

MORGANS FOODS INC  
Form DEF 14A  
June 12, 2013  
**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

**MORGAN'S FOODS, INC.**

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**(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:

(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.

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

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

(3) Filing Party:

(4) Date Filed:

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**MORGAN'S FOODS, INC.**

4829 Galaxy Parkway, Suite S

Cleveland, Ohio 44128

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**NOTICE OF ANNUAL MEETING OF SHAREHOLDERS**

**TO BE HELD JULY 2, 2013**

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TO THE SHAREHOLDERS:

You are hereby notified that the Annual Meeting of Shareholders of Morgan's Foods, Inc., an Ohio corporation (the "Company"), will be held at the Marriott Cleveland East, 26300 Harvard Road, Warrensville Heights, Ohio 44122, on Tuesday, July 2, 2013, at 10:00 a.m., Eastern Time, for the following purposes:

1. To elect seven directors, each for a term of one year
2. To ratify the appointment of Grant Thornton LLP
3. To approve the Amended and Restated Articles of Incorporation to eliminate cumulative voting rights and add a severability provision
4. To approve an amendment to the Code of Regulations (the "Regulations") to provide for advance notice and disclosure provisions in connection with annual meetings of shareholders
5. To approve an amendment to the Regulations to provide for advanced notice and disclosure provisions in connection with shareholder nominations
6. To approve an amendment to the Regulations to provide for advanced notice and disclosure provisions for special meetings of shareholders

7. To approve other amendments to the Regulations primarily related to the conduct of shareholder meetings and the use of uncertificated shares and to restate the Regulations for all amendments approved by the shareholders
  8. To vote on an advisory basis on a resolution approving executive compensation
  9. To vote on an advisory basis on the frequency of holding an advisory vote on executive compensation
  10. To vote on a proposal to terminate the Amended and Restated Shareholder Rights Agreement
  11. To transact such other business as may properly come before the meeting or any adjournment thereof
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Only shareholders of record at the close of business on May 8, 2013 will be entitled to notice of and to vote at the meeting or any adjournment thereof.

BY ORDER OF THE  
BOARD OF  
DIRECTORS,  
KENNETH L. HIGNETT  
*Secretary*

June 13, 2013

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**IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS FOR THE ANNUAL MEETING OF SHAREHOLDERS TO BE HELD ON JULY 2, 2013:**

**This proxy statement and the Company's 2013 annual report to shareholders are also available at <https://materials.proxyvote.com/616900>.**

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**SHAREHOLDERS WHO DO NOT EXPECT TO ATTEND THE MEETING IN PERSON ARE URGED TO VOTE BY TELEPHONE OR THE INTERNET OR TO COMPLETE, DATE AND SIGN THE ENCLOSED PROXY AND RETURN IT IN THE ENCLOSED POSTAGE-PAID ENVELOPE TO ENSURE THAT THEIR SHARES ARE REPRESENTED AT THE MEETING OR ANY ADJOURNMENT THEREOF.**

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**MORGAN'S FOODS, INC.**

4829 Galaxy Parkway, Suite S

Cleveland, Ohio 44128

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**PROXY STATEMENT**

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This proxy statement is furnished in connection with the solicitation of proxies by and on behalf of the Board of Directors of Morgan's Foods, Inc., an Ohio corporation (the "Company"), for use at the Annual Meeting of Shareholders of the Company (the "Meeting") to be held at the Marriott Cleveland East, 26300 Harvard Road, Warrensville Heights, Ohio 44122, on Tuesday, July 2, 2013 at 10:00 a.m., Eastern Time, and at any adjournment thereof.

This proxy statement and accompanying notice and form of proxy are being mailed to shareholders on or about June 13, 2013. A copy of the Company's Annual Report to Shareholders, including financial statements, for the fiscal year March 3, 2013 (the "2013 fiscal year") is enclosed with this proxy statement.

The presence of any shareholder at the Meeting will not operate to revoke his proxy. Any proxy may be revoked, at any time before it is exercised, in open meeting, or by giving notice to the Company in writing, or by filing a duly executed proxy bearing a later date.

If the enclosed proxy is executed and returned to the Company, the persons named therein will vote the shares represented by it at the Meeting. The proxy permits specification of a vote for the election of directors, or the withholding of authority to vote in the election of directors, or the withholding of authority to vote for one or more specified nominees and a vote for, against or abstain on the other proposals described in this proxy statement. Where a choice is specified in the proxy, the shares represented thereby will be voted in accordance with such specification. If no specification is made, such shares will be voted to elect as directors the nominees set forth herein under "Election of Directors" and FOR the other proposals included in this proxy.

Under Ohio law and the Company's Articles of Incorporation, broker non-votes and abstaining votes will not be counted in favor of or against election of any nominee.

The close of business on May 8, 2013, has been fixed as the record date for the determination of shareholders entitled to notice of and to vote at the Meeting. As of May 8, 2013, the Company's outstanding voting securities consisted of 4,039,147 Common Shares, without par value, each of which is entitled to one vote on all matters to be presented to the shareholders at the Meeting.

## **VOTING PROCEDURES**

*If you are a record holder:*

You may vote by mail: complete and sign your proxy card and mail it in the enclosed, prepaid and addressed envelope

You may vote by telephone: call toll-free 1-800-652-VOTE (8683) on a touch tone phone and follow the instructions provide by the recorded message. You will need your proxy card available if you vote by telephone.

You may vote by Internet: access [www.investorvote.com/MRFD](http://www.investorvote.com/MRFD) and follow the steps outlined on the secure website.

You may vote in person at the meeting, however, you are encouraged to vote by mail, telephone or Internet even if you plan to attend the meeting.

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*If you are a “street name” holder:*

You must vote your common shares through the procedures established by your bank, broker, or other holder of record. Your bank, broker, or other holder of record has enclosed or otherwise provided a voting instruction card for you to use in directing the bank, broker, or other holder of record how to vote your common shares.

You may vote at the meeting, however, to do so you will first need to ask your bank, broker or other holder of record to furnish you with a legal proxy. You will need to bring the legal proxy with you to the meeting and hand it in with a signed ballot that you can request at the meeting. You will not be able to vote your common shares at the meeting without a legal proxy and signed ballot.

**PROPOSAL 1: ELECTION OF DIRECTORS**

At the Meeting, shares represented by proxies will be voted, unless otherwise specified in such proxies, for the election of the seven nominees to the Board of Directors named in this proxy statement and the enclosed proxy. These nominees were selected by the Board of Directors and will, if elected, serve as directors of the Company until the next annual meeting of the shareholders and until their successors are elected and qualified or until their earlier removal or resignation. All but one of the nominees are currently members of the Board of Directors and all nominees have consented to be nominated and to serve if elected. If, for any reason, any one or more nominees becomes unavailable for election, it is expected that proxies will be voted for the election of such substitute nominees as may be designated by the Board of Directors.

If notice in writing is given by any shareholder to the President or the Secretary of the Company, not less than 48 hours before the time fixed for holding the Meeting, that such shareholder desires that the voting for the election of directors shall be cumulative, and if an announcement of the giving of such notice is made upon the convening of the Meeting by the President or Secretary or by or on behalf of the shareholder giving such notice, each shareholder shall have the right to cumulate such voting power as he possesses at such election and to give one candidate an amount of votes equal to the number of directors to be elected multiplied by the number of his shares, or to distribute his votes on the same principle among two or more candidates, as he sees fit. If voting for the election of directors is cumulative, the persons named in the enclosed proxy will vote the shares represented by proxies given to them in such fashion as to elect as many of the nominees as possible.

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

<b>Name</b>	<b>Age</b>	<b>Principal Occupation for the Past Five Years</b>	<b>Director of the Company Since</b>
Marilyn A Eisele	55	President (2013 to present); Chief Financial Officer, NDI Medical, LLC (medical device commercialization firm) (2012 to present); Vice President – Finance, Chief Financial	2011

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		Officer, The PDI Group (munitions trailer & ground support systems manufacturer) (April 2011 to 2012); Chief Financial Officer, Five Star Technologies, Inc. (advanced materials supplier) (August 2002 – April 2011)	
Jefferson P. Gramm	37	Portfolio Manager, Managing Director and Managing Partner of Bandera Partners LLC.(2006-present)	2013
Steven S. Kaufman	63	Managing Member, Kaufman & Company, LLC (Law firm) (January 2011 to present); Partner, Thompson Hine, LLP (law firm) (June 2002 to January 2011)	1989
Bernard Lerner	86	Chief Executive Officer, Automated Packaging Systems, Inc. (manufacturer of packaging materials and machinery)	1989
James J. Liguori	64	Interim Chief Executive Officer (January 2013 to present) President and Chief Operating Officer of the Company (July 1988 to January 2013); Executive Vice President of the Company (August 1987 to July 1988)	1984
James C. Pappas	31	Managing Member of JCP Investment Management, LLC, (investment fund) (June 2009 to present); Private Investor, (July 2007 to May 2009); Investment Banker, The Goldman Sachs Group, Inc. (investment bank) (June 2005 to June 2007)	2012
Jacob J. Saour	32	Associate Director, Capital Markets, Cushman & Wakefield, (Global real estate services firm) (July 2010 to present); Houlihan Lokey (Global investment bank) (March 2007 to May 2010)	

In addition to the professional and occupational experience described above for each nominee, the Board has concluded that the skills, qualifications, experiences and attributes described below make the nominees persons who should serve as directors:

Marilyn A. Eisele – Ms. Eisele serves as president of a medical device commercialization firm and has served as chief financial officer of both public and privately held businesses, primarily in manufacturing, advanced materials, technology and the retail industries. She also has a background in public accounting with a national accounting firm and maintains an active CPA license in Ohio. Her education and experience give her strong expertise in the areas of operations and finance, including the raising of capital.

Jefferson P. Gramm – Mr. Gramm has been a Managing Director, Managing Partner and Portfolio Manager of Bandera Partners LLC, a value-oriented investment partnership, and Bandera Partners Management LLC, an affiliate general partner entity, since August 2006. Previous to Bandera Partners, Mr. Gramm was a Managing Director of Arklow Capital, LLC, a hedge fund manager focused on distressed and value investments. Mr. Gramm’s experience in finance, especially in areas of distressed and value investments are of great value to the Company in reviewing acquisition targets and negotiating and completing potential acquisitions.

Steven S. Kaufman – Mr. Kaufman has been a practicing attorney for many years, both as the head of a regional practice and a partner in a national law firm and member of its executive committee. He has strong expertise in the areas of risk management, conflict resolution and finance as well as business law and litigation.

Bernard Lerner – Mr. Lerner is the long-standing chief executive and founder of a multi-national producer of packaging materials and machinery. He brings to the Board of Directors expertise in all areas of business operations including human resources, administration and finance.

James J. Liguori – Mr. Liguori has been an officer and director of the Company since 1984 and has been responsible for all aspects of restaurant operations. He has expertise in restaurant operations, marketing and the operations of the franchisors.

James C. Pappas – Mr. Pappas has significant experience in the valuation and management of investment securities in addition to his experience in investment banking and corporate finance from his career with major investment banking firms. He has concentrated much of his efforts in the restaurant and retail business sectors and possesses a thorough understanding of the restaurant business in addition to his expertise in corporate finance.

Jacob J. Saour – Mr. Saour is an Associate Director in the Capital Markets Group of Cushman & Wakefield, a global real estate services firm based in New York. Prior to his current position, Mr. Saour worked for Houlihan Lokey, a Los Angeles based global investment bank, in the Tangible Asset Group. Mr. Saour’s interdisciplinary knowledge of real estate, capital markets, finance and investments will allow him to contribute helpful insight in overseeing Company’s real estate holdings.

## **Board Leadership**

The Board does not have a formal policy regarding the separation of the roles of CEO and Chairman of the Board as the Board believes it is in the best interest of the Company and our shareholders to make that determination based on the position and direction of the Company and the membership of the Board. At this time, the Board has determined that having an independent director serve as Chairman is in the best interest of the Company and our shareholders. This structure ensures a greater role for the independent directors in the oversight of the Company and active participation of the independent directors in setting agendas and establishing Board priorities and procedures. Further, this structure permits our President and CEO to devote more time to focus on the strategic direction and management of our day-to-day operations. The Chairman is supported by independent directors who play pivotal roles and serve on the committees of the Board. The Board does not have a lead independent director.

## **Board’s Role in Risk Oversight**

It is management’s responsibility to manage risk and bring to the Board of Directors’ attention the most material risks to the Company. The Board of Directors has oversight responsibility of the processes established to report and monitor systems for material risks applicable to the Company. The Board’s Audit Committee regularly reviews enterprise-wide risk management, which includes treasury risks, financial and accounting risks, legal and compliance risks and other risk management functions. The Compensation and Leadership Committee considers risks related to the attraction and retention of talent and related to the design of compensation programs tailored to the specific needs of the Company. The full Board considers strategic risks and opportunities and receives reports from management on risk.

## **Board of Directors Structure**

The Board of Directors has determined that each of the following directors or director nominee is an “independent director” as defined by the listing standards of The Nasdaq Stock Market: Marilyn A. Eisele, Jefferson P. Gramm, Steven S. Kaufman, Bernard Lerner, James C. Pappas and Jacob J. Saour.

The Board of Directors has an Executive Committee, an Audit Committee, and a Compensation and Leadership Committee. The Company does not have a nominating committee or a nominating committee charter. The Board of Directors as a whole functions as the nominating committee due to the relatively small size of the Board and the smaller market capitalization of the Company.

The Executive Committee consists of James C. Pappas, Bernard Lerner and James J. Liguori. This committee has the authority, between meetings of the Board of Directors, to exercise substantially all of the powers of the Board in the management of the business of the Company.

The Audit Committee consists of Marilyn A. Eisele (Chairperson), Steven S. Kaufman and Bernard Lerner. This committee, as set forth in more detail in the Audit Committee Report below, approves the Company's retention of independent auditors and pre-approves any audit or non-audit services performed by them. It reviews with such accountants the arrangements for, and the scope of, the audit to be conducted by them. It also reviews with the independent accountants and with management the results of audits and various other financial and accounting matters affecting the Company. The Board has determined that Marilyn A. Eisele qualifies as an "audit committee financial expert" as defined in the rules of the Securities and Exchange Commission. The Audit Committee has a charter. A copy of that charter was attached to the Company's 2011 Proxy Statement.

The members of the Compensation and Leadership Committee are James C. Pappas (Chairman), Bernard Lerner, Marilyn A. Eisele and Steven S. Kaufman. This committee administers the Company's compensation, benefits and the Company's Long-Term Incentive Plan. The Board of Directors adopted a charter establishing the duties and responsibilities of the Compensation and Leadership Committee. A copy of that charter was attached to the Company's 2011 Proxy Statement. Our policies and overall compensation practices for all employees do not create risks that are reasonably likely to have a material adverse effect on the Company. In addition, incentive compensation (in the past generally in the form of stock options) is not designed, and does not create, risks that are reasonably likely to have a material adverse effect on the Company. Recommendations regarding compensation of officers (other than the CEO) are made to the Compensation and Leadership Committee by our CEO. The Compensation and Leadership Committee can exercise its discretion in modifying any amount presented by our CEO. During fiscal 2013, the Compensation and Leadership Committee did not retain the services of a compensation consultant.

While neither the charter of the Audit Committee or the Compensation and Leadership Committee are available on the Company's website, copies of the charters of the Audit Committee and of the Compensation and Leadership Committee were attached as exhibits to the proxy statement for the June 24, 2011 annual meeting of shareholders.

The Board of Directors met seven times, the Audit Committee met four times, the Compensation and Leadership Committee met six times and the Executive Committee did not meet, during the 2013 fiscal year. In 2013 the Board also established a Special Committee consisting of Steven S. Kaufman (chairman), Marilyn A. Eisele and Bernard Lerner, for the purpose of reviewing proposed equity transactions which met 18 times during the 2013 fiscal year. Each director currently serving on the Board attended 75% or more of the meetings held during such year by the Board and the committee(s) on which he or she served. The Company encourages the attendance of all directors at the annual shareholders meetings. All of the Company's directors attended the 2012 annual meeting of shareholders.

Nominations for Director are made by the Board of Directors as a whole. The Board determines the desired skills and characteristics for directors as well as the composition of the Board of Directors as a whole. This assessment considers the directors' qualifications and independence, as well as diversity, age, skill and experience in the context of the needs of the Board of Directors. At a minimum, directors should share the values of the Company and should possess the following characteristics: high personal and professional integrity; the ability to exercise sound business judgment; an inquiring mind; and the time available to devote to Board of Directors' activities and the willingness to do so. The Board does not have a formal policy specifically focusing on the consideration of diversity; however, diversity is one of the many factors that the Board considers when identifying candidates. In addition to the foregoing considerations, generally with respect to nominees recommended by shareholders, the Board will evaluate such recommended nominees considering the additional information regarding them provided to the Board. When seeking candidates for the Board of Directors, the Board may solicit suggestions from incumbent directors, management and third-party search firms. Ultimately, the Board will recommend prospective nominees who the Board believes will be effective, in conjunction with the other members of the Board of Directors, in collectively serving the long-term interests of the Company's shareholders. The Board will review any candidate recommended by shareholders of the Company in light of its criteria for selection of new directors. If a shareholder wishes to recommend a candidate to the Board of Directors, he or she should send his or her recommendation, with a description of the candidate's qualifications, to the Secretary of the Company, Kenneth L. Hignett, 4829 Galaxy Parkway, Suite S, Cleveland, Ohio 44128. Please note that if our shareholders approve Proposal Four our Code of Regulations will be amended to provide certain advance notice and disclosure requirements for shareholder nominees for election as directors.

**PROPOSAL 2: RATIFICATION OF THE APPOINTMENT OF  
GRANT THORNTON LLP**

The Audit Committee of the Board currently anticipates appointing Grant Thornton LLP as our independent registered public accounting firm for the fiscal year ending March 2, 2014. For fiscal year 2013, Grant Thornton was engaged by us to audit our annual financial statements. Representatives of Grant Thornton are expected to be present at the Meeting, will have an opportunity to make a statement if they so desire and will be available to respond to appropriate questions.

The Board seeks an indication from shareholders of their approval or disapproval of the Audit Committee's anticipated appointment of Grant Thornton as the Company's independent registered public accounting firm for the 2014 fiscal year. The submission of this matter for approval by shareholders is not legally required, however, the Board believes that the submission is an opportunity for the shareholders to provide feedback to the Board on an important issue of corporate governance. If the shareholders do not approve the appointment of Grant Thornton, the appointment of the Company's independent registered public accounting firm will be re-evaluated by the Audit Committee but will not require the Audit Committee to appoint a different accounting firm. If the shareholders approve the appointment of Grant Thornton, the Audit Committee in its discretion may select a different independent registered public accounting firm at any time during the year if it determines that such a change would be in the best interest of the Company and its shareholders. Approval of the proposal to ratify the selection of Grant Thornton as our independent registered public accounting firm requires the affirmative vote of a majority of the common shares present in person or by proxy and entitled to be voted on the proposal at the Meeting. Abstentions will have the same effect as votes against the proposal. Broker non-votes will not be considered common shares present and entitled to vote on the proposal and will not have a positive or negative effect on the outcome of this proposal, however, there will be no broker non-votes on this proposal because brokers have the discretion to vote uninstructed common shares on this proposal.

**The Board of Directors recommends that you vote FOR Proposal 2.**



**PROPOSAL 3: PROPOSAL TO AMEND AND RESTATE THE ARTICLES OF INCORPORATION TO ELIMINATE CUMULATIVE VOTING IN THE ELECTION OF DIRECTORS**

Our Board of Directors recommends that the shareholders approve amendment and restatement of the Amended and Restated Articles of Incorporation to eliminate cumulative voting in the election of directors as discussed below. Under Ohio law, because our Amended and Restated Articles of Incorporation currently do not address cumulative voting, our shareholders have the right to elect cumulative voting in any election of directors.

Cumulative voting enables a shareholder to cumulate his or her voting power to give one nominee a number of votes equal to the number of directors to be elected multiplied by the number of shares he or she holds, or to distribute the votes among two or more nominees as he or she sees fit. Thus, with cumulative voting, shareholders can cast all of their votes “for” one nominee, instead of voting each share “for” or “against” or “abstain” for each nominee, and thereby may be able to elect one or more nominees that have not been supported by the holders of a majority of the shares voting on the election of directors. Coupled with the annual election of directors, cumulative voting increases the chances that a minority shareholder could take disruptive actions to the detriment of the majority of shareholders. Finally, eliminating cumulative voting would be consistent with the general trend away from cumulative voting for public companies. Consequently, we are submitting this proposal to eliminate cumulative voting.

The elimination of cumulative voting might under certain circumstances render more difficult or discourage a merger, tender offer or proxy contest, the assumption of control by a holder of a large block of our common shares or the removal of incumbent management. Neither management nor our Board is aware of any attempt by any shareholder to accumulate sufficient shares to obtain control of the Company.

If the shareholders approve this proposal, the following will be added as a new Article SEVENTH of the Company’s Amended and Restated Articles of Incorporation:

Notwithstanding any provision of the General Corporation Law of Ohio now or hereafter in effect, no shareholder shall have the right to vote cumulatively in the election of directors.

The proposed amendment and restatement of the Amended and Restated Articles of Incorporation would also add a provision providing for severability, which would allow any of the remaining articles to remain in full force and effect if an individual article is held to be invalid, prohibited, or unenforceable. The full text of the proposed amendment and restatement of the Amended and Restated Articles of Incorporation is attached as Appendix A; underlined text denotes proposed additions and strikethrough text denotes proposed deletions. The previous description of the amendment and restatement of the Articles of Incorporation is qualified in its entirety by reference to Appendix A.

Under Ohio corporation law, the affirmative vote of two-thirds of our outstanding common shares is required for approval of the proposal to adopt the Amended and Restated Articles of Incorporation. Abstentions and unvoted shares (including broker non-votes) will have the same effect as votes against the proposal.

**The Board of Directors recommends that you vote FOR Proposal 3.**

**PROPOSALS TO APPROVE THE AMENDMENTS  
TO THE COMPANY’S CODE OF REGULATIONS**

Our Board of Directors recommends that the shareholders approve amendments to the Company’s the Amended Code of Regulations to require advance notice and disclosure related to business to be conducted at shareholder meetings. Our current Amended Code of Regulations does not contain provisions governing procedural or disclosure requirements governing (a) shareholder proposals made in connection with an Annual Meeting of Shareholders, (b) shareholder nominations for directors, or (c) shareholder proposals made in connection with a Special Meeting of Shareholders. In addition, the Board of Directors recommends the shareholders approve (i) additional clean up and modernization amendments to the Amended Code of Regulations primarily related to the conduct of shareholder meetings and the use of uncertificated shares and (ii) the restatement of the Amended Code of Regulations to reflect all amendments approved hereby. The proposed amendments to the Amended Code of Regulations would establish procedural and disclosure requirements for these three cases. Approval of the amendments would have no effect on a shareholder’s right to make proposals under Rule 14a-8 (“Rule 14a-8”) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”).

**PROPOSAL 4: PROPOSAL TO APPROVE AN AMENDMENT TO THE AMENDED CODE OF REGULATIONS TO REQUIRE ADVANCE NOTICE AND DISCLOSURE RELATED TO ANNUAL MEETINGS**

*Advance Notice and Disclosures in Connection with Annual Meetings*

Reasons For and Effects of Proposed Amendment

Our Code of Regulations currently does not contain any notice or disclosure requirements that apply to proposals made by a shareholder in connection with our Annual Meeting of Shareholders. As a result, if a shareholder is not seeking to include such a proposal in the Company’s proxy materials pursuant to Rule 14a-8, the shareholder is not required to provide to the Company and other shareholders any advance notice of its intended proposal or any information regarding its holdings of the Company’s stock or its interests in the proposal. Therefore, for example, if such a proposal were to be brought late in the proxy season (for instance, after we have delivered our Proxy Statement to shareholders), it could cause shareholders unnecessary confusion and create uncertainty about the proxy process and our Annual Meeting of Shareholders. In this situation and other similar situations, the shareholders might not have enough time, or the necessary information, to make an informed judgment about how to vote on such proposal.

Advance Notice Requirements

To remedy this deficiency, the amendment being proposed creates an advance notice provision that would require shareholders seeking to bring such proposals to give the Company advance notice of their intent to do so at least 90 days, but no more than 120 days, before the first anniversary of the immediately preceding year's Annual Meeting of Shareholders. This provision is intended to provide reasonable advance notice of a shareholder's intention to submit a proposal. To understand how this would apply, if the proposed notice period had been in place for the 2012 proxy season, the shareholder would have been required to provide notice of the proposal and related disclosures to the Company on or after February 23, but before March 25, of 2012.

Such notice would give the Company a brief time to consider the proposal and to determine whether to include appropriate information regarding the matter in our Proxy Statement. Shareholders also would benefit from the adoption of this advance notice provision because it would allow the Company to supply such information to shareholders, and shareholders would have the time necessary to decide how they would like to vote on the proposal. In addition, by adopting the proposed advance notice provision, no "surprise" proposals would be raised at Annual Meetings of Shareholders and meeting efficiency and clarity would be enhanced.

### Disclosure Requirements

Because no Code of Regulations disclosure requirements currently apply to shareholder proposals, shareholders who bring such proposals for consideration at Annual Meetings of Shareholders are not required to supply to the Company or the shareholders any information about themselves, their interests in the Company, or their reasons for bringing the proposals. This amendment would require these types of disclosures from proposing shareholders in order to allow the Company to provide other shareholders with the information necessary to make an informed decision on the proposal. For example, such a proposing shareholder would be required to disclose, with respect to each record or beneficial owner of the Company's shares making the proposal, or on whose behalf the proposal is made, as applicable (both are referred to as "holders"), a description of each holder's economic and voting interests in the Company, including a description of:

- the holder's name and address;
- the number of shares of the Company that are owned of record or beneficially by such holder, and the number of shares as to which the holder has or will have a right to acquire ownership;
- any derivative, swap, or other transactions engaged in by the holder, the purpose or effect of which is to give such holder economic risk similar to ownership of the Company's shares or voting power with respect to the Company's shares;
- any agreement or relationship pursuant to which the holder has or shares a right to vote shares of the Company;
- any repurchase, "stock borrowing," or similar arrangement engaged in by the holder the purpose or effect of which is to reduce the holder's economic risks of holding, increase or decrease the holder's voting power with respect to, or provide the holder with the opportunity to profit from any decrease in the price or value of, the Company's shares;
- any rights to dividends on the shares of the Company owned beneficially by the holder that are separated or separable from the underlying shares;
- any performance-related fees that the holder is entitled to based on any change in the price or value of the Company's shares; and
- any other information that the holder must disclose in a proxy statement or other filings required in connection with solicitations of proxies for such proposal pursuant to Section 14 of the Exchange Act and applicable rules and regulations;

Each holder would also be required to disclose the following:

- a statement of the course of action proposed for the Company to follow; the text of the proposal; the reasons for making the proposal; and any material interest in the matter proposed by the holder;
- a description of all arrangements or understandings with any other person or entity (naming such person or entity) pursuant to which the proposal is to be made;
- certain interests in the Company's shares held by partnerships and limited liability companies in which the holder has a direct or indirect interest; and
- certain arrangements relating to, or rights or other interests in the Company's shares held by each holder's immediate family members;

These disclosures would give Company shareholders and the Company the information they need to understand the purpose of the proposal and what the Company is being asked to do, and to assess the interests of the proposing shareholder in making the proposal. The disclosures also would allow shareholders to make an informed decision about how to vote on the proposal.

Refusal to Acknowledge Submission of Proposals

This proposed amendment also would provide that the officer presiding over the Annual Meeting of Shareholders may refuse to acknowledge the submission of any proposal not made in accordance with the provisions of Section 2(e) of Article I of the Code of Regulations and declare at such meeting that any such proposal has not been brought properly before the meeting and therefore will not be considered.

Effect on Shareholder Proposal Procedures under Rule 14a-8

The provisions of proposed new Section 2 of Article I of the Code of Regulations expressly apply to proposals that are not made pursuant to Rule 14a-8. Nothing in proposed new Section 2 of Article I of the Code of Regulations is intended to affect the rights of shareholders to request inclusion of proposals in the Company's Proxy Statement pursuant to and in accordance with the requirements of Rule 14a-8.

The full text of the proposed amendment to the Code of Regulations is included in Article I, Section 2 of the attached Appen