ("Annual Retainer") in the amount of \$60,000 to each non-employee director other than the Audit Committee Financial Expert, who is to receive \$65,000. Of the Annual Retainer, \$30,000 is to be paid in cash to each such director, other than the Audit Committee Financial Expert, who is to receive \$35,000 in cash (the "Cash Payment"). The Cash Payment is payable in equal installments on May 1 and November 1 of each year in which each non-employee director continues to serve as a member of the Board. Each non-employee director is to receive the balance of the Annual Retainer in the form of shares of Common Stock (the "Common Stock Payment"). The portion of the annual retainer that is paid in common stock will be determined by reference to the "Fair Market Value&#