

PRECISION OPTICS CORPORATION INC
Form PRE 14A
October 17, 2006

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

SCHEDULE 14A INFORMATION

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

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to §240.14a-12

Precision Optics Corporation, Inc.

(Name of Registrant as Specified In Its Charter)

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

Payment of Filing Fee (Check the appropriate box):

- No fee required
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(1) Amount Previously Paid:

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

(3) Filing Party:

(4) Date Filed:

PRECISION OPTICS CORPORATION, INC.

**22 East Broadway
Gardner, Massachusetts 01440**

To the Stockholders:

The Board of Directors and officers of Precision Optics Corporation, Inc. invite you to attend the 2006 Annual Meeting of Stockholders to be held Tuesday, November 28, 2006, at 10:00 a.m. at the offices of Ropes & Gray LLP, One International Place, Boston, Massachusetts.

A copy of the Proxy Statement and a copy of the Company's 2006 Annual Report to Stockholders are enclosed.

If you cannot be present at the meeting, please mark, date, and sign the enclosed proxy card and return it as soon as possible in the enclosed envelope.

Very truly yours,

/s/ Richard E. Forkey

Richard E. Forkey
President

PRECISION OPTICS CORPORATION, INC.
22 East Broadway
Gardner, Massachusetts 01440

NOTICE OF 2006 ANNUAL MEETING OF STOCKHOLDERS

November 28, 2006

The 2006 Annual Meeting of Stockholders of Precision Optics Corporation, Inc. (the "Company") will be held on Tuesday, November 28, 2006, at 10:00 a.m. at the offices of Ropes & Gray LLP, Boston, Massachusetts, for the following purposes:

1. To consider and approve an amendment to the Company's Articles of Organization, as amended, to increase the number of authorized shares of the Company.
2. To consider and act on a proposal to approve certain amendments to the Amended and Restated 1997 Incentive Plan of the Company.
3. To consider and act on a proposal to approve the 2006 Equity Incentive Plan of the Company.
4. To elect two Class I directors to hold office for a three-year term and until their respective successors shall have been duly elected and qualified.
5. To transact any and all other business that may properly come before the meeting or any adjournment thereof.

All stockholders of record at the close of business on Friday, October 13, 2006, are entitled to notice of and to vote at the meeting.

Stockholders are requested to sign and date the enclosed proxy and return it in the enclosed envelope. The envelope requires no postage if mailed in the United States.

By Order of the Board of Directors

/s/ Michael T. Pieniazek

Michael T. Pieniazek
Clerk

November 1, 2006

PRECISION OPTICS CORPORATION, INC.

**Annual Meeting of Stockholders
November 28, 2006**

PROXY STATEMENT

INFORMATION CONCERNING SOLICITATION AND VOTING

General

This proxy statement and form of proxy are furnished in connection with the solicitation of proxies by the Board of Directors of Precision Optics Corporation, Inc., a Massachusetts corporation (the "Company"), for the 2006 Annual Meeting of Stockholders of the Company to be held on November 28, 2006, at 10:00 a.m. at the offices of Ropes & Gray LLP, One International Place, Boston, Massachusetts, and any adjournments thereof, for the purposes set forth in the notice of meeting. The Company was incorporated in 1982, and its principal executive offices are at 22 East Broadway, Gardner, Massachusetts 01440 (telephone 978-630-1800). This proxy statement and form of proxy are first being distributed to stockholders on or about November 1, 2006.

Stockholders Entitled to Vote

As of September 15, 2006, the Company had outstanding 15,458,212 shares of common stock, \$0.01 par value per share (the "Common Stock"). Each share of Common Stock entitles the holder of record thereof at the close of business on October 13, 2006 to one vote, in person or by proxy, on the matters to be voted upon at the meeting.

Voting Procedures

Consistent with Massachusetts law and the Company's by-laws, the holders of a majority of the shares entitled to be cast on a particular matter, present in person or represented by proxy, constitutes a quorum as to such matter. Votes cast by proxy or in person at the annual meeting will be counted by persons appointed by the Company to act as election inspectors for the meeting.

If the enclosed form of proxy is properly signed and returned and not revoked, the shares represented thereby will be voted at the annual meeting. If the stockholder specifies in the proxy how the shares are to be voted, they will be voted as specified. If the stockholder does not specify how the shares are to be voted, such shares will be voted in favor of Proposals 1, 2 and 3 below and for the election of the nominees for director.

Any stockholder has the right to revoke his or her proxy at any time before it is voted by: (1) attending the meeting and voting in person, (2) by filing with the Clerk of the Company a written instrument revoking the proxy or (3) delivering to the Clerk another newly executed proxy bearing a later date.

Required Vote

The approval of the amendment to the Articles of Organization, as amended, to increase the number of shares outstanding as described in Proposal 1 requires the affirmative vote of a majority of all shares outstanding.

The approval of certain amendments to the Company's Amended and Restated 1997 Incentive Plan described in Proposal Number 2 and the approval of the 2006 Equity Incentive Plan of the Company described in Proposal Number 3 require the affirmative vote of a majority of the shares represented and entitled to vote at the meeting.

The election of the Class I directors described in Proposal 4 requires a plurality of votes cast.

Abstentions and broker "non-votes" are counted as present and entitled to vote for purposes of determining a quorum, but will not be counted as votes properly cast for purposes of determining the outcome of voting on any matter. A broker non-vote occurs when a nominee holding shares for a beneficial owner does not vote on a particular proposal because the nominee does not have discretionary voting power for the particular item and has not received instructions from the beneficial owner.

Voting on Other Matters

At the date hereof, the Company's management has no knowledge of any business other than that described in the notice for the annual meeting which will be presented for consideration at such meeting. If any other business should come before such meeting, the persons appointed by the enclosed form of proxy may, in their discretion, vote all such proxies in accordance with their own judgment. The persons appointed by the enclosed form of proxy also may, in their discretion, vote all proxies with respect to matters incident to the conduct of the meeting.

Costs of Proxy Solicitation

The Company will bear all the costs of the solicitation of proxies. The Board of Directors (the "Board") may arrange with brokerage houses and other custodians, nominees, and fiduciaries to forward solicitation materials to the beneficial owners of the stock held of record by such persons, and the Company may reimburse them for the reasonable out-of-pocket expenses incurred in so doing. In addition to the solicitation of proxies by use of the mail, the Company may use the services of some of its directors, officers, and regular employees (who will receive no compensation therefrom in addition to their regular salaries) to solicit proxies personally or by mail or telephone.

PROPOSAL NUMBER 1. APPROVAL OF THE AUTHORIZED SHARES AMENDMENT

Purpose of the Increase in Authorized Shares

The Board of Directors has approved and is hereby soliciting stockholder approval of an amendment to the Company's Articles of Organization, as amended, to increase the number of shares of Common Stock that the Company is authorized to issue from 20,000,000 to 50,000,000. On September 15, 2006, the Company had 15,458,212 shares of Common Stock outstanding and 2,492,583 shares of Common Stock reserved for specific purposes, including issuance upon exercise of outstanding stock options or for future awards under its equity incentive arrangements. The Board of Directors believes that it is desirable to have available a substantial number of authorized but unissued shares of Common Stock, which may be issued from time to time without further action by the stockholders, to provide for stock splits or stock dividends, stock options and other equity incentives, to be able to take advantage of acquisition opportunities, to meet future capital needs and for other general corporate purposes.

The form of the proposed amendment is attached hereto as Annex I. Subject to favorable stockholder action, the proposed amendment would become effective upon the filing of Articles of Amendment with the Secretary of State of The Commonwealth of Massachusetts, which would be expected to occur shortly after stockholder approval of the amendment. Upon filing of such amendment, all stockholders of the Company would be bound by the amendment, whether or not they voted for it.

Risks Associated with the Increase in Authorized Shares

The issuance of additional authorized shares of Common Stock may dilute the voting power and equity interests of present stockholders. Prior to the Authorized Shares Amendment, if all of the existing authorized shares were issued, current shares outstanding would be approximately 77% of the total outstanding shares. If the Authorized Shares Amendment is approved and all of the then authorized shares were issued, current shares outstanding would be approximately 31% of the total outstanding shares. It is not possible to predict in advance whether the issuance of additional shares will have a dilutive effect on earnings per share as it depends on the specific events associated with a particular transaction. Shares of authorized but unissued Common Stock may be issued from time to time by the Board of Directors without further stockholder action unless such action is required by Massachusetts law, under which the Company is incorporated, or the Company's Articles of Organization.

Recommendation of the Board of Directors

The Board of Directors believes that the advantages of the additional authorized shares outweigh any potential disadvantages. The Board of Directors believes that approval of the increase in the authorized shares is in the best interest of the stockholders because it would facilitate the Company's business and financial purposes in the future without the necessity of delaying such activities for further stockholder approval, except as may be required by Massachusetts law or the Company's Articles of Organization.

**THE BOARD OF DIRECTORS RECOMMENDS THAT
STOCKHOLDERS VOTE FOR PROPOSAL 1.**

**PROPOSAL NUMBER 2. APPROVAL OF AMENDMENTS TO
THE AMENDED AND RESTATED 1997 EQUITY INCENTIVE PLAN**

On April 12, 2006 and May 9, 2006, the Board of Directors approved, and is hereby soliciting stockholder approval of, certain amendments to the Precision Optics Corporation, Inc. Amended and Restated 1997 Incentive Plan (the "1997 Incentive Plan"). The primary purpose of further amending the 1997 Incentive Plan is to increase the total number of shares of Common Stock that may be issued under the 1997 Incentive Plan from 1,500,000 to 3,000,000. The amendment also provides that any shares of Common Stock remaining under an award that terminates or is terminated without having been exercised at all or in full will not be considered to have been delivered in satisfaction of an Award and will revert to the pool of shares of Common Stock available for issuance under the 1997 Incentive Plan. As of October 10, 2006, 497,438 shares of Common Stock remained available for future Awards under the 1997 Incentive Plan.

If Proposal Number 3 related to the adoption of a new equity incentive plan is approved by the requisite number of stockholders, no additional Awards will be granted under the 1997 Incentive Plan and any shares remaining in the pool of shares available for issuance under the 1997 Incentive Plan will be rolled over to the pool of shares available for issuance under the 2006 Incentive Plan.

The following is a summary of the material features of the 1997 Incentive Plan, as proposed to be amended, however, it may not contain all of the information important to you. We urge you to read the 1997 Incentive Plan, a copy of which appears as Exhibit A to this proxy statement. Capitalized terms used under Proposal Number 2 but not otherwise defined under Proposal Number 2 shall have the meanings ascribed to such terms in the 1997 Incentive Plan.

Participation in Plan

The grant of Awards under the 1997 Incentive Plan to eligible participants is subject to the discretion of the plan administrator, which is currently the Board of Directors. The benefits or amounts that have been or are to be received under the 1997 Incentive Plan since the date the Board approved the increase in the number of shares available for grant under the 1997 Incentive Plan are not determinable at this time, other than as set forth in the following table:

**Amended Plan Benefits
1997 Incentive Plan**

Name and Position	Number of Units	Dollar Value
Richard E. Forkey, President, Chief Executive Officer, and Treasurer	373,600 (1)	- (2)
Joseph N. Forkey, Executive Vice President and Chief Scientific Officer	280,200 (3)	- (2)
Michael T. Pieniazek, Vice President, Finance, Chief Financial Officer and Clerk	125,000 (4)	\$22,500(5)
All current executive officers as a group	778,800 (1)	\$22,500(6)
All non-executive directors as a group	40,000 (7)	- (8)
All non-executive officer employees as a group	277,000 (9)	- (2)

- (1) Richard Forkey was granted options to purchase 373,600 shares of Common Stock at an exercise price of \$0.55 per share on May 9, 2006.
- (2) The dollar value of the options will depend on the difference between the exercise price and the fair market value of the underlying shares on the date of exercise (the "option spread"). As of October 10, 2006, the closing price of the Company's Common Stock on the OTC Bulletin Board was \$0.43, resulting in a negative option spread as of such date.
- (3) Joseph Forkey was granted options to purchase 280,200 shares of Common Stock at an exercise price of \$0.55 per share on May 9, 2006.
- (4) Michael Pieniazek was granted options to purchase 125,000 shares of Common Stock at an exercise price of \$0.25 per share on September 15, 2006.
- (5) The dollar value of the options will depend on the difference between the exercise price and the fair market value of the underlying shares on the date of exercise. The dollar value of the options shown above represents the option spread as of October 10, 2006.
- (6) The dollar value of 125,000 of such options represents the option spread as of October 10, 2006. The remaining options have no value as of such date.
- (7) Represents grants of Awards expected in connection with the 2006 Annual Meeting of Stockholders. Each non-employee director of the Company receives an option to purchase shares of Common Stock on the date of each annual meeting of stockholders.
- (8) The dollar value of such Awards is not determinable at this time.
- (9) Such Awards were granted to other employees on May 9, 2006 and have an exercise price of \$0.55 per share.

Summary of the 1997 Incentive Plan

Administration. Subject to the terms of the 1997 Incentive Plan, the Administrator has authority to interpret the 1997 Incentive Plan; determine eligibility for and grant Awards; determine, modify or waive the terms and conditions of any Award; and otherwise do all things necessary to carry out the purposes of the 1997 Incentive Plan. In the case of any Award intended to be eligible for the performance-based compensation exception under Section 162(m), the Administrator shall exercise its discretion consistent with qualifying the Award for such exception.

Eligibility and Participation. In general, the Administrator selects participants in the 1997 Incentive Plan from among key employees of the Company and its affiliates who, in the opinion of the Administrator, are in a position to make a significant contribution to the success of the Company or its affiliates. The Administrator also has discretion to include as participants in the 1997 Incentive Plan members of the Company's Board of Directors and other persons who provide services to the Company or its affiliates. As of October 10, 2006, approximately 40 persons were eligible to receive Awards under the 1997 Incentive Plan, including the Company's three executive officers and four non-employee directors. The maximum number of shares for which stock options may be granted to any person, the maximum number of shares subject to stock appreciation rights granted to any person, and the aggregate maximum number of shares of Stock which may be delivered to any person pursuant to Awards that are not stock options or stock appreciation rights are each limited to 600,000 shares per year under the 1997 Incentive Plan. In addition, no more than \$2 million may be paid to any individual with respect to any annual cash performance-based bonuses and no more than \$2 million in cash performance-based bonuses may be paid to any individual with respect to multi-year performance periods ending in the same year. No Award constituting an incentive stock option within the meaning of Section 422 of the Internal Revenue Code (an "ISO") may be granted under the 1997 Incentive Plan after September 15, 2007, but ISO Awards previously granted may extend beyond such date.

Types of Awards. The Administrator, in its discretion, may award (i) options to purchase Common Stock, (ii) stock appreciation rights, (iii) restricted or unrestricted Stock, (iv) promises to deliver Common Stock or other securities in the future, (v) convertible securities, (vi) cash bonuses, and (vii) cash bonuses or loans to help defray the costs of the foregoing Awards.

Performance Criteria. Awards under the 1997 Incentive Plan may be conditioned upon satisfaction of specified performance criteria. In the case of any such Award that is intended to qualify for exemption from the deduction limitation rules of Section 162(m) of the Internal Revenue Code (an "Exempt Award"), the criteria used in connection with the Award shall be one or any combination of the following (determined either on a consolidated basis or, as the context permits, on a divisional, subsidiary, line of business or geographical basis or in combinations thereof): (i) sales; revenues; assets; expenses; earnings before or after deduction for all or any portion of interest, taxes, depreciation or amortization, whether or not on a continuing operations or an aggregate or per share basis; return on equity, investment, capital or assets; gross margin; inventory level or turns; one or more operating ratios; borrowing levels, leverage ratios or credit rating; market share; capital expenditures; cash flow; stock price; stockholder return; or other objective operating contributions; or (ii) acquisitions or divestitures (in whole or in part); joint ventures and strategic alliances; spin-offs, split-ups and the like; reorganizations; recapitalizations, restructurings, financings (issuance of debt or equity) and refinancings; or other transactions that involve a change in the equity ownership of the Company. A Performance Criterion measure and any targets with respect thereto determined by the Administrator need not be based upon an increase, a positive or improved result or avoidance of loss. In the case of an Exempt Award, the administrator will preestablish the particular performance goals in writing no later than 90 days after the commencement of the period of service to which the performance relates (or earlier if so required under applicable regulations) and will certify prior to payment whether the performance goal or goals have been attained. If the performance goal with respect to an Exempt Award is not attained, no other Award shall be provided in substitution. To date, the Company has not granted any Exempt Awards.

Rules Applicable to Awards. Neither ISOs nor, except as the Administrator otherwise expressly provides, other Awards may be transferred other than by will or by the laws of descent and distribution, and during a Participant's lifetime ISOs (and, except as the Administrator otherwise expressly provides, other non-transferable Awards requiring exercise) may be exercised only by the Participant. The Administrator may determine the time or times at which an Award will vest or become exercisable. Without limiting the foregoing, the Administrator may at any time accelerate the vesting or exercisability of an Award, regardless of any adverse or potentially adverse tax consequences resulting from such acceleration. Unless the Administrator expressly provides otherwise, immediately upon the cessation of the Participant's Employment, an Award requiring exercise will cease to be exercisable and will terminate, and all other Awards to the extent not already vested will be forfeited with certain exceptions, which are enumerated in the 1997 Incentive Plan.

Stock Options. The Administrator will determine the exercise price, if any, of each Award requiring exercise. Unless the Administrator determines otherwise, each stock option will have an exercise price not less than the fair market value of the Stock subject to the stock option, determined as of the date of grant. A stock option intended to be an ISO granted to a person who owns (or by application of attribution rules is deemed to own) more than 10% of the total combined voting power of all classes of stock of the Company will have an exercise price equal to 110% of such fair market value. Options awarded under the 1997 Incentive Plan will not be ISOs except as expressly provided otherwise.

Effect of Certain Transactions. In the event of a consolidation or merger in which the Company is not the surviving corporation or which results in the acquisition of a majority of the Company's outstanding Stock by a single person or entity or by a group of persons and/or entities acting in concert, or in the event of the sale or transfer of all or substantially all of the Company's assets or a dissolution or liquidation of the Company, all outstanding Awards requiring exercise will cease to be exercisable, and all other Awards to the extent not fully vested (including Awards subject to performance conditions not yet satisfied or determined) will be forfeited, as of the effective time of such transaction; provided, however, that immediately prior to the consummation of such a transaction, the vesting or exercisability of Awards shall be accelerated unless, in the case of any Award, the Administrator provides for one or more substitute or replacement awards from, or the assumption of existing Awards by, the acquiring entity (if any) or its affiliates.

Equitable Adjustment. In the event of a stock dividend, stock split or combination of shares, recapitalization or other change in the Company's capital structure, the Administrator will make appropriate adjustments to the maximum number of shares that may be delivered under the 1997 Incentive Plan, to the maximum share limits under the 1997 Incentive Plan, to the number

and kind of shares of stock or securities subject to Awards then outstanding or subsequently granted, to any exercise prices relating to Awards, and to any other provision of Awards affected by such change. In connection with the one-for-six reverse split of the Company's Common Stock that was consummated on January 29, 2003, the Administrator made such adjustments accordingly. The Administrator also may make such adjustments to take into account other distributions or events, if the Administrator determines that adjustments are appropriate to avoid distortion in the operation of the 1997 Incentive Plan and to preserve the value of Awards; provided, however, that no such adjustment shall be made to the maximum share limits, or otherwise to an Award intended to be eligible for the performance-based exception under Section 162(m), except to the extent consistent with that exception.

Amendment. Subject to the Administrator's obligation to exercise its discretion consistent with qualifying Awards for the performance-based exception under Section 162(m) if such Awards are intended to so qualify, the Administrator may at any time or times amend the 1997 Incentive Plan or any outstanding Award for any purpose which may at the time be permitted by law, or may at any time terminate the 1997 Incentive Plan as to any further grants of Awards, provided that, except to the extent expressly required or permitted by the 1997 Incentive Plan, no such amendment will, without the approval of the stockholders of the Company, effectuate a change for which stockholder approval is required in order for the 1997 Incentive Plan to continue to qualify under Section 422 of the Internal Revenue Code or for Awards to be eligible for the performance-based exception under Section 162(m).

Other Compensation. The existence of the 1997 Incentive Plan and the grant of Awards will not affect the Company's right to pay other bonuses or compensation in addition to Awards under the 1997 Incentive Plan.

Price of Common Stock. The closing price of the Company's Common Stock on the OTC Bulletin Board on October 10, 2006 was \$0.43.

Certain Federal Income Tax Consequences

The following discussion summarizes certain United States federal income tax consequences of the issuance and receipt of options under the 1997 Incentive Plan under the law as in effect on the date of this proxy statement. The 1997 Incentive Plan provides for the grant of both ISOs and NSOs, as well as other Awards. The summary does not purport to cover federal employment tax or other federal tax consequences that may be associated with the 1997 Incentive Plan, nor does it cover state, local or non-U.S. taxes.

ISOs. An optionee realizes no taxable income upon the grant or, for regular tax purposes, upon the exercise of an ISO. However, the exercise of an ISO may result in an alternative minimum tax liability to the optionee. With certain exceptions, a disposition of shares purchased under an ISO within two years from the date of grant or within one year after exercise produces ordinary income to the optionee (and a deduction to the Company) equal to the value of the shares at the time of exercise less the exercise price. Any additional gain recognized in the disposition is treated as a capital gain for which the Company is not entitled to a deduction. If the optionee does not dispose of the shares until after the expiration of these one- and two-year holding periods, any gain or loss recognized upon a subsequent sale is treated as a long-term capital gain or loss for which the Company is not entitled to a deduction.