

FRANKLIN CAPITAL CORP

Form PRE 14A

February 11, 2005

**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 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 Section 240.14a-12

**FRANKLIN CAPITAL CORPORATION**

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(Name of Registrant as specified in its charter)

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

Payment of Filing Fee (Check the appropriate box):

No fee required.

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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):

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    - 1) Amount Previously Paid:
    - 2) Form, Schedule or Registration Statement No.:
    - 3) Filing Party:
    - 4) Date Filed:
-

## FRANKLIN CAPITAL CORPORATION

100 Wilshire Boulevard, Suite 1500  
Santa Monica, California 90401

### NOTICE OF ANNUAL MEETING OF STOCKHOLDERS To Be Held On March 25, 2005

The 2004 Annual Meeting of the Stockholders (the *Annual Meeting*) of Franklin Capital Corporation, a Delaware corporation (the *Company*), will be held on March 25, 2005, at 10:00 a.m., at the Miramar Hotel, 101 Wilshire Boulevard, Santa Monica, California 90401 for the following purposes, each of which is described more fully in the accompanying proxy statement:

- Proposal No. 1:** To elect Lytle Brown III as a Class I Director to hold office for a three-year term expiring in 2007, or until his successor has been duly elected and qualified or until his earlier death, resignation or removal, in accordance with the Company's bylaws, as amended;
- Proposal No. 2:** To ratify the appointment by the Board of Directors of the Company (the *Board*) of Rothstein, Kass & Company, P.C. (*Rothstein Kass*) to serve as independent auditors for the fiscal year ended December 31, 2004;
- Proposal No. 3:** To authorize and approve a stock option and restricted stock plan for the Company (the *New Plan*);
- Proposal No. 4:** To authorize and approve the payment of cash and equity compensation to Milton Todd Ault III (*Ault*), Lynne Silverstein (*Silverstein*), and Louis Glazer and Melanie Glazer (the *Glazers*), each of whom may be deemed to be an interested stockholder (as defined in Section 203 of the Delaware General Corporate Law (*DGCL*)) of the Company;
- Proposal No. 5:** To authorize and approve the sale of common stock par value \$1.00 of the Company (*Common Stock*), warrants to purchase Common Stock and other securities representing indebtedness convertible into Common Stock to Ault, Silverstein and the Glazers, each of whom may be deemed to be an interested stockholder (as defined in Section 203 of the DGCL) on terms that are approved by a majority of the Board consistent with its fiduciary duties and market terms existing at the time of such offering, including those relating to price per share, interest rate, warrant coverage and registration rights for such issuances and the requirements of applicable law, including the Investment Company Act of 1940, as amended (the *Investment Company Act*), as described in this proxy statement;
- Proposal No. 6:** To authorize and approve the certificate of amendment to the Amended and Restated Certificate of Incorporation of the Company (the *Certificate of Amendment*) to reduce the par value of the Common Stock from \$1.00 per share to \$0.33 per share and effect a three-for-one split of the Common Stock (the *Stock Split*);
- Proposal No. 7:** To authorize and approve the prospective issuance of bonds, notes or other evidences of indebtedness that are convertible into Common Stock (*Convertible Bonds*, *Convertible Notes* or *Other Convertible Indebtedness*) in accordance with the requirements of the Investment Company Act;
- Proposal No. 8:** To authorize and approve the Board to withdraw the Company's election to be treated as a business development company (*BDC*) as soon as practicable pursuant to Section 54(c) under the Investment Company Act;
- Proposal No. 9:** To authorize and approve the Certificate of Amendment to change the name of the Company to Patient Safety Technologies, Inc.;
- Proposal No. 10:** To authorize and approve the Certificate of Amendment to decrease the authorized number of shares of Common Stock from 50,000,000 shares to 25,000,000 shares and decrease the authorized number of shares of Preferred Stock from 10,000,000 to 1,000,000; and

11. To consider and transact such other business as may properly come before the Annual Meeting or any adjournment or postponement thereof.

The Board has fixed the close of business on January 26, 2005 as the record date (the *Record Date*) for the determination of the stockholders entitled to notice of, and to vote at, the Annual Meeting or any adjournment or postponement thereof. Each stockholder of record as of the record date will be entitled to one vote for each share of Common Stock and one vote for each share of preferred stock of the Company (*Preferred Stock*) held on the Record Date.

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By Order of the Board of Directors

/s/ Milton Todd Ault III

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Chairman and Chief Executive Officer

Santa Monica, California

February , 2005

**You are cordially invited to attend the Annual Meeting in person. Whether or not you expect to attend the Annual Meeting, please complete, date, sign and return the enclosed proxy card as promptly as possible in order to ensure your representation at the Annual Meeting. A return envelope (which is postage prepaid if mailed in the United States) is enclosed for your convenience. Even if you have voted by proxy, you may still vote in person if you attend the Annual Meeting. Please note, however, that if your shares are held of record by a broker, bank or other nominee and you wish to vote at the Annual Meeting, you must obtain a proxy issued in your name from that record holder.**

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## FRANKLIN CAPITAL CORPORATION

100 Wilshire Boulevard, Suite 1500  
Santa Monica, California 90401

### PROXY STATEMENT

FOR THE ANNUAL MEETING OF STOCKHOLDERS TO BE HELD ON  
March 25, 2005

### QUESTIONS AND ANSWERS ABOUT THIS PROXY STATEMENT AND VOTING

#### Why am I receiving these materials?

You have been sent this proxy statement and the enclosed proxy card because Franklin Capital Corporation (the *Company*) is soliciting your proxy to vote at the Annual Meeting on the proposals described in this proxy statement (the *Proposals*). You are invited to attend the Annual Meeting to vote in person on the Proposals. However, you do not need to attend the Annual Meeting to vote your shares. Instead, you may simply complete, sign, date and return the enclosed proxy card to indicate your vote with respect to each of the Proposals. The Notice of Annual Meeting of Stockholders, this proxy statement and the accompanying proxy cards are first being mailed to stockholders on or about February , 2005.

#### Who can vote at the Annual Meeting?

Only stockholders of record at the close of business on January 26, 2005 (the *Record Date*) will be entitled to vote at the Annual Meeting. As of the Record Date, there were 1,556,901 shares of Common Stock and 10,950 shares of Preferred Stock outstanding and entitled to vote.

#### *Stockholder of Record: Shares Registered in Your Name*

If on the Record Date your shares were registered directly in your name with the Company, then you are a stockholder of record. As a stockholder of record, you may vote in person at the Annual Meeting or vote by proxy. Whether or not you plan to attend the Annual Meeting, the Company encourages you to fill out and return the enclosed proxy card to ensure your representation at the Annual Meeting.

#### *Beneficial Owner: Shares Registered in the Name of a Broker or Bank*

If on the Record Date your shares were held in an account at a brokerage firm, bank, dealer, or other similar organization, then you are the beneficial owner of shares held in street name and these proxy materials are being forwarded to you by that organization. The organization holding your account is considered the stockholder of record for purposes of voting at the Annual Meeting. As the beneficial owner, you have the right to direct your brokerage firm, bank, dealer or other similar organization on how to vote the shares in your account. You are also invited to attend the Annual Meeting, as discussed further below. However, since you are not the stockholder of record, you may not vote your shares in person at the Annual Meeting unless you request and obtain a valid proxy from your broker or other agent. Your brokerage firm, bank, dealer or other agent should have provided you a voting instruction card for you to use in directing the stockholder of record how to vote your shares or obtain a proxy allowing you to vote your shares personally.

#### What am I voting on?

There are ten matters scheduled for a vote at the Annual Meeting:

**Proposal No. 1:** The election of Lytle Brown III as a Class I Director to hold office for a three-year term expiring in 2007, or until his successor has been duly elected and qualified or until his earlier death, resignation or removal, in accordance with the Company's bylaws, as amended;

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**Proposal No. 2:** The ratification of the appointment by the Board of Directors of the Company (the *Board*) of Rothstein, Kass & Company, P.C. ( *Rothstein Kass* ) to serve as independent auditors for the fiscal year ended December 31, 2004;

**Proposal No. 3:** The authorization and approval of a stock option and restricted stock plan for the Company (the *New Plan* );

**Proposal No. 4:** The authorization and approval of the payment of cash and equity compensation to Milton Todd Ault III ( *Ault* ), Lynne Silverstein ( *Silverstein* ), and Louis Glazer and Melanie Glazer (the *Glazers* ), each of whom may be deemed to be an interested stockholder (as defined in Section 203 of the Delaware General Corporate Law ( *DGCL* )) of the Company;

**Proposal No. 5:** The authorization and approval of the sale of common stock par value \$1.00 of the Company ( *Common Stock* ), warrants to purchase Common Stock and other securities representing indebtedness convertible into Common Stock to Ault, Silverstein and the Glazers, each of whom may be deemed to be an interested stockholder (as defined in Section 203 of the DGCL), on terms that are approved by a majority of the Board consistent with its fiduciary duties and market terms existing at the time of such offering, including those relating to price per share, interest rate, warrant coverage and registration rights for such issuances and the requirements of applicable law, including the Investment Company Act of 1940, as amended (the *Investment Company Act* ), as described in this proxy statement;

**Proposal No. 6:** The authorization and approval of the certificate of amendment to the Amended and Restated Certificate of Incorporation of the Company (the *Certificate of Amendment* ) to reduce the par value of the Common Stock from \$1.00 per share to \$0.33 per share and effect a three-for-one split of the Common Stock (the *Stock Split* );

**Proposal No. 7:** The authorization and approval of the prospective issuance of bonds, notes or other evidences of indebtedness that are convertible into Common Stock ( *Convertible Bonds*, *Convertible Notes* or *Other Convertible Indebtedness* ) in accordance with the requirements of the Investment Company Act; and

**Proposal No. 8:** The authorization and approval of the Board to withdraw the Company's election to be treated as a business development company ( *BDC* ) as soon as practicable pursuant to Section 54(c) under the Investment Company Act;

**Proposal No. 9:** The authorization and approval of the Certificate of Amendment to change the name of the Company to Patient Safety Technologies, Inc. ;

**Proposal No. 10:** The authorization and approval of the Certificate of Amendment to decrease the authorized number of shares of Common Stock from 50,000,000 shares to 25,000,000 shares and decrease the authorized number of shares of Preferred Stock from 10,000,000 to 1,000,000; and

To consider and transact such other business as may properly come before the Annual Meeting or any adjournment or postponement thereof.

Each of these Proposals, as well as the recommendation of the Board with respect to each of these Proposals, are described in greater detail elsewhere in this proxy statement.

### How do I vote?

With respect to the election of directors, you may either vote FOR the nominee proposed by the Board or you may abstain from voting for the nominee specified. For each of the other matters to be voted on, you

may vote FOR or AGAINST or ABSTAIN from voting. The procedures for voting are fairly straightforward, as described below:

***Stockholder of Record: Shares Registered in Your Name***

If you are a stockholder of record, you may vote in person at the Annual Meeting or vote by proxy using the enclosed proxy card. To vote in person, you need only attend the Annual Meeting, where you will be given a ballot to vote on each of the proposals. To vote using the proxy card, simply complete, sign and date the enclosed proxy card and return it promptly in the postage prepaid envelope provided. If you are a holder of record of Common Stock, you should complete, sign and date the proxy card marked with Common Stock in the upper right hand corner. If you are a holder of record of Preferred Stock, you should complete, sign and date the proxy card marked with Preferred Stock in the upper right hand corner. If you are a holder of record of both Common Stock and Preferred Stock, you should complete, sign and date both proxy cards. So long as we receive your signed proxy card by the Annual Meeting, your shares will be voted as you have directed on the card.

Whether or not you plan to attend the Annual Meeting, the Company encourages you to vote by proxy to ensure your representation at the Annual Meeting. You may still attend the Annual Meeting and vote in person even if you have already voted by proxy.

***Beneficial Owner: Shares Registered in the Name of Broker or Bank***

If you are a beneficial owner of shares registered in the name of your brokerage firm, bank, dealer, or other similar organization, you should have received a voting instruction card with these proxy materials from that organization. Simply complete and mail the voting instruction card to ensure your representation at the Annual Meeting. Alternatively, you may vote in person at the Annual Meeting. However, to vote in person at the Annual Meeting, you must obtain a valid proxy from your brokerage firm, bank, dealer or other similar organization. Follow the instructions from your brokerage firm, bank, dealer, or other similar organization included with these proxy materials, or contact your brokerage firm, bank, dealer, or other similar organization to request a proxy form.

If your shares are held in street name, you will need to obtain a proxy form from the institution that holds your shares and follow the instructions included on that form regarding how to instruct your broker to vote your shares. If you do not give instructions to your broker, your broker can vote your shares only with respect to discretionary items, but not with respect to non-discretionary items. Discretionary items are proposals considered routine under the rules of certain self-regulatory organizations, such as the New York Stock Exchange and the American Stock Exchange, on which your broker may vote shares held in street name in the absence of your voting instructions. On non-discretionary items for which you do not give your broker instructions, the shares will be treated as broker non-votes (which are considered shares for which the brokerage firm, bank, dealer, or other similar organization or nominee has not received voting instructions from the record holder and does not have discretionary authority to vote the shares on certain proposals).

**How many votes do I have?**

On each matter to be voted upon at the Annual Meeting, you have one vote for each share of Common Stock and one vote for each share of Preferred Stock you own as of the Record Date. The Common Stock and Preferred Stock will vote together as a single class with regard to each of the proposals to be considered at the Annual Meeting. In addition, the Common Stock and Preferred Stock will each vote as a separate class with regard to Proposal Nos. 6, 9 and 10.

**What if I return a proxy card but do not make specific choices?**

If you return a signed and dated proxy card without marking any voting selections, all of your shares will be voted FOR the election of the nominee for director and FOR each of the other proposals described in this proxy statement. If any other matter is properly presented at the meeting, your proxy (one of the individuals named on your proxy card as your proxy) will vote your shares using his or her best judgment.

**Who is paying for this proxy solicitation?**

The Company will pay for the entire cost of soliciting proxies. The Company may also reimburse brokerage firms, banks, dealers, or other similar organizations or agents for the cost of forwarding proxy materials to beneficial owners. In addition to these mailed proxy materials, the Company's directors and officers may also solicit proxies in person, by telephone or by other means of communication; however, directors and officers will not be paid any additional compensation for soliciting proxies.

**What does it mean if I receive more than one proxy card?**

If you receive more than one proxy card marked "Common Stock" or "Preferred Stock" in the upper right hand corner, it means that your shares are registered in more than one name or are registered in different accounts. Please complete, sign, date and return each proxy card to ensure that all of your shares are voted at the Annual Meeting.

**Can I change my vote after submitting my proxy card?**

You can change your vote by revoking your proxy at any time before the final vote at the Annual Meeting. You may revoke your proxy in any one of three ways:

You may submit another properly completed proxy card indicating a later date.

You may send a written notice that you are revoking your proxy to the Company's Corporate Secretary at 100 Wilshire Boulevard, Suite 1500, Santa Monica, California 90401.

You may attend the Annual Meeting and vote in person in accordance with the procedures specified above. However, simply attending the Annual Meeting will not, by itself, revoke your proxy.

Following the final vote at the Annual Meeting, you may not revoke your proxy or otherwise change your vote.

**How are votes counted?**

Votes will be counted by the inspector of election appointed for the Annual Meeting.

**How many votes are needed to approve each proposal?**

**Proposal No. 1:** Proposal No. 1 (the election of Lytle Brown III as a Class I Director to hold office for a three-year term expiring in 2007, or until his successor has been duly elected and qualified or until his earlier death, resignation or removal, in accordance with the Company's bylaws, as amended) will be approved if a plurality of the total votes properly cast in person or by proxy at the Annual Meeting by the holders of Common Stock and Preferred Stock, voting together as a single class, vote "FOR" the proposal. Abstentions and broker non-votes will have no effect on the result of the vote.

**Proposal No. 2:** Proposal No. 2 (the ratification of the appointment by the Board of Rothstein Kass to serve as independent auditors for the fiscal year ended December 31, 2004) will be approved if a majority of the total votes properly cast in person or by proxy at the Annual Meeting by the holders of Common Stock and Preferred Stock, voting together as a single class, vote "FOR" the proposal. Abstentions and broker non-votes will have no effect on the result of the vote.

**Proposal No. 3:** Proposal No. 3 (the authorization and approval of a stock option and restricted stock plan for the Company) will be approved if a majority of the total votes properly cast in person or by proxy at the Annual Meeting by the holders of Common Stock and Preferred Stock, voting together as a single class, vote "FOR" the proposal. Abstentions and broker non-votes will have no effect on the result of the vote.

**Proposal No. 4:** Proposal No. 4 (the authorization and approval of the payment of cash and equity compensation to Ault, Silverstein and the Glazers, each of whom may be deemed to be an "interested stockholder" (as defined in Section 203 of the DGCL) of the Company)) will be approved if at least

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66 2/3% of the outstanding shares of Common Stock and Preferred Stock (excluding any shares owned by Ault Glazer, Ault, Silverstein and the Glazers), voting together as a single class at the Annual Meeting, are voted FOR the proposal. Abstentions and broker non-votes will have the same effect as votes AGAINST Proposal No. 4.

**Proposal No. 5:** Proposal No. 5 (the authorization and approval of the sale of Common Stock, warrants to purchase Common Stock, and other securities representing indebtedness convertible into Common Stock to Ault, Silverstein and the Glazers, each of whom may be deemed to be an interested stockholder (as defined in Section 203 of the DGCL) of the Company)) will be approved if at least 66 2/3% of the outstanding shares of Common Stock and Preferred Stock (excluding any shares owned by Ault Glazer, Ault, Silverstein and the Glazers), voting together as a single class at the Annual Meeting, are voted FOR the proposal. Abstentions and broker non-votes will have the same effect as votes AGAINST Proposal No. 5.

**Proposal No. 6:** Proposal No. 6 (the authorization and approval of the Certificate of Amendment to reduce the par value of the Common Stock from \$1.00 per share to \$0.33 per share and effect a three-for-one stock split of the Common Stock ) will be approved if a majority of the outstanding shares of Common Stock and Preferred Stock, voting together as a single class at the Annual Meeting, are voted FOR the proposal, a majority of the outstanding shares of Common Stock, voting separately as a class at the Annual Meeting, are voted FOR the proposal, and a majority of the outstanding shares of Preferred Stock, voting separately as a class at the Annual Meeting, are voted FOR the proposal. Abstentions and broker non-votes will have the same effect as votes AGAINST Proposal No. 6.

**Proposal No. 7:** Proposal No. 7 (the authorization and approval of the prospective issuance of Convertible Bonds, Convertible Notes or Other Convertible Indebtedness in accordance with the requirements of the Investment Company Act) will be approved if a majority of the total votes properly cast in person or by proxy at the Annual Meeting by the holders of Common Stock and Preferred Stock, voting together as a single class, vote FOR the proposal. Abstentions and broker non-votes will have no effect on the result of the vote.

**Proposal No. 8:** Proposal No. 8 (the authorization and approval of the Board to withdraw the Company's election to be treated as a BDC pursuant to Section 54(c) under Investment Company Act) will be approved if a majority of the outstanding shares of the Common Stock and Preferred Stock, voting together as a single class at the Annual Meeting, are voted FOR the proposal. Abstentions and broker non-votes will also have the same effect as votes AGAINST Proposal No. 8.

For purposes of this Proposal No. 8 only, the vote of a majority of the outstanding shares means the vote (A) of 67 per centum or more of the voting securities present at the Annual Meeting, if the holders of more than 50 per centum of the outstanding voting securities of the Company are present or represented by proxy; or (B) of more than 50 per centum of the outstanding voting securities of the Company, whichever is the less.

**Proposal No. 9:** Proposal No. 9 (the authorization and approval of the Certificate of Amendment to change the name of the Company to Patient Safety Technologies, Inc.) will be approved if a majority of the outstanding shares of Common Stock and Preferred Stock, voting together as a single class at the Annual Meeting, are voted FOR the proposal, a majority of the outstanding shares of Common Stock, voting separately as a class at the Annual Meeting, are voted FOR the proposal, and a majority of the outstanding shares of Preferred Stock, voting separately as a class at the Annual Meeting, are voted FOR the proposal. Abstentions and broker non-votes will have the same effect as votes AGAINST Proposal No. 9.

**Proposal No. 10:** Proposal No. 10 (the authorization and approval of the Certificate of Amendment to decrease the authorized number of shares of Common Stock from 50,000,000 shares to 25,000,000 shares and decrease the authorized number of shares of Preferred Stock from 10,000,000 to 1,000,000) will be approved if a majority of the outstanding shares of Common Stock and Preferred Stock, voting together as a single class at the Annual Meeting, are voted FOR the proposal, a majority of the

outstanding shares of Common Stock, voting separately as a class at the Annual Meeting, are voted FOR the proposal, and a majority of the outstanding shares of Preferred Stock, voting separately as a class at the Annual Meeting, are voted FOR the proposal. Abstentions and broker non-votes will have the same effect as votes AGAINST Proposal No. 10.

To consider and transact such other business as may properly come before the Annual Meeting or any adjournment or postponement thereof.

The approval of each proposal described in this proxy statement is independent from the approval of each of the other proposals described in this proxy statement. However, Proposal Nos. 3, 7, 8 and 9 have certain provisions which make them interrelated. Specifically, in the event that Proposal No. 8 (authorization and approval of the Board to withdraw the Company's election to be treated as a BDC) is approved, the limitations placed on the Company as a BDC, which are described in Proposal Nos. 3, 7 and 9, will no longer be applicable to the Company upon its filing of an election with the SEC to no longer be regulated as a BDC under the Investment Company Act.

#### **What is the quorum requirement?**

A quorum of stockholders is necessary to hold a valid meeting. For purposes of Proposal Nos. 1, 2, 3, 4, 5, 7, and 8, a quorum will be present if at least a majority of the outstanding shares of Common Stock and Preferred Stock are represented by stockholders present at the Annual Meeting or by proxy. In addition, a quorum will be present for Proposal Nos. 6, 9 and 10 if at least (i) a majority of the outstanding shares of Common Stock and Preferred Stock are represented by stockholders present at the Annual Meeting or by proxy; (ii) a majority of the outstanding shares of Common Stock are represented by stockholders present at the Annual Meeting or by proxy; and (iii) a majority of the outstanding shares of Preferred Stock are represented by stockholders present at the Annual meeting or by proxy. As of the Record Date, there were 1,556,901 shares of Common Stock and 10,950 shares of Preferred Stock outstanding and entitled to vote.

Your shares will be counted towards the quorum only if you submit a valid proxy card or if you vote at the Annual Meeting. Abstentions and broker non-votes will be counted towards the quorum requirement. If there is no quorum, a majority of the votes present at the Annual Meeting may adjourn or postpone the Annual Meeting to another date upon which a quorum may be obtained.

Any adjournment may be made with respect to one or more proposals for the Company, but not necessarily for all proposals of the Company. In the event that a quorum is present at the Annual Meeting but sufficient votes to approve any proposal are not received, the persons named as proxies may propose one or more adjournments of the Annual Meeting to permit further solicitation of proxies or to obtain the vote required for approval of one or more proposals.

#### **How can I find out the results of the voting at the Annual Meeting?**

Preliminary voting results will be announced at the Annual Meeting. Final voting results will be published promptly after certification in a press release or current report on Form 8-K, as well as in the Company's Form 10-Q for the quarter ending March 31, 2005.

#### **Background**

On June 23, 2004, the Company entered into a Letter of Understanding (the *LOU*) with Ault Glazer Investment Management, LLC (*Ault Glazer*). This LOU set forth the understandings and agreements of the Company and Ault Glazer with respect to the initial steps in the execution of a strategic restructuring and recapitalization plan for the Company (the *Restructuring Plan*). The Restructuring Plan was intended to maximize stockholder value through, among other things, (i) a shift in the Company's investment strategy away from the radio and telecommunications industry toward a focus on the medical products/health care solutions and the financial service industries, (ii) the liquidation of the Company's investments (including Excelsior Radio Networks, Inc. (*Excelsior*)), (iii) the raising of new capital to fund new investments, and

(iv) the election of new directors and officers with experience and expertise in the medical products/health care solutions and the financial services industries.

On October 22, 2004, the Company held a special meeting of stockholders to approve certain proposals relating to the Restructuring Plan (the *Special Meeting* ). The stockholders approved the following proposals at the Special Meeting:

the election of directors;

the amendment and restatement of the Company's certificate of incorporation to increase the authorized number of shares of the Company's Common Stock from 5,000,000 shares to 50,000,000 shares;

the amendment and restatement of the Company's certificate of incorporation to increase the authorized number of shares of the Company's Preferred Stock from 5,000,000 shares to 10,000,000 shares;

the amendment and restatement of the Company's certificate of incorporation to provide for the limitation of liability of the Company's directors to the fullest extent permitted by law;

the amendment and restatement of the Company's certificate of incorporation to provide for the classification of the Board into three staggered classes of directors;

the sale by the Company to Quince Associates, LP ( *Quince* ) of all of the shares of, and warrants to purchase shares of common stock of Excelsior owned by the Company for an aggregate purchase price of approximately \$1.5 million; and

the sale by the Company of up to 5,000,000 shares of Common Stock and warrants to purchase up to an additional 1,500,000 shares of its Common Stock.

The authorization and approval of the sale by the Company of Common Stock and warrants to purchase Common Stock to Ault, Silverstein, and the Glazers, each of whom may be deemed to be interested stockholders (as defined in Section 203 of the DGCL) was not approved at the Special Meeting and is being submitted for reconsideration at the Annual Meeting as Proposal No. 5. Unlike the earlier proposal which stockholders did not approve at the Special Meeting, Proposal No. 5, in addition to seeking authorization for issuance of Common Stock and warrants to purchase Common Stock, also includes authorization for the issuance of other securities representing indebtedness to Ault, Silverstein, and the Glazers.

On October 22, 2004, Mr. Stephen L. Brown, resigned from his positions as the Company's Chairman and Chief Executive Officer. Similarly, Hiram M. Lazar also resigned from his positions as the Company's Chief Financial Officer and Secretary. To fill the vacancies created by these resignations, the newly elected Board (consisting of Louis Glazer, Alice Campbell, Herbert Langsam, and Lytle Brown III) appointed Ault to serve as the Company's Chairman and Chief Executive Officer and Silverstein to serve as the Company's President and Secretary.

On February 4, 2005, the Company entered into a definitive agreement to purchase SurgiCount Medical Inc. ( *Surgicount* ), a privately held, California-based developer of patient safety devices. Under the terms of the agreement with Surgicount, which is subject to customary conditions to closing, the Company will pay approximately \$4 million in a combination of cash, stock and milestone payments. Surgicount owns U.S. and European patents on patient safety products, including the Safety-Sponge System, which allows for faster and more accurate accounting of surgical sponges.

#### **Background of Ault Glazer and its Relationship with the Company**

Ault Glazer is a private investment management firm headquartered in Santa Monica, California that currently manages approximately \$20 million in individual client accounts and private investment funds. Together, Ault, Silverstein, and the Glazers own 100% of the outstanding membership interests in Ault Glazer. Ault serves as the controlling and managing member of Ault Glazer and Silverstein is the Chief Executive Officer of Ault Glazer.

As of the date of this proxy statement, Ault Glazer, Ault, Silverstein and the Glazers may be deemed to directly or indirectly beneficially own or control approximately 29.7% of the outstanding Common Stock. Ault Glazer's, Ault's, Silverstein's and the Glazers' beneficial ownership or control of these shares of Common Stock may result from either their positions as owners or executive officers of Ault Glazer and/or their discretionary authority over private investment funds which Ault Glazer manages, or their direct ownership of shares of Common Stock.

As of the date of this proxy statement, Ault Glazer, Ault, Silverstein and the Glazers may be deemed to directly or indirectly beneficially own or control approximately 98.2% of the outstanding Preferred Stock. Ault Glazer's, Ault's, Silverstein's and the Glazers' beneficial ownership or control of these shares of Preferred Stock may result from either their positions as owners or executive officers of Ault Glazer and/or their discretionary authority over private investment funds which Ault Glazer manages, or their direct ownership of shares of Preferred Stock. In addition, prior to the date of the Annual Meeting, the Glazers intend to make offers (or to cause their designees to make offers) to all of the other holders of Preferred Stock to purchase the remaining outstanding shares of Preferred Stock.

### **Relationships and Interests in Proposals**

Certain of the Company's directors and executive officers and affiliates (including the private investment funds Ault Glazer manages) have an interest in Proposals Nos. 3, 4 and 5 relating to the authorization and approval of a new stock option and restricted stock plan and the approval of certain business combinations (as defined in Section 203 of the DGCL) with the Company. Specifically, if the Company's stockholders authorize and approve the new stock option and restricted stock plan as described in Proposal No. 3 in this proxy statement, then Ault, Silverstein, and the Glazers (subject to approval of Proposal Nos. 4 and 5) will be entitled to immediately receive options and/or restricted stock (upon approval of Proposal No. 8) from the Company. In addition, if the Company's stockholders authorize and approve business combinations between the Company and Ault, Silverstein, and the Glazers as described in Proposal Nos. 4 and 5, respectively, then Ault, Silverstein and the Glazers, each of whom may be deemed to be interested stockholders for purposes of Section 203 of the DGCL, will be able to immediately participate in the types of business combinations described in Proposal Nos. 4 and 5 (e.g., the receipt of financial benefits (which can be broadly construed to include cash (e.g., salary, consulting or other fees) and equity compensation (e.g., options, grants, restricted stock awards) and the purchase of any securities offered for sale by the Company).

Solely for purposes of this proxy statement and only with respect to those proposals in which approval is being sought for business combinations involving the Company and Ault, Silverstein, and the Glazers, namely Proposal Nos. 4 and 5, the Company in order to avoid any questions as to the applicability of Section 203 of the DGCL is assuming that the parties so named in those proposals each may be deemed to be interested stockholders (as defined in Section 203 of the DGCL).

### **REASONS FOR THE ANNUAL MEETING**

The Annual meeting is being held in order to vote on several important proposals. Each proposal that will be presented at the Annual Meeting is described in greater detail below.

**PROPOSAL NO. 1**

**ELECTION OF A CLASS I DIRECTOR**

**Background**

Pursuant to the Company's Amended and Restated Certification of Incorporation and its ByLaws, the number of directors constituting the Board shall be fixed from time to time by resolution passed by a majority of the Board. The number of directors on the Board is currently fixed at five. Directors are elected by class for a staggered term of three years for each class, with the term of office of one class of directors expiring each year. Directors serve until their successors are elected and qualified. No current disagreement exists between the Company and any of the current members of the Board regarding the operations, policies or practices of the Company.

Class I Director, Lytle Brown III, has been nominated for re-election for a three-year term expiring in 2007. Mr. Brown was recently appointed to fill an open directorship vacated by the former directors of the Board on October 22, 2004. No person being nominated as a Class I director is being proposed for election pursuant to any agreement or understanding between any such person and the Company.

**Information Regarding the Company's Directors and Nominees**

The names and certain information concerning the current directors and the person nominated by the Board to be elected as a Class I Director of the Company at the Annual Meeting is set forth below. All shares represented by the proxies will be voted FOR the election to the Board of the nominee named below unless authority to vote for the nominee has been withheld in the proxy. Although the nominee has consented to serve as a director if elected, and the Board has no reason to believe that the nominee will be unable to serve as a director, if the nominee withdraws or otherwise becomes unavailable to serve, shares represented by the proxies will be voted FOR any substitute nominee designated by the Board.

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The following table sets forth certain information regarding the Company's current directors whose terms of office will continue after the Annual Meeting and the nominee for election to the Board at the Annual Meeting:

### Current Directors

#### Interested Directors

*Messrs. Ault and Glazer are interested persons as defined in the Investment Company Act due to their positions as officers of the Company, its subsidiaries or affiliates and/or their direct or indirect beneficial ownership of more than 5% of the Company's outstanding shares.*

Name and Year First Elected Director	Age	Background Information
Milton Todd Ault III Class III Director (2004)	35	<i>Milton Todd Ault III</i> is the Chairman and Chief Executive Officer of the Company and has served as a director of the Company since June 23, 2004. Ault is also the co-founder and chief investment officer of Ault Glazer. Prior to co-founding Ault Glazer in 1998, Ault served as a portfolio manager and regional institutional financial advisor for Prudential Securities. Ault has also previously served as an institutional account executive for Dean Witter Reynolds. Until December 31, 2004, Ault was a registered representative of Strome Securities, L.P. ( <i>Strome</i> )
Louis Glazer, M.D., Ph.G. Class III Director (2004)	73	<i>Louis Glazer, M.D., Ph.G.</i> is the Chief Health and Science Officer of Franklin Medical Products, LLC (a subsidiary of the Company) and has served as a Class III Director of the Company since October 22, 2004. Mr. Glazer also currently serves as a member of Ault Glazer's advisory board and as an independent biotechnology and medical consultant. Until 2002, Dr. Glazer served as the chief anesthesiologist and medical director for the Vitreo-Retinal Clinic in Memphis, Tennessee. Prior to that, Dr. Glazer taught obstetrics anesthesia at the University of Tennessee, while practicing anesthesiology at Baptist East Hospital, Methodist Hospital, St. Francis Hospital and Baptist Memorial Hospital in Memphis, Tennessee. Dr. Glazer was also responsible for establishing anesthesia programs at Baptist Memorial Hospital and Methodist Hospital South in Memphis, Tennessee. Dr. Glazer received his B.S. in pharmacy from the University of Oklahoma and his M.D. from the University of Bologna School of Medicine in Italy.

**Independent Directors**

*The following directors are considered independent for purposes of the Investment Company Act.*

Name and Year First Elected Director	Age	Background Information
Herbert Langsam Class II Director (2004)	73	<p><i>Herbert Langsam</i> has served as a Class II Director of the Company since October 22, 2004. Mr. Langsam also currently serves as president of Medicare Recoveries, Inc., a private company located in Oklahoma City, Oklahoma focused on providing Medicare claims and recovery services. Mr. Langsam serves as a member of the board of trustees for the Geriatric Research Drug Therapy Institute and as an adjunct professor at the University of Oklahoma Pharmacy School. Previously, Mr. Langsam was the founder, president and chief executive officer of Langsam Health Services, a conglomerate of health care companies that serviced 17,000 long-term care residents, that was acquired by Omnicare, Inc. in 1991. Mr. Langsam also served as the vice president of pharmacy services for Omnicare, Inc. following its acquisition of Langsam Health Services. Mr. Langsam received his B.S. in pharmacy from the University of Oklahoma.</p>
Alice Campbell Class II Director (2004)	55	<p><i>Alice M. Campbell</i> has served as a Class II Director of the Company since October 22, 2004. Ms. Campbell also currently serves as an investigator and consultant, specializing in research and litigation services, financial investigations and computer forensics, for major companies and law firms throughout the United States. Ms. Campbell is a certified fraud specialist, as well as a certified instructor for the Regional Training Center of the United States Internal Revenue Service (the <b>IRS</b>) and for the National Business Institute. Previously, Ms. Campbell served as a special agent for the United States Treasury Department where she conducted criminal investigations and worked closely with the United States Attorney's Office and with several federal agencies, including the IRS, Federal Bureau of Investigation, Secret Service, Customs Service, State Department, Drug Enforcement Agency, Bureau of Alcohol, Tobacco and Firearms and U.S. Postal Service. Ms. Campbell received her B.A. from the University of North Carolina, Chapel Hill and has attended various specialized schools dealing with financial matters.</p>

**Nominee for Director****Independent Director**

*Mr. Brown is considered independent for purposes of the Investment Company Act.*

Name and Year First Elected Director	Age	Background Information
Brigadier General (Ret.) Lytle Brown III Class I Director (2004)	72	Brigadier General (Ret.) Lytle Brown III has served as a Class I Director of the Company since October 22, 2004 and is a current nominee for reelection as a Class I Director. Mr. Brown also currently serves as a senior tax professional with H&R Block Inc., in Nashville, Tennessee. Mr. Brown also owns and manages Marmatic Enterprises, a private company in Nashville, Tennessee that manages and invests in residential real estate principally in Tennessee and Florida. Mr. Brown is a former partner and executive vice president of Hart Freeland Roberts, Inc., one of the largest architectural engineering firms in Tennessee. Mr. Brown previously served as the head of the United States Army Corps of Engineers from 1984 to 1988, during which time he acted as commander of all engineering in Tennessee, as well as engineering units in Louisiana and Mississippi. Mr. Brown received his B.S. in engineering from Vanderbilt University and his J.D. from the Nashville School of Law.

Certain family relationships exist among the directors and/or executive officers of the Company. Specifically, Silverstein, the President and Secretary of the Company, is the step-daughter of Louis Glazer. Louis Glazer is the Chief Health and Science Officer of Franklin Medical Products, LLC and a Class III Director of the Company.

**Vote Required; Board Recommendation**

Proposal No. 1 (the election of Lytle Brown III as a Class I Director to hold office for a three-year term expiring in 2007, or until his successor has been duly elected and qualified or until his earlier death, resignation or removal, in accordance with the Company's bylaws, as amended) will be approved if a plurality of the total votes properly cast in person or by proxy at the Annual Meeting by the holders of Common Stock and Preferred Stock, voting together as a single class, vote **FOR** the proposal. Abstentions and broker non-votes will have no effect on the result of the vote. ***The Board unanimously recommends that you vote all of your shares FOR the election to the Board of the nominee described in this Proposal No. 1.***

**PROPOSAL NO. 2****RATIFICATION OF SELECTION OF INDEPENDENT PUBLIC ACCOUNTANTS****Background**

As previously reported in the current report on Form 8-K filed by the Company with the SEC on July 9, 2004, Ernst & Young LLP ( ***E&Y*** ) informed the Company on July 6, 2004 that, due to economic reasons, E&Y would not stand for re-election as the Company's independent accountants for the year ending December 31, 2004 and that the client-auditor relationship between the Company and E&Y would cease upon the filing of the Company's quarterly report on Form 10-Q for the quarterly period ended June 30, 2004. E&Y's report on the financial statements for either of the past two years did not contain an adverse opinion or a disclaimer of opinion, and was not qualified or modified as to uncertainty, audit scope, or accounting principles.

As a result of E&Y's resignation, on October 28, 2004, the Company, upon the recommendation and approval of the Audit Committee (which consists solely of directors who are not interested persons of the Company), engaged Rothstein Kass to serve as the Company's independent accountants for the fiscal year ending December 31, 2004. Prior to this engagement, Rothstein Kass had not performed any services on behalf of the Company or been consulted in respect of the Company during the Company's two most recent fiscal years or any subsequent interim period.

Rothstein Kass has advised the Company that neither the firm nor any present member or associate of it has any material financial interest, direct or indirect, in the Company or its subsidiaries. In addition, Rothstein Kass has informed management that if Proposal No. 8 (the authorization and approval of the Board to withdraw the Company's election to be treated as a BDC) is not approved, and the Company continues to operate as a BDC, then it is likely that they would not be willing to serve as the Company's independent accountants for the Company's 2005 fiscal year.

The Company expects that a representative of Rothstein Kass will be present at the Annual Meeting and will have an opportunity to make a statement if he or she so chooses and will be available to respond to appropriate questions. The Company does not expect that a representative of E&Y will be present and available at the Annual Meeting to respond to questions.

Unless marked to the contrary, the shares represented by the enclosed proxy card will be voted FOR ratification of the appointment of Rothstein Kass as the independent public accountants of the Company.

**Vote Required; Board Recommendation**

Proposal No. 2 (the ratification of the appointment by the Board of Rothstein Kass to serve as independent auditors for the fiscal year ended December 31, 2004) will be approved if a majority of the total votes properly cast in person or by proxy at the Annual Meeting by the holders of Common Stock and Preferred Stock, voting together as a single class, vote FOR the proposal. Abstentions and broker non-votes will have no effect on the result of the vote. *The Board unanimously recommends that you vote all of your shares FOR the ratification of Rothstein Kass as independent public accountants as described in this Proposal No. 2.*

**Fees Paid to Independent Public Accountants for 2004<sup>(1)</sup>, 2003 and 2002**

The following are aggregate fees billed to the Company by its independent auditors for work performed in 2004<sup>(1)</sup>, 2003 and 2002:

	Fiscal Year Ended December 31, 2004(1)	Fiscal Year Ended December 31, 2003(2)	Fiscal Year Ended December 31, 2002(2)
Audit Fees	\$ 110,000	\$ 89,500	\$ 115,000
Audit-Related Fees	\$ 85,600		
Tax Fees			
All Other Fees		\$ 7,500	\$ 56,000
	<u>\$ 195,600</u>	<u>\$ 97,000</u>	<u>\$ 171,000</u>

(1) Information regarding the fees paid or billed to the Company for the year ended 2004 are based on services provided by Ernst & Young, LLP (E&Y) from 1/1/04 to 8/13/04 and services provided by Rothstein Kass from 10/28/04 to 12/31/04. The amounts paid or attributable to E&Y for Audit Fees and Audit-Related Fees during 2004 were approximately \$55,000 and \$55,600, respectively. The amounts paid or attributable to Rothstein Kass for Audit Fees and Audit-Related Fees during 2004 were approximately \$55,000 and \$30,000, respectively.

(2) Information regarding the fees paid by the Company for the Fiscal Years Ended 2003 and 2002 are for services provided only by E&Y.

*Audit Fees.* Audit fees consist of fees billed for professional services rendered for the audit of our year-end consolidated financial statements and reviews of the interim consolidated financial statements included in quarterly reports and services that are normally provided by independent accountants in connection with statutory and regulatory filings.

*Audit-Related Fees.* Audit-related fees consist of fees billed for assurance and related services that are reasonably related to the performance of the audit or review of our consolidated financial statements and are not reported under *Audit Fees*. These services include attest services that are not required by statute or regulation and consultations concerning financial accounting and reporting standards.

*Tax Fees.* Tax fees consist of fees billed for professional services for tax compliance. These services include assistance regarding federal, state and local tax compliance.

*All Other Fees.* All other fees would include fees for products and services other than the services reported above.

### **Audit Committee Report**

As of September 23, 2004, the members of the Company's Audit Committee consisted of Irving Levine (Chairman) and Laurence Foster. Effective October 22, 2004, Messrs. Levine and Foster were replaced on the Audit Committee by Alice Campbell, Herbert Langsam, and Lytle Brown III.

The following is the Audit Committee Report (the Report) that the former Audit Committee members approved for inclusion in the Company's definitive proxy statement filed with the SEC on September 30, 2004:

#### ***The Report***

The Audit Committee reviewed and discussed with management Franklin's audited financial statements as of and for the year ended December 31, 2003. The Audit Committee also discussed with the independent accountants the matters required to be discussed by Statement on Auditing Standards No. 61, Communication with Audit Committees, as amended, by the Auditing Standards Board of the American Institute of Certified Public Accountants.

The Audit Committee's responsibilities are set forth in the Audit Committee Charter adopted by the Board, which was filed as Appendix A to Franklin's proxy statement for its 2002 Annual Meeting of Stockholders. Each of the members of the Audit Committee qualifies as an independent director under the applicable listing standards of AMEX.

The Audit Committee received and reviewed the written disclosures and the letter from the independent accountants required by Independence Standard No. 1, Independence Discussions with Audit Committees, as amended, by the Independence Standards Board, and have discussed with the accountants the accountants' independence. The Audit Committee considered whether the provisions of non-financial audit services were compatible with the independence of Ernst & Young LLP (E&Y) in performing financial audit services.

Based on the reviews and discussions referred to above, the Audit Committee recommended to the Board that the financial statements referred to above be included in Franklin's annual report on Form 10-K for the year ended December 31, 2003 for filing with the SEC. On July 6, 2004, E&Y indicated to Franklin that, due to economic reasons, E&Y would not stand for re-election as Franklin's independent accountants for the year ended December 31, 2004 and that the client auditor relationship between Franklin and E&Y will cease upon the filing of Franklin's quarterly report on Form 10-Q for the quarterly period ended June 30, 2004. The decision to change accountants was not presented to, recommended or approved by the Audit Committee or the Board. During Franklin's fiscal years ended December 31, 2002 and 2003, and the interim periods preceding the date hereof, there were no disagreements with E&Y on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of E&Y, would have caused E&Y to make reference to the subject matter of the disagreements in connection with its report. During that time, there were no reportable events as set forth in

Item 304(a)(1)(v) of Regulation S-K. Franklin has provided E&Y with a copy of this report prior to its filing with the SEC and requested that E&Y furnish a letter addressed to the SEC stating whether it agrees with the statements made by Franklin in this report and, if not, stating the respects in which it does not agree. A copy of such letter was filed as an exhibit to Franklin's current report on Form 8-K filed with the SEC on July 9, 2004. Franklin has not yet engaged independent accountants to succeed E&Y as Franklin's independent accountants. Representatives from E&Y are not expected to attend or be available for questions at the Special Meeting.

Submitted by the Audit Committee:

Irving Levine  
Laurence Foster

As of October 28, 2004, the new members of the Audit Committee (*i.e.*, Alice Campbell, Herbert Langsam, and Lytle Brown III) engaged Rothstein Kass as independent accountants to succeed E&Y as the Company's independent accountants. The Audit Committee operates pursuant to a charter approved by the Board, as amended and restated as of November 11, 2004 which is attached to this proxy statement as Appendix B (the ***Amended and Restated Charter of the Audit Committee***).

In accordance with its Amended and Restated Charter of the Audit Committee, the Audit Committee's policy is to expressly pre-approve all audit and permissible non-audit services provided by the Company's independent public accountants before the independent public accountants are engaged by the Company to provide any such services. These services may include audit services, audit related services, tax services and other related services. Pre-approval is generally provided for up to one year and any pre-approval is detailed as to the particular service or category of service and is subject to a specific budget.

### **PROPOSAL NO. 3**

#### **APPROVAL OF NEW**

#### **STOCK OPTION AND RESTRICTED STOCK PLAN FOR THE COMPANY**

##### **Background**

On September 9, 1997, the Company's stockholders approved two stock option plans: a stock incentive plan (the ***1997 Stock Incentive Plan***) to be offered to the Company's consultants, officers and employees (including any officer or employee who is also a director of the Company) and a non-statutory stock option plan (the ***Non-Statutory Stock Option Plan***) to be offered to the Company's non-employee directors. As of December 31, 2004, there were 20,625 options to purchase Common Stock outstanding and no options available for future issuance under either the 1997 Stock Incentive Plan or the Non-Statutory Stock Option Plan. Accordingly, because of the lack of availability of options for issuance under either of the foregoing plans, the Board believes that it needs the flexibility to issue new options. In addition, the Board would also like the ability, subject to approval of Proposal No. 8 (the withdrawal of the Company as a BDC) to issue restricted stock.

The Board is proposing to establish a new stock option and restricted stock plan (the ***New Plan***), to encourage stock ownership in the Company by officers, employees, non-officer directors and consultants. The Board believes that the approval of the New Plan is essential to further the long-term stability and financial success of the Company by attracting, motivating, and retaining qualified officers, directors, non-officer directors and consultants through the use of stock incentives. The Compensation Committee has recommended and the Board has approved the adoption of the New Plan.

The New Plan would provide for the grant of Common Stock with restrictions on disposition (the *Restricted Stock* ), up to a maximum of ten percent (10%) of the outstanding shares of Common Stock as of the date on which the New Plan is adopted (approximately 155,690 shares). The New Plan, as proposed, would also provide for the issuance of options to purchase a maximum of twenty-five percent (25%) of the shares of Common Stock that are outstanding as of the date on which the New Plan is adopted (approximately 389,225 shares), all of which are authorized for issuance as incentive stock options ( *ISOs* ), reduced by the number of shares with respect to which Restricted Stock is awarded. Options granted under this New Plan may qualify as ISOs, as defined in Section 422 of the Internal Revenue Code of 1986, as amended (the *Code* ).

The Company has not yet determined the amount of any options or Restricted Stock awards to be offered to any officers, employees, non-officer directors or consultants under the New Plan. At such time as the Company determines to issue any awards to any officers, employees, non-officer directors or consultants, the Company intends to engage outside consultants, law firms or other qualified parties to assist the Compensation Committee with the development of a plan of awards consistent with industry standards and applicable law.

The Compensation Committee will determine the amount and features of the stock options or Restricted Stock, if any, to be awarded to participants. The Compensation Committee evaluates a number of criteria, including the past service of each such participant to the Company, the present and potential contributions of such participant to the success of the Company, and such other factors as the Compensation Committee shall deem relevant in connection with accomplishing the purposes of the New Plan, including the recipient's current stock holdings, years of service, position with the Company, and other factors. The Compensation Committee does not apply a formula assigning specific weights to any of these factors when making its determination. The Compensation Committee awards stock options and Restricted Stock on a subjective basis and such awards depend in each case on the performance of the officer under consideration, and in the case of new hires, their potential performance.

Any issuances or grants of stock options or Restricted Stock under the New Plan will be subject to the requirements of applicable law including, but not limited to, the Investment Company Act and the rules and regulations promulgated thereunder. In addition, unless and until stockholders approve Proposal Nos. 4 and 5 (the approval of the Company to pay compensation and sell securities, respectively, to Ault, Silverstein and the Glazers), pursuant to Section 203 of the DGCL, no options or restricted stock may be issued or granted under the New Plan to Ault, Silverstein or the Glazers until the earlier of the date upon which stockholders approve such issuances or grants or May 13, 2007. Section 203 of the DGCL will not generally affect the Company's issuance or grant of options or restricted stock to persons other than Ault, Silverstein or the Glazers.

#### **Purpose of the Proposal; Need for Stockholder Approval**

The purpose of this Proposal No. 3 is to advance the interests of the Company and its subsidiaries by providing to key employees of the Company and its subsidiaries who have substantial responsibility for the direction and management of the Company, as well as certain directors and consultants of the Company, additional incentives, to the extent permitted by law, to exert their best efforts on behalf of the Company, to increase their proprietary interest in the success of the Company, to reward outstanding performance and to provide a means to attract and retain persons of outstanding ability to the service of the Company.

The Board believes that the Company's future success depends on its ability to maintain a competitive position in attracting, retaining, and motivating key executive officers, employees, non-officer directors and consultants through the use of long-term incentive compensation. Under AMEX rules, stockholder approval is required when a stock option plan or other equity compensation arrangement is established or materially amended. Accordingly, stockholders are being asked to approve the adoption of the New Plan at the Annual Meeting.

If Proposal No. 3 is approved, the New Plan will be implemented and maintained in accordance with applicable law, including, but not limited to the Investment Company Act and the rules and regulations promulgated thereunder. As a BDC, the Company is subject to certain limitations and/or restrictions in

connection with the operation and maintenance of the New Plan which include (i) limitations on the amount of stock options that may be granted by the Company under the New Plan, (ii) the requirement that the Company obtain an SEC exemptive order prior to the granting of any stock options to directors who are neither officers or employees of the Company, (iii) the restriction on granting stock options to consultants as compensation for services provided to the Company, and (iv) prohibitions on the issuance of Restricted Stock to its officers, employees and non-officer directors and consultants absent an SEC exemptive order. However, in the event that Proposal No. 8 (the approval of the withdrawal of the Company's election to be treated as a BDC) is approved, the New Plan will no longer be subject to the limitations or restrictions under the Investment Company Act applicable to BDCs.

### **Description of the New Plan**

The following is a brief description of the material features of the New Plan. Such description is qualified in its entirety by reference to the full text of the New Plan, which is attached to this proxy statement as Appendix A.

*Purpose.* The purpose of the New Plan is to advance the interests of the Company by providing key employees of the Company who have substantial responsibility for the direction and management of the Company, as well as certain directors, employees and consultants with additional incentives to exert their best efforts to increase their proprietary interest in the success of the Company, to reward outstanding performance, and to attract and retain persons of outstanding ability.

*Authorization.* The New Plan provides for the grant of Common Stock with restrictions on disposition (the Restricted Stock), up to a maximum of ten percent (10%) of the outstanding shares of Common Stock as of the date on which the New Plan is adopted (approximately 155,690 shares). The New Plan also provides for the issuance of options to purchase a maximum of twenty-five percent (25%) of the shares of Common Stock that are outstanding as of the date on which the New Plan is adopted (approximately 389,225 shares), all of which are authorized for issuance as ISOs, reduced by the number of shares with respect to which Restricted Stock is awarded.

Stock options cannot be granted to consultants, or to directors who are neither officers or employees of the Company and no restricted stock will be granted to anyone, absent an SEC exemptive order.

*Administration.* The New Plan will be administered by the Company's Compensation Committee, which is comprised of at least two members of the Company's Board, who each shall (a) be a non-employee director, as defined in Rule 16b-3 promulgated under the Securities Exchange Act of 1934, as amended (the *Exchange Act*) (b) be an outside director as the term is defined under Section 162(m) of the Code; and (c) and independent director under the rules established by AMEX.

The Compensation Committee will interpret the New Plan and, to the extent and in the manner contemplated in the New Plan, will exercise the discretion reserved to it in the New Plan. The decision of the Compensation Committee on any interpretation of the New Plan or administration thereof shall be final and binding with respect to the Company, any participant or any person claiming to have rights as, or on behalf of, any participant.

*Participants.* The Compensation Committee will determine and designate those officers, employees, non-officer directors and consultants of the Company who are eligible to participate in the New Plan. The Compensation Committee will also determine the number of options and shares of restricted stock to be awarded to each participant. In making these determinations, the Compensation Committee will take into account the past service of the participant and potential contributions to the success of the Company, and such other factors as the Compensation Committee deems relevant to accomplish the purposes of the New Plan.

As of the date of this proxy statement, approximately nine persons would be eligible to participate in the New Plan. Options are not transferable other than by the laws of descent and distribution or pursuant to a qualified domestic relations order.

*Terms of options.* Stock options are granted under the New Plan at a price not less than the prevailing market value at the time of grant and will have realizable value only if the Company's stock price increases. The Compensation Committee will determine the amount and features of the stock options, if any, to be awarded to participants. The Compensation Committee will evaluate a number of criteria, including the past service of each such participant to the Company, the present and potential contributions of such participant to the success of the Company, and such other factors as the Compensation Committee shall deem relevant in connection with accomplishing the purposes of the New Plan, including the participant's current stock holdings, years of service, position with the Company, and other factors. The Compensation Committee will not apply a formula assigning specific weights to any of these factors when making its determination. The Compensation Committee will award stock options on a subjective basis and such awards will depend in each case on the performance of the participant under consideration. Pursuant to the Investment Company Act, options may not be repriced for any participant. Options granted under the New Plan may be incentive stock options or non-qualified stock options.

*Exercise of options.* Options will be exercisable at a price equal to the fair market value of the shares at the time the option is granted. The day on which the Company approves the granting of an option or the date specified in the New Plan will be considered the date on which the option is granted. For purposes of the New Plan, the fair market value of the shares as of any date shall be the average of the high and low trading prices of the shares on that date.

Options may contain such other terms and conditions as the Compensation Committee deems advisable, including, but not limited to, being exercisable only in installments. Options granted to different participants or at different times need not contain similar provisions. Each option will state the period or periods of time within which the option may be exercised by the participant, which may not exceed ten years from the date the option is granted.

*Awards of Restricted Stock.* Each award of Restricted Stock will contain a vesting schedule, which will set forth the times at which the participant will acquire a nonforfeitable right to the shares awarded to him or her. In general, it is intended that awards of Restricted Stock will vest ratably over the four years following the date of the award, but an individual award agreement may provide otherwise.

*Effect of change in shares subject to the amended plan.* If there is a change in the outstanding shares through the declaration of stock dividends, stock splits, or combinations or exchanges of shares, or otherwise, the number of shares available for option and awards of restricted stock and the shares subject to an option and the option prices shall be appropriately adjusted by the Compensation Committee.

*Amendment and termination.* The Board may amend or alter, suspend or discontinue the New Plan at any time. While the Board may seek stockholder approval of an action modifying a provision of the New Plan when deemed advisable, the Board may make certain modifications without stockholder approval (except with respect to the number of shares authorized for issuance under the New Plan). The New Plan will terminate ten years from the date of its adoption by the Board.

*Resale of shares acquired pursuant to awards.* Participants purchasing shares pursuant to options and/or vesting in awards of restricted stock may resell the shares through brokers or dealers at prevailing market prices, to the extent a market exists for our Common Stock. Any sales by participants who may be deemed affiliates of the Company must be made pursuant to registration under the Securities Act or pursuant to an exemption therefrom.

*Federal tax consequences of the New Plan.* The following is a summary of certain federal income tax consequences of transactions under the New Plan based on current federal income tax laws. This summary is not intended to be exhaustive and does not describe state, local, or other tax consequences.

*Non-qualified stock options.* The grant of a non-qualified stock option under the New Plan will not result in the recognition of taxable income to the participant or in a deduction to the Company. In general, upon exercise, a participant will recognize ordinary income in an amount equal to the excess of the fair market value of the shares of common stock purchased over the exercise price. The Company is required to withhold tax on the amount of income so recognized, and is entitled to a tax deduction equal to the amount of such

income. Gain or loss upon a subsequent sale of any shares of common stock received upon the exercise of a non-qualified stock option is taxed as capital gain or loss (long-term or short-term, depending upon the holding period of the stock sold) to the participant.

*Incentive stock options.* Generally, neither the grant nor the exercise of an incentive stock option will result in the recognition of taxable income by the participant. Rather, when the participant disposes of stock acquired upon exercise of an incentive stock option, the participant will recognize income in the amount of the excess of the amount realized upon disposition (if any) over the exercise price. This special tax treatment is available only if the participant does not dispose of the stock acquired upon the exercise of the incentive stock option before the later of the first anniversary of the date of exercise or the second anniversary of the date of the grant of the option. A disposition before that time is referred to as a disqualifying disposition. If a participant effects a disqualifying disposition, he or she will generally have income taxable at ordinary rates equal to the excess of the fair market value of the stock on the date of exercise over the exercise price and income taxable at capital gains rates on any amount realized on disposition in excess of the fair market value of the stock on the date of exercise. The Company is generally not entitled to any deduction in connection with the issuance or exer