

CHEESECAKE FACTORY INC
Form DEF 14A
April 21, 2009

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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 (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

The Cheesecake Factory Incorporated

(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):

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(1) Amount Previously Paid:

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

(3) Filing Party:

(4) Date Filed:

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April 21, 2009

Dear Stockholder:

You are cordially invited to attend The Cheesecake Factory Incorporated Annual Meeting of Stockholders on Wednesday, May 20, 2009 at 10:00 a.m. (Pacific Daylight Time). The meeting will be held at the Janet and Ray Scherr Forum Theatre, Thousand Oaks Civic Arts Plaza, 2100 Thousand Oaks Boulevard, Thousand Oaks, California 91362.

The matters to be acted upon at the meeting are described in the attached Notice of Annual Meeting and Proxy Statement.

Regardless of whether or not you will attend, please vote by signing, dating and returning the enclosed Proxy Card, or you can vote by telephone or Internet (see below). Voting by mail will not prevent you from voting in person at the meeting.

Sincerely,

David Overton
*Chairman of the Board and Chief Executive
Officer*

YOUR VOTE IS VERY IMPORTANT

Whether or not you plan to attend the Annual Meeting of Stockholders, and to ensure that a quorum is present, you are urged to vote your proxy by telephone or the Internet, or by returning the enclosed Proxy Card by mail. If you are able to attend the meeting and you wish to vote your shares in person, the proxy is revocable.

Voting by telephone or the Internet is fast, convenient and your vote is immediately confirmed and posted. To vote by telephone or Internet, first read the accompanying Proxy Statement and then follow the instructions below:

VOTE BY TELEPHONE

1. Using a touch-tone telephone, call 1-800-690-6903.
2. Follow the step-by-step instructions provided.

VOTE BY INTERNET

1. Go to www.proxyvote.com.
2. Follow the step-by-step instructions provided.

IF YOU PLAN TO ATTEND THE MEETING

Attendance will be limited to stockholders. Admission will be on a first-come, first-served basis. Stockholders may be asked to present valid picture identification, such as a driver's license or passport.

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Stockholders holding stock in brokerage accounts ("street name" holders) will need to bring a copy of a brokerage statement reflecting stock ownership as of the record date. Cameras, recording devices and other electronic devices will not be permitted at the Annual Meeting.

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THE CHEESECAKE FACTORY INCORPORATED

26901 Malibu Hills Road
Calabasas Hills, California 91301

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

on
May 20, 2009

The 2009 Annual Meeting of Stockholders of THE CHEESECAKE FACTORY INCORPORATED (the "Company") will be held at the Janet and Ray Scherr Forum Theatre, Thousand Oaks Civic Arts Plaza, 2100 Thousand Oaks Boulevard, Thousand Oaks, California 91362, on Wednesday, May 20, 2009, beginning at 10:00 a.m. Pacific Daylight Time, for the following purposes:

1. To elect three nominees to serve as directors of the Company for a term to expire at the Company's 2011 Annual Meeting of Stockholders and until respective successors shall be elected and qualified;
2. To approve amendments to the Company's Certificate of Incorporation to remove certain supermajority voting requirements;
3. To approve amendments to the Company's Certificate of Incorporation to allow stockholders holding not less than eighty percent (80%) of the outstanding shares of the Company to take action by written consent;
4. To ratify the selection of PricewaterhouseCoopers LLP as the Company's independent registered public accounting firm for the fiscal year ending December 29, 2009; and
5. To transact such other business as may properly come before the meeting or any adjournment or postponement thereof.

At the Annual Meeting, the Board of Directors intends to present Alexander L. Cappello, Jerome I. Kransdorf, and David B. Pittaway for election to the Board of Directors.

The Board of Directors has fixed the close of business on March 27, 2009 as the record date for the determination of stockholders entitled to notice of and to vote at the Annual Meeting or any adjournment or postponement thereof.

By Order of the Board of Directors,

Debby R. Zurzolo
Secretary

Calabasas Hills, California
April 21, 2009

YOUR VOTE IS VERY IMPORTANT REGARDLESS OF THE NUMBER OF SHARES THAT YOU OWN. PLEASE READ THE ATTACHED PROXY STATEMENT CAREFULLY AND VOTE BY TELEPHONE, INTERNET OR BY COMPLETING, DATING AND SIGNING THE ENCLOSED PROXY CARD, AND RETURNING IT AS SOON AS POSSIBLE.

IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS FOR THE STOCKHOLDER MEETING TO BE HELD ON MAY 20, 2009: THIS PROXY STATEMENT AND OUR 2008 ANNUAL REPORT TO STOCKHOLDERS ARE AVAILABLE AT WWW.PROXYVOTE.COM.

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THE CHEESECAKE FACTORY INCORPORATED

PROXY STATEMENT FOR THE ANNUAL MEETING OF STOCKHOLDERS TO BE HELD ON MAY 20, 2009

INTRODUCTION

General

This Proxy Statement is furnished to the stockholders of THE CHEESECAKE FACTORY INCORPORATED (the "Company" and "we," "us" or "our") in connection with the solicitation of proxies by our Board of Directors for use at the Annual Meeting of Stockholders to be held at the Janet and Ray Scherr Forum Theatre, Thousand Oaks Civic Arts Plaza, 2100 Thousand Oaks Boulevard, Thousand Oaks, California 91362, on May 20, 2009, beginning at 10:00 a.m. Pacific Daylight Time, and at any adjournment or postponement thereof. We intend to cause this Proxy Statement and form of proxy to be mailed to stockholders on or about April 21, 2009.

Voting; Quorum; Abstentions and Broker Non-Votes

On March 27, 2009, the record date fixed by the Board of Directors for the Annual Meeting, 60,076,340 shares of our common stock were outstanding and there were no outstanding shares of any other class of stock. Each holder of common stock is entitled to one vote for each share of such stock held of record. Only stockholders of record at the close of business on March 27, 2009 will be entitled to notice of and to vote at the Annual Meeting.

The required quorum for the transaction of business at the Annual Meeting is a majority of the issued and outstanding shares of our common stock entitled to vote at the Annual Meeting, whether present in person or represented by proxy. Our Bylaws provide that unless otherwise provided by law, by the Certificate of Incorporation or the Bylaws, all elections and questions shall be decided by the vote of the holders of a majority of the outstanding shares of stock entitled to vote thereon present in person or by proxy at the Annual Meeting. Shares of stock represented by a properly signed and returned proxy will be treated as present at the Annual Meeting for purposes of determining a quorum, regardless of whether the proxy is marked as casting a vote or abstaining. Shares of voting stock represented by "broker non-votes" shall be treated as present for purposes of determining a quorum, but shall not be counted or deemed present for the purpose of determining whether stockholders approve a proposal. "Broker non-votes" are shares of stock held in record name by brokers or nominees as to which (i) instructions have not been received from the beneficial owners or persons entitled to vote; (ii) the broker or nominee does not have discretionary voting power under applicable rules or the instrument under which it serves in such capacity; or (iii) the record holder has indicated on the Proxy Card or has executed a proxy and otherwise notified us that it does not have authority to vote such shares on that matter.

For Proposal 1, our Bylaws require that in an uncontested election each director will be elected by the vote of the majority of votes cast. A majority of votes cast means that the number of shares cast "for" a director's election exceeds the number of votes cast "against" that director. A stockholder whose ballot is marked as "abstain" or broker non-votes to which a stockholder otherwise gives no authority or direction shall not be considered a vote cast and therefore will have no effect on the outcome of the vote.

Proposal 2 requires the affirmative vote of at least eighty percent (80%) of the outstanding shares of stock. Accordingly, abstentions and broker non-votes will have the same effect as voting against this proposal.

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Proposal 3 requires the affirmative vote of at least eighty percent (80%) of the outstanding shares of stock. Accordingly, abstentions and broker non-votes will have the same effect as voting against this proposal.

Proposal 2 and Proposal 3 are each conditioned upon stockholder approval of the other. If either Proposal 2 or Proposal 3 is not approved, the other will not be effective even if it obtains the requisite vote of stockholders.

Proposal 4 requires the approval of a majority of the outstanding shares of stock entitled to vote. Accordingly, abstentions as to this proposal will count as votes against the proposal. Broker non-votes as to Proposal 4, however, will be deemed shares not entitled to vote on the proposal, will not be counted as votes for or against the proposal and therefore will have no effect on the vote.

Proxies

Proxies delivered pursuant to this solicitation are revocable at the stockholder's option, prior to their exercise, by attendance and voting at the Annual Meeting (although attendance at the Annual Meeting itself will not revoke a proxy) or by filing a written notice to Debby R. Zurzolo, our Secretary, revoking the proxy or another duly executed proxy bearing a later date. Unless previously revoked, all proxies representing shares entitled to vote that are delivered pursuant to this solicitation will be voted at the Annual Meeting by the named attorneys-in-fact and agents, to the extent authorized, in accordance with the directions contained therein.

If no directions are given, the shares represented by such proxies will be voted **FOR** the election of the nominees for directors, Alexander L. Cappello, Jerome I. Kransdorf and David B. Pittaway; **FOR** the amendments to our Certificate of Incorporation to remove certain supermajority provisions; **FOR** the amendments to our Certificate of Incorporation to permit action by written consent; and **FOR** the ratification of the selection of PricewaterhouseCoopers LLC as our independent registered public accounting firm for the fiscal year ending December 29, 2009. The named proxies may vote in their discretion upon such other matters as may properly come before the Annual Meeting, including any motion made for adjournment or postponement (including for purposes of soliciting additional votes).

Solicitation

We will pay for the cost of preparing, assembling and mailing the Notice of Annual Meeting and Proxy Statement and the cost of this solicitation. Our directors, officers and other staff members may solicit proxies, without additional remuneration, in person or by telephone or facsimile transmission. We may also choose to retain a proxy soliciting firm, but to date we have not done so for the voting related to the proposals in this year's Proxy Statement. Banks, brokerage houses and other custodians, nominees or fiduciaries will be requested to forward soliciting material to their principals and to obtain authorization for the execution of proxies, and will be reimbursed for their reasonable out-of-pocket expenses incurred in that regard.

ITEMS TO BE VOTED ON

Proposal 1: Election of Directors

Our Bylaws provide for a Board of Directors consisting of no less than five and no more than thirteen members, the exact number within this range being determined by the Board of Directors. The Board of Directors has currently set the number of directors at eight. The Board of Directors is currently classified into three classes with each director serving a three-year term. At the 2008 Annual Meeting of Stockholders, stockholders approved amendments to our Certificate of Incorporation to eliminate our

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classified board structure. As a result, all directors will stand for election to one-year terms beginning with the 2011 Annual Meeting of Stockholders. Alexander L. Cappello, Jerome I. Kransdorf and Wayne H. White are serving terms that will expire at the Annual Meeting of Stockholders to be held this year. On February 4, 2009, Mr. White notified the Board that he will not stand for reelection as a director when his current term ends at this year's Annual Meeting of Stockholders. As such, Mr. White will retire from our Board of Directors and the Compensation Committee, effective May 20, 2009. Allen J. Bernstein, Thomas L. Gregory and David R. Klock are serving terms that will expire at the Annual Meeting of Stockholders to be held in 2010.

The Corporate Governance and Nominating Committee of the Board of Directors ("Governance Committee") has recommended the nomination of Alexander L. Cappello, Jerome I. Kransdorf, and David B. Pittaway for election to the Board of Directors for a term that will expire at the Annual Meeting of Stockholders to be held in 2011. Mr. Cappello was recommended by a non-management director for consideration by the Governance Committee and was appointed by the Board of Directors in fiscal 2008 when the size of the Board was expanded to its current size of eight directors. Mr. Kransdorf has been a non-management director since 1997. Mr. Pittaway was recommended by a non-management director for consideration by the Governance Committee and nominated by the Board of Directors in March, 2009 for stockholders' consideration at the 2009 Annual Meeting to fill the vacancy resulting from Mr. White's retirement.

Mr. Pittaway, age 57, is Senior Managing Director, Senior Vice President and Secretary of Castle Harlan, Inc. a private equity firm. He has been with Castle Harlan since 1987. Mr. Pittaway also has been Vice President and Secretary of Branford Castle, Inc., an investment company, since October, 1986. From 1987 to 1998, Mr. Pittaway was Vice President, Chief Financial Officer and a director of Branford Chain, Inc., a marine wholesale company, where he is now a director and Vice Chairman. Previously, Mr. Pittaway was Vice President of Strategic Planning and Assistant to the President of Donaldson, Lufkin & Jenrette, Inc., an investment banking firm. Mr. Pittaway is also a member of the Boards of Directors of Morton's Restaurant Group, Inc., McCormick & Schmick's Seafood Restaurants, Perkins & Marie Callender's Inc., United Malt Holdings, Caribbean Restaurants, LLC, Bravo Development, Inc. and the Dystrophic Epidermolysis Bullosa Research Association of America. In addition, he is a director and co-founder of the Armed Forces Reserve Family Assistance Fund. The Board of Directors has determined that Mr. Pittaway would be an "independent director" as such term is defined in NASD Marketplace Rule 4200(a)(15) if he were elected to the Board of Directors.

The Board of Directors approved the Governance Committee's recommendations and nominated Mr. Cappello, Mr. Kransdorf and Mr. Pittaway, each of whom has indicated his willingness to serve. Unless a stockholder specifies otherwise, the shares represented by each returned proxy will be voted **FOR** the election of Mr. Cappello, Mr. Kransdorf and Mr. Pittaway.

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS A VOTE FOR THE ELECTION OF MR. CAPPELLO, MR. KRANSDORF AND MR. PITTAWAY TO THE BOARD OF DIRECTORS.

Proposal 2: Approval of Amendments to the Company's Certificate of Incorporation to Remove Certain Supermajority Voting Provisions

Our Board of Directors has approved and adopted, and recommends for stockholder approval, amendments to the Company's Certificate of Incorporation to eliminate certain "supermajority" voting provisions contained in our Certificate of Incorporation. This Proposal 2 is conditioned upon approval of "Proposal 3: Approval of Amendments to the Company's Certificate of Incorporation to Permit Action by Written Consent," as described on page 6 of this Proxy Statement.

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Reasons FOR the Proposal

As with many public companies, the supermajority voting requirements in our Certificate of Incorporation were originally implemented when we became a public company in 1992 to broadly protect the interests of our stockholders.

Our Board is firmly committed to ensuring effective corporate governance and it desires to be responsive to evolving standards of corporate governance and to the concerns of our stockholders. In recent years, stockholders of many public companies have requested the elimination of the supermajority voting standard for stockholder actions. Our Board has on several occasions considered the advantages of maintaining the supermajority voting requirements and, in the past, has concluded that maintaining them was in the best interest of the Company and our stockholders. This year the Board requested that the Governance Committee review our supermajority voting provisions in light of continual stockholder interest. The Governance Committee consulted management and outside advisors as part of its review.

In making its recommendation, the Governance Committee and the Board carefully considered the advantages and disadvantages of eliminating the supermajority voting provisions. They considered that the provisions requiring a supermajority vote to amend certain provisions of the Certificate of Incorporation facilitate corporate governance stability by requiring broad stockholder consensus to effect changes and are designed to protect minority stockholder interests. Many investors and others, however, have come to perceive supermajority voting provisions as conflicting with principles of good corporate governance because they can, either in appearance or practice, be viewed as making it more difficult for stockholders to effect change and participate in important company decisions that are properly within the realm of stockholders under state corporate law. According to some investors, the requirement of a supermajority vote can limit the ability of a majority of the stockholders at any particular time to effect change by essentially providing a veto to a large minority stockholder or group of stockholders. In addition, a lower threshold for stockholder votes can increase stockholders' ability to participate effectively in corporate governance.

After weighing all of these considerations, the Governance Committee recommended the elimination of certain of the supermajority vote requirements in the Company's Certificate of Incorporation, and the Board agreed and determined that the elimination of certain of those provisions is advisable and in the best interests of the Company and our stockholders.

In accordance with Delaware law these changes will be accomplished by amendments to Articles SEVENTH and TENTH of the Company's Certificate of Incorporation.

The amendments to Article TENTH will not eliminate the supermajority vote requirement in Article TENTH relating to the amendment of the provisions in the Certificate of Incorporation that provide either for action by written consent (assuming Proposal 3 is approved) or the call of a special meeting only by the Chairman of the Board or a majority of the Board. With the steps taken by the Board in the proposals set forth at this meeting (including action by written consent as discussed in Proposal 3) and the actions taken in 2008 (to require majority voting for election to the Board) and at the 2008 Annual Meeting of Stockholders (the elimination of a classified board and adding provisions for removal of directors without cause), the Board has taken effective steps to enhance our corporate governance and does not believe that the elimination of the supermajority vote in these limited circumstances is appropriate.

The proposed amendments to Articles SEVENTH and TENTH are described in greater detail below under "Amendments to Supermajority Voting Requirements."

Amendments to Supermajority Voting Requirements

Article SEVENTH of our Certificate of Incorporation currently requires the affirmative vote of the holders of eighty percent (80%) or more of the combined voting power of all outstanding shares of capital stock entitled to vote generally in election of directors, voting together as a single class, for stockholders to

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make, adopt, alter, amend and repeal any provision of our Bylaws. The proposed amendment, if adopted, would replace the eighty percent (80%) supermajority vote requirement with a requirement that holders of a majority or more of the combined voting power of the then outstanding shares of voting stock, voting together as a single class, would be able to make, adopt, alter, amend and repeal any provision of our Bylaws.

The Board has also committed to amend our Bylaws to provide for the same majority vote standard with respect to stockholders' initiated Bylaw amendments if stockholders vote to approve the proposed amendment to Article SEVENTH of the Certificate of Incorporation. If the amendments are adopted, the Bylaws would continue to permit amendments to the Bylaws adopted by a majority of the Board.

Article TENTH of the Certificate of Incorporation currently provides that the affirmative vote of holders of at least eighty percent (80%) of the combined voting power of all the then outstanding shares of capital stock, entitled to vote generally in the election of directors, voting together as a single class, is required to amend, alter, repeal or adopt any provision inconsistent with the following articles of the Certificate of Incorporation: (a) Article SIXTH (action by written consent, call of special meetings and removal of directors); (b) Article SEVENTH (amendment of the Bylaws); (c) Article EIGHTH (indemnification of officers and directors); (d) Article NINTH (limitation of monetary damages); and (e) Article TENTH itself; or to add an article or provision imposing cumulative voting in the election of directors.

The proposed amendments to our Certificate of Incorporation, if adopted, would eliminate the requirement in Article TENTH that would require an eighty percent (80%) vote to amend, alter, repeal or adopt any provision inconsistent with Articles SEVENTH, EIGHTH and NINTH; or to add an article or provision imposing cumulative voting in the election of directors. The proposed amendments, if adopted, would also eliminate the requirement in Article TENTH that would require an eighty percent (80%) vote to amend, alter, repeal or adopt any provisions inconsistent with the provisions in Article SIXTH relating to the removal of directors. The proposed amendments, however, would retain the requirement in Article TENTH that would require an eighty percent (80%) vote to amend, alter, repeal or adopt any provision inconsistent with the provisions in Article SIXTH relating to actions by written consent and the call of special stockholder meetings.

The Board unanimously adopted a resolution, subject to shareholder approval, and declaring the advisability of amendments to Articles SEVENTH and TENTH to the Certificate of Incorporation in the manner discussed above.

The text of Articles SEVENTH and TENTH of our Certificate of Incorporation as proposed to be amended is set forth, with additions indicated by underlining and deletions indicated by strike-out.

* * *

SEVENTH: All the powers of the Corporation, insofar as the same may be lawfully vested by this Certificate of Incorporation in the Board of Directors, are hereby conferred upon the Board of Directors. In furtherance and not in limitation of such powers, the Board of Directors shall have the power to make, adopt, alter, amend and repeal from time to time bylaws of the Corporation, subject to the right of the stockholders entitled to vote with respect thereto to adopt, alter, amend and repeal bylaws made by the Board of Directors; provided, however, that bylaws shall not be adopted, altered, amended or repealed by the stockholders of the Corporation except by the vote of the holders of ~~not less than eighty percent (80%) of the~~ at least majority of the combined voting power of all of the then outstanding shares of capital stock entitled to vote ~~upon~~ generally in the election of directors, voting together as a single class.

TENTH: The Corporation reserves the right to amend, alter or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed herein or by statute, and all rights and powers conferred herein are subject to this reserved power, provided, however, that

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subject to the powers and rights provided for herein with respect to Preferred Stock issued by the Corporation, if any, but notwithstanding anything else contained in this Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least eighty percent (80%) of the combined voting power of all of the then outstanding shares of capital stock entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend, alter, repeal or adopt any provision inconsistent with this Article TENTH or ~~Articles SIXTH, SEVENTH, EIGHT or NINTH of this Certificate of Incorporation or to add an article or provision imposing cumulative voting in the election of directors subsections (a) or (b) of Article SIXTH.~~

* * *

To be approved, the proposed amendments require the affirmative vote of the holders of at least eighty percent (80%) of the combined voting power of our common stock. If approved, these amendments will become effective upon the filing of a certificate setting forth the amendments with the Secretary of the State of Delaware, which we would file promptly after the Annual Meeting of Stockholders. Approval of this Proposal 2 is conditioned upon approval of Proposal 3 by the Company's stockholders.

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS A VOTE FOR THE APPROVAL OF AMENDMENTS TO OUR CERTIFICATE OF INCORPORATION TO REMOVE CERTAIN SUPERMAJORITY VOTING PROVISIONS.

Proposal 3: Approval of Amendments to the Company's Certificate of Incorporation to Permit Action by Written Consent

Our Board of Directors has approved and adopted, and recommends for stockholder approval, amendments to the Company's Certificate of Incorporation to permit stockholders to take action by written consent. This proposal is conditioned upon approval of "Proposal 2: Approval of Amendments to the Company's Certificate of Incorporation to Remove Certain Supermajority Voting Provisions," as described on page 3 of this Proxy Statement.

Reasons FOR the Proposal

The General Corporation Law of the State of Delaware provides that unless a company's certificate of incorporation provides otherwise, stockholders may take action without a meeting if the holders of stock having the minimum number of votes necessary to authorize such action sign a written consent. Our Certificate of Incorporation currently requires that any action permitted to be taken by stockholders may only be taken at an annual meeting or special meeting of stockholders. As with many public companies, this provision was implemented when we became a public company in 1992. The proposed amendments to the Certificate of Incorporation would permit action that is required to be taken or which may be taken at any annual or special meeting of stockholders of the Company to be taken by the written consent of stockholders, without a meeting, if such action is taken by a written consent signed by the holders of eighty percent (80%) of the voting power of all of the capital stock of the Company entitled to vote with respect to the subject matter thereof.

Along with its review of the Company's supermajority provisions discussed above, under Proposal 2, the Board also requested the Governance Committee to review the Company's provisions precluding action by written consent. The Governance Committee and the Board reviewed the advantages of limiting action by written consent. Requiring stockholder action only at regularly scheduled shareholder meetings (i) increases the likelihood that the Company and all of our stockholders will be given an opportunity to consider carefully and respond prudently to important shareholder proposals, and (ii) avoids untimely action in a context that might not permit stockholders to have the full benefit of the knowledge, advice and participation of our management and Board of Directors. The Governance Committee and the Board also considered the views of investors who believe that these provisions are inconsistent with principles of good corporate governance because they can, either in appearance or practice, limit stockholders' ability to

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participate effectively in corporate governance. In addition to concerns expressed about the role of action by written consent in corporate governance, the Governance Committee also considered the advantages of permitting action by written consent. For example, the expense of holding a meeting of stockholders can be considerable, and it is inefficient to hold a stockholders meeting if the holders of a significant number of voting stock have already determined how a matter will be decided. The ability to obtain stockholder approval by written consent also facilitates transactions by the Company without the delays in calling a meeting and distributing meeting materials. Actions taken by written consent, however, would not relieve the Company of complying with federal state securities laws with respect to the solicitation of written consents.

In making its recommendation, the Governance Committee and the Board balanced the various interests of those stockholders who view the right to act by written consent as good corporate governance and the attendant advantages of acting by written consent, and the protections afforded stockholders by precluding action by written consent. The Governance Committee and the Board concluded that the best interests of the Company and our stockholders would be served by amending our Certificate of Incorporation to permit action by written consent (and without a meeting of stockholders) when the action taken receives the support of at least 80% of the voting shares entitled to vote on the matter. This balance is further maintained by retaining a supermajority vote requirement to amend the provisions authorizing action by written consent as discussed above under Proposal 2.

In accordance with Delaware law, these changes will be accomplished by amendments to Article SIXTH of the Company's Certificate of Incorporation.

The proposed amendments to Article SIXTH are described in greater detail below under "Amendments to Action by Written Consent."

Amendments to Action by Written Consent

Article SIXTH of our Certificate of Incorporation currently provides that any actions required or permitted to be taken by our stockholders must be effected at an annual or special meeting of stockholders and may not be effected by written consent. The proposed amendments to our Certificate of Incorporation, if adopted, would permit any action required or permitted to be taken at any annual or special meeting of stockholders of the Company, to be taken without a meeting if a consent or consents in writing are signed by holders of at least eighty percent (80%) of the combined voting power of all then outstanding shares of capital stock entitled to vote with respect to the subject matter presented.

The Board unanimously adopted a resolution, subject to shareholder approval, and declaring the advisability of amendments to Article SIXTH to the Certificate of Incorporation in the manner discussed above.

The text of Article SIXTH of our Certificate of Incorporation as proposed to be amended is set forth below, with additions indicated by underlining and deletions indicated by strike-out.

* * *

SIXTH: (a) Any action required or permitted to be taken by the stockholders of the Corporation must be effected at an annual or special meeting of stockholders of the Corporation and may not be effected by any consent or consents in writing by such stockholders, setting forth the action so taken, shall be signed by holders of eighty percent (80%) of the combined voting power of all the then outstanding shares of capital stock entitled to vote with respect to the subject matter thereof, voting together as a single class. (b) Special meetings of stockholders of the Corporation may be called only by the Chairman of the Board, if there be one, or the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board of Directors for adoption). (c) Prior to the 2011

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Annual Meeting, directors of the Corporation may be removed by stockholders only for cause and only by the affirmative vote of the holders of a majority of the voting power of the capital stock of the Corporation outstanding and entitled to vote thereon. At and after the 2011 Annual Meeting, a director may be removed without cause by the affirmative vote of the holders of a majority of the voting power of the capital stock of the Corporation outstanding and entitled to vote thereon.

* * *

To be approved, the proposed amendments require the affirmative vote of the holders of at least eighty percent (80%) of the combined voting power of our common stock. If approved, these amendments will become effective upon the filing of a certificate setting forth the amendments with the Secretary of the State of Delaware, which we would file promptly after the Annual Meeting of Stockholders. This Proposal 3 is conditioned upon approval of Proposal 2 by the Company's stockholders.

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS A VOTE FOR THE APPROVAL OF AMENDMENTS TO OUR CERTIFICATE OF INCORPORATION TO PERMIT STOCKHOLDER ACTION BY WRITTEN CONSENT.

Proposal 4: Ratification of Selection of Independent Registered Public Accounting Firm

The Audit Committee appointed PricewaterhouseCoopers LLP ("PwC") as our independent registered public accounting firm to conduct the audit of our books and records for the fiscal year ending December 30, 2008. PwC has served as our independent registered public accounting firm since our inception in 1992. The Audit Committee has initially selected PwC as our independent auditors for fiscal 2009. Although our governing documents do not require submission of this matter to stockholders, the Board of Directors believes that submission is consistent with current best practices in corporate governance and is seeking ratification of the appointment by stockholders. In the event that stockholders fail to ratify the selection of PwC, it will be considered a direction to the Audit Committee to consider the selection of a different independent registered public accounting firm. Even if the selection of PwC is ratified by the stockholders at the Annual Meeting, the Audit Committee in its discretion may select a different independent registered public accounting firm at any time if it determines that a change would be in the best interests of the Company and our stockholders. Representatives of PwC are expected to be present at the Annual Meeting of Stockholders to respond to appropriate questions and to make a statement should they so desire.

Independent Registered Public Accounting Firm Fees and Services

The following table sets forth the aggregate fees billed by PwC to us during the last two fiscal years:

	Fiscal 2008	Fiscal 2007
Audit Fees	\$ 581,400	\$ 586,500
Audit-Related Fees		
Tax Fees	21,450	29,627
All Other Fees	8,500	86,074
Total	\$ 611,350	\$ 702,201

Audit Fees represent the aggregate fees billed by PwC for the audit of our annual financial statements included in the Annual Report on Form 10-K, review of financial statements included in the Quarterly Reports on Form 10-Q, the audit of our internal control over financial reporting with the objective of obtaining reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects, and services normally provided by our independent registered public accounting firm in connection with statutory and regulatory filings or engagements.

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Tax Fees represent the aggregate fees billed by PwC for tax compliance services.

All Other Fees represent the aggregate fees billed by PwC for services other than those reported in the above categories. For fiscal 2008 and 2007, the nature of services provided consisted primarily of review and consultation related to our stock-based compensation procedures.

Policy on Audit Committee Pre-Approval of Audit and Permissible Non-Audit Services of Our Independent Registered Public Accounting Firm

The Audit Committee is responsible for appointing, setting compensation for and overseeing the work of our independent registered public accounting firm. The Audit Committee has established a policy requiring that it pre-approve all audit and permissible non-audit services provided by the independent auditor. The Audit Committee considers whether such services are consistent with the rules of the Securities and Exchange Commission ("SEC") on auditor independence as well as whether the independent auditor is best positioned to provide the most effective and efficient service, for reasons such as familiarity with our business, staff members, culture, accounting systems, risk profile and other factors, and input from our management. The Audit Committee's charter authorizes the Audit Committee to delegate to one or more of its members the pre-approval of audit and permissible non-audit services provided that those members report any pre-approvals to the full committee. Pursuant to this authority, the Audit Committee has delegated to its Chair the authority to address any requests for pre-approval of services between Audit Committee meetings provided that the amount of fees for any particular services requested does not exceed \$10,000, and the Chair reports any pre-approval decisions to the Audit Committee at its next scheduled meeting. The policy prohibits the Audit Committee from delegating to management the Audit Committee's responsibility to pre-approve permitted services of the independent registered public accounting firm. In addition, the policy prohibits our auditors from providing internal control related services to us unless such engagement has been specifically pre-approved by the Audit Committee. None of the services related to the *Audit-Related Fees* or *Tax Fees* described above was approved by the Audit Committee pursuant to the waiver of pre-approval provisions set forth in applicable rules of the SEC.

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS A VOTE FOR THE RATIFICATION OF THE SELECTION OF PRICEWATERHOUSECOOPERS LLC AS THE INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM OF THE COMPANY FOR FISCAL 2009.

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BOARD OF DIRECTORS AND CORPORATE GOVERNANCE

Our Board of Directors

DAVID OVERTON, age 63, co-founded our predecessor company with his parents. He has served as our Chairman of the Board and Chief Executive Officer since its incorporation in February 1992.

ALLEN J. BERNSTEIN, age 63, became a director of the Company in February, 2008. Mr. Bernstein is the President of Endeavor Restaurant Group, Inc. He founded and served as Chairman and Chief Executive Officer of Morton's Restaurant Group, Inc. from 1989 through 2005 and presently serves as its Chairman Emeritus. He currently serves on the boards of directors of a number of privately held companies, including Caribbean Restaurants, LLC; Bravo Development, Inc; and as non-executive Chairman of the Board of Perkins & Marie Callender's, Inc. Previously, Mr. Bernstein served as a director on the boards of Charlie Brown's Steakhouse, McCormick & Schmick's Seafood Restaurants and Dave & Busters, Inc. He also serves as Director Emeritus of the American Film Institute.

ALEXANDER L. CAPPELLO, age 53, became a director of the Company in February, 2008. Mr. Cappello is Chairman and Chief Executive Officer of Cappello Capital Corp., a global merchant banking firm, which has conducted business in 50 countries where its principals have completed over \$110 billion in transactions. Mr. Cappello has more than 30 years of global experience in corporate management, corporate finance, and investment banking and merchant banking. He currently serves as a Trustee for the University of Southern California and past President of its Alumni Association Board of Governors. In addition, he serves as a Trustee of the City of Hope, and a director of California Republic Bank and the RAND Corporation Center for Middle East Public Policy. Mr. Cappello previously served as Chairman of the International Board of the Young Presidents Organization, Chairman of Inter-Tel (Delaware), Incorporated and has served as a director for a number of public companies prior to their acquisition or privatization, including Koo Koo Roo, Inc., Cytrx Corp., and Genius Products, Inc.

THOMAS L. GREGORY, age 73, became a director of the Company upon the consummation of our initial public offering in September, 1992. Mr. Gregory has over 50 years of experience in the food service industry. He served as Vice Chairman of the Board of Directors of Sizzler International, Inc., a restaurant chain, until August 1994. Mr. Gregory served as President, Chief Executive Officer and a member of the Board of Directors of Sizzler from 1982 to 1991, and then served as President of its successor company until his retirement in 1992. From 1974 to 1991, he served as Vice President for Collins Foods International, Inc., a food service company, and retained such position concurrently with his positions at Sizzler. Mr. Gregory is a member of the Board of Directors of Regis Corporation, the world's largest chain of retail hair care operations.

DAVID R. KLOCK, Ph.D., age 64, became a director of the Company in December, 2006. He is currently the Wachovia Chair in Business and Dean of the School of Business at the University of Alabama at Birmingham. From 2005 until 2008, Dr. Klock was Dean of the College of Business Administration at California State Polytechnic University in Pomona, California. In 2004, Dr. Klock was appointed Chairman of CompBenefits Corporation, an Atlanta, Georgia-based provider of dental and vision plans to over 4.5 million members in the United States. CompBenefits was sold to Humana Inc. in October 2007. From 1993 to 2004, Dr. Klock served as Chairman and Chief Executive Officer of CompBenefits and from 1991 to 1993, he served as President.

JEROME I. KRANSDORF, age 70, became a director of the Company in March, 1997. Mr. Kransdorf has more than 40 years of investment management experience. He currently serves as President of JaK Direct, a division of Muriel Siebert & Co., Inc. From 1997 to 2001, Mr. Kransdorf served as Senior Vice President of J. & W. Seligman & Co. Incorporated, an investment advisory firm. From 1959 to 1997, he was employed in investment and senior management positions at Wertheim & Co. and its successor companies.

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WAYNE H. WHITE, age 71, became a director of the Company upon the consummation of our initial public offering in September, 1992. From 1983 until his retirement in June, 2002, Mr. White was an investment banker specializing in gaming and restaurant companies. Mr. White has approximately 20 years of senior management experience in the restaurant industry, including Victoria Station (seven years) and Famous Restaurants (two years). He is also a member of the Board of Directors of Nevada Gold & Casinos, Inc. On February 4, 2009, Mr. White notified the Board of Directors that he will not stand for reelection as a director when his current term ends at this year's Annual Meeting of Stockholders. As such, Mr. White will retire from our Board of Directors and the Compensation Committee, effective May 20, 2009.

AGNIESZKA WINKLER, age 63, became a director of the Company in May, 2007. Ms. Winkler is the founder and Chairperson of The Winkler Group, a San Francisco-based management consultancy specializing in branding and marketing efficiency and effectiveness. She is also the founder and former Chairperson and Chief Executive Officer of Winkler Advertising, founded in 1984, and Team Toolz Inc., founded in 1999, both of which were acquired. Ms. Winkler has served on the Boards of Directors of the following NASDAQ-listed companies before they were acquired: Inter-Tel (Delaware), Incorporated, Reno Air, Inc. and SuperCuts, Inc. In addition, she served as Vice Chairperson of the Board of Directors of IPLocks, Inc., a privately held company. Ms. Winkler currently serves on the Board of Trustees of Santa Clara University and is Vice Chair of the Committee of 200 Foundation. Ms. Winkler is the author of "Warp Speed Branding," published by Wiley in the United States, China, and Turkey.

Director Independence

The Board of Directors has determined each of the following directors to be an "independent director" as such term is defined in NASD Marketplace Rule 4200(a)(15): Allen J. Bernstein; Alexander L. Cappello; Thomas L. Gregory; David R. Klock; Jerome I. Kransdorf; Wayne H. White; and Agnieszka Winkler. In this Proxy Statement, these seven directors are referred to individually as an "Independent Director" and collectively as the "Independent Directors."

Lead Director

Prior to July, 2008, the Independent Directors of the Board of Directors selected one coordinating director, annually, from among their group. Mr. Gregory served in this position in fiscal 2008 through July, 2008. In July, 2008, the Independent Directors of the Board of Directors extended the duties and responsibilities of the coordinating director and renamed the position that of "Lead Director." One Independent Director is selected annually by the Independent Directors from among their group to serve as "Lead Director." The role of the Lead Director is to preside at executive sessions of the Independent Directors, serve as principle liaison between the Independent Directors and the Chairman of the Board, coordinate the agenda and materials for meetings of the Board of Directors, advise the Chairman of the Board of Directors concerning scheduling of meetings, make recommendations to the Chairman of the Board regarding the retention of advisors and consultants who report directly to the Board of Directors, make recommendations to the Board of Directors and the Chairman regarding significant corporate governance issues, oversee the Governance Committee's review of our compliance with corporate governance policies adopted by the Board, and oversee the annual evaluation of the Board of Directors and its committees. Mr. Cappello currently serves as Lead Director and has served in that position since July, 2008.

Audit Committee Financial Expert

With the assistance of our legal counsel, the Board of Directors reviewed the applicable legal standards for independence and criteria for determination of "audit committee financial expert" as well as responses to annual questionnaires completed by the directors and has further determined that

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Thomas L. Gregory, chair of the Audit Committee of the Board of Directors, Alexander L. Cappello and David R. Klock is each an "audit committee financial expert" as such term is defined in Item 407(d)(5)(ii) of Regulation S-K adopted by the SEC.

Corporate Governance

The Board of Directors is committed to ethical business practices and believes that good corporate governance is important to ensure that the Company is managed for the long-term benefit of its stockholders.

The Independent Directors meet regularly in executive session without management. The Lead Director presides at these executive session meetings. Currently, all directors except for one, David Overton, are Independent Directors. In addition, each member of all five committees of the Board of Directors in service for part or all of fiscal 2008 is an Independent Director. Additional information regarding Board committees appears in the section of this Proxy Statement entitled "Committees of the Board of Directors and Composition of Committees."

We make available on our website the policy that the Board of Directors has adopted for stockholders and employees who wish to communicate any concern directly with the Board of Directors. The policy can be found at www.thecheesecakefactory.com by clicking on the links for "Investors," "Corporate Governance" and "Governance Principles and Guidelines," and the document entitled "Corporate Governance Principles and Guidelines."

Director Nominations Process

The Board of Directors has adopted a policy and procedure regarding Board of Director candidates (the "Nominations Policy"). The purpose of the Nominations Policy is to describe the process by which candidates are selected for possible inclusion in the Board of Director's recommended slate of director nominees. The Governance Committee of the Board of Directors administers the Nominations Policy.

The Governance Committee is responsible for identifying candidates for nomination or appointment to the Board of Directors. To fulfill this function, the Governance Committee will at least annually review the size and composition of the Board of Directors and its committees, including the number of directors eligible for election at the annual meeting of stockholders, in accordance with our Articles of Incorporation and Bylaws. The Governance Committee may solicit recommendations for nominees from other directors, members of management or others. In addition, the Governance Committee will consider recommendations of a stockholder of record who timely complies with these policies and procedures.

In fiscal 2008, the Board of Directors adopted amendments to our Bylaws to implement a majority vote policy such that in order to be considered for nomination by the Board of Directors, an individual must agree that if elected he or she will submit an irrevocable resignation effective upon (i) the director's failure to receive a majority vote in an uncontested election at which he or she is subject to reelection; and (ii) acceptance of the resignation by the Board of Directors.

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Minimum Qualifications

The Governance Committee has identified the following minimum qualifications for candidates for nomination to the Board of Directors:

Each candidate must consent in writing to be named in our proxy statement as a nominee and to serve as a director of the Company if nominated, elected or appointed, and qualified.

Each candidate must agree that if elected he or she will submit an irrevocable resignation to the Secretary of the Company promptly following his or her election or reelection that will be effective upon (i) such director's failure to receive a "majority vote" for reelection in any "uncontested election" (as those terms are defined in the Company's Bylaws) at which he or she is subject to reelection; and (ii) acceptance of that resignation by the Board of Directors in accordance with the Bylaws and any policies and procedures adopted by the Board of Directors for such purposes.

Each candidate's service as a director must not cause us or any of our subsidiaries to lose, or to be threatened with the loss of any application for, right to the use of, or entitlement to, any material governmental license, authorization or permit.

Each candidate shall be an individual who has demonstrated integrity and ethics in his/her personal and professional life and has established a record of professional accomplishment in his/her chosen field.

Each candidate shall be prepared to represent the best interests of all of our stockholders and not just one particular constituency.

No candidate or family member (as defined in the NASD rules) of a candidate may have any current material personal, financial or professional interest in any company which is determined by the Committee to be a significant competitor of ours.

Each candidate must be prepared to participate fully in Board activities, including active membership on at least one Board committee, and not have other personal or professional commitments that would, in the Governance Committee's sole judgment, interfere with or limit his or her ability to do so.

Each candidate shall be prepared not to serve as a member of the board of directors of more than two publicly traded companies in addition to ours without prior approval of the majority of the Independent Directors.

Each candidate shall not have attained the age of 72 as of the date of appointment or election to the Board.

Criteria for Evaluating Candidates

In evaluating nominations, the Governance Committee will seek to achieve a balance of different capabilities and overall diversity in the areas of personal and professional experiences and backgrounds, financial, managerial and operational knowledge; variety of opinions and perspectives; and other differentiating characteristics with the goal of seeking and selecting candidates that will enhance the Board's ability to adequately perform its responsibilities, increase stockholder value, and adhere to good corporate governance practices. The Governance Committee will consider the following criteria in evaluating candidates for nomination in light of the size and composition of the Board of Directors and its committees:

Satisfaction of the minimum qualifications established by the Governance Committee.

Education and other training.

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Relevant personal and professional background, including financial, managerial and operational skills and knowledge and experience in both corporate and non-traditional environments, such as government, academia and non-profit organizations.

Whether the candidate is a party to any action or arbitration adverse to us or any of our subsidiaries.

Whether the candidate would qualify as an "independent" director as defined by The NASDAQ Stock Market's listing standards.

Whether the candidate would qualify as an "audit committee financial expert."

Whether the candidate has been involved in any legal proceeding that would be required to be disclosed by us pursuant to Item 401(f) of Regulation S-K.

Whether any business relationships exist, or have existed, that would be required to be disclosed pursuant to Item 404 of Regulation S-K.

The candidate's reputation for judgment and honesty.

Whether we would be required to disclose any of the relationships described in Section 407(e) of Regulation S-K.

The number and identity of any other boards of directors of which the candidate is a member.

Other professional and personal commitments that could affect the candidate's ability to serve.

Whether the candidate has provided accurate and complete responses to any requests for additional