

TEREX CORP
Form DEF 14A
March 31, 2010

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

SCHEDULE 14A

INFORMATION REQUIRED IN PROXY STATEMENT
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 under § 240.14a-12

TEREX CORPORATION
(Name of Registrant as Specified in Its Charter)

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

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(3) Filing
Party:

(4) Date Filed:

TEREX CORPORATION
200 Nyala Farm Road, Westport, Connecticut 06880

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS
TO BE HELD ON MAY 13, 2010

The Annual Meeting of Stockholders of Terex Corporation (“Terex” or the “Company”) will be held at the corporate offices of Terex Corporation, 200 Nyala Farm Road, Westport, Connecticut, on Thursday, May 13, 2010, at 10:00 a.m., local time, for the following purposes:

1. To elect nine (9) directors of the Company to hold office for one year or until their successors are duly elected and qualified.
2. To ratify the selection of PricewaterhouseCoopers LLP as the independent registered public accounting firm for the Company for 2010.
3. To transact such other business as may properly come before the meeting or any adjournment or postponement thereof.

The foregoing items of business are described more fully in the Proxy Statement accompanying this Notice.

The Board of Directors of the Company has fixed the close of business on March 17, 2010 as the record date for determining the stockholders entitled to notice of, and to vote at, the Annual Meeting.

Securities and Exchange Commission rules allow us to furnish proxy materials to our stockholders on the Internet. We are pleased to utilize these rules and believe that they enable us to provide our stockholders with the information that they need, while lowering the cost of delivery and reducing the environmental impact of our Annual Meeting.

On or about April 2, 2010, we will be mailing our Notice of Internet Availability of Proxy Materials to most of our stockholders, which contains instructions for our stockholders’ use of this process, including how to access our 2010 Proxy Statement and 2009 Annual Report and how to vote online. In addition, the Notice of Internet Availability of Proxy Materials contains instructions on how you may receive a paper copy of the Proxy Statement and Annual Report, if you received only a Notice of Internet Availability of Proxy Materials this year.

EVERY STOCKHOLDER’S VOTE IS IMPORTANT. While all stockholders are invited to attend the Annual Meeting, we urge you to vote whether or not you will be present at the Annual Meeting. You may vote by telephone or via the Internet. If you received a paper copy of the proxy card by mail, you may complete, date and sign the proxy card and return it in the envelope provided. No postage is required if the proxy card is mailed in the United States. You may withdraw your proxy or change your vote at any time before your proxy is voted, either by voting in person at the Annual Meeting, by proxy, by telephone or via the Internet. Please vote promptly in order to avoid the additional expense of further solicitation.

By order of the Board of Directors,

Eric I Cohen
Secretary

March 31, 2010

Westport, Connecticut

TEREX CORPORATION
200 Nyala Farm Road
Westport, Connecticut 06880

Proxy Statement for the
Annual Meeting of Stockholders
to be held on May 13, 2010

This Proxy Statement is furnished to stockholders of Terex Corporation (“Terex” or the “Company”) in connection with the solicitation of proxies by and on behalf of the Company’s Board of Directors (the “Board”) for use at the Annual Meeting of Stockholders of the Company to be held at 10:00 a.m., local time, on May 13, 2010, at the corporate offices of Terex Corporation, 200 Nyala Farm Road, Westport, Connecticut, and at any adjournments or postponements thereof (collectively, the “Meeting”), for the purposes set forth in the accompanying Notice of Annual Meeting of Stockholders (the “Notice”).

As of March 17, 2010, the record date for determining the stockholders entitled to notice of, and to vote at, the Meeting, the Company had outstanding 108,584,623 shares of common stock, \$.01 par value per share (“Common Stock”).

Under rules and regulations of the Securities and Exchange Commission (“SEC”), instead of mailing a printed copy of our proxy materials to each stockholder of record or beneficial owner of our Common Stock, we are furnishing proxy materials, which include our Proxy Statement and Annual Report, to our stockholders over the Internet and providing a Notice of Internet Availability of Proxy Materials by mail to all of our stockholders, other than to stockholders who previously elected to receive a printed copy of the proxy materials. Those stockholders that previously elected to receive printed proxy materials will each receive such materials by mail. If you received a Notice of Internet Availability of Proxy Materials by mail, you will not receive a printed copy of the proxy materials unless you request to receive these materials in hard copy by following the instructions provided in the Notice of Internet Availability of Proxy Materials. Instead, the Notice of Internet Availability of Proxy Materials will instruct you how you may access and review all of the important information contained in the proxy materials over the Internet. The Notice of Internet Availability of Proxy Materials also instructs you how you may submit your proxy via telephone or the Internet. If you received a Notice of Internet Availability of Proxy Materials by mail and would like to receive a printed copy of our proxy materials, you should follow the instructions for requesting such materials included in the Notice of Internet Availability of Proxy Materials.

We are mailing the Notice of Internet Availability of Proxy Materials to our stockholders on or about April 2, 2010.

Each share of Common Stock is entitled to one vote per share for each matter to be voted on at the Meeting. Except for the election of directors of the Company, the affirmative vote of a majority of the shares of Common Stock present in person or represented by proxy and entitled to vote is required for the approval of any matters voted upon at the Meeting. In an uncontested election of directors, such as the election at the Meeting, each director shall be elected by a majority of the votes cast with respect to such director.

A quorum of stockholders is constituted by the presence, in person or by proxy, of holders of record of Common Stock representing a majority of the aggregate number of votes entitled to be cast. Abstentions and broker non-votes will be considered present for purposes of determining the presence of a quorum. With respect to all matters to be voted upon at the Meeting, abstentions will have the effect of a negative vote and broker non-votes will not be considered as votes cast and thus will have no effect on the outcome of the vote.

Proxy solicitations by the Board will be made by mail, by phone, via the Internet or by personal interviews conducted by officers or employees of the Company. All costs of solicitations, including (a) printing and mailing of the Notice of Internet Availability of Proxy Materials, (b) the printing and mailing of this Proxy Statement and accompanying material, (c) the reimbursement of brokerage firms and others for their expenses in forwarding solicitation material to the beneficial owners of the Company's stock, and (d) supplementary solicitations to submit proxies, if any, will be borne by the Company.

How To Vote

In order that your shares of Common Stock may be represented at the Meeting, you are requested to vote your proxy using one of the following methods:

Via the Internet – You can vote your shares via the Internet as instructed in the Notice of Internet Availability of Proxy Materials. The Internet procedures are designed to authenticate your identity to allow you to vote your shares and confirm that your instructions have been properly recorded. Internet voting facilities for stockholders of record are available 24 hours a day and will close at 11:59 p.m. (EDT) on May 12, 2010.

By Telephone – The Notice of Internet Availability of Proxy Materials includes a toll-free number you can call to request printed copies of proxy materials and instructions on how to vote by telephone. The printed proxy materials include a different toll-free number you may call for voting.

By Mail – Stockholders who receive a paper proxy card may elect to vote by mail and should complete, sign and date their proxy card and mail it in the pre-addressed envelope that accompanies the delivery of paper proxy cards. Proxy cards submitted by mail must be received by the time of the Meeting in order for your shares to be voted. Stockholders who hold shares beneficially in street name may vote by mail by requesting a paper proxy card according to the instructions contained in the Notice of Internet Availability of Proxy Materials received from your broker or other agent, and then completing, signing and dating the voting instruction card provided by the brokers or other agents and mailing it in the pre-addressed envelope provided.

Please note that this year the rules regarding how brokers may vote your shares have changed. Brokers may no longer vote your shares on the election of directors in the absence of your specific instructions as to how to vote. The Company encourages you to provide instructions to your broker regarding the voting of your shares.

If you vote via the Internet, by telephone or by mailing a proxy card, we will vote your shares as you direct. For the election of directors, you can specify whether your shares should be voted for all, some or none of the nominees for director listed. With respect to the other items being submitted for stockholder vote, you may vote “for” or “against” any proposal or you may abstain from voting on any proposal.

If you submit a proxy via the Internet, by telephone or by mailing a proxy card without indicating your instructions, we will vote your shares consistent with the recommendations of our Board as stated in this Proxy Statement and in the Notice of Internet Availability of Proxy Materials, specifically in favor of our nominees for directors and in favor of the ratification of the appointment of PricewaterhouseCoopers LLP as our independent registered public accounting firm. If any other matters are properly presented at the Meeting for consideration, then our officers named on your proxy will have discretion to vote for you on those matters. As of the date of the Notice of Internet Availability of Proxy Materials, we knew of no other matters to be presented at the Meeting.

Revocation of Proxies – Any stockholder giving a proxy has the right to attend the Meeting to vote his or her shares of Common Stock in person (thereby revoking any prior proxy). Any stockholder also has the right to revoke the proxy at any time by executing a later-dated proxy, by telephone, via the Internet or by written revocation received by the Secretary of the Company prior to the time the proxy is voted. All properly executed and unrevoked proxies delivered pursuant to this solicitation, if received at or prior to the Meeting, will be voted at the Meeting.

NO PERSON IS AUTHORIZED TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATION OTHER THAN THOSE CONTAINED IN THIS PROXY STATEMENT, AND, IF GIVEN OR MADE, SUCH INFORMATION MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED. THE DELIVERY OF THIS PROXY STATEMENT SHALL, UNDER NO CIRCUMSTANCES, CREATE ANY IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE AFFAIRS OF THE COMPANY SINCE THE DATE OF THIS PROXY STATEMENT.

PROPOSAL 1: ELECTION OF DIRECTORS

At the Meeting, nine directors of the Company are to be elected to hold office until the Company's next Annual Meeting of Stockholders or until their respective successors are duly elected and qualified. Each director shall be elected by a majority of the votes of shares of Common Stock represented at the Meeting in person or by proxy cast with respect to such director. Unless marked to the contrary, the proxies received by the Company will be voted FOR the election of the nine nominees listed below, all of whom are presently members of the Board.

Each nominee has consented to being named in this Proxy Statement and to serve as a director if elected. However, should any of the nominees for director decline or become unable to accept nomination if elected, it is intended that the Board will vote for the election of such other person as director as it shall designate. The Company has no reason to believe that any nominee will decline or be unable to serve if elected.

In the event of an uncontested election, as is the case this year, any nominee for director who is a current director and receives less than a majority of the votes cast in person or by proxy at the Meeting shall offer to resign from the Board. While the Board does not believe that in each such case a director should necessarily leave the Board, this presents an opportunity for the Board, through its Governance and Nominating Committee, to consider the resignation offer.

The information set forth below has been furnished to the Company by the nominees and sets forth for each nominee, as of March 25, 2010, such nominee's name, business experience for at least the past five years, other directorships held and age. There is no family relationship between any nominee and any other nominee or executive officer of the Company. For information regarding the beneficial ownership of the Common Stock by the current directors of the Company, see "Security Ownership of Management and Certain Beneficial Owners."

The Governance and Nominating Committee of the Board has nominated each of the following individuals based on various criteria, including, among others, a desire to maintain a balanced experience and knowledge base within the Board, the nominees' personal integrity, independence, diversity, experience, sound judgment and willingness to devote necessary time and attention to properly discharge the duties of director, and the ability of the nominees to make positive contributions to the leadership and governance of the Company.

The Board recommends that the stockholders vote FOR the following nominees for director.

Name	Age	Positions and Offices with Company	First Year As Company Director
Ronald M. DeFeo	58	Chairman of the Board, Chief Executive Officer and Director	1993
G. Chris Andersen	71	Lead Director	1992
Paula H. J. Cholmondeley	62	Director	2004
Don DeFosset	61	Director	1999
William H. Fike	73	Director	1995
Thomas J. Hansen	61	Director	2008
David A. Sachs	50	Director	1992
Oren G. Shaffer	67	Director	2007
David C. Wang	65	Director	2008

Ronald M. DeFeo

Business Experience: Ronald M. DeFeo joined the Company on May 1, 1992, was appointed President and Chief Operating Officer of the Company on October 4, 1993, Chief Executive Officer (“CEO”) of the Company on March 24, 1995 and Chairman of the Board on March 4, 1998. Mr. DeFeo relinquished the titles of President and Chief Operating Officer of the Company on January 3, 2007. Pursuant to an Amended and Restated Employment and Compensation Agreement between Mr. DeFeo and the Company, dated as of October 14, 2008 (the “DeFeo Agreement”), Mr. DeFeo is to remain Chief Executive Officer of the Company through December 31, 2012 and the Company will use its best efforts, consistent with generally accepted best corporate governance standards, to have Mr. DeFeo elected Chairman of the Board during this time. Prior to joining the Company, Mr. DeFeo was a Senior Vice President of J.I. Case Company, the former Tenneco farm and construction equipment division, and also served as a Managing Director of Case Construction Equipment throughout Europe. While at J.I. Case, Mr. DeFeo was also a Vice President of North American Construction Equipment Sales and General Manager of Retail Operations. Mr. DeFeo serves as a director of Kennametal Inc. (a supplier of the Company). Mr. DeFeo served as a director of United Rentals, Inc. (a customer of the Company) until June 2005.

Qualifications: Mr. DeFeo has 18 years of management and operating experience with the Company. Mr. DeFeo is well regarded in the industry having been named to the Association of Equipment Manufacturers (“AEM”) Hall of Fame and having served as the Chairman of AEM. Based on his current role as CEO of the Company and his history with the Company and the industry, Mr. DeFeo provides the Board with skillful leadership and in-depth industry knowledge.

G. Chris Andersen

Business Experience: G. Chris Andersen has been a merchant banker since 1996 and is currently a partner of G. C. Andersen Partners, LLC, a private merchant banking and advisory firm. Previously, Mr. Andersen served as the non-executive Chairman of the Board of Directors of Millenium Cell Inc.

Qualifications: Mr. Andersen has an extensive knowledge of global capital markets, mergers and acquisitions transactions and investment community concerns. Based on his tenure with the Board, he also has an extensive knowledge of the Company that, in addition to his professional and other experiences, strengthens the Board's collective knowledge, capabilities and experience.

Paula H. J. Cholmondeley

Business Experience: Paula H. J. Cholmondeley was a private consultant on strategic planning from 2004 through 2009. Ms. Cholmondeley served as Vice President and General Manager of Sappi Fine Paper, North America from 2000 through 2004, where she was responsible for their Specialty Products division. Ms. Cholmondeley held senior positions with various other companies from 1980 through 1998, including Owens Corning, The Faxon Company, Blue Cross of Greater Philadelphia, and Westinghouse Elevator Company, and also served as a White House Fellow assisting the U.S. Trade Representative during the Reagan administration. Ms. Cholmondeley, a former certified public accountant, is an alumnus of Howard University and received a Masters Degree in Accounting from the University of Pennsylvania, Wharton School of Finance. Ms. Cholmondeley is also a director of Dentsply International Inc., Ultralife Corporation, Albany International Corp. and Minerals Technologies Inc., and is an independent trustee of Nationwide Mutual Funds.

Qualifications: Ms. Cholmondeley has significant financial and operations experience with several international manufacturing companies, held executive positions where she was responsible for leading strategic planning and involved in preparing financial statements as the chief financial officer of a large insurance company. As a result of these professional and other experiences, and as Ms. Cholmondeley is an African American female raised in the Caribbean, she brings diverse perspectives and experiences, which strengthens the Board.

Donald DeFosset

Business Experience: Don DeFosset retired in 2005 as Chairman, President and Chief Executive Officer of Walter Industries, Inc., a diversified company with principal operating businesses in homebuilding and home financing, water transmission products and energy services. Mr. DeFosset served since November 2000 as President and CEO, and since March 2002 as Chairman, of Walter Industries. Previously, he was Executive Vice President and Chief Operating Officer of Dura Automotive Systems, Inc. ("Dura"), a global supplier of engineered systems, from October 1999 through June 2000. Before joining Dura, Mr. DeFosset served as a Corporate Executive Vice President, President of the Truck Group and a member of the Office of Chief Executive Officer of Navistar International Corporation from October 1996 to August 1999. Mr. DeFosset also serves as a director of National Retail Properties Inc., Regions Financial Corporation and EnPro Industries, Inc. Previously, Mr. DeFosset served as a director of James Hardie Industries N.V. from 2006 through 2008.

Qualifications: Mr. DeFosset has considerable experience as a chief executive of a large diversified industrial company and as a senior executive of an international machinery manufacturer. Based on his tenure with the Board, he has an extensive knowledge of the Company that, in addition to his professional and other experiences, strengthens the Board's ability to perform its functions.

William H. Fike

Business Experience: William H. Fike has been President of Fike & Associates, a consulting firm, since January 2000. Mr. Fike retired as the Vice Chairman and Executive Vice President of Magna International Inc., an automotive parts manufacturer based in Ontario, Canada, in February 1999. Prior to joining Magna International in August 1994, Mr. Fike was employed by Ford Motor Company from 1965 to 1994, where he served most recently as a Corporate Vice President and as President of Ford Europe. Previously, Mr. Fike served as a director of Magna International from 1995 through 2007.

Qualifications: Mr. Fike has substantial operations experience as a senior executive of a large international automotive manufacturer. He also has substantial international operating experience, having lived and managed overseas businesses for many years. Based on his tenure with the Board, he has an extensive knowledge of the Company that, in addition to his professional and other experiences, strengthens the Board's collective knowledge, capabilities and experience.

Thomas J. Hansen

Business Experience: Thomas J. Hansen is Vice Chairman of Illinois Tool Works Inc. ("ITW"), a manufacturer of fasteners and components, consumable systems and a variety of specialty products and equipment, and is responsible for ITW's worldwide Automotive Components and Fastener, Fluids and Polymers, Industrial Metal and Plastic and Construction businesses. From 1998 until May 2006, Mr. Hansen served as Executive Vice President of ITW. Mr. Hansen joined ITW in 1980 as sales and marketing manager of the Shakeproof Industrial Products businesses and held several other positions with the company. Mr. Hansen is a member of the Northern Illinois University's Executive Club, a member of the Economics Club of Chicago, is Chairman of the ITW Better Government Council, and is a former member of the Board of Trustees of MAPI (Manufacturers Alliance).

Qualifications: Mr. Hansen is a senior executive of a large diversified industrial manufacturing company facing the same set of current external economic, social and governance issues as the Company. He also has significant experience in the area of mergers and acquisitions. As a result of these professional and other experiences, Mr. Hansen brings knowledge, experience and operational capabilities to the Board.

David A. Sachs

Business Experience: David A. Sachs is a Senior Advisor in the Capital Markets Group and serves as an Investment Committee Member of Ares Management LLC, a firm he co-founded in 1997. Mr. Sachs has been an investment banker and investment manager since 1981.

Qualifications: Mr. Sachs has extensive knowledge of global capital markets and is valuable to the Board's discussions of the Company's capital and liquidity needs. Based on his tenure with the Board, he has an extensive knowledge of the Company that, in addition to his professional and other experiences, brings value and insight to the Company and the Board.

Oren G. Shaffer

Business Experience: Oren G. Shaffer retired in 2007 as the Vice Chairman and Chief Financial Officer of Qwest Communications International Inc., a telecommunications provider, having served in that capacity from 2002 to 2007. From 2000 to 2002, Mr. Shaffer was President and Chief Operating Officer of Sorrento Networks, a company which develops intelligent optical networking solutions for telecommunication applications, and was a consultant for SBC Corp., a provider of wireless service technology. From October 1994 to January 2000, he served as Executive Vice President and Chief Financial Officer of Ameritech Corporation, a telecommunications company. He also held various senior executive positions in the areas of operations, finance and strategy in his 25 years with Goodyear Tire & Rubber Co. Mr. Shaffer also serves as a director of Belgacom SA and Intermec, Inc.

Qualifications: Mr. Shaffer has chief financial officer experience at large international companies and operations experience at a large global manufacturing company. He has significant experience with European businesses and is currently director of a Belgian-based telecommunications company. As a result of these professional and other experiences, Mr. Shaffer strengthens the Board's collective knowledge and capabilities.

David W. Wang

Business Experience: David C. Wang is President of Boeing China Inc. and Vice President of International Relations of The Boeing Company ("Boeing"), a large aerospace company and a manufacturer of commercial jetliners and military aircraft, and has held these positions since November 2002. Prior to joining Boeing, Mr. Wang served as Chairman and CEO of General Electric China from 1997 to 2001. Prior to that, Mr. Wang served in various positions of increasing responsibility with General Electric since 1980. Mr. Wang is also a director of KLA-Tencor Corporation.

Qualifications: Mr. Wang has substantial experience as a global manufacturing executive in the international and Chinese markets. As Mr. Wang is a Chinese national, he brings a unique perspective to the Board in a key developing market in which the Company hopes to expand in the future. As a result of these professional and other experiences, Mr. Wang provides a diverse outlook which adds to the Board's collective ability to provide guidance to the Company and management.

Dr. Donald P. Jacobs is a current director of the Company who is not standing for election as a nominee for director at the Meeting. Dr. Jacobs is Dean Emeritus and the Gaylord Freeman Distinguished Professor of Banking of the J.L. Kellogg School of Management at Northwestern University. Prior to that, Dr. Jacobs was Dean of the Kellogg School. He presently teaches corporate governance, strategy and international business. Given Dr. Jacobs' extensive management experience and knowledge of the Company, Dr. Jacobs will continue as an advisor to the Company in the capacity of Director Emeritus. In this role, Dr. Jacobs will be invited to attend and participate in all Board and Governance and Nominating Committee meetings, and must attend at least one Board and Governance and Nominating Committee meeting in person annually. As Director Emeritus, Dr. Jacobs will not be entitled to a vote at such meetings.

Helge H. Wehmeier is a current director of the Company who is not standing for election as a nominee for director at the Meeting.

Board Meetings and Corporate Governance

The Board met 12 times in 2009 at regularly scheduled and special meetings, including telephonic meetings. All of the directors in office during 2009 attended at least 75% of the meetings of the Board and all committees of the Board on which they served during 2009. It is the Company's policy, as stated in the Company's Governance Guidelines (the

“Guidelines”), that each director is expected to attend the annual meeting of stockholders. All of the directors then in office attended the Company’s previous annual meeting of stockholders held on May 14, 2009.

Director Independence

It is the Company's policy that the Board consists of a majority of directors who qualify as independent directors under the listing standards of the New York Stock Exchange ("NYSE"), the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the requirements of any other applicable regulatory authority, including the SEC. The Board annually reviews the relationship of each director with the Company, and only those directors who the Board affirmatively determines have no material relationship with the Company are deemed to be independent directors. The Guidelines specifically define what is deemed to be a material relationship between the Company and an independent director. The following are the relationships that the Board considers in making its independence determination:

- (i) whether the director or any of his or her immediate family members is or was within the past five years an officer of the Company;
- (ii) whether the director is or was within the past five years an employee of the Company;
- (iii) whether the director or any of his or her immediate family members is or was during the past five years affiliated with, or employed by, any past or present auditor of the Company (or an affiliate thereof);
- (iv) whether the director or any of his or her immediate family members is or was within the past five years part of an interlocking directorate in which an executive officer of the Company serves or served on the compensation committee of a company that concurrently employs or employed the director or any of his or her immediate family members;
- (v) whether the director is an executive officer, a partner, member, of counsel or beneficial owner of more than ten percent (10%) of the equity interest of a customer of, or a supplier of goods or services (including without limitation any investment banking firm or law firm) to, the Company where the amount involved in any of the last three fiscal years exceeds certain thresholds;
- (vi) whether the director is an executive officer, a partner or beneficial owner of more than ten percent (10%) of the equity interest of a company to which the Company was indebted at the end of any fiscal quarter during the Company's most recently completed fiscal year or current fiscal year in an amount in excess of five percent (5%) of the Company's total consolidated assets at the end of such fiscal year;
- (vii) whether the director is an executive officer, a partner or beneficial owner of more than ten percent (10%) of the equity interest of a company which was indebted to the Company;
- (viii) whether the director or any of his or her immediate family members was indebted to the Company, other than in the ordinary course of business of the Company and the business of the director or the member of his or her immediate family, as applicable, at the end of any fiscal quarter during the Company's most recently completed fiscal year or current fiscal year in an amount in excess of \$100,000 at the end of such fiscal year;
- (ix) whether the director is affiliated with a tax exempt entity that within the preceding three years received the greater of (x) \$1 million or (y) two percent (2%) of its consolidated gross revenues from the Company (based on the tax exempt entity's most recently completed fiscal year);

- (x) whether the director or any of his or her immediate family members is during the current fiscal year or was during the most recently completed fiscal year a party to a transaction or series of similar transactions with the Company or its subsidiaries (excluding director fees, stock options and other director compensation), other than on arm's-length terms where the amount involved is not material to either party;
- (xi) whether the director or any of his or her immediate family members received more than \$100,000 per year in direct compensation from the Company, other than director and committee fees and pension or other forms of deferred compensation for prior service within the past three years; and
- (xii) whether the director has any other relationships with the Company or the members of management of the Company that the Board has determined to be material and which are not described in (i) through (xi) above.

After consideration of all applicable matters, the Board determined, based on the above criteria, that none of the directors has a material relationship with the Company other than as a director or as a stockholder except for Mr. DeFeo, who is not an independent director. Accordingly, the Board has determined that all of the nominees for director are independent directors except for Mr. DeFeo, who has been nominated to serve on the Board as a result of his position as Chief Executive Officer of the Company.

Director Compensation

Directors who are employees of the Company receive no additional compensation by virtue of being directors of the Company. Outside directors receive compensation for their service as directors and reimbursement of their expenses incurred as a result of their service as directors. See "Director Compensation" for a detailed description of director compensation, including the Company's Common Stock ownership objective for outside directors.

Board Leadership Structure