

IPARTY CORP  
Form DEF 14A  
April 28, 2008

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

## SCHEDULE 14A

(Rule 14a-101)

## 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 Pursuant to §240.14a-12

iParty Corp.  
(Name of Registrant as Specified In Its Charter)

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

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.
  - (1) Title of each class of securities to which transaction applies:
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- (2) Form, Schedule or Registration Statement No.:
  - (3) Filing Party:
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**iParty Corp.**  
**270 Bridge Street, Suite 301**  
**Dedham, MA 02026**

**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS**

The 2008 Annual Meeting of Stockholders of iParty Corp. will be held as follows:

**Date:** Wednesday, June 4, 2008

**Time:** 11:00 a.m., local time

**Place:** Posternak Blankstein & Lund LLP  
Prudential Tower  
800 Boylston Street, 33rd Floor  
Boston, MA 02199

**Matters to be voted on:**

1. The election of all six directors;
2. Amendments to the Certificate of the Designations, Powers, Preferences and Rights of the Series B convertible preferred stock ( **Certificate of Designations-Series B** ) to change the requisite number of shares or holders necessary to amend or waive certain provisions therein;
3. Ratification of the selection of Ernst & Young LLP as our independent registered public accounting firm for the fiscal year ending December 27, 2008; and
4. Any other matters properly brought before the annual meeting or any adjournment thereof.

The Board of Directors has fixed the close of business on April 14, 2008 as the record date for determining stockholders entitled to notice of and to vote at the annual meeting. Representation in person or by proxy of at least a majority of all outstanding shares of each class of stock entitled to vote at the meeting is required to constitute a quorum. Accordingly, it is important that your shares be represented at the annual meeting. The list of stockholders entitled to vote at the annual meeting will be available for examination by any stockholder at our offices at 270 Bridge Street, Suite 301, Dedham, MA 02026 for ten (10) days prior to June 4, 2008. Enclosed with the proxy statement for the meeting, you will find a copy

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of our Annual Report on Form 10-K for fiscal 2007.

**Your vote at the meeting is very important to us regardless of the number of shares you own. Please vote your shares, whether or not you plan to attend the meeting, by completing the enclosed proxy card and returning it to us in the enclosed envelope. Should you want to change your vote prior to the annual meeting you may do so in accordance with the instructions contained in the accompanying proxy statement.**

By Order of the Board of Directors,

/s/ David Robertson  
DAVID ROBERTSON  
*Secretary*

*This notice, proxy statement, and form of proxy are being distributed on or about April 30, 2008.*

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**iParty Corp.**  
270 Bridge Street, Suite 301  
Dedham, MA 02026

**PROXY STATEMENT**  
**for Annual Meeting of Stockholders to Be Held on June 4, 2008**

**GENERAL INFORMATION**

Our Board of Directors (the **Board**) is furnishing you this proxy statement to solicit proxies on its behalf to be voted at the Annual Meeting of Stockholders of iParty Corp. ( **iParty** or the **Company** ). The meeting will be held at the offices of Posternak Blankstein & Lund LLP, at the Prudential Tower, 33<sup>rd</sup> Floor, 800 Boylston Street, Boston MA, 02199, on June 4, 2008, at 11:00 a.m., local time. The proxies also may be voted at any adjournments or postponements of the meeting.

The mailing address of our principal executive offices is iParty Corp., 270 Bridge Street, Suite 301, Dedham, MA, 02026. We are first furnishing the proxy materials to stockholders on or about April 30, 2008.

All properly executed written proxies that are delivered pursuant to this solicitation will be voted at the meeting in accordance with the directions given in the proxy, unless the proxy is revoked prior to completion of voting at the meeting.

Only owners of record of shares of common stock, Series B convertible preferred stock ( **Series B Preferred Stock** ), Series C convertible preferred stock ( **Series C Preferred Stock** ), Series D convertible preferred stock ( **Series D Preferred Stock** ), Series E convertible preferred stock ( **Series E Preferred Stock** ) and Series F convertible preferred stock ( **Series F Preferred Stock** ) and together with the Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock, the **Convertible Preferred Stock** ) of the Company at the close of business on April 14, 2008, the record date, are entitled to notice of and to vote at the meeting, or at any adjournments or postponements of the meeting.

**QUESTIONS AND ANSWERS ABOUT THE MEETING AND VOTING**

**What is this document?** This is the Notice of our 2008 Annual Meeting of Stockholders of iParty Corp. ( **iParty** or the **Company** ), combined with our Proxy Statement which provides important information for your use in voting your shares of our common stock, or our various series of convertible preferred stock, at the annual meeting.

**Who can vote?** You can vote your shares of common stock or your shares of convertible preferred stock if our records show that you owned the shares at the close of business on April 14, 2008, which is the record date for the annual

meeting. Shares representing a total of 37,660,753 votes are eligible to vote at the meeting.

**Common Stock.** You are permitted one vote for each share of common stock you owned at the close of business on April 14, 2008, including (i) shares held in your name as a stockholder of record, and (ii) shares held in street name for you as the beneficial owner through a broker, trustee, or other nominee, such as a bank. Thus, as of April 14, 2008, there were 22,717,400 votes eligible to vote at the meeting associated with 22,717,400 shares of common stock. The enclosed proxy card shows the number of shares you can vote.

**Convertible Preferred Stock.** Except as otherwise required by Delaware General Corporation Law, the Convertible Preferred Stock is entitled to vote together with the common stock on all matters to which the common stock is entitled to vote. When the Convertible Preferred Stock votes together with the Common Stock as one class, you are permitted one vote for each whole number of shares of our common stock into which the shares of Convertible Preferred Stock are convertible. Thus, as of April 14, 2008, the number of votes eligible to vote at the meeting were 6,033,833 votes associated with 464,151 shares of Series B Preferred Stock (you are permitted thirteen (13) votes for each share of Series B Preferred Stock), 1,300,000 votes associated with 100,000 shares of Series C Preferred Stock (you are permitted thirteen (13) votes for each share of Series C Preferred Stock), 3,500,000 votes associated with 250,000

shares of Series D Preferred Stock (you are permitted fourteen (14) votes for each share of Series D Preferred Stock), 2,966,660 votes associated with 296,666 shares of Series E Preferred Stock (you are permitted ten (10) votes for each share of Series E Preferred Stock), and 1,142,860 votes associated with 114,286 shares of Series F Preferred Stock (you are permitted ten (10) votes for each share of Series F Preferred Stock). In each such case, the number of votes is calculated based on the number of shares you owned at the close of business on April 14, 2008, including shares held in your name as a stockholder of record and shares held in street name for you as the beneficial owner through a broker, trustee, or other nominee, such as a bank. The enclosed proxy card shows the number of shares you can vote.

***Special Voting Rights of Series C and Series D Preferred Stock with Respect to Election of Directors.*** So long as at least fifty percent (50%), of the initially issued shares of Series C Preferred Stock remains outstanding, the holders of the Series C Preferred Stock are entitled to vote alone for the election of a Series C Director. So long as at least fifty percent (50%), of the initially issued shares of Series D Preferred Stock remains outstanding, the holders of the Series D Preferred Stock are entitled to vote alone for the election of a Series D Director.

***Special Voting Rights of the Convertible Preferred Stock.*** Under the various Certificates of Designations, each series of Convertible Preferred Stock has a separate class vote in the following instances:

- The creation and issuance of any series of preferred stock or other security which is senior as to liquidation and or dividend rights to such Convertible Preferred Stock; and
- An action that repeals, amends, or otherwise changes the Certificate of Designations or Certificate of Incorporation in a manner that would alter or change the powers, preferences, rights, privileges, restrictions and conditions of the particular class of Convertible Preferred Stock to adversely affect such class.

Unless otherwise specified in the Certificate of Designations, when voting as a separate class, you are permitted one vote for each share of Convertible Preferred Stock you owned at the close of business on April 14, 2008, including (i) shares held in your name as a stockholder of record, and (ii) shares held in street name for you as the beneficial owner through a broker, trustee, or other nominee, such as a bank. In the case of the second bullet point above, in addition to counting the votes previously described, each holder of Series B Preferred Stock, regardless of the number of shares of Series B Preferred Stock owned of record or beneficially, is also permitted one vote per holder when counting the number of holders.

**How do I vote by proxy?** Follow the instructions on the enclosed proxy card to vote on each proposal to be considered at the annual meeting. Sign and date the proxy card and mail it back in the enclosed envelope. The proxy holders named on the proxy card will vote your shares as you instruct. If you sign and return the proxy card but do not vote on a proposal, the proxy holders will vote for you on that proposal. Unless you instruct otherwise, the proxy holders will vote in accordance with the Board of Director's recommendation below.

**How does the board of directors recommend that I vote on the proposals?** The Board of Directors recommends that you vote:



**FOR** the election of all six nominees to serve as directors;

**FOR** the amendments to the Certificate of Designations-Series B to change the requisite number of shares or holders necessary to amend or waive certain provisions therein; and

**FOR** the ratification of the selection of Ernst & Young LLP as our independent registered public accounting firm for the fiscal year ending December 27, 2008.

**What if other matters come up at the meeting?** The matters described in this proxy statement are the only matters we know that will be voted on at the meeting. If other matters are properly presented at the meeting, the proxy holders will vote your shares in their discretion.

**Can I change my vote after I return my proxy card?** Yes. At any time before the annual meeting, you can change your vote either by sending our Chief Financial Officer and Secretary, David E. Robertson, a written notice revoking your proxy card or by signing, dating, and returning to us a new proxy card. We will honor the proxy card with the latest date.

**Can I vote in person at the meeting rather than by completing the proxy card?** Although we encourage you to complete and return the proxy card even if you plan to attend the meeting to ensure that your vote is counted, you can always vote your shares in person at the meeting.

**Who will count the votes?** The votes cast by holders of shares of our common stock and our various series of convertible preferred stock will be counted, tabulated and certified by the transfer agent and registrar of our common stock and Series B Preferred Stock, Continental Stock Transfer & Trust Co. David E. Robertson, our Chief Financial Officer, will serve as the inspector of elections at the annual meeting.

**Will my vote be kept confidential?** Yes, your vote will be kept confidential and we will not disclose your vote, unless (1) we are required to do so by law (including in connection with the pursuit or defense of a legal or administrative action or proceeding), (2) a stockholder makes a written comment on the proxy card or otherwise communicates his or her vote to management, (3) to allow the inspector of elections to certify the results of the vote, or (4) there is a contested election for the Board of Directors. The inspector of elections will forward any written comments that you make on the proxy card to our Board of Directors and Chief Executive Officer without providing your name, unless you expressly request disclosure on your proxy card.

**What do I do if I am a beneficial owner and my shares are held in street name ?** If your shares are held in the name of your broker, a bank, or other nominee, that party will give you instructions for voting your shares, which should be enclosed with this document.

**What constitutes a quorum?** In order for business to be conducted at the meeting, a quorum must be present. The presence, in person or by proxy, of the holders of a majority of all outstanding shares of each class of stock entitled to vote at the annual meeting is necessary to constitute a quorum at the annual meeting.

Shares of common stock and Convertible Preferred Stock represented in person or by proxy (including broker non-votes, if any, and shares that abstain or do not vote with respect to one or more of the matters to be voted upon) will be counted for the purpose of determining whether a quorum exists. Broker non-votes are those shares that are held in street name by a broker, bank, or other nominee that indicates on its proxy that it does not have discretionary authority to vote on a particular matter. Brokers, banks and other nominees may not be able to use their discretionary authority for the matters involving the amendments to the Certificate of Designations-Series B.

If a quorum is not present, the meeting will be adjourned until a quorum is obtained. Under our bylaws, notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, our stockholders may transact any business that might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, our by-laws require that a notice of the adjourned meeting be given to each stockholder of record entitled to vote at the meeting.

**What is the voting requirement to approve each proposal?** In the election of directors, the persons receiving the most number of FOR votes at the meeting will be elected. Holders of shares of Series C Preferred Stock alone are entitled to cast votes in respect of the election of the Series C Director.

The proposal to amend Section 4(c) and Section 7(c) of the Certificate of Designations-Series B will require: (i) the affirmative vote of a majority of the outstanding shares of our common stock and Convertible Preferred Stock entitled to vote on the matter, voting together as a single class on an as converted basis, (ii) the affirmative vote of a majority of the outstanding shares of Series B Preferred Stock entitled to vote on the matter, voting separately as a single class, and (iii) the affirmative vote of a majority in number of the holders of the Series B Preferred Stock entitled to vote on the matter, voting separately as a class, in the case of Section 4(c) and the affirmative vote of one-half in number of the holders of the Series B Preferred Stock entitled to vote on the matter, voting separately as a class, in the case of Section 7(c).

The proposal to ratify the selection of Ernst & Young LLP as our independent registered public accounting firm for the fiscal year ending December 27, 2008 requires the affirmative vote of a majority of the votes cast at the meeting by the holders of outstanding shares of all classes of our stock entitled to vote thereon who are present at the meeting either in person or by proxy.

Votes withheld for a particular director nominee and broker non-votes, if any, will have no effect on the outcome of the election of directors. Abstentions and broker non-votes, if any, will have the same effect as a no vote with respect to the approval of the amendments to the Certificate of Designations-Series B. Neither abstentions nor broker non-votes, if any, will have an effect on the voting of the ratification of the selection of Ernst & Young LLP as our independent registered public accounting firm.

**What are broker non-votes ?** If you hold shares beneficially in street name and do not provide your broker with voting instructions, your shares may constitute broker non-votes. Generally, broker non-votes occur on a matter when a broker is not permitted to vote on that matter without instructions from you, as the beneficial owner. Brokers, banks and other nominees may not be able to use their discretionary authority for the matter involving the amendments to the Certificate of Designations-Series B; however, they may be able to use their discretionary authority for the matters involving the election of directors and the ratification of our independent registered public accounting firm for the fiscal year ended December 27, 2008.

**Where can I find the voting results?** We will announce the results of the voting at the annual meeting and report the voting results in our Quarterly Report on Form 10-Q for the second quarter of fiscal 2008, which we expect to file with the Securities and Exchange Commission ( **SEC** ) in August 2008. The results will be contained in Part II, Item 4 of that Quarterly Report, which will be available via Internet on the Investor Relations page of our licensed website at [www.iparty.com](http://www.iparty.com) and on the SEC's website, [www.sec.gov](http://www.sec.gov).

**Who pays for this proxy solicitation?** We do. In addition to sending you these materials, one of our officers, directors or employees may contact you by telephone, by mail, or in person. None of these persons will receive any extra compensation for doing this.

**How and when may I submit a stockholder proposal for consideration at next year's annual meeting of stockholders or to recommend nominees to serve as directors?** You may submit proposals, including director nominations, for consideration at future stockholder meetings.

**Stockholder Proposals:** If you are interested in submitting a proposal for inclusion in our proxy statement for next year's annual meeting, or would like to recommend a nominee for director, we must receive your written proposal at our principal executive offices no later than December 30, 2008, which is the 120th calendar day before the one-year anniversary of the proxy statement we are releasing to our stockholders for this year's annual meeting. If the date of next year's annual meeting (or special meeting in lieu of the annual meeting) is moved more than 30 days before or after the anniversary date of this year's meeting, the deadline for inclusion of proposals in our proxy statement will instead be a reasonable time before we begin to print and mail our proxy materials next year. Such proposals also will

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need to comply with SEC regulations under Rule 14a-8 (Shareholder Proposals) regarding the inclusion of shareowner proposals in company-sponsored proxy materials. Any proposals should be addressed to:

iParty Corp.  
270 Bridge Street, Suite 301  
Dedham, MA 02026  
ATTN: David E. Robertson, Chief Financial Officer  
Fax: (781) 326-7143

Except in the case of proposals made in accordance with SEC Rule 14a-8 (Shareholder Proposals), the Company's proxy holders are allowed to use their discretionary voting authority on stockholder proposals that the Company did not receive written notice of at least 45 days prior to the anniversary of the date on which the Company first mailed its proxy materials for its immediately preceding annual meeting of stockholders. The deadline for proposals to be presented at the 2009 Annual Meeting of Stockholders is March 14, 2009.

**Copy of By-Law Provisions:** You may contact our Chief Financial Officer (Mr. Robertson) at our principal executive offices for a copy of the relevant by-law provisions regarding the requirements for making stockholder proposals. Our by-laws also are available on the Investor Relations page on our licensed website at [www.iparty.com](http://www.iparty.com).

**How may I communicate with the board of directors or the non-management directors on the board of directors?** You may submit an e-mail to our Board of Directors at [bod@iparty.com](mailto:bod@iparty.com). All directors have access to this e-mail address. Communications intended for our non-management independent directors should be directed to the attention of Frank Haydu at [frankhaydu@yahoo.com](mailto:frankhaydu@yahoo.com). You may report your concerns anonymously or confidentially.

**Does iParty have a policy regarding the attendance of directors at the meeting?** Our by-laws do not mandate that members of the Board of Directors must attend the annual meeting of stockholders and we have no separate policy regarding such attendance.

**How many directors attended last year's annual meeting?** At last year's annual meeting, six of our then seven directors were present in person. All six of our current directors were present in person at last year's meeting.

**Does iParty have a code of conduct applicable to all directors, officers, and employees?** Yes. In accordance with Section 406 of the Sarbanes-Oxley Act, Item 406 of SEC Regulation S-K, and Section 807 of the enhanced corporate governance rules of the American Stock Exchange, we have adopted a code of business conduct and ethics that is applicable to all our directors, officers and employees and is available on the Investor Relations page on our licensed website at [www.iparty.com](http://www.iparty.com). Our written code of business conduct and ethics provides for an enforcement mechanism and requires that waiver of its provisions for any of our directors or officers must be approved by our Board of Directors. We are required to disclose any such waivers on the Investor Relations page of our corporate website at [www.iparty.com](http://www.iparty.com).

**Is the code of conduct publicly available?** Yes. Our code of business conduct and ethics is available on the Investor Relations page on our licensed website at [www.iparty.com](http://www.iparty.com).

**Where can I see the Company's corporate documents and SEC filings?** iParty's website contains its by-laws, the Board committee charters, corporate governance guidelines, code of business conduct and ethics and the Company's SEC filings. To view the by-laws, the Board committee charters, corporate governance guidelines, or code of business conduct and ethics, go to [www.iparty.com](http://www.iparty.com) and click on Investor Relations . To view iParty's SEC filings, including Forms 3, 4, and 5 filed by the Company's directors and executive officers, go to [www.iparty.com](http://www.iparty.com), click on Investor Relations and then click on SEC Filings .

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iParty will also promptly deliver free of charge, upon request, the Company's Certificate of Incorporation, by-laws, Board committee charters, corporate governance guidelines or the code of business conduct and ethics to any stockholder requesting a copy. Requests for these documents may be made in the same manner as requests for a copy of iParty's Annual Report on Form 10-K.

**How can I obtain an annual report on Form 10-K?** A copy of our Annual Report on Form 10-K for the year ended December 29, 2007 is enclosed with this proxy statement. Stockholders may request another free copy of our proxy statement and our 2007 Annual Report on Form 10-K by making a written or oral request to:

iParty Corp.  
270 Bridge Street, Suite 301  
Dedham, MA 02026  
ATTN: David E. Robertson, Chief Financial Officer  
Telephone: (781) 329-3952

Our proxy statement and Annual Report on Form 10-K for fiscal 2007 is also available on the Investor Relations page of our licensed website at [www.iparty.com](http://www.iparty.com) and the SEC's website at [www.sec.gov](http://www.sec.gov).

**Where can I get directions to the meeting?** The meeting will be held in the offices of Posternak Blankstein & Lund LLP on the 33rd floor of the Prudential Tower, 800 Boylston Street, Boston, MA. Directions to the meeting location are available at [www.pbl.com](http://www.pbl.com).

**Who should I contact if I have any questions?** If you have any questions about the annual meeting or any matters relating to this proxy statement, please contact David E. Robertson, our Chief Financial Officer, at the address and telephone number above.



**ITEMS TO BE ACTED ON AT THE MEETING**

**Proposal 1.** Election of Directors

Our entire Board of Directors, to consist of six (6) members, will be elected at the meeting. Each nominee for director currently serves on our Board of Directors. The directors elected will hold office until their successors are elected and qualified, which should occur at the next annual meeting or special meeting in lieu thereof, in accordance with our by-laws.

We have no reason to believe that any of the nominees will not be a candidate or will be unable to serve as a director. However, in the event any nominee is not a candidate or is unable or unwilling to serve as a director at the time of the election, the Board of Directors (on recommendation of the Nominating Committee) may either propose to reduce the number of directors or propose a substitute nominee.

Under the Certificate of Designations-Series C, for so long as at least 50% of the initially issued shares of Series C Preferred Stock remain outstanding, the holders of the Series C Preferred Stock have the exclusive right, voting separately as a class, to elect one director of the Company (the **Series C Director**). Robert W. Jevon is the designee of the holders of the Series C Preferred Stock.

Under the Certificate of Designations-Series D, for so long as at least 50% of the initially issued shares of Series D Preferred Stock remain outstanding, the holders of the Series D Preferred Stock have the exclusive right, voting separately as a class, to elect one director of the Company (the **Series D Director**). The holders of the Series D Preferred Stock have not elected to designate a Series D Director at the 2008 Annual Meeting.

**The Board recommends that you vote FOR each of the following nominees:**

- Sal V. Perisano
  
- Daniel I. De Wolf
  
- Frank W. Haydu III
  
- Eric Schindler

- Joseph S. Vassalluzzo
  
- Robert W. Jevon, Jr. (for Series C Director)

**Biographical information about each of these nominees can be found on pages 15 through 17 of this proxy statement.**

**Unless you specify otherwise, the Board intends the accompanying proxy to be voted FOR** these nominees. Thus, unless you withhold authority or your proxy contains contrary instructions, a properly signed and dated proxy will be voted FOR the election of these nominees. Votes withheld will not affect the outcome of the voting with respect to the election of any nominee.

**Proposal 2.** Proposal to amend the Certificate of Designations-Series B to change the requisite number of shares or holders necessary to amend or waive certain provisions therein

**Our Board of Directors has approved and declared advisable the amendments to Section 4(c) and Section 7(c) of the Certificate of Designations-Series B that:**

- Changes the waiver threshold in section 4(c) from the affirmative vote of a *majority in number* of the holders of the then outstanding shares of Series B Preferred Stock to the affirmative vote of the *holders of a majority* of the then outstanding shares of Series B Preferred Stock (Section 4(c));
  
- Changes the approval threshold in section 7(c) from the consent of *one-half in number* of the holders of the then outstanding shares of Series B Preferred Stock to the consent of the *holders of a majority* of the then outstanding shares of Series B Preferred Stock in the event that a vote is required due to an action that repeals, amends, or otherwise changes the Certificate of Designation or Certificate of Incorporation in a manner that

would adversely alter or change the powers, preferences, rights, privileges, and restrictions of the Series B Preferred Stock (Section 7(c)); and

- Adds the ability of the *holders of a majority* of the then outstanding shares of Series B Preferred Stock to waive any of the rights, preferences, designations, or restrictions contained in the Series B Preferred Stock (Section 7(c)).

The full text of the proposed resolutions is contained in the proposed Certificate of Amendment to the Restated Certificate of Incorporation, which is attached to this proxy statement as Appendix A and incorporated herein by reference.

**Summary of Rights of Series B Preferred Stock.** As set forth more fully in the Certificate of Designations - Series B, which is included as an exhibit to our annual report on Form 10-K for the fiscal year ended December 29, 2007, the holders of the Series B Preferred Stock have certain defined rights and preferences. These rights and preferences include: (i) a liquidation preference senior to the holders of our common stock, as more fully described under *Voting on Liquidation Events*, (ii) an anti-dilution provision that protects the holders in the event we issue common stock or certain rights including option grants in excess of certain defined amounts, to purchase or convert into common stock, at a price below the then existing conversion price, (iii) the right to participate in dividends, when and if declared by the Board of Directors, and (iv) certain defined voting rights, which include the right to vote together with the common stock as one class on all matters to which the common stock is entitled to vote and a separate class vote as described below under *Current Voting Standards of the Series B Preferred Stock*. With respect to the right to participate in dividends noted above, as of April 14, 2008, the Company has never paid a cash dividend on its common stock.

**Current Voting Standards of the Series B Preferred Stock.** Except as otherwise required by Delaware General Corporation Law, the Series B Preferred Stock is entitled to vote together with the common stock and all of the other outstanding classes of Convertible Preferred Stock on all matters to which the common stock is entitled to vote. In addition, in certain circumstances, the holders of the Series B Preferred Stock have a separate class vote. Except as otherwise required by Delaware General Corporation Law, the holders of shares of the Series B Preferred Stock vote as a separate class in the following circumstances:

- The creation and issuance of any series of preferred stock or other security which is senior as to liquidation and or dividend rights to such Series B Preferred Stock; and
- An action that repeals, amends, or otherwise changes the Certificate of Designations - Series B or Certificate of Incorporation in a manner that would alter or change the powers, preferences, rights, privileges, restrictions and conditions of the Series B Preferred Stock to adversely affect such class.

The Series B Preferred Stock has four distinct approval standards. Depending on the matter to be acted on or waived, the necessary approval may require either: (i) the vote of a *majority in number* of the holders of the Series B Preferred Stock entitled to vote on the matter, (ii) the vote of *one-half in number* of the holders of the Series B Preferred Stock entitled to vote on the matter, (iii) the vote of the *holders of one-half* of the outstanding shares of the Series B Preferred Stock entitled to vote on the matter or (iv) the vote of *holders of a majority* of the outstanding shares of Series B Preferred Stock entitled to vote on the matter. In addition, under Delaware General Corporation Law, the holders of the Series B Preferred Stock are entitled to vote as a class upon an amendment to the Certificate of Incorporation if the amendment, among other specified actions, would alter or change the powers, preferences, or special rights of the shares of such class that affects them adversely. In this case, the minimum required vote under Delaware Law is a majority of the

**outstanding shares of the Series B Preferred Stock. Thus, in addition to the standards noted above, Delaware General Corporation Law may require us to count the votes in two ways with respect to a proposed amendment before determining that a matter has been approved or defeated: first, count the number of stockholders voting, and second, count the number of votes cast on the matter.**

*Reasons for the Amendments.* The proposed amendments to the Series B Preferred Stock seek to make consistent the necessary vote or consent among the various approval provisions contained in the Series B Preferred Stock by having one standard that follows the Delaware General Corporation Law standard for separate class voting on amendments, and makes the approval provisions of the Series B Preferred Stock more similar to the other outstanding series of Convertible Preferred Stock. By removing the provision requiring the Company to count stockholders rather than shares and making the approval standard essentially consistent throughout the terms of the Series B Preferred Stock, we believe that the approval of the amendments will have the following benefits:

- It will be easier to determine whether a particular vote is achievable;
  
- The approval provisions will be consistent and more understandable for our stockholders;
  
- The approval provisions will be consistent with the traditional concepts of majority voting and the minimum statutory requirements contained in the Delaware General Corporation law; and
  
- The Series B Preferred Stock approval power will be allocated according to the stockholder's relative economic stake in the Company rather than the arbitrary number of owners.