

EDIETS COM INC
Form DEF 14A
March 20, 2009

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
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eDiets.com, Inc.

(Name of Registrant as Specified In Its Charter)

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- No fee required.
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NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

To Be Held at 9:00 a.m. on Tuesday May 5, 2009

Dear eDiets.com Stockholder:

The Annual Meeting of Stockholders of eDiets.com, Inc., a Delaware corporation (the "Company"), will be held at 9:00 a.m., local time, on Tuesday May 5, 2009, at 1000 Corporate Drive, Suite 600, Fort Lauderdale, Florida for the following purposes:

1. To elect seven directors to serve until the next Annual Meeting of Stockholders or until their respective successors have been duly elected and qualified; and

2. To transact such other business as may properly come before the Meeting and any postponements or adjournments thereof. The Board of Directors has fixed the close of business on Wednesday, February 25, 2009, as the record date for the determination of stockholders entitled to notice of, and to vote at, the Meeting and any postponements or adjournments thereof. A list of stockholders eligible to vote at the Meeting will be available for inspection at the Meeting and for a period of 10 days prior to the Meeting, during regular business hours, at the Company's corporate headquarters.

All stockholders are cordially invited to attend the Meeting in person. However, whether or not you plan to attend, please sign, date and promptly mail the enclosed proxy card in the enclosed return envelope. Alternatively, you may vote your shares by telephone, by dialing 1-800-690-6903, prior to the deadline at 11:59 p.m. Eastern on May 4, 2009. Returning your proxy card or voting electronically does not deprive you of your right to attend the Meeting and vote your shares in person.

By order of the Board of Directors,

/s/ Kevin McGrath
Kevin McGrath, Chief Executive Officer

March 20, 2009

eDiets.com, Inc.

1000 Corporate Drive, Suite 600

Fort Lauderdale, FL 33334

PROXY STATEMENT

This proxy statement, which is being made available to stockholders on or about March 20, 2009, is furnished in connection with the solicitation of proxies by the Board of Directors of eDiets.com, Inc., a Delaware corporation (the "Company"), for use at the forthcoming Annual Meeting of Stockholders to be held on Tuesday May 5, 2009 (the "Meeting"), and at any postponements or adjournments thereof.

At the close of business on February 25, 2009, the record date for determination of stockholders entitled to notice of, and to vote at, the Meeting, there were outstanding an aggregate of 25,158,664 shares of the Company's common stock, par value \$.001 per share (the "Common Stock"), the Company's only class of securities entitled to vote at the Meeting.

Voting and Revocability of Proxies

Each share of Common Stock is entitled to one vote on all matters to come before the Meeting. In the election of directors, assuming a quorum is present, the eight nominees receiving the highest number of votes cast at the Meeting will be elected.

The required quorum for the transaction of business at the Meeting will be a majority of the voting power of shares of Common Stock issued and outstanding on the record date. Shares present in person or by proxy (including shares which abstain or do not vote with respect to one or more of the matters presented for stockholder approval) will be counted for purposes of determining whether a quorum exists at the meeting.

In voting on the election of directors, abstentions and broker non-votes (which occur when a broker holding shares for a beneficial owner does not vote on a particular proposal because the broker does not have discretionary voting power with respect to that item and has not received voting instructions from the beneficial owner) will be disregarded and not treated as votes cast and, therefore, will not affect the outcome of the election.

Your proxy may be revoked at any time prior to its exercise by giving written notice to the Secretary of the Company at the offices of the Company set forth above, by presenting a duly executed proxy bearing a later date or by voting in person at the Meeting, but your mere attendance at the Meeting will not revoke your proxy. Your proxy, when properly executed, will be voted in accordance with the specific instructions indicated on your proxy card. Unless contrary instructions are given, your proxy will be voted FOR the election of the eight nominees for director, as provided in Proposal 1 below; and, to the extent permitted by applicable rules of the Securities and Exchange Commission (the "SEC"), in accordance with the judgment of the persons voting the proxies upon such other matters as may come before the Meeting and any postponements or adjournments thereof. See "Other Matters" below.

PROPOSAL 1

ELECTION OF DIRECTORS

The By-Laws of the Company provide that the number of directors shall be fixed, from time to time, by resolution. The Board of Directors has fixed the number of directors to be elected at the Meeting at seven (7) and recommends to the stockholders the following seven (7) nominees for election as directors of the Company:

Kevin A. Richardson, II

Stephen Cootey

Robert L. Doretti

Lee S. Isgur

Ronald Luks

Pedro N. Ortega-Dardet

Kevin McGrath

Each nominee has indicated their willingness to serve on the Board of Directors. If any nominee will be unable to serve, proxies will be voted (unless marked to the contrary) for such person or persons, if any, as shall be recommended by the Board of Directors. However, proxies will not be voted for the election of more than seven (7) directors. The nominees who are elected at the Meeting will serve as directors of the Company until the 2010 Annual Meeting of Stockholders, or until their successors are elected and have qualified, subject to earlier death, resignation, retirement or removal from office.

The following sets forth, as of February 25, 2009, certain information with respect to each of the above nominees for election as a director at the Meeting:

Name, Age And Occupation	Director Since
Kevin A. Richardson II, 40	2006
<p>Mr. Richardson founded Prides Capital LLC and Prides Capital Partners LLC in January 2004 where he is Managing Director. Prior to that, Mr. Richardson had been a partner at Blum Capital Partners since April of 1999. Blum Capital Partners is a \$2.5 billion investment firm, which pioneered the investment style of strategic block investing. Between May 1999 and September 2003, Mr. Richardson was the lead public partner on 18 investments. Prior to joining Blum Capital, Mr. Richardson was an analyst at Tudor Investment Corporation, an investment management firm that currently manages approximately \$8.8 billion across several hedge funds and private equity funds. Previously, Mr. Richardson spent four years at Fidelity Management and Research where he was the assistant portfolio manager of the Fidelity Contra Fund, a registered investment company. Mr. Richardson also managed Fidelity Airline Fund, the Fidelity Aerospace and Defense Fund, and performed research and analysis in a variety of industry sectors (computer services, business services, media, financial services, and healthcare information technology). Previously, Mr. Richardson worked at Kidder, Peabody & Co. Mr. Richardson is also a director of Healthtronics Inc., a position he has held since March 2006.</p>	
Stephen L. Cootey, 40	2006
<p>Mr. Cootey has been a member of the Prides Capital LLC investment team since 2004. Prior to joining Prides Capital, he was a vice president at Credit Suisse First Boston from 2001 to 2004, where he participated in over 25 transactions, raising over \$18 billion in capital through the equity and debt markets. His responsibilities included credit analysis, structuring, due diligencies, negotiation and the execution of equity, debt and M&A transactions. Prior to joining CSFB, Mr. Cootey was an associate at Goldman, Sachs and Accenture specializing in strategy and technical implementation of asset management software applications for high net worth clients. In addition, Mr. Cootey founded and ran his own consulting firm, from 1997 to 1998.</p>	

Robert L. Doretti, 66

2004

Mr. Doretti served as Chairman, Chief Executive Officer and President of ON Technology Corporation, a provider of software infrastructure solutions to Fortune 500 enterprises, from 2000 through its acquisition by Symantec Corporation in February 2004. From 1995 through its acquisition by Oracle Corporation in 1999, Mr. Doretti was President and Chief Executive Officer of Thinking Machines Corporation, a professional services and software provider of data mining and customer relationship management (CRM) solutions. Mr. Doretti spent over 19 years at Wang Laboratories, Inc., including the last 7 years as Senior Vice President of US Operations, where he was instrumental in growing that business to \$1.8 billion in revenue.

Lee S. Isgur, 71

1999

Mr. Isgur has served as Principal and Chief Financial Officer of Marché restaurant (Menlo Park, California) since 2001 and Chief Executive Officer since February 2008. Mr. Isgur also has been the Managing Partner of Corporate Counselors, a research and investment banking consulting firm since 1997. From 1994 to 1997, Mr. Isgur was a Managing Director of Jeffries & Company, an investment-banking firm. Mr. Isgur has served on the board of Station Casinos, Inc. (NYSE) from 2003 until 2007 and was a member of Station Casinos, Inc.'s audit and corporate governance committees.

Ronald Luks, 57

2004

Mr. Luks has served as President of Egret Associates, Inc. since 1988 and is a founding principal in Fun Online Corp. Both firms provide content creation and licensing services, online community management and real time publication services to the major commercial online services including CompuServe, Netscape.com, AOL and the Microsoft Network. Mr. Luks has been an industry consultant to such firms as Nintendo of America, Rolling Stone Interactive, Activision, and Sega of America. Mr. Luks was formerly a partner in the Wall Street firm of Ernst & Co., and a member of the American Stock Exchange and other national stock and commodity exchanges. He currently maintains his securities registration with Liberty Pacific Securities, LLC, a Seattle-based investment banking firm.

Pedro N. Ortega-Dardet, 45

2003

Mr. Ortega-Dardet has served as President of Skinmetics, Inc., which designs, manufactures and markets premium skin-care products under the name Wilma Schumann Skin Care, since 1997. Mr. Ortega-Dardet also serves as Director of the Esthetics Manufacturer and Distributors Alliance and serves as the Editor of Skin and Body News, an industry newsletter. Mr. Ortega-Dardet holds a B.S. degree in Industrial Engineering and Operations Research from Syracuse University and an M.B.A. with a concentration in Finance and a minor in Marketing from the University of Miami.

Kevin McGrath, 55

2008

On December 30, 2008 Mr. McGrath was appointed President and Chief Executive Officer of the Company and was appointed to the Company's Board of Directors. From 2004 through 2007, Mr. McGrath was President and CEO of Digital Angel Corporation, a manufacturer of animal identification products and satellite based search and rescue equipment. From 1996 through 2003 Mr. McGrath was Chairman and CEO of DIRECTTV Latin America, LLC, a pay television provider in Latin America.

THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR EACH DIRECTOR NOMINEE.

CORPORATE GOVERNANCE

Board of Directors

The Board of Directors of the Company, which met four times in person and met eight times by telephone in 2008, has formed the following standing committees.

1. The Audit Committee consists of Mr. Isgur (Chair), Mr. Ortega-Dardet and Mr. Doretti, and its function is to oversee the accounting and financial reporting processes of the Company and the audits of the financial statements of the Company. The Board of Directors has adopted a written charter for the Audit Committee. A copy of the charter is available on the Company's website at www.ediets.com. The Board of Directors has determined each individual to be financially sophisticated and that Mr. Isgur is an audit committee financial expert as those terms are defined by the Nasdaq Marketplace Rules and the rules of the SEC. The Audit Committee met six times in 2008.
2. The Governance and Nomination Committee is composed of Mr. Doretti (Chair), Mr. Isgur, Mr. Luks, Mr. Ortega-Dardet and Andrea M. Weiss, who is not standing for re-election. The Board of Directors has adopted a written charter for this committee. A copy of this charter is available on the Company's website at www.ediets.com. Its function is to assist the Board of Directors in overseeing issues relating to the composition and operation of the Board of Directors and its committees, and the development of good corporate governance practices. The Governance and Nomination Committee met once and consulted informally on several occasions in 2008.
3. The Compensation Committee is composed of Ms. Weiss (Chair), Mr. Cootey, Mr. Isgur and Mr. Luks. The Board of Directors has adopted a written charter for this committee. A copy of this charter is available on the Company's website at www.ediets.com. Its function is to assist the Board of Directors in determining and overseeing the compensation practices of the company. The Compensation Committee met once and consulted informally on numerous occasions in 2008.

During 2008, each director attended at least 75% of the aggregate of (i) all meetings of the Board of Directors held during the period for which he or she has been a director and (ii) all meetings of each committee of the Board of Directors held during the periods that he or she served as a member of such committee.

The Board of Directors has determined that all directors but Mr. McGrath are independent, as defined under the Nasdaq Marketplace Rules. Furthermore, all of the Audit Committee members are independent, as independence for audit committee members is defined under the Nasdaq Marketplace Rules and SEC regulations. All of the Governance, Nominating and Compensation Committee members are independent, as independence for compensation, nominating and governance committees is defined under the Nasdaq Marketplace Rules.

There are no family relationships among any of the directors or executive officers of the Company.

The Audit Committee pre-approves all auditing services and permitted non-audit services (including the fees and terms thereof) to be performed by the independent accountants, subject to the de minimus exceptions for non-audit services described in Section 10A(i)(1)(B) of the Securities Exchange Act of 1934, as amended, that are approved by the Audit Committee prior to the completion of the audit.

The Audit Committee has adopted guidelines regarding the engagement of the independent auditor. For audit services (including statutory audit engagements as required under state laws), the independent auditor will provide the Audit Committee with an engagement letter no later than 6 weeks prior to the end of the fourth quarter of each year outlining the scope of the audit services proposed to be performed during the next fiscal year. If agreed to by the Audit Committee, this engagement letter will be formally accepted by the Audit Committee at the later of either its 4th Quarter Audit Committee meeting or four weeks before the end of the 4th Quarter. The independent auditor will submit to the Audit Committee for approval an audit services fee proposal after acceptance of the engagement letter.

For non-audit services, Company management will submit to the Audit Committee for approval (during June or September of each fiscal year) the list of non-audit services that it recommends the Committee engage the independent auditor to provide for the fiscal year. Company management and the independent auditor will each confirm to the Audit Committee that each non-audit service on the list is permissible under all applicable legal requirements. In addition to the list of planned non-audit services, a budget estimating non-audit service spending for the fiscal year will be provided. The Audit Committee will approve both the list of permissible non-audit services and the budget for such services. The Audit Committee will be informed routinely as to the non-audit services actually provided by the independent auditor pursuant to this pre-approval process.

To ensure prompt handling of unexpected matters, the Audit Committee delegates to the Chair the authority to amend or modify the list of approved permissible non-audit services and fees. The Chair will report action taken to the Audit Committee at the next committee meeting.

The Company and the independent auditor must ensure that all audit and non-audit services have been approved by the Audit Committee. The Chief Financial Officer is responsible for tracking all independent auditor fees against the budget for such services and to report at least annually to the Audit Committee.

Director Nomination Process

The Nominating Committee will consider director candidates recommended by stockholders. Stockholders who wish to recommend to the Committee candidates for election to the Board of Directors must do so in writing. The recommendations should be sent to the Company, care of Thomas Hoyer, Secretary, 1000 Corporate Drive, Suite 600, Fort Lauderdale, FL 33334, who will, in turn, forward the recommendation to the Committee. The recommendation must set forth (i) the name and address as they appear on the Company's books of the stock holder making the recommendation and the class and number of shares of capital stock of the Company beneficially owned by such stockholder and (ii) the name of the candidate and all information relating to the candidate that is required to be disclosed in solicitations of proxies for election of directors under the federal proxy rules. The recommendation must be accompanied by the candidate's written consent to being named in the Company's proxy statement as a nominee for election to the Board of Directors and to serving as a director, if elected. Stockholders must also comply with all requirements of the Company's by-laws with respect to nomination of persons for election to the Board of Directors.

The Committee believes that nominees for election to the Board of Directors should possess sufficient business or financial experience and a willingness to devote the time and effort necessary to discharge the responsibilities of a director. This experience can include, but is not limited to, service on other boards, experience in the industries in which the Company conducts its business, operational experience, or a background in e-commerce, marketing, retail or distribution. The Committee believes that nominees should be selected based on qualifications and strengths that are considered in their totality rather than based upon a mechanical application of specified criteria. The Committee strives to nominate persons for election to the Board of Directors whose background, integrity, and personal characteristics indicate that they will make a positive contribution to the Company. The Committee's policy is to evaluate all candidates in the same manner without regard to whether a candidate has been recommended internally, by a stockholder, or otherwise.

Stockholder Communication Policy

Stockholders may send communications to the Board of Directors or individual members of the Board by writing them, care of Thomas Hoyer, Secretary, 1000 Corporate Drive, Suite 600, Fort Lauderdale, FL 33334, who will forward the communication to the intended director or directors. If the stockholder wishes the communication to be confidential, then the communication should be provided in a form which will maintain confidentiality.

Attendance at Annual Meetings of Stockholders

The Company encourages all directors to attend the Company's annual meeting of stockholders. All of the Company's directors attended last year's annual meeting.

Code of Business Conduct and Ethics

The Company has adopted a Code of Business Conduct and Ethics that comprises a code of ethics, as defined by the federal securities laws. The Code of Business Conduct and Ethics applies to all directors, officers and employees of the Company and is posted at www.ediets.com.

OTHER MATTERS

The Board of Directors knows of no other matters to be presented for action at the Meeting other than those set forth in the attached Notice and customary procedural matters. However, if any other matters should properly come before the meeting or any postponements or adjournments thereof, the proxies solicited hereby will be voted on such matters, to the extent permitted by applicable rules of the SEC, in accordance with the judgment of the persons voting such proxies. In the latter regard, the Company intends to avail itself, with respect to the Meeting, of the provisions of Rule 14a-4(c)(i) under the Securities Exchange Act of 1934, as amended, which grant the persons voting the proxies discretionary authority to vote on any stockholder proposals presented at an annual meeting if the Company has not received notice a reasonable time before it mails its proxy materials for the current year. The Company has received no notice of any stockholder proposal.

ADDITIONAL INFORMATION

Executive Officers

On December 30, 2008 Mr. McGrath was appointed President and Chief Executive Officer of the Company and was appointed to the Company's Board of Directors. From 2004 through 2007, Mr. McGrath was President and CEO of Digital Angel Corporation, a manufacturer of animal identification products and satellite based search and rescue equipment. From 1996 through 2003 Mr. McGrath was Chairman and CEO of DIRECTV Latin America, LLC, a pay television provider in Latin America. Mr. McGrath was one of the founders of DIRECTV and grew the DIRECTV Latin America business from concept stage to becoming the largest pay television provider in Latin America. Additionally, Mr. McGrath has two decades of experience at General Motors, Electronic Data Systems Corporation and Hughes. Mr. McGrath graduated from Princeton University and holds a Masters in Business Administration from the Amos Tuck School at Dartmouth College.

Stephen J. Rattner, 51, was President of eDiets from October 2006 to December 30, 2008 and Chief Executive Officer from November 2007 to December 30, 2008. He joined the Company in May 2006, following the acquisition of Nutrio.com, of which he was co-Founder, President and Chief Executive Officer since 1999. Prior to co-founding Nutrio, Mr. Rattner was co-Founder, President and Chief Operating Officer of HotOffice Technologies. Mr. Rattner was also a name partner in the public accounting firm of Levi, Rattner, Cahlin & Co. (Levi Rattner). During his tenure at Levi Rattner, he practiced primarily corporate transactional and taxation work, having counseled numerous clients in large corporate financial transactions. His experience also includes significant involvement in mergers and acquisitions. Prior to co-founding Levi Rattner, Mr. Rattner was employed by the public accounting firm KPMG. He received his Bachelor of Science Degree in Business Administration from the University of Florida and is a Certified Public Accountant.

Thomas J. Hoyer, 46, has served as Chief Financial Officer and Treasurer since March 2008 and Secretary since February 2009. Mr. Hoyer was previously Chief Financial Officer of Digital Angel, Inc., a manufacturer and distributor of visual ID, radio frequency and GPS tracking products, from January through May 2007. Before that, Mr. Hoyer was Chief Financial Officer of NationsRent Companies, Inc., a construction equipment distribution and services company, from 2003 through 2006. From 2002 to 2003, Mr. Hoyer was Vice President of Corporate Finance at MWH Global, Inc., a privately held environmental consulting, engineering, and construction company. He served as Chief Financial Officer of GlobEquip LLC in 2001. Mr. Hoyer began his career at Fluor Corporation, where he served in various positions with increasing levels of responsibility, most recently as Assistant Treasurer from January 1998 to January 2001. Mr. Hoyer earned a Bachelor's Degree and a Master's Degree in Business Administration from Clemson University and is a Certified Public Accountant.

James A. Epstein, 43, has served as General Counsel from April 2004 to March 2009 and as Secretary from July 2006 through February 2009. Prior to joining the Company, Mr. Epstein was General Counsel/Secretary at 21st Century Holding Company from 2000 to 2004, where he oversaw securities matters, regulatory compliance, corporate governance and contracts. From 1999 to 2000, Mr. Epstein was General Counsel for Internet solutions provider 186K.Net, where he drafted commercial contracts and oversaw contractual and licensing relationships with strategic partners such as AT&T, Sprint and Microsoft. As an associate at law firms Conrad & Scherer and Hinshaw & Culbertson, he specialized in the insurance and health care fields, where his clients included major insurers, Lloyds of London, public hospital districts and private health care companies such as HCA and Humana. Mr. Epstein earned a Juris Doctorate at the University of Florida.

Beneficial Ownership of Principal Stockholders And Management

The following table sets forth, as of February 25, 2009 (unless otherwise specified), certain information regarding beneficial ownership of Common Stock: (i) by each person who is known by us to beneficially own more than 5% of our outstanding shares; (ii) by each of our directors; (iii) by the Chief Executive Officer, the Chief Financial Officer and the three other most highly compensated executive officers who were serving as executive officers as of the end of fiscal year 2008, whom we refer to collectively as the Named Executive Officers; and (iv) by all of our present directors and executive officers as a group. Such information is based upon information filed by such persons with the SEC or provided to the Company by such persons or by other sources believed to be reliable.

Name and Address of Beneficial Owner	Number of Shares Beneficially Owned	Percent of Class
Prides Capital Partners, LLC	15,342,099(1)	54.7%
Alejandro Gonzalez	2,501,145(2)	9.9%
Lee S. Isgur	481,899(3)	1.9%
Pedro N. Ortega-Dardet	246,432(4)	1.0%
Robert L. Doretti	196,592(5)	*
Ronald Luks	182,443(6)	*
Andrea M. Weiss	168,432(7)	*
Kevin McGrath		*
Thomas Hoyer	79,530(8)	*
James A. Epstein	68,962(9)	*
All directors and executive officers as a group (9 persons)	16,766,389	57.7%

* Less than 1%

- (1) Includes Warrants to purchase 1,009,901 shares of Common Stock issued in First Closing of the Private Placement on May 15, 2006, Warrants to purchase 178,218 shares of Common Stock issued in the Second Closing of the Private Placement on August 1, 2006, Warrants to purchase 1,000,000 shares of Common Stock issued in connection with the Senior Secured Note on August 31, 2007, Warrants to purchase 500,000 shares of Common Stock issued in connection with the Senior Secured Note on May 30, 2008 and 223,373 shares issuable upon exercise of stock options that are vested or exercisable within sixty (60) days. The address for Prides Capital Partners, LLC is 200 High Street, Suite 700, Boston, MA 02110.
- (2) The address for Mr. Gonzalez is Ruben Dario #223 5-A, Chapultepec Morales, Mexico D.F. 11570.

- (3) Represents 2,000 shares held by a revocable trust of which Mr. Isgur is the trustee and beneficiary, 268,935 shares held in a joint account with Mr. Isgur's wife and 210,964 shares issuable upon the exercise of stock options that are vested or exercisable within sixty (60) days.
- (4) Includes 14,404 shares received in connection with the merger of DietSmart, Inc. with and into eDiets.com, Inc. in 2001 and 157,028 shares issuable upon the exercise of stock options that are vested or exercisable within sixty (60) days.
- (5) Includes 194,528 shares issuable upon the exercise of stock options that are vested or exercisable within sixty (60) days.
- (6) Includes 158,984 and 3,338 shares issuable upon the exercise of stock options and restricted shares, respectively, that are vested or exercisable within sixty (60) days.
- (7) Includes 137,395 and 1,113 shares issuable upon the exercise of stock options and restricted shares, respectively, that are vested or exercisable within sixty (60) days.
- (8) Represents 56,760 and 22,770 shares issuable upon the exercise of stock options and restricted shares, respectively, that are vested or exercisable within sixty (60) days.
- (9) Includes 52,299 shares issuable upon the exercise of stock options that are vested or exercisable within sixty (60) days.

AUDIT COMMITTEE REPORT

The Audit Committee hereby reports as follows:

1. The Audit Committee has reviewed and discussed the audited financial statements with our management.
2. The Audit Committee has discussed with Ernst & Young LLP, the Company's independent accountants, the matters required to be discussed by Statement on Auditing Standards (SAS) 61 (Communications with Audit Committees), as may be amended or modified.
3. The Audit Committee has received the written disclosures and the letter from Ernst & Young LLP required by PCAOB Rule 3526 (Communication with Audit Committees Concerning Independence), as may be modified or supplemented, and has discussed with Ernst & Young LLP their independence.
4. Based on the review and discussions referred to in paragraphs (1) through (3) above, the Audit Committee recommended to our board of directors that the audited financial statements be included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2008, for filing with the Commission.

/s/ Lee S. Isgur (Chairman)

/s/ Pedro N. Ortega-Dardet

/s/ Robert L. Doretti

March 20, 2009

Independent Auditors and Fees

The firm of Ernst & Young LLP served as the Company's independent public accountants for fiscal 2008 and has been selected by the Audit Committee to do so in fiscal 2009. A representative of Ernst & Young LLP is expected to attend the Meeting, will have the opportunity to make a statement if desired, and will be available to answer appropriate questions.

The following table sets forth fees billed to the Company by the Company's independent auditors for the years ended December 31, 2008 and December 31, 2007 for (i) services rendered for the audit of the Company's annual financial statements and the review of the Company's quarterly financial statements, (ii) services rendered that are reasonably related to the performance of the audit or review of the Company's financial statements that are not reported as Audit Fees, and (iii) services rendered in connection with tax preparation, compliance, advice and assistance.

	Principal Accountant Fees and Services	
Services	2008	2007
Audit Fees	\$ 293,609	\$ 300,525
Audit Related Fees		
Tax Fees		
All Other Fees	1,500	1,500
Total	\$ 295,109	\$ 302,025

Prior to engaging our accountants to perform a particular service, our Audit Committee obtains an estimate for the service to be performed. All of the services described above were approved by the Audit Committee in accordance with its procedures.

EXECUTIVE COMPENSATION

Compensation Discussion and Analysis

Business Context

eDiets was founded in 1996 as a direct-to-consumer business and in 2004 we began to license our brand, technology and content to other direct-to-consumer businesses. In 2006, eDiets entered the corporate licensing business with the acquisition of Nutrio.com, Inc. (Nutrio), now known as eDiets Corporate Services. eDiets Corporate Services provides web-based, client-branded, health and nutrition programs to large corporations in the food, pharmaceutical, insurance, medical, nutrition and fitness markets.

The acquisition of Nutrio allowed eDiets access to the business-to-business and corporate services market for the first time and gave eDiets the opportunity to leverage Nutrio's knowledge-base and existing corporate relationships to grow the corporate services business. This, in turn, opened a potentially valuable new customer acquisition channel apart from Internet direct response advertising, which had become unsustainable as a primary customer acquisition strategy designed to support meaningful revenue growth on the Company's then-existing technology platform. Simultaneously, the Company determined that it was necessary to develop a new enterprise technology platform to support a multi channel customer strategy across business-to-business and business-to-consumer channels, to leverage cross selling opportunities between digital subscriptions, meal delivery and ecommerce and to offer a higher quality digital subscription product better able to attract and retain customers in an increasingly competitive market.

Management Transition

Kevin McGrath was appointed Chief Executive Officer in December 2008. Previously, Mr. McGrath was President and CEO of Digital Angel Corporation, a manufacturer of animal identification products and satellite based search and rescue equipment. During his three and half year tenure, Digital Angel doubled revenue, improved margins, lowered costs and merged the company into Applied Digital Solutions in 2007. Prior to Digital Angel, Mr. McGrath was Chairman and CEO of DIRECTV Latin America, the largest pay television provider in Latin America. Mr. McGrath was one of the founders of DIRECTV and grew the DIRECTV Latin America business from concept stage to becoming the largest pay television provider in Latin America by generating tremendous revenue growth with key partnerships, and implementing infrastructure required for profitable growth during his six year tenure. DIRECTV Latin America was acquired by New Corporation in 2003. Additionally, Mr. McGrath compiled two decades of experience at General Motors, Electronic Data Systems Corporation and Hughes. Mr. McGrath was retained to leverage his experiences in successfully building industry leading subscription and business-to-business businesses profitably. Mr. McGrath replaced Stephen J. Rattner who as CEO spearheaded the Company's transition to a new technology platform and launch of a diet meal delivery business. With the retention of Mr. McGrath, Mr. Rattner became Executive Vice President of Corporate Services.

In January 2008, Robert T. Hamilton resigned as Chief Financial Officer and Thomas J. Hoyer accepted the same position on March 7, 2008. On March 12, 2009 James A. Epstein left the Company and was not replaced.

Process and Procedures

The Compensation Committee (the Committee) is responsible for discharging the Board's responsibilities relating to compensation of the CEO and all of the named executive officers and reviewing and monitoring human resource and organizational matters. The Committee's charter can be found on the Company's website at www.ediets.com. The Committee evaluates and approves the Company's compensation philosophy, strategy, plans, policies and programs. More specifically, the Committee's duties and responsibilities include, among others:

reviewing and approving on an annual basis corporate goals and objectives relevant to the CEO's compensation, evaluating the CEO's performance in light of those goals and objectives and recommending to the Board the overall compensation levels for the CEO based on such evaluation;

reviewing and approving the annual base salaries, annual incentive opportunities and other compensation arrangements of the CEO and all other named executive officers;

reviewing and monitoring all compensation and significant benefit plans that affect all employees and annually approving overall employee salary policies, as well as equity-based programs for all categories of employees;

monitoring compliance with requirements under the Sarbanes-Oxley Act of 2002 relating to 401(k) plans and loans to directors and officers and compliance with all other applicable laws affecting employee compensation and benefits; and

reviewing and recommending any proposed changes in director compensation to the Board.

The Committee has the authority to retain and terminate external compensation consultants to assist it in the evaluation of executive and outside director compensation. From 2006 through the end of 2008, the Committee engaged Mercer LLC (Mercer) as its outside compensation advisor. In this role, Mercer reported directly to the Committee. The Committee provided direction to Mercer in terms of the scope of services requested and the Committee has the sole authority to approve consultant fees and the other terms and conditions of the engagement. The Committee also has the authority to obtain advice and assistance from external legal, accounting or other advisors.

For each of the named executive officers other than the CEO, the Committee reviews and approves all elements of the executive compensation program taking into consideration recommendations from the CEO and human resources staff and information, including competitive market information, provided by compensation consultants. For the CEO, the Committee reviews and approves all elements of his compensation program taking into consideration the Board's evaluation of the CEO, recommendations from the human resources staff and information, including competitive market information, provided by compensation consultants.

The Committee met one time in fiscal 2008, regularly conducted executive sessions with the full board without members of senior management present and consulted informally on numerous occasions. The Committee regularly reports its conclusions and actions to the full Board.

Compensation Philosophy and Objectives

Like many companies, eDiets strives to have an executive pay program that is (1) market competitive, (2) performance-based and (3) stockholder aligned. Unlike many publicly-traded companies, eDiets continues to significantly transform its business strategy and operational model to maximize short-term and long-term performance. In this context, the Company requires entrepreneurial leadership talent and a pay program that appropriately balances risk and reward. Accordingly, the Committee strives to set compensation levels and design pay programs that reflect both the Company's life cycle and development stage and the talent profile it requires.

In order to better understand competitive market rates of pay for comparable executive roles in similar companies, the Committee directed Mercer to research and provide benchmark data the Committee could use in its decision making process regarding executive compensation levels and plan designs. In working with Mercer in 2006, the following criteria were developed to form a peer group for benchmarking purposes:

annual revenues between \$50 million and \$200 million;

market capitalization between \$100 million and \$500 million;

operating model whereby a majority of business is conducted on-line;

reliance on a technology platform for commercial activity; and

focus on the medical and/or health industry.

Based on these criteria, the following nine (9) companies were used as the peer group for purposes of benchmarking executive compensation levels and program designs:

Cybersource Corporation (CYBS);

TravelZoo, Inc. (TZOO);

Knot, Inc. (KNOT);

Bluefly, Inc. (BFLY);

NIC, Inc. (EGOV);

Stamps.com (STMP);

Celebrate Express, Inc. (BDAY);

Liquidity Services (LQDT); and

Napster (NAPS).

In order to better understand any unique compensation considerations or practices for local companies, the Committee also directed Mercer to provide benchmark data for a select group of companies headquartered in South Florida. This information was used as another data point for comparison purposes, especially for positions where executive talent might be sourced locally.

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In utilizing market pay data, the Committee does not attempt to target compensation levels to any specific percentile derived from the peer group. Rather, the Committee utilizes the data as a general guideline in attempting to create an overall package which would serve to recruit, motivate and retain the entrepreneurial talent required while balancing the transitional nature of eDiets' business and the limited cash flow generated by the Company over the last three years. The performance and stockholder alignment objectives are achieved by the structure of the overall executive pay program which includes cash-based short-term incentive opportunities as well as equity-based long-term incentive opportunities when performance goals are achieved. The Committee does not apply a fixed formula for determining the level of fixed vs. variable compensation, short-term vs. long-term compensation, or cash vs. equity compensation. Nonetheless, the Committee believes that an executive pay program with a substantial emphasis on equity-based long-term incentive opportunities creates the proper risk/reward balance and stockholder alignment given the Company's life-cycle and development stage. Accordingly, when setting compensation levels, the Committee reviews and evaluates the resulting pay mix to ensure alignment with these objectives.

Executive Compensation Components

For 2008, the primary components of compensation for the named executive officers were:

base salary;

short-term incentives; and

long-term incentives.

Base Salary

Base salaries of named executive officers are reviewed annually and determined by the Committee. Base salaries are determined by giving consideration to the Company's performance, the officer's impact level, scope of responsibility, prior experience, past accomplishments and data on prevailing compensation levels in the Company's peer group. The Committee believes that current base salary levels are appropriate for attracting and retaining executive talent. Based on the Company's performance and cash flow position, no salary increases were made in 2008. Mr. McGrath was awarded the same base salary as Mr. Rattner (please refer to the section labeled "Chief Executive Officer Compensation" for additional information regarding CEO pay).

Short-term Incentives

Given the transformation in the Company's business, the Committee has been disinclined to establish specific performance targets and rely on a formulaic incentive compensation program. However, the Committee has retained the right to pay discretionary bonuses for significant performance accomplishments that exceed expectations or when viewed as necessary to recognize key contributors.

Based on the Committee's assessment of performance in 2008, no discretionary bonuses were awarded.

In 2009, senior management will develop and implement a structured and formulaic short-term incentive plan with the approval of the Committee.

Long-term Incentives

The Company has two employee equity plans: the 1999 Stock Option Plan (the 1999 Plan) and the 2004 Equity Incentive Plan (the 2004 Plan).

The 1999 Plan allows only for the granting of stock options. Under the 1999 Plan, option grants have an exercise price equal to the fair market value on the date of grant, vest ratably over a two- or three-year period and expire five or ten years from the date of grant. As of February 25, 2009, there were 117,874 shares remaining available for grant under the 1999 Plan, which expires in October 2009.

The 2004 Plan allows for the grant of incentive stock options, non-qualified stock-options, stock appreciation rights, restricted stock, deferred stock and unrestricted stock. As of February 25, 2009, there were 335,022 shares remaining available for grant under the 2004 plan, which expires on the date of the 2014 Annual Meeting.

The Committee believes that equity-based long-term incentive opportunities are the critical component of the executive compensation program because they help create the appropriate risk/reward opportunity while conserving cash flow, creating a strong link between performance and reward, and fostering the alignment of interests between executive leadership and the Company's stockholders.

The Committee reviews and considers equity grants upon hiring and annually thereafter. If annual grants are made, they are granted on the first business day of the fiscal year. In 2007, the Committee approved grants of stock options and restricted shares to the named executive officers and other key employees which were granted on January 2, 2008. The stock options grants generally have a five year term and vest ratably over three years from the date of grant. The restricted shares generally either vest ratably over three years or are subject to performance-based vesting requirements (as specified in the Grants of Plan Based Awards Table on page 28 of this Proxy Statement).

Chief Executive Officer Compensation

For most of 2007, the Board was conducting a search for a Chief Executive Officer. During this time, Mr. Rattner assumed increased responsibilities and provided leadership over the Company's operations. At the conclusion of the search process, Mr. Rattner was appointed the Chief Executive Officer. On December 30, 2008 Mr. McGrath became Chief Executive Officer. The following table summarizes the Committee's compensation actions related to the CEO position from the time Mr. Rattner became President of eDiets Corporate Services (May 2006) to Mr. McGrath's appointment as Chief Executive Officer (December 2008). The Committee believes its actions with respect to CEO compensation appropriately reflect changing roles and responsibilities at the Company and create a strong performance and retention incentive for the individual.

Event	Base Salary	Stock Options Granted	Restricted Shares Granted	Cash Bonus
Following appointment as President of eDiets Corporate Services in May 2006	\$ 240,000	N/A	N/A	N/A
Following appointment as President of eDiets in October 2006	\$ 300,000	250,000(1)	225,000(2)	N/A
Following appointment as CEO of eDiets in November 2007	\$ 325,000	175,000(3)	N/A	N/A
January 2008	N/A	25,000(4)	N/A	\$ 100,000(5)
Following appointment of Mr. McGrath in December 2008	\$ 325,000	450,000(6)	425,000(7)	N/A

- (1) These stock options have an exercise price of \$3.79 and vest ratably over a three year period with the first portion vesting on April 2, 2008. They are intended to coincide with the term of Mr. Rattner's employment agreement and to encourage his retention for that period.
- (2) These restricted shares would have become eligible to vest upon the fulfillment of performance goals for the CEO position as set by the Board. With Mr. Rattner's transition to Executive Vice President of Corporate Services, those restricted shares will vest upon the fulfillment of new performance goals to be established in the future by the Board.
- (3) These stock options have an exercise price of \$4.88 and have a three year vesting period with the first portion vesting on April 2, 2008. They are intended to coincide with the term of Mr. Rattner's employment agreement and to encourage his retention for that period.
- (4) These stock options vest ratably over three years with the first portion vesting on January 2, 2009. This annual grant is designed to recognize operational improvements in 2007 and provide Mr. Rattner with annual equity compensation which provides additional incentives to maximize stockholder return over the long term.
- (5) This bonus was in recognition of the improvements made during 2007 in the Company's operations, technology platform and in the development of corporate business relationships designed to open new customer acquisition channels. Mr. Rattner elected to take this bonus in the form of unrestricted shares.
- (6) These stock options have an exercise price of \$3.30 and vest ratably over a three year period with the first portion vesting on December 30, 2009. They are intended to coincide with the term of Mr. McGrath's employment agreement and to encourage his retention for that period.
- (7) These restricted shares become eligible to vest upon the fulfillment of performance goals set by the Board.

The stock options and restricted shares granted to Mr. McGrath were designed to fulfill the Company's goal of structuring the compensation package with a blend of service-based stock options and performance-based restricted stock. The stock options require stockholder value creation in order to provide value to Mr. McGrath and the restricted shares only vest upon the achievement of specific performance goals to be established by the Board.

Potential Payments Upon Termination or Change of Control

The Company entered into employment agreements with Mr. McGrath on December 30, 2008, with Mr. Hoyer (together the Executives) on March 7, 2008 (together the Agreements) and with Mr. Rattner on February 12, 2008. Mr. Rattner's employment agreement was terminated on December 30, 2008. The Agreements have a 36 month term and may be renewed by mutual agreement for subsequent 12 month terms unless sooner terminated for any of the following reasons:

by the Company for Cause (Cause is defined to mean continued failure substantially to perform duties, dishonesty in the performance of duties, conviction of, or plea of nolo contendere to a crime constituting a felony under the laws of the United States or any state thereof or a misdemeanor involving moral turpitude, willful malfeasance or willful misconduct or any act or omission which is materially injurious to the financial condition or business reputation of the Company, or breach of confidentiality or non-disclosure obligations);

by the Executives for Good Reason (Good Reason is defined to mean a material diminution of base salary, any material breach by the Company of any material agreement between the Executives and the Company concerning the terms and conditions of the Executives' employment with the Company, or a material diminution in the Executives' positions or authority, duties, or responsibilities other than an isolated, insubstantial and inadvertent action that is not taken in bad faith and is remedied by the Company within 30 days after the receipt of written notice thereof from the Executives (provided, however, that the appointment of an executive Chairman of the Board to whom the Executives would report, any other change in the Executives' title or reporting relationships, or an adjustment in the nature of the Executives' duties and responsibilities that does not remove from him the authority to manage a significant portion of the products and services offered by the Company immediately prior to such change or adjustment, shall not constitute Good Reason), or any relocation of the location at which the Executives are required to provide their services to a location that is more than 50 miles from its original location;

upon the Executives' Disability (Disability is defined to mean physically or mentally incapacitated and therefore unable for a period of three (3) consecutive months or for an aggregate of six (6) months in any twenty-four (24) consecutive month period to perform job duties); or

upon the Executives' death.

The Agreements provide for severance and other remedies after termination by the Company or by the Executives that vary, depending upon the events preceding and/or causing the termination and whether such termination occurs after a change of control and how long after a change of control any such termination occurs. The Agreements define a change of control as: (i) the sale or disposition, in one or a series of related transactions, of all, or substantially all, of the assets of the Company to any person or group (as such terms are defined in Sections 13(d)(3) or 14(d)(2) of the Exchange Act) other than Prides Capital Partners, LLC and its affiliates; or (ii) any person or group, other than Prides Capital Partners, LLC and its affiliates, is or becomes the beneficial owner (as that term is defined in Rule 13d-3 under the Exchange Act (except that a person shall be deemed to have beneficial ownership of all shares that any such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 50% of the total voting power of the voting stock of the Company (or an entity that controls the Company), including by way of merger, consolidation, tender or exchange offer or otherwise.

In the event that the Executives are terminated for Cause or the Executives resign without Good Reason, the Agreements provide that the Executives will receive: