

ALTERA CORP  
Form 10-Q  
October 22, 2010  
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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 10-Q

(Mark One)

☒ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT  
OF 1934

For the quarterly period ended October 1, 2010

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT  
OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 0-16617

ALTERA CORPORATION

(Exact name of registrant as specified in its charter)

DELAWARE

(State or other jurisdiction of  
incorporation or organization)

101 INNOVATION DRIVE

SAN JOSE, CALIFORNIA 95134

(Address of principal executive offices) (zip code)

408-544-7000

77-0016691

(I.R.S. Employer

Identification Number)

(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

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Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act:

Large accelerated filer ☒      Accelerated filer ☐      Non-accelerated filer ☐      Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

Number of shares of common stock outstanding at October 13, 2010: 312,563,496

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## PART I FINANCIAL INFORMATION

## ITEM 1: Financial Statements

ALTERA CORPORATION  
CONSOLIDATED BALANCE SHEETS  
(Unaudited)

(In thousands, except par value amount)	October 1, 2010	December 31, 2009
Assets		
Current assets:		
Cash and cash equivalents	\$2,414,416	\$1,546,672
Accounts receivable, net	346,812	218,144
Inventories	108,153	69,705
Deferred income taxes — current	73,624	79,164
Deferred compensation plan — marketable securities	49,321	50,905
Deferred compensation plan — restricted cash equivalents	20,975	18,986
Other current assets	115,579	58,194
Total current assets	3,128,880	2,041,770
Property and equipment, net	163,151	174,516
Deferred income taxes — non-current	38,498	59,249
Other assets, net	20,921	17,696
Total assets	\$3,351,450	\$2,293,231
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	\$138,315	\$50,520
Accrued liabilities	23,717	32,256
Accrued compensation and related liabilities	85,972	49,862
Deferred compensation plan obligations	70,296	69,891
Deferred income and allowances on sales to distributors	385,550	281,885
Income taxes payable	1,009	5,547
Total current liabilities	704,859	489,961
Income taxes payable — non-current	215,079	210,967
Long-term credit facility	500,000	500,000
Other non-current liabilities	7,254	6,967
Total liabilities	1,427,192	1,207,895
Commitments and contingencies (See “Note 10 — Commitments and Contingencies”)		
Stockholders' equity:		
Common stock: \$.001 par value; 1,000,000 shares authorized; outstanding - 312,445 at October 1, 2010 and 296,817 shares at December 31, 2009	312	297
Capital in excess of par value	722,017	372,098
Retained earnings	1,201,929	712,941
Total stockholders' equity	1,924,258	1,085,336
Total liabilities and stockholders' equity	\$3,351,450	\$2,293,231

See accompanying notes to consolidated financial statements.



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ALTERA CORPORATION  
CONSOLIDATED STATEMENTS OF INCOME  
(Unaudited)

(In thousands, except per share amounts)	Three Months Ended		Nine Months Ended	
	October 1, 2010	September 25, 2009	October 1, 2010	September 25, 2009
Net sales	\$527,453	\$286,612	\$1,399,048	\$830,415
Cost of sales	157,899	93,686	405,646	281,303
Gross margin	369,554	192,926	993,402	549,112
Research and development expense	67,896	70,097	197,861	193,268
Selling, general, and administrative expense	63,473	56,332	190,421	170,670
Compensation expense — deferred compensation plan	4,699	5,538	3,285	9,147
Gain on deferred compensation plan securities	(4,699)	(5,538)	(3,285)	(9,147)
Interest income and other	(1,092)	(740)	(2,394)	(5,835)
Interest expense	1,098	1,225	3,492	3,884
Income before income taxes	238,179	66,012	604,022	187,125
Income tax expense	20,688	9,308	52,751	39,037
Net income	\$217,491	\$56,704	\$551,271	\$148,088
Net income per share:				
Basic	\$0.70	\$0.19	\$1.81	\$0.50
Diluted	\$0.69	\$0.19	\$1.78	\$0.50
Shares used in computing per share amounts:				
Basic	309,766	294,758	304,267	293,935
Diluted	317,069	297,545	310,367	295,961
Cash dividends per common share	\$0.06	\$0.05	\$0.16	\$0.15

See accompanying notes to consolidated financial statements.

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ALTERA CORPORATION  
CONSOLIDATED STATEMENTS OF CASH FLOWS  
(Unaudited, in thousands)

	Nine Months Ended	
	October 1, 2010	September 25, 2009
Cash Flows from Operating Activities:		
Net income	\$551,271	\$148,088
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	20,276	22,139
Stock-based compensation	44,898	47,840
Deferred income tax (benefit)/expense	(16,493)	) 1,441
Tax effect of employee stock plans	14,602	(2,642)
Excess tax benefit from employee stock plans	(12,879)	) (510)
Gain on substantive termination of retiree medical plan	—	(6,488)
Changes in assets and liabilities:		
Accounts receivable, net	(128,668)	) (172,779)
Inventories	(38,448)	) 18,811
Other assets	(43,946)	) 29,164
Accounts payable and other liabilities	112,788	(9,078)
Deferred income and allowances on sales to distributors	103,665	87,458
Income taxes payable	42,358	31,246
Deferred compensation plan obligations	(2,880)	) 1,664
Net cash provided by operating activities	646,544	196,354
Cash Flows from Investing Activities:		
Purchases of property and equipment	(6,325)	) (9,236)
Sales (purchases) of deferred compensation plan securities, net	2,880	(1,664)
Purchases of intangible assets	(1,500)	) (690)
Net cash used in investing activities	(4,945)	) (11,590)
Cash Flows from Financing Activities:		
Proceeds from issuance of common stock through various stock plans	284,776	19,049
Shares withheld for employee taxes	(19,880)	) (10,632)
Payment of dividends to stockholders	(48,764)	) (44,120)
Excess tax benefit from stock-based compensation	12,879	510
Principal payments on capital lease obligations	(2,866)	) (2,375)
Net cash provided by (used in) financing activities	226,145	(37,568)
Net increase in cash and cash equivalents	867,744	147,196
Cash and cash equivalents at beginning of period	1,546,672	1,216,743
Cash and cash equivalents at end of period	\$2,414,416	\$1,363,939

See accompanying notes to consolidated financial statements.

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ALTERA CORPORATION  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(Unaudited)

Note 1 — Organization and Basis of Presentation

The accompanying unaudited consolidated financial statements of Altera Corporation and its subsidiaries, collectively referred to herein as “Altera”, “we”, “us”, or “our”, have been prepared by us in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”) for interim financial information. This financial information reflects all adjustments which are, in the opinion of our management, of a normal recurring nature and necessary for a fair statement of the results for the periods presented. The December 31, 2009 consolidated balance sheet data was derived from our audited consolidated financial statements included in our 2009 Annual Report on Form 10-K, but does not include all disclosures required by U.S. GAAP. The consolidated financial statements include our accounts as well as those of our wholly-owned subsidiaries after elimination of all significant inter-company balances and transactions.

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported in our consolidated financial statements and accompanying notes. Actual results could differ materially from those estimates.

These consolidated financial statements should be read in conjunction with our audited consolidated financial statements for the year ended December 31, 2009 included in our Annual Report on Form 10-K, as filed on February 17, 2010 with the Securities and Exchange Commission (“SEC”). The consolidated operating results for the three or nine months ended October 1, 2010 are not necessarily indicative of the results to be expected for any future period.

Note 2 — Recent Accounting Pronouncements

Accounting Standards Adopted in the Nine Months Ended October 1, 2010

Fair Value Measurements and Disclosures

In January 2010, the Financial Accounting Standards Board (“FASB”) issued amended guidance on fair value measurements and disclosures. The new guidance requires additional disclosures regarding fair value measurements, amends disclosures about postretirement benefit plan assets, and provides clarification regarding the level of disaggregation of fair value disclosures by investment class. This guidance is effective for interim and annual reporting periods beginning after December 15, 2009, except for certain Level 3 activity disclosure requirements that will be effective for reporting periods beginning after December 15, 2010. Accordingly, we adopted this amendment in the quarter ended April 2, 2010, except for the additional Level 3 requirements that will be adopted in 2011. See Note 15 — Fair Value of Financial Instruments to our consolidated financial statements.

Subsequent Events

In February 2010, the FASB issued amended guidance on subsequent events. Under this amended guidance, SEC filers are no longer required to disclose the date through which subsequent events have been evaluated in originally issued and revised financial statements. This guidance was effective immediately and we adopted this new guidance in the quarter ended April 2, 2010. See Note 16 — Subsequent Event to our consolidated financial statements.



Note 3 — Accounts Receivable, Net and Significant Customers

Accounts receivable, net was comprised of the following:

(In thousands)	October 1, 2010	December 31, 2009
Gross accounts receivable	\$347,612	\$218,647
Allowance for doubtful accounts	(500 )	(500 )
Allowance for sales returns	(300 )	(3 )
Accounts receivable, net	\$346,812	\$218,144

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We sell our products to original equipment manufacturers, or OEMs, and to electronic components distributors who resell these products to OEMs, or their subcontract manufacturers. Net sales by customer type and net sales to significant customers were as follows:

(Percentage of Net Sales)	Three Months Ended		Nine Months Ended	
	October 1, 2010	September 25, 2009	October 1, 2010	September 25, 2009
Sales to distributors	77	% 85	% 82	% 81
Sales to OEMs	23	% 15	% 18	% 19
	100	% 100	% 100	% 100
Significant Distributors <sup>(1)</sup> :				
Arrow Electronics, Inc. ( "Arrow")	45	% 43	% 47	% 42
Macnica, Inc. ("Macnica")	19	% 16	% 19	% 14

(1) Except as presented above, no other distributor accounted for greater than 10% of our net sales for the quarterly or year-to-date periods ended October 1, 2010 or September 25, 2009.

Huawei Technologies Co., Ltd., an OEM, accounted for 14% and 11% of our net sales for the quarterly and year-to-date periods ended October 1, 2010, respectively, and accounted for 11% of our net sales for the year-to-date period ended September 25, 2009. No other individual OEM accounted for more than 10% of our net sales for the quarterly or year-to-date periods ended October 1, 2010 or September 25, 2009.

As of October 1, 2010, accounts receivable from Arrow, Macnica and Avnet, Inc. including its affiliates ("Avnet") individually accounted for approximately 20%, 46% and 12%, respectively, of our total accounts receivable. As of December 31, 2009, accounts receivable from Arrow, Macnica and Avnet individually accounted for approximately 36%, 21% and 14%, respectively, of our total accounts receivable. No other distributor or OEM accounted for more than 10% of our accounts receivable as of October 1, 2010 or December 31, 2009.

## Note 4 — Inventories

Inventories were comprised of the following:

(In thousands)	October 1, 2010	December 31, 2009
Raw materials	\$11,316	\$7,158
Work in process	58,015	39,652
Finished goods	38,822	22,895
Total inventories	\$108,153	\$69,705

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## Note 5 — Property and Equipment

Property and equipment, net was comprised of the following:

(In thousands)	October 1, 2010	December 31, 2009
Land and land rights	\$23,108	\$23,108
Buildings	146,998	152,557
Equipment and software	208,824	213,187
Office furniture and fixtures	23,048	20,798
Leasehold improvements	6,797	6,930
Construction in progress	2,360	1,464
Property and equipment, at cost	411,135	418,044
Accumulated depreciation and amortization	(247,984)	(243,528)
Property and equipment, net	\$163,151	\$174,516

Depreciation expense includes the amortization of assets recorded under capital leases. Depreciation expense was \$6.5 million and \$19.9 million for the three and nine months ended October 1, 2010, respectively. Depreciation expense was \$7.4 million and \$22.0 million for the three and nine months ended September 25, 2009, respectively.

Depreciation and amortization expense as presented in our consolidated statements of cash flows includes the above amounts, together with amortization expense on our intangible assets. Intangible asset amortization expense was not significant for any period presented in our consolidated statements of income.

Assets held under capital leases, included in Equipment and software as presented above, totaled \$5.3 million (net of accumulated amortization of \$10.2 million) as of October 1, 2010 and \$8.6 million (net of accumulated amortization of \$6.9 million) as of December 31, 2009.

## Note 6 — Deferred Income and Allowances on Sales to Distributors

Deferred income and allowances on sales to distributors was comprised of the following:

(In thousands)	October 1, 2010	December 31, 2009
Deferred revenue on shipment to distributors	\$572,966	\$363,448
Deferred cost of sales on shipment to distributors	(42,713)	(28,971)
Deferred income on shipment to distributors	530,253	334,477
Advances to distributors	(151,685)	(60,877)
Other deferred revenue <sup>(1)</sup>	6,982	8,285
Total	\$385,550	\$281,885

(1) Principally represents revenue deferred on our software and intellectual property licenses.

The Deferred income and allowances on sales to distributors activity for the nine months ended October 1, 2010 and September 25, 2009 was as follows:

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(In thousands)	Nine Months Ended	
	October 1, 2010	September 25, 2009
Balance at beginning of period	\$281,885	\$205,674
Deferred revenue recognized upon shipment to distributors	6,384,863	3,229,414
Deferred costs of sales recognized upon shipment to distributors	(431,293)	(227,197)
(Increase)/decrease in advances to distributors	(90,808)	42,181
Revenue recognized upon sell-through to end customers	(1,221,097)	(639,333)
Costs of sales recognized upon sell-through to end customers	363,645	217,187
Earned distributor price concessions <sup>(1)</sup>	(4,827,363)	(2,372,675)
Returns	(72,979)	(163,790)
(Decrease)/increase in other deferred revenue	(1,303)	271
Balance at end of period	\$385,550	\$291,732

(1) Average aggregate price concessions typically range from 65% to 80% of our list price on an annual basis, depending upon the composition of our sales, volumes, and factors associated with timing of shipments to distributors.

We sell the majority of our products to distributors worldwide at a list price. However, distributors resell our products to end customers at a very broad range of individually negotiated prices based on a variety of factors, including customer, product, quantity, geography and competitive differentiation. The majority of our distributors' sales to their customers are priced at a discount from our list price. Under these circumstances, we remit back to the distributor a portion of its original purchase price after the resale transaction is completed and we validate the distributor's resale information, including end customer, device, quantity and price, against the distributor price concession that we have approved in advance. To receive price concessions, distributors must submit the price concession claims to us for approval within 60 days of the resale of the product to an end customer. It is our practice to apply these negotiated price discounts to future purchases, requiring the distributor to settle receivable balances, on a current basis, generally within 30 days, for amounts originally invoiced. This practice has an adverse impact on the working capital of our distributors. As such, we have entered into agreements with certain distributors whereby we advance cash to the distributors to reduce the distributor's working capital requirements. These advances are settled in cash at least on a quarterly basis and are estimated based on the amount of ending inventory as reported by the distributor multiplied by a negotiated percentage. Such advances have no impact on revenue recognition or our consolidated statements of income and are a component of Deferred income and allowances on sales to distributors on our consolidated balance sheets. We continuously process discounts taken by distributors against our Deferred income and allowances on sales to distributors. We adjust the recorded amount of the distributor advances based on cash settlements at the end of each quarter. These advances are set forth in binding legal agreements and are unsecured, bear no interest on unsettled balances, and are due upon demand. The agreements governing these advances can be cancelled by us at any time.

We also enter into arrangements that, in substance, finance distributors' accounts receivable and inventory. The amounts advanced are classified as Other current assets in our consolidated balance sheets and totaled \$62.8 million as of October 1, 2010 and \$33.0 million as of December 31, 2009. These arrangements are set forth in binding legal agreements and are unsecured, bear no interest on unsettled balances, and are due upon demand.

## Note 7 — Comprehensive Income

The components of comprehensive income were as follows:

	Three Months Ended	Nine Months Ended
(In thousands)		

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	October 1, 2010	September 25, 2009	October 1, 2010	September 25, 2009
Net income	\$217,491	\$56,704	\$551,271	\$148,088
Reversal of accumulated unrecognized loss on retiree medical plan, net of tax effect	—	—	—	1,118
Comprehensive income	\$217,491	\$56,704	\$551,271	\$149,206

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## Note 8 — Income Per Share

A reconciliation of basic and diluted income per share is presented below:

(In thousands, except per share amounts)	Three Months Ended		Nine Months Ended	
	October 1, 2010	September 25, 2009	October 1, 2010	September 25, 2009
Basic:				
Net income	\$217,491	\$56,704	\$551,271	\$148,088
Basic weighted shares outstanding	309,766	294,758	304,267	293,935
Net income per share	\$0.70	\$0.19	\$1.81	\$0.50
Diluted:				
Net income	\$217,491	\$56,704	\$551,271	\$148,088
Weighted shares outstanding	309,766	294,758	304,267	293,935
Effect of dilutive securities:				
Stock options, ESPP, and restricted stock unit shares	7,303	2,787	6,100	2,026
Diluted weighted shares outstanding	317,069	297,545	310,367	295,961
Net income per share	\$0.69	\$0.19	\$1.78	\$0.50

In applying the treasury stock method, we excluded 1.0 million and 4.7 million stock option shares for the three and nine months ended October 1, 2010, respectively, and 27.9 million and 31.5 million stock option shares for the three and nine months ended September 25, 2009, respectively, because their effect was anti-dilutive. While these stock option shares have been anti-dilutive, they could be dilutive in the future. All restricted stock units outstanding as of October 1, 2010 and September 25, 2009 were included in our treasury stock method calculation.

## Note 9 — Long-term Credit Facility

Our total borrowings under our \$750 million unsecured revolving credit facility (the “Facility”) as of October 1, 2010 and December 31, 2009 were \$500 million. Borrowings under the Facility bear interest at either a Eurodollar rate (“LIBOR”) or a Prime rate, at our option, plus an applicable margin based upon certain financial ratios, determined and payable quarterly. The interest rate as of October 1, 2010 was LIBOR plus 0.35%. In addition, we pay a facility fee on the entire Facility. This facility fee varies with certain financial ratios and was 0.10% as of October 1, 2010. The principal amount of borrowings, together with accrued interest, is due on the maturity date in August 2012. As of October 1, 2010, \$250 million was available under the Facility.

The terms of the Facility require compliance with certain financial covenants that require us to maintain specified financial ratios related to interest coverage and financial leverage. As of October 1, 2010, we were in compliance with all such covenants.

## Note 10 — Commitments and Contingencies

#### Indemnification and Product Warranty

We indemnify certain customers, distributors, suppliers, and subcontractors for attorney's fees and damages and costs awarded against these parties in certain circumstances in which our products are alleged to infringe third party intellectual property rights including patents, trade secrets, trademarks, or copyrights. We cannot estimate the amount of potential future payments, if any, that we might be required to make as a result of these agreements. To date, we have not paid any claim or been required to defend any action related to our indemnification obligations, and accordingly, we have not accrued any amounts for such indemnification obligations. However, we may record charges in the future as a result of these indemnification obligations.

We generally warrant our devices for one year, against defects in materials, workmanship and material non-conformance

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to our specifications. We accrue for known warranty issues if a loss is probable and can be reasonably estimated, and accrue for estimated but unidentified issues based on historical activity. If there is a material increase in customer claims compared with our historical experience or if the costs of servicing warranty claims are greater than expected, we may record a charge against cost of sales. Warranty expense was not significant for any period presented in our consolidated statements of income.

## Purchase Obligations

We depend entirely upon subcontractors to manufacture our silicon wafers and provide assembly and test services. Due to lengthy subcontractor lead times, we must order these materials and services from these subcontractors well in advance, and we are obligated to pay for the materials and services once they are completed. As of October 1, 2010, we had approximately \$251.9 million of outstanding purchase commitments to such subcontractors. We expect to receive and pay for these materials and services over the next six months.

## Legal Proceedings

We are named as a party to a lawsuit concerning our historical stock option practices and related accounting and reporting.

In May and July 2006, we were notified that three shareholder derivative lawsuits had been filed in the Superior Court of the State of California, County of Santa Clara, by persons identifying themselves as Altera shareholders and purporting to act on behalf of Altera, naming Altera Corporation as a nominal defendant and naming some of our current and former officers and directors as defendants. On July 12, 2006, one of these derivative actions was voluntarily dismissed by the plaintiff shareholder. The remaining two derivative lawsuits pending in Santa Clara Superior Court were consolidated into a single action on September 5, 2006. Plaintiffs filed a second amended consolidated complaint on December 15, 2006. On January 30, 2007, Altera and the defendants filed a motion to stay this action pending resolution of the federal derivative action (discussed below). On February 11, 2009, one of the remaining derivative plaintiffs voluntarily dismissed his derivative claims and, on March 20, 2009, the other remaining derivative plaintiff filed a third amended complaint. In June 2009, Altera and the defendants demurred to the third amended complaint. After the court issued a tentative ruling in favor of Altera, the parties agreed to stay the action in order to allow plaintiff to serve a demand on Altera's board of directors. The plaintiff served the demand on November 4, 2009. In the first quarter of 2010, the board of directors completed its review of the demand and decided to reject plaintiff's demand. On June 1, 2010, the plaintiff filed a fourth amended complaint, alleging that the board of director's decision to reject plaintiff's demand was wrongful. On July 15, 2010, Altera demurred to the fourth amended complaint. In October 2010, the court dismissed plaintiff's fourth amended complaint and granted plaintiff leave to file a fifth amended complaint.

Plaintiff asserts claims against the individual defendants for breach of fiduciary duty, waste of corporate assets, unjust enrichment, violations of California Corporation Code section 25402, breach of fiduciary duty for insider selling and misappropriation of information, and deceit. Plaintiff's claims concern the granting of stock options by Altera between 1994 and 2001 and the alleged filing of false and misleading financial statements between 1994 and 2006. All of these claims are asserted derivatively on behalf of Altera. Plaintiff seeks, among other relief, an indeterminate amount of damages from the individual defendants and a judgment directing Altera to reform its corporate governance practices.

During the months of May, June, and July 2006, four other derivative lawsuits were filed by purported Altera shareholders, on behalf of Altera, in the United States District Court for the Northern District of California. On August 8, 2006, these actions were consolidated, and the plaintiffs filed a consolidated complaint on November 30, 2006. On September 15, 2008, the plaintiffs voluntarily agreed to dismiss the case. On September 18, 2008, the court entered an order dismissing the case.



Note 11 — Stock-Based Compensation

Our stock-based compensation plans include the 2005 Equity Incentive Plan (the “2005 Plan”) and the 1987 Employee Stock Purchase Plan (“ESPP”).

2005 EQUITY INCENTIVE PLAN

Our equity incentive program is a broad-based, long-term retention program intended to attract, motivate, and retain talented employees as well as align stockholder and employee interests. The 2005 Plan provides stock-based incentive compensation (“awards”) to both our eligible employees and non-employee directors. Awards that may be granted under the 2005 Plan include non-qualified and incentive stock options, restricted stock units (“RSU”s), performance-based restricted stock units (“PRSU”s), restricted stock awards, stock appreciation rights, and stock bonus awards. To date, awards granted under the 2005 Plan consist of stock options, RSUs and PRSUs. The majority of stock-based awards granted under the 2005 Plan vest over four years. Stock options granted under the 2005 Plan have a maximum contractual term of ten years. On May 6, 2010, our stockholders approved

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an amendment to the 2005 Plan to increase the shares reserved for future issuance by 5 million. As of October 1, 2010, the 2005 Plan had a total of 27.9 million shares reserved for future issuance, of which 17.9 million shares were available for future grants.

A summary of activity for our RSUs and PRSUs for the nine months ended October 1, 2010 and information regarding RSUs and PRSUs outstanding and expected to vest as of October 1, 2010 is as follows:

(In thousands, except per share amounts and terms)	Number of Shares	Weighted-Average Grant-Date Fair Market Value Per Share	Weighted-Average Remaining Contractual Term (in Years)	Aggregate Intrinsic Value <sup>(1)</sup>
Outstanding, December 31, 2009	6,952	\$19.36		
Grants	3,075	\$26.89		
Vested	(2,446 )	\$19.60		
Forfeited	(303 )	\$20.46		
Outstanding, October 1, 2010	7,278	\$22.42	1.8	\$218,999
Vested and expected to vest, October 1, 2010	6,292	\$22.42	1.7	\$189,338

(1) Aggregate intrinsic value represents the closing price per share of our stock on October 1, 2010, multiplied by the number of RSUs and PRSUs outstanding or vested and expected to vest as of October 1, 2010.

A summary of stock option activity for the nine months ended October 1, 2010 and information regarding stock options outstanding, exercisable, and vested and expected to vest as of October 1, 2010 is as follows:

(In thousands, except per share amounts and terms)	Number of Shares	Weighted-Average Exercise Price Per Share	Weighted-Average Remaining Contractual Term (in Years)	Aggregate Intrinsic Value <sup>(1)</sup>
Outstanding, December 31, 2009	30,834	\$ 21.89		
Grants	75	\$ 21.88		
Exercises	(13,360 )	\$ 21.60		
Forfeited/Cancelled/Expired	(769 )	\$ 37.59		
Outstanding, October 1, 2010	16,780	\$ 21.40	3.2	\$145,913
Exercisable, October 1, 2010	16,334	\$ 21.43	3.1	\$141,651
Vested and expected to vest, October 1, 2010	16,747	\$ 21.40	3.2	\$145,600

(1) For those stock options with an exercise price below the closing price per share on October 1, 2010, aggregate intrinsic value represents the difference between the exercise price and the closing price per share of our common stock on October 1, 2010, multiplied by the number of stock options outstanding, exercisable, or vested and expected to vest as of October 1, 2010.

For the three and nine months ended October 1, 2010, 5.5 million and 13.4 million non-qualified stock option shares were exercised, respectively. The total intrinsic value of stock options exercised for the three and nine months ended October 1, 2010 was \$33.7 million and \$66.0 million, respectively. The aggregate intrinsic value represents the difference between the exercise price and the selling price received by option holders upon the exercise of stock options during the period. The total cash received from employees as a result of employee stock option exercises during the three and nine months ended October 1, 2010 was \$109.4 million and \$284.8 million, respectively.

## 1987 EMPLOYEE STOCK PURCHASE PLAN

Our ESPP has two consecutive, overlapping twelve-month offering periods, with a new period commencing on the first trading day on or after May 1 and November 1 of each year and terminating on the last trading day on or before April 30 and October 31. Each twelve-month offering period generally includes two six-month purchase periods. The purchase price at which shares are sold under the ESPP is 85% of the lower of the fair market value of a share of our common stock on (1) the first day of the offering period, or (2) the last trading day of the purchase period. If the fair market value at the end of any purchase period is less than the fair market value at the beginning of the offering period, each participant is automatically withdrawn from the

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current offering period following the purchase of shares on the purchase date and is automatically re-enrolled in the immediately following offering period.

We sold 595,861 shares of common stock under the ESPP at a price of \$13.81 during the nine months ended October 1, 2010, and 619,363 shares of common stock under the ESPP at a price of \$13.86 during the nine months ended September 25, 2009. On May 6, 2010, our stockholders approved an amendment to the ESPP to increase the shares reserved for future issuance by 1 million. As of October 1, 2010, 2.6 million shares were available for future issuance under the ESPP.

## VALUATION AND EXPENSE INFORMATION

The assumptions used to estimate the fair value of ESPP, RSUs and PRSUs were as follows:

	Three Months Ended		Nine Months Ended			
	October 1, 2010	September 25, 2009	October 1, 2010	September 25, 2009		
ESPP purchase rights:						
Expected term (in years)	—	—	0.7	0.8		
Expected stock price volatility	—	—	31.2 %	50.6 %		
Risk-free interest rate	—	—	0.3 %	0.4 %		
Dividend yield	—	—	0.8 %	1.2 %		
Weighted-average estimated fair value	\$—	\$ —	\$6.56	\$5.09		
RSUs and PRSUs:						
			Change of Control (6)			
Change of Control Followed by Termination (7)	1,442,000	107,149	105,760	223,162	1,878,071	701,703
James W. Benz Change of Control (6)			88,138	182,073		270,211
Change of Control Followed by Termination (7)	1,206,836		88,138	182,073	1,477,047	569,080
Allison M. Fergus Change of Control (6)			882	49,307		50,189
Change of Control Followed by Termination (7)	941,213		882	49,307	991,402	991,402
Christopher F. Liucci Change of Control (6)				50,394		50,394
Change of Control Followed by	283,511			50,394	333,905	333,905

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### Termination (7)

- (1) The cash severance payment is calculated by adding the 2007 accrued but unpaid annual incentive to either three times the sum of current annual salary plus target annual incentive or one times the sum of current annual salary plus target annual incentive, depending on the individual Executive Officer's continuity agreement outlined above.
- (2) The value of accelerated stock options is calculated by multiplying the number of unvested stock options by the difference between the stock price on December 31, 2007 of \$24.17 and the exercise price of the stock option.
- (3) The value of accelerated restricted stock is calculated by multiplying the number of unvested restricted stock shares by the stock price on December 31, 2007 of \$24.17.
- (4) Mr. Fuller's and Mr. Liucci's change in control payments would not exceed the safe harbor limit (three times the base amount less one dollar) and are not reduced. Ms. Fergus's after-tax change in control payment, including the 20% payment of the excise tax, would be greater than the after-tax payment of the safe harbor limit and is also not reduced. A personal tax rate of 40% is used in calculating the after-tax amount for Ms. Fergus.
- (5) Mr. Hellmann, Mr. Gallagher, and Mr. Benz's gross payments would be more than 10% above the IRC Section 280G safe harbor limit. Therefore, the Company would additionally pay the 20% excise tax and income taxes related to the excise tax. An estimated tax gross-up rate of 60% was used in the calculation.

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- (6) Represents payments under the provisions of the DCP Plan and award agreements under the Omnibus Plan, which provide for payments upon a change of control exclusive of our continuity agreements. In the event of a change of control under our DCP Plan, participants are entitled to acceleration of unvested account balances, subject to the limitations of IRC Section 280G. In addition, pursuant to the award agreements for options and restricted stock awards to Executive Officers, the unvested portions of all such awards shall immediately vest and become exercisable upon a change of control.
- (7) Represents payments under the continuity agreements in the event of a change of control followed by termination without cause or resignation for good reason by the executive within three years of the change of control.

***Payments upon Termination of Executive Chairman Under Employment Agreement***

Pursuant to his Employment Agreement, Mr. Fuller is entitled to certain benefits in the event of voluntary resignation for good reason or involuntary termination without cause by the Company, and in the event of disability or death. Mr. Fuller's Employment Agreement also provides that if there is a change of control followed by termination without cause or resignation for good reason during his initial or subsequent renewal employment periods, he will be entitled to payments under his continuity agreement. These payments are set forth in the **Payments Under Change of Control** table above in the row entitled **Change of Control Followed by Termination** for Mr. Fuller. The payments set forth below assume a December 31, 2007 trigger event.

<b>Name/Event</b>	<b>Cash Severance Payment (1)</b>	<b>Medicare Supplemental Premium (2)</b>	<b>Life Insurance Premium (3)</b>	<b>Acceleration of Unvested Options (4)</b>	<b>Acceleration of Unvested Restricted Stock (5)</b>	<b>Amounts Accrued (6)</b>	<b>Total</b>
Mortimer B. Fuller III							
Voluntary Resignation for Good Reason or Involuntary Termination without Cause	\$ 1,996,500	\$ 9,666	\$ 1,763,563	\$ 236,782	\$ 609,809	\$ 507,000	\$ 5,123,320
Disability or Death				236,782	609,809	507,000	1,353,591

- (1) Cash severance payment represents three times Mr. Fuller's base salary on December 31, 2007.
- (2) Mr. Fuller is entitled to medical supplemental premiums for his dependents and himself for three years. The estimated amounts payable on December 31, 2007, were calculated by multiplying the estimated monthly premium cost for a standard Medicare Supplemental Plan J policy, which provides the most comprehensive coverage of the 12 standard Medicare plans available, by 36 months. The estimated monthly premium was obtained from publicly available quotes provided by AARP. None of Mr. Fuller's dependents will be eligible for Medicare Supplemental coverage until 2012, so no amounts were included for his dependents.
- (3) Mr. Fuller is entitled to life insurance premiums, plus a tax gross up of such premiums, that extend from the year of his termination through the year he attains age 70. The estimated amounts, assuming a December 31, 2007 trigger event, were calculated by multiplying the total amount of such payments made to Mr. Fuller for life insurance and gross ups in 2007 by five years.
- (4) The value of accelerated stock options is calculated by multiplying the number of unvested options by the difference between the stock price on December 31, 2007, of \$24.17 and the exercise price of the stock option.
- (5) The value of accelerated restricted stock is calculated by multiplying the number of unvested restricted stock shares by the stock price on December 31, 2007, of \$24.17.
- (6) As of December 31, 2007, Mr. Fuller had earned but had not yet been paid an annual cash bonus of \$507,000. Mr. Fuller is also contractually entitled to payment for the following items accrued through the date of his termination: unpaid base salary, any earned but unused vacation time, any properly incurred but unreimbursed business-related expenses, and any other amounts or benefits required to be paid or provided by law or under the terms of any applicable pension, welfare or equity compensation plan of the Company. The value of these items at December 31, 2007, was assumed to have been zero.

Additional information on Mr. Fuller's Employment Agreement is set forth under **Narrative Supplement to the Summary Compensation Table and Grants of Plan-Based Awards in 2007 Table**.

***Payments in the Event of Retirement, Death, or Disability***

Mr. Hellmann and Mr. Gallagher are entitled to receive accelerated vesting of their DCP accounts in the event of death or disability, pursuant to the DCP Plan provisions. We have provided the DCP benefit to Messrs. Hellmann and Gallagher in consideration of their role in the organization and as an incentive for their continued service. None of the other Executive Officers are provided this benefit.

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Assuming a December 31, 2007 death or disability, Messrs. Hellmann and Gallagher would be entitled to the acceleration of unvested account balances, subject to the limitations of IRC Section 280G, of \$98,276 and \$107,149, respectively. In the event of retirement at December 31, 2007, Messrs. Hellmann and Gallagher are not entitled to acceleration of unvested DCP balances. For additional information, see Nonqualified Deferred Compensation For 2007 above.

Mr. Benz is a participant in the Rail Link Plan, which was frozen on January 31, 2002. Based upon his average compensation and years of service accrued prior to the plan being frozen, the annual amount payable upon retirement at age 62 under the plan is \$28,145. In accordance with the plan provisions, assuming retirement, death or disability at December 31, 2007, Mr. Benz is entitled to receive annual payments of \$23,923, which amounts include a 5% benefit reduction for each remaining year of service until Mr. Benz attains age 62. For additional information, see 2007 Pension Benefits above.

**Table of Contents****SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

The following table and related footnotes set forth as of April 1, 2008 (except to the extent indicated in the footnotes to the table below) certain information concerning beneficial ownership of our stock held by (1) each stockholder known by us to own beneficially more than 5% of any class of stock, (2) each of our directors, (3) each director nominee, (4) each Executive Officer, which includes our named executive officers and (5) all of our directors and Executive Officers as a group. We have calculated beneficial ownership in accordance with the rules of the SEC. Unless otherwise indicated below in the footnotes to the table, each stockholder named in the table has sole voting and investment power with respect to all shares shown as beneficially owned by that stockholder, and the designated address of each individual listed in the table is as follows: Genesee & Wyoming Inc., 66 Field Point Road, Greenwich, Connecticut 06830. We have omitted percentages of less than 1.0% from the table. Unless otherwise indicated, all options to purchase shares of Class A Common Stock, restricted shares and DSUs were issued pursuant to the Omnibus Plan.

Name and Address of  Beneficial Owner	Class A Common Stock Beneficially Owned		Class B Common Stock Beneficially Owned		Percent of Vote (1)
	No. of Shares	Percent of Class	No. of Shares	Percent of Class	
<b>Directors and Nominees</b>					
Mortimer B. Fuller III (2)	729,251	2.28%	3,027,668	76.16%	43.20%
John C. Hellmann (3)	479,506	1.50%	1,872	0.05%	0.70%
Robert M. Melzer (4)	95,221	*		*	*
Philip J. Ringo (5)	105,707	*		*	*
Peter O. Scannell (6)	32,605	*		*	*
Mark A. Scudder (7)	29,632	*		*	*
M. Douglas Young (8)	68,935	*		*	*
David C. Hurley (9)	10,030	*		*	*
Øivind Lorentzen (10)	13,238	*		*	*
<b>Other Named Executives</b>					
Timothy J. Gallagher (11)	98,637	0.31%		0.00%	0.14%
James W. Benz (12)	160,538	0.51%		0.00%	0.22%
Allison M. Fergus (13)	17,948	0.06%		0.00%	0.03%
Christopher F. Liucci (14)	13,195	0.04%		0.00%	0.02%
<b>Significant Shareholders</b>					
Louis S. Fuller (15)	297,750	0.94%	671,041	16.88%	9.82%
<b>Other</b>					
Wellington Management Company, LLP (16)	3,258,726	10.31%		*	4.57%
75 State Street					
Boston, Massachusetts 02109					
T. Rowe Price Associates, Inc. (17)	3,015,218	9.54%		*	4.23%
100 E. Pratt Street					
Baltimore, Maryland 21202					
Baron Capital Group, Inc. (18)	2,871,400	9.09%		*	4.02%
767 Fifth Avenue					
New York, New York 10153					
Keeley Asset Management Corp. (19)	2,474,650	7.83%		*	3.47%



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401 South LaSalle Street

Chicago, Illinois 60605

Franklin Resources, Inc. (20)	1,636,941	5.18%		*	2.29%
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One Franklin Parkway

San Mateo, California 94403

All Directors and Executive Officers as a Group (13 persons) (21)	1,856,376	4.20%	3,029,540	76.20%	44.35%
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\* Represents less than 1%.

- (1) Reflects the voting power of the outstanding share holdings shown on the table as a result of the fact that Class A Common Stock is entitled to one vote per share and Class B Common Stock is entitled to ten votes per share.
- (2) The amounts shown include: (1) 287,604 shares of Class A Common Stock owned by Mr. Fuller individually; (2) 25,229 shares of Class A Common Stock represented by restricted stock (which includes 4,335 restricted stock units), of which 8,324 shares (which includes 4,335 restricted stock units) will vest within 60 days; (3) 3,027,668 shares of Class B Common Stock owned by Mr. Fuller individually; (4) 9,590 shares of Class A Common Stock held by Mr. Fuller's wife, as to which shares Mr. Fuller disclaims beneficial ownership; and (5) 406,828 shares of Class A Common Stock that may be purchased pursuant to options exercisable within 60 days.

The number of shares in the table includes shares that are subject to three separate variable prepaid forward transactions with Credit Suisse First Boston Capital LLC. On March 8, 2004, Mr. Fuller entered into the first transaction relating to 337,500 shares of Class B Common Stock, which contract was extended on March 8, 2007 until June 13, 2008. Mr. Fuller received net proceeds of \$4,707,937 under the initial contract and \$339,053 in connection with the extension. Under the terms of the extended contract, Mr. Fuller has agreed to deliver shares of Class B Common Stock (which are immediately convertible into shares of Class A Common Stock on a one-for-one basis) or shares of Class A Common Stock on the expiration date of the contract (or on an earlier date if the contract is terminated early) as follows: (1) if the final price is less than or equal to the floor price (\$25.1516 per share) (the *March Floor Price*), 337,500 shares; (2) if the final price is less than or equal to the cap price (\$31.4451 per share) (the *March Cap Price*), but greater than the March Floor Price, then a number of shares equal to 337,500 times the March Floor Price divided by the final price; and (3) if the final price is greater than the March Cap Price, then a number of shares equal to 337,500 shares multiplied by a fraction, the numerator of which is the sum of the March Floor Price and the difference between the final price and the March Cap Price, and the denominator of which is the final price. In connection with the contract, Mr. Fuller has pledged 337,500 shares of Class B Common Stock to secure his obligation under the extended contract. Under the extended contract, in lieu of delivery of shares, Mr. Fuller may, at his option, settle the contract by delivery of cash. On December 1, 2004, Mr. Fuller entered into a second transaction relating to an additional 337,500 shares of Class B Common Stock, which contract was extended on December 3, 2007 until December 24, 2008. Mr. Fuller received net proceeds of \$5,355,405 under the initial contract and \$623,142 in connection with the extension. The terms of the extended contract contain a delivery obligation identical to that of the March 2004 contract, but with a floor price of \$26.3449 per share and a cap price of \$31.6139 per share. All share information associated with the March 2004 and the December 2004 contracts has been updated for the 3 for 2 stock split in March 2006. In addition, on March 15, 2006, Mr. Fuller entered into a transaction relating to an additional 480,000 shares of Class B Common Stock, which contract expires on December 24, 2008, and for which Mr. Fuller received net proceeds of \$12,511,968. The March 2006 contract contains a delivery obligation identical to that of the prior contracts, but with a floor price of \$30.10 per share and a cap price of \$37.625 per share.

- (3) The amount shown includes: (1) 138,714 shares of Class A Common Stock and 1,872 shares of Class B Common Stock owned by Mr. Hellmann individually; (2) 20,352 shares of Class A Common Stock represented by restricted stock, of which 7,233 shares will vest within 60 days; and (3) 320,440 shares of Class A Common Stock that may be purchased pursuant to options exercisable within 60 days.

The number of shares in the table includes 138,714 shares of Class A Common Stock held in a brokerage account pledged as collateral for a credit facility. The fair market value of the securities held in the brokerage account, other than the Class A Common Stock, exceeds the amount of the credit facility. In addition, in the event of foreclosure on the credit facility, the securities other than our Class A Common Stock would be sold first to satisfy any outstanding obligations.

- (4) The amount shown includes: (1) 35,820 shares of Class A Common Stock owned by Mr. Melzer individually; (2) 11,250 shares of Class A Common Stock held by a self-directed IRA; (3) 10,126 shares of Class A Common Stock that may be purchased pursuant to options exercisable within 60 days; (4) 34,913 shares of Class A Common Stock that may be received for DSUs; and (5) 3,112 shares of Class A Common Stock represented by restricted stock, of which 3,122 shares will vest within 60 days.
- (5) The amount shown includes: (1) 32,577 shares of Class A Common Stock owned by Mr. Ringo individually; (2) 18,731 shares of Class A Common Stock owned by Mr. Ringo's wife, as to which shares he disclaims beneficial ownership; (3) 5,063 shares of Class A Common Stock that may be purchased pursuant to options exercisable within 60 days; (4) 47,857 shares of Class A Common Stock that may be received for DSUs; and (5) 5,063 shares of Class A Common Stock represented by restricted stock, of which 493 shares will vest within 60 days.
- (6) The amount shown includes: (1) 7,481 shares of Class A Common Stock owned jointly by Mr. Scannell and his wife; (2) 10,125 shares of Class A Common Stock that may be purchased pursuant to options exercisable within 60 days; (3) 12,424 shares of Class A Common Stock that may be received for DSUs; and (4) 2,575 shares of Class A Common Stock represented by restricted stock, of which 1,287 shares will vest within 60 days.
- (7) The amount shown includes: (1) 16,850 shares of Class A Common Stock owned by Mr. Scudder individually; (2) 10,125 shares of Class A Common Stock that may be purchased pursuant to options exercisable within 60 days; (3) 1,178 shares of Class A Common Stock that may be received for DSUs; and (4) 1,479 shares of Class A Common Stock represented by restricted stock, of which 493 shares will vest within 60 days.
- (8) The amount shown includes: (1) 7,481 shares of Class A Common Stock owned by Mr. Young individually; (2) 58,879 shares of Class A Common Stock that may be received for DSUs; and (3) 2,575 shares of Class A Common Stock represented by restricted stock, of which 1,287 shares will vest within 60 days.
- (9) The amount shown includes (1) 2,981 shares of Class A Common Stock owned by Mr. Hurley individually; (2) 4,474 shares of Class A Common Stock that may be received for DSUs; and (3) 2,575 shares of Class A Common Stock represented by restricted stock, of which 1,287 shares will vest within 60 days.

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- (10) The amount shown includes (1) 8,644 shares of Class A Common Stock owned by Mr. Lorentzen individually; (2) 3,115 shares of Class A Common Stock that may be received for DSUs; and (3) 1,479 shares of Class A Common Stock represented by restricted stock, of which 493 shares will vest within 60 days.
- (11) The amounts shown include: (1) 3,755 shares of Class A Common Stock owned by Mr. Gallagher individually; (2) 9,233 shares of Class A Common Stock represented by restricted stock, of which 4,351 shares will vest within 60 days; and (3) 85,649 shares of Class A Common Stock that may be purchased pursuant to options exercisable within 60 days.
- (12) The amount shown includes: (1) 64,703 shares of Class A Common Stock owned by Mr. Benz jointly with his wife; (2) 7,532 shares of Class A Common Stock represented by restricted stock, of which 3,588 shares will vest within 60 days; (3) 86,503 shares of Class A Common Stock that may be purchased pursuant to options exercisable within 60 days owned by Mr. Benz individually; and (4) 1,800 shares of Class A Common Stock that may be purchased pursuant to options exercisable within 60 days owned by Mr. Benz's wife.
- (13) The amount shown includes: (1) 15,908 shares of Class A Common Stock that may be purchased by Ms. Fergus pursuant to options exercisable within 60 days; and (2) 2,040 shares of Class A Common Stock represented by restricted stock, of which 680 shares will vest within 60 days.
- (14) The amount shown includes: (1) 667 shares of Class A Common Stock owned by Mr. Liucci individually; (2) 10,776 shares of Class A Common Stock that may be purchased pursuant to options exercisable within 60 days; and (3) 1,752 shares of Class A Common Stock represented by restricted stock, of which 473 shares will vest within 60 days.
- (15) The amounts shown include: (1) 674,041 shares of Class B Common Stock owned by Mr. Louis Fuller individually; and (2) 297,750 shares of Class A Common Stock owned by Mr. Louis Fuller's wife, as to which shares he disclaims beneficial ownership.
- (16) The amount and percentage shown, and the information contained in this footnote, is derived from a Schedule 13G/A filed by Wellington Management Company, LLP ( *WMC* ) on February 14, 2008. The shares are owned of record by clients of WMC. WMC, in its capacity as investment adviser, may be deemed to beneficially own all of such shares. Those clients have the right to receive, or the power to direct the receipt of, dividends from, or the proceeds from the sale of, such shares. No such client is known to have such right or power with respect to more than five percent of the class. WMC has shared power to vote 2,826,626 of such shares and has shared power to dispose of 3,246,076 of such shares.
- (17) The amount and percentage shown, and the information contained in this footnote, is derived from a Schedule 13G filed by T. Rowe Price Associates, Inc. ( *Price Associates* ) on February 13, 2008. Price Associates has sole voting power to vote 883,600 of such shares and has sole power to dispose of all of such shares. According to their joint Schedule 13G, T. Rowe Price Small-Cap Value Fund, Inc. ( *Price SC Value Fund* ) has sole voting power to vote 2,055,000 of such shares. Because Price Associates does not serve as custodian of the assets of any of its clients, only the client or the client's custodian or trustee bank has the right to receive dividends paid with respect to, and proceeds from the sale of, the shares. The ultimate power to direct the receipt of dividends paid with respect to, and the proceeds from the sale of, the shares, is vested in the individual and institutional clients, which Price Associates serves as investment adviser. Any and all discretionary authority which has been delegated to Price Associates may be revoked in whole or in part at any time. Not more than five percent of the class is owned by any one client subject to the investment advice of Price Associates. With respect to securities owned by any one of the T. Rowe Price Funds, only State Street Bank and Trust Company, as custodian for each of such funds, has the right to receive dividends paid with respect to, and proceeds from the sale of, such securities. No other person is known to have such right, except that the stockholders of each such Fund participate proportionately in any dividends and distributions so paid.
- (18) The amount and percentage shown, and the information contained in this footnote, is derived from a Schedule 13G/A filed by Baron Capital Group, Inc. ( *BCG* ) on February 12, 2008. BCG has sole voting power with respect to 100,000 shares, shared voting power with respect to 2,510,150 shares, sole dispositive power with respect to 100,000 shares and shared dispositive power with respect to 2,771,400 shares. According to their joint Schedule 13G, BAMCO, Inc., shared voting power with respect to 2,227,250 shares and shared dispositive power with respect to 2,477,250 shares; Baron Capital Management, Inc. ( *BCM* ) has sole voting power with respect to 100,000 shares, shared voting power with respect to 282,900 shares, sole dispositive power with respect to 100,000 shares and share dispositive power with respect to 294,150 shares; Baron Growth Fund has shared voting and shared dispositive power with respect to 2,000,000 shares; and Ronald Baron has sole voting power with respect to 100,000 shares, shared voting power with respect to 2,510,150 shares, sole dispositive power with respect to 100,000 shares and shared dispositive power with respect to 2,771,400 shares. The advisory clients of BAMCO, Inc. and BCM have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, the shares in their accounts. No such person is known to have an interest relating to more than five percent of the class. BCG and Ronald Baron disclaim beneficial ownership of shares held by their controlled entities (or the investment advisory clients thereof) to the extent such shares are held by persons other than BCG and Ronald Baron. BAMCO and BCM disclaim beneficial ownership of shares held by their investment advisory clients to the extent such shares are held by persons other than BAMCO, BCM and their affiliates.
- (19) The amount and percentage shown, and the information contained in this footnote, is derived from a Schedule 13G filed by Keeley Asset Management Corp. ( *Keeley* ) on February 14, 2008. Keeley has sole voting power with respect to 2,325,750 of such shares and sole power to dispose of 2,474,650 of such shares. According to their joint Schedule 13G, Keeley Small Cap Value Fund shares beneficial ownership of 1,852,500 shares held by Keeley.
- (20) The amount and percentage shown, and the information contained in this footnote, is derived from a Schedule 13G filed by Franklin Resources, Inc. ( *Franklin* ) on February 4, 2008. Franklin Advisory Services, LLC ( *Franklin Advisory* ) has sole voting power with respect to 1,599,800 of such shares and sole power to dispose of 1,636,941 of such shares. The advisory clients of Franklin have the right to receive or the power to direct the receipt of dividends from, as well as the proceeds from the sale of, the shares in their

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- accounts. Charles B. Johnson and Rupert H. Johnson, Jr. (the Principal Shareholders ) each own in excess of 10% of the outstanding common stock of Franklin Advisory. The Principal Shareholders, Franklin and Franklin Advisory share beneficial ownership of 1,636,941 shares.
- (21) See footnotes 2 through 14 to this table. The amounts shown include: (1) 646,848 shares of Class A Common Stock owned individually, jointly with a spouse or in a self directed IRA; (2) 963,343 shares of Class A Common Stock that may be purchased pursuant to options exercisable within 60 days; (3) 3,029,540 shares of Class B Common Stock owned individually; (4) 81,412 shares of Class A Common Stock represented by restricted stock (which includes 4,335 restricted stock units), of which 33,111 shares (which includes 4,335 restricted stock units) will vest within 60 days; and (5) 162,840 shares of Class A Common Stock that may be received for DSUs.

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**REPORT OF THE AUDIT COMMITTEE\***

The duties and responsibilities of the Audit Committee are set forth in our Audit Committee Charter which can be found on our website, [www.gwrr.com](http://www.gwrr.com), under the Governance link. The Audit Committee has:

selected PwC as our independent registered public accounting firm to audit our consolidated financial statements as of and for the year ended December 31, 2007;

reviewed and discussed our audited financial statements for 2007 with management and with PwC, our independent registered public accounting firm, and held, as appropriate, executive sessions with PwC and those responsible for our internal audit function, in each case without the presence of management;

discussed with PwC, our independent registered public accounting firm, the matters required to be discussed by SAS 114, as amended, as adopted by the Public Company Accounting Oversight Board, including the quality of the Company's accounting principles, the reasonableness of management's significant judgments and the clarity of disclosures in the financial statements; and

received and reviewed the written disclosures and the letter from PwC required by Independence Standards Board Standard No. 1 (independence discussions with audit committees) as adopted by the Public Company Accounting Oversight Board, and has discussed with PwC its independence.

In performing all of these functions, the Audit Committee acts in an oversight capacity. The Audit Committee reviews the Company's quarterly and annual reports on Form 10-Q and Form 10-K prior to filing with the SEC. In its oversight role, the Audit Committee relies on the work and assurances of:

the Company's management, which has the primary responsibility for establishing and maintaining adequate internal control over financial reporting and for preparing the financial statements, and other reports; and

PwC, which is engaged to audit and report on the consolidated financial statements of the Company and the effectiveness of the Company's internal control over financial reporting.

In reliance on these reviews and discussions, and the report of the independent registered public accounting firm, the Audit Committee recommended to the Board, and the Board approved, that the audited financial statements be included in the Company's Form 10-K for 2007 for filing with the SEC.

***Audit Committee:***

Øivind Lorentzen III, *Chairman*

Philip J. Ringo

Robert M. Melzer

\*

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The information in this report is not soliciting material, is not deemed filed with the SEC and is not to be incorporated by reference in any of our filings under the Securities Act of 1933, as amended, or the Exchange Act whether made before or after the date hereof and irrespective of any general incorporation language in any such filings.

**Table of Contents****PROPOSAL TWO:****APPROVAL OF THE SELECTION OF INDEPENDENT AUDITORS**

PwC served as our independent registered public accounting firm for our fiscal year ended December 31, 2007. In addition to the audit of the 2007 financial statements, the Audit Committee engaged PwC to perform certain other services for which it was paid fees.

PwC also served as our independent registered public accounting firm for the fiscal years 2002, 2003, 2004, 2005 and 2006. Our Audit Committee has selected PwC as our independent registered public accounting firm for fiscal year 2008. This selection will be presented to our stockholders for their ratification at the annual meeting.

We are asking our stockholders to ratify the selection of PwC as our independent registered public accounting firm for fiscal year 2008. Although ratification is not required by our by-laws or otherwise, the Board is submitting the selection of PwC to our stockholders for ratification because we value our stockholders' views on our independent registered public accounting firm and as a matter of good corporate practice. In the event that our stockholders fail to ratify the selection, it will be considered as a direction to the Audit Committee to consider the selection of a different firm. Even if the selection is ratified, the Audit Committee in its discretion may select a different independent registered public accounting firm, at any time during the year if it determines that such a change would be in the best interests of the Company and our stockholders.

One or more representatives of PwC is planning to be present at the annual meeting and will be available to respond to appropriate questions. In addition, the representatives will have an opportunity to make a statement if they so desire.

**The Board of Directors unanimously recommends that stockholders vote FOR the ratification of PwC as the Company's independent registered public accounting firm for its fiscal year 2008.**

**Principal Accountant Fees and Services**

Aggregate fees for professional services rendered to us by PwC for the years ended December 31, 2006 and 2007 were:

	2006	2007
Audit	\$ 1,325,191	\$ 1,514,840
Audit Related	15,777	70,000
Tax	19,617	
All Other	2,500	12,400
<b>Total</b>	<b>\$ 1,363,085</b>	<b>\$ 1,597,240</b>

Audit fees for the years ended December 31, 2006 and 2007 were for professional services rendered by PwC for the audits of the consolidated financial statements of the Company, including the audit of internal control over financial reporting statutory audits and assistance with review of documents filed with the SEC.

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*Audit Related* fees for the years ended December 31, 2006 and 2007 were for assurance and related services by PwC related to due diligence for mergers and acquisitions, accounting consultations in connection with acquisitions and consultations concerning financial accounting and reporting standards.

*Tax* fees for the years ended December 31, 2006 and 2007 were for services by PwC related to tax compliance, tax planning and tax advice.

*All other* fees for the year ended December 31, 2006 and 2007 were for access to a web-based technical accounting research tool and for statutory financial statement reporting value software.

Our Audit Committee has not adopted pre-approval policies and procedures for audit and permitted non-audit services. The engagement of PwC for non-audit accounting and tax services is limited to circumstances where these services are considered integral to the audit services that PwC provides or where there is another compelling rationale for using PwC. All audit, audit-related and permitted non-audit services for which PwC was engaged were pre-approved by the Audit Committee in compliance with applicable SEC requirements.

**STOCKHOLDER PROPOSALS FOR 2009 ANNUAL MEETING**

In order for any stockholder proposal to be included in our proxy statement to be issued in connection with our 2009 annual meeting, that proposal must be received by our Secretary no later than December 23, 2008. If that proposal is in compliance with all of the requirements of Rule 14a-8 under the Exchange Act, it will be included in the proxy statement and set forth on the proxy card issued for that annual meeting. Stockholders may wish to submit proposals at the 2009 annual meeting rather than include such proposals in our proxy materials, but in order for such proposals to be deemed timely, such proposals must be received by our Secretary by no earlier than February 17, 2009, and no later than March 19, 2009.



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**OTHER MATTERS**

Our Board does not know of any other matters that are to be presented for action at the annual meeting. Should any other matter come before the annual meeting, however, the persons named in the enclosed proxy will have discretionary authority to vote all proxies with respect to such matter in accordance with their judgment.

**NOTICE OF INTERNET AVAILABILITY OF PROXY MATERIALS**

*Important Notice Regarding the Availability of Proxy Materials for the Stockholders Meeting to be held on May 28, 2008.*

**The Proxy Statement and Annual Report to Stockholders are available at [www.gwrr.com/proxy](http://www.gwrr.com/proxy)**

**Directions to the Rye Town Hilton are set forth below:**

**From Manhattan or Connecticut (or from points North)**

From I-95 (North or South) take Exit 21 (in New York) to 287 West. Follow 287 West to Exit 10 (Webb Av). Continue through traffic light at end of the ramp for 2/10 mile. At next traffic light, make a right onto 120A (Westchester Ave.) Follow Westchester three more lights and then turn left into the hotel.

**From Rockland County or New Jersey (or from points West)**

From 287 East (Tappan Zee Bridge), take Exit 10. After exiting, you will be on Westchester Ave. Follow Westchester Avenue ahead while forking left at the signs for Port Chester/120A, and the hotel will be four lights ahead on the left.

BY ORDER OF THE BOARD OF DIRECTORS

Allison M. Fergus

*Secretary*

Dated: April 21, 2008

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As Amended on May 30, 2007

**GENESEE & WYOMING INC.**

**CORPORATE GOVERNANCE PRINCIPLES**

The Board of Directors ( *Board* ) of Genesee & Wyoming Inc. ( *Company* ) is governed by the following general principles:

- (a) The Board's paramount duty is to oversee the Chief Executive Officer ( *CEO* ) and other senior management in the competent and ethical management of the Company. The selection, compensation and evaluation of a well-qualified and ethical CEO is the single most important function of the Board.
- (b) Open communication between the Board and management is crucial to the Company's long-term success. Management is responsible for creating, developing and implementing the strategy of the Company. The Board is responsible for reviewing the strategy and guiding its implementation in the context of the overall scope of the business and the interests of its stockholders. Management is responsible for operating the Company in an effective and ethical manner in order to produce long-term value for stockholders. Senior management and the Board are expected to know how the Company earns its income and what risks the Company is undertaking in the course of carrying out its business. Neither management's nor the Board's personal interests should be placed ahead of, or in conflict with, the interests of the Company.
- (c) Management is responsible, under the oversight of the Board and its Audit Committee, for producing financial statements that fairly present the financial condition and results of operations of the Company, and for making the timely, understandable and complete disclosures that stockholders and prospective investors need to permit them to assess the financial and business soundness and risks of the Company.
- (d) The Company is responsible for dealing (i) with its employees in a fair and equitable manner; (ii) with the communities in which it operates with good citizenship; and (iii) with government in accordance with, and with a commitment to, all applicable laws, rules and regulations.

Based on the preceding principles, the Board has adopted the following corporate governance policies:

1. Responsibilities and Duties of the Board and Members of the Board.

In addition to its general responsibility to oversee management, the Board is also responsible for performing a number of specific functions. It is the Board's duty to:

- 1.1. Appoint the Executive Chairman of the Board ( *Chairman* ) and the CEO.
- 1.2. Appoint the officers of the Company.
- 1.3. Review and monitor fundamental financial and business strategies and review, monitor and approve material corporate actions.
- 1.4. Approve operating and capital budgets at the commencement of each financial year and monitor progress on a quarterly basis against budget by financial key performance indicators.

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1.5. Monitor and oversee the Company's financial position.

1.6. Evaluate the performance of, and set the compensation for, the Chairman, the CEO and other senior management executives through its Compensation Committee.

1.7. Ensure that the Company's policies and compliance systems in place are consistent with the objective that the Company, its officers and directors act legally, ethically and responsibly.

1.8. Participate in Board meetings, review relevant materials in advance of meetings, serve on Board committees and prepare for meetings and for discussions with management.

1.9. Spend the time needed, and meet as frequently as necessary, to properly discharge its responsibilities.

1.10. Understand the Company's business, industry and primary risks.

### **2. Board Composition and Compensation.**

2.1. The Board is currently composed of two executive directors (the Chairman and the CEO) and seven non-executive directors. The Company believes that the Board has the benefit of access to all of the executives of the Company and that, therefore, it is not necessary to have additional executive directors. The Board believes that its current size of nine members is an appropriate size for a working board because it is large enough to represent broad interests but small enough to maintain close working relationships and collegiality. The Company's By-laws allow for not less than three nor more than fifteen directors. Changes to the size of the Board shall be recommended by the Governance Committee and approved by the full Board.

### **2.2. Board Selection**

2.2.1. The Board is responsible for nominating directors. In nominating directors, the Board, with the assistance of the Governance Committee, will take into account: (a) minimum individual qualifications, including strength of character, mature judgment, industry knowledge or experience and an ability to work collegially with the other members of the Board, and (b) a variety of other factors it considers appropriate, which may include the following: leadership skills; general business acumen and experience; broad knowledge of the rail freight business or of other modes of transportation; knowledge of strategy, finance, international business, government affairs related to transportation; age; number of other board seats; existing commitments to other businesses and willingness to commit the necessary time; legal considerations such as antitrust issues; and corporate governance background—all to ensure an active Board whose members work well together and possess the collective knowledge and expertise required by the Board. Selection shall be made in the context of an assessment of the perceived needs of the Board at the point in time the selection is being made. At least a majority of the directors shall be independent directors, as determined in accordance with section 3 below.

2.2.2. The Governance Committee considers and establishes procedures regarding recommendations for nomination to the Board, including nominations submitted by stockholders. Recommendations of stockholders should be sent to the Company, to the attention of the Corporate Secretary. Any recommendations submitted to the Corporate Secretary should be in writing and should include whatever supporting material the stockholder considers appropriate in support of that

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recommendation, but must include the information that would be required under the rules of the SEC in a proxy statement soliciting proxies for the election of such candidate and a signed consent of the candidate to serve as a director of the Company, if elected. The Governance Committee will evaluate all potential candidates in the same manner, regardless of the source of the recommendation. Based on the information provided to the Governance Committee, it will make an initial determination whether to conduct a full evaluation of a candidate. As part of the full evaluation process, the Governance Committee may conduct interviews, obtain additional background information and conduct reference checks of the candidate. The Governance Committee may also ask the candidate to meet with management and other members of the Board.

2.3. The following are the criteria for remaining a director:

2.3.1. All non-executive directors are expected voluntarily to review and assess their own membership of the Board from time to time and, particularly, before standing for re-election, taking into account length of service, age, qualifications and expertise relevant to the Company's then current policy and business. In addition, the Governance Committee will adopt a formal process for evaluating on an annual basis the effectiveness of the Board and each of its committees and determining opportunities for their improvement. The sole purpose of this evaluation is to increase the effectiveness of the Board.

2.3.2. Non-executive directors who change the responsibility they held when they were elected to the Board should submit a letter of resignation to the Board. Individual non-executive directors should submit a letter of resignation to retire from the Board at the end of the term following their 70th birthday. In both cases, such letter may be accepted or rejected by the Governance Committee.

2.3.3. Individual executive directors should submit a letter of resignation to retire from the Board on the relinquishment of their executive position with the Company. Such letter may be accepted or rejected by the Governance Committee.

2.3.4. Because of the importance of knowledge of the Company and of continuity, the Board does not believe that in every instance the directors who retire or change from the position they held when they came on the Board should necessarily leave the Board. There should, however, be an opportunity for the Board to review the continued appropriateness of Board membership under these circumstances.

2.3.5. The Board has not adopted term limits. While term limits ensure fresh ideas and viewpoints, they result in the loss of the contribution of directors who have been able to develop, over a period of time, insight into the Company, the continuity of its strategy and its operations, culture and management and a working relationship with other directors.

2.3.6. The Board will review each director's continuation on the Board every three years which will also allow each director to confirm his or her desire to continue as a member.

2.3.7. Absent special circumstances, each director is expected to attend the annual meetings of stockholders.

2.4. The Board's compensation will be determined annually following the annual meeting of stockholders. The compensation of directors should fairly reward them for their efforts on behalf of the Company and should be structured to align their interests with the long-term interests of the

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Company's stockholders. Board members have the right to elect to receive their cash compensation in Company common stock and the Board strongly encourages all of its members to make this election. The Board may seek outside expertise to determine the appropriateness and competitiveness of its compensation.

### 3. Categorical Standards for Director Independence.

3.1. The Board determines each director's independence on an annual basis based on applicable regulatory and stock exchange requirements and these standards. When assessing the materiality of a director's relationship with the Company, the Board shall consider the issue not merely from the standpoint of the director, but also from that of persons or organizations with which the director has an affiliation. Material relationships can include commercial, industrial, banking, consulting, legal, accounting, charitable and familial relationships, among others. The Board's determination shall be disclosed in its proxy statement for each annual meeting of stockholders. The Board will also evaluate the independence of the members of the Audit Committee and Compensation Committee in accordance with applicable rules.

#### 3.2. For purposes of these standards:

3.2.1. *Company* means Genesee & Wyoming Inc. and its consolidated subsidiaries.

3.2.2. *Executive Officer* means an officer within the meaning of Rule 16a-1(f) under the Securities Exchange Act of 1934.

3.2.3. *Immediate Family* means a director's spouse, parents, stepparents, children, stepchildren, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law and anyone (other than domestic employees) who shares the director's home, but excluding any person who is no longer an immediate family member as a result of legal separation or divorce, or death or incapacitation.

3.3. An *independent* director shall be defined to mean a director who has none of the relationships with the Company set forth in section 3.4.1 below, and otherwise has no direct or indirect material relationship with the Company (either directly or as a partner, stockholder or officer of a company that has a relationship with the Company) that would interfere with the exercise of independent judgment by such director; provided, however, that the Board believes all directors should hold meaningful equity ownership positions in the Company.

3.4. The Board, in its business judgment, will determine, based on all relevant facts and circumstances and in a manner consistent with the standards set forth below, whether a director has a relationship with the Company or to its management that would interfere with such director's exercise of his or her independent judgment. The following standards shall be followed by the Board in determining director independence:

#### 3.4.1. Under any circumstances, a director is not independent if:

3.4.1.1. the director is, or has been within the preceding three years, employed by the Company;

3.4.1.2. an Immediate Family member of that director is, or has been employed as an Executive Officer of the Company within the preceding three years;

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3.4.1.3. the director, or an Immediate Family member of that director, received within the preceding three years more than \$100,000 in any twelve-month period in direct compensation from the Company, other than director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service);

3.4.1.4. the director or an Immediate Family member of that director is a current partner of a firm that is the Company's internal or external auditor; the director is a current employee of such a firm; the director has an Immediate Family member who is a current employee of such a firm and who participates in the firm's audit, assurance or tax compliance (but not tax planning) practice; or the director or an Immediate Family member of that director was within the last three years (but is no longer) a partner or employee of such a firm and personally worked on the Company's audit within that time;

3.4.1.5. the director or an Immediate Family member of that director is, or has been within the preceding three years, employed as an Executive Officer of another company where any of the Company's present Executive Officers at the same time serves or served on such other company's compensation committee; or

3.4.1.6. the director is a current employee, or an Immediate Family member of that director is a current Executive Officer, of a company that has made payments to, or received payments from, the Company for property or services in an amount which, in any of the preceding three fiscal years, exceeds the greater of \$1,000,000 or two percent (2%) of the consolidated gross revenues of the other company.

3.4.2. The following commercial or charitable relationships will **not** be considered to be material relationships that would impair a director's independence:

3.4.2.1. if the director or an Immediate Family member of that director is an Executive Officer or director of another company in which the Company owns an equity interest, and the amount of the equity interest held by the Company is less than ten percent (10%) of the outstanding voting securities of the company at which the director or an Immediate Family member of that director serves as an Executive Officer or director;

3.4.2.2. if the director or an Immediate Family member of that director serves as an Executive Officer, director or trustee of a charitable organization, and the Company's annual charitable contributions to that organization (excluding contributions by the Company under any established matching gift program) are less than the lesser of \$1,000,000 or two percent (2%) of that organization's consolidated gross revenues in its most recent fiscal year; and

3.4.2.3. if the director is a current employee, or an Immediate Family member of that director is a current Executive Officer, of another company that has made payments to, or received payments from, the Company for property or services in an amount which, in any of the preceding three fiscal years, did not exceed the greater of \$1,000,000 or two percent (2%) of the consolidated gross revenues of the other company.

3.4.3. For relationships not covered by the standards contained in section 3.4.2 above, the determination of whether or not the relationship is material, and therefore whether the director is independent, shall be made by the directors who satisfy the independence standards set forth in sections 3.4.1 and 3.4.2 above.

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3.5. The Board may determine that a director who has a relationship that exceeds the limits described in section 3.4.2 above is nonetheless independent, so long as such relationship is not otherwise described in section 3.4.1 above. The basis for any such determination will be explained in the Company's next proxy statement.

### **4. Committees of the Board.**

4.1. The Board has established the following committees to assist it in discharging its responsibilities: (i) Audit; (ii) Compensation; and (iii) Governance. The current charters of the Audit, Compensation and Governance Committees are published on the Company's website, and will be mailed to stockholders upon written request. The committee chairs report the highlights of their meetings to the full Board following each meeting of the respective committees. The committees occasionally hold meetings in conjunction with the full Board. The Audit, Compensation and Governance Committees are comprised solely of independent directors in accordance with these standards and all applicable regulatory and stock exchange requirements.

### **5. The Relationship of the Board to Management.**

5.1. To enhance open communication between the Board and management, the Board's policy is to periodically invite senior executives of the Company to attend Board meetings. The Board does not expect all senior executives to attend on a regular basis.

5.2. From time to time, the Board, each of its committees and the Company may engage outside advisors to provide advice on specific issues. These advisors may also be invited to attend Board meetings. The Corporate Secretary and the Company's independent registered public accounting firm have open invitations to attend Board meetings.

5.3. The Board will meet in executive session regularly. The non-management directors will also have at least four regularly scheduled meetings a year without management present.

5.4. Board members will have complete access to the Company's management, and Board members will exercise judgment to ensure that contact with management is not distracting to the business operation of the Company. The Board and each of its committees shall have the right at any time to retain outside financial, legal or other advisors.

### **6. Management and Succession.**

6.1. The Board will review annually with the CEO management succession planning and development. There should also be available, on a continuing basis, the CEO's recommendation as to his successor should he be unexpectedly disabled.

### **7. Director Orientation and Continuing Education.**

7.1. The Company will provide new directors with materials and briefings to permit them to become familiar with the Company's business, industry and corporate governance practices. The Company will also provide, as appropriate, additional educational opportunities to directors on an ongoing basis to better enable them to perform their duties.

7.2. Directors are expected to attend training and/or education programs to the extent they would help them better understand the operations of the Company, the industry in which the Company

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operates and corporate governance best practices. The Company will reimburse its board members for the costs associated with such training and education.

### 8. Communicating with the Board.

8.1. Stockholders or other interested parties who would like to communicate directly with the Board, non-management directors or an individual director may do so by writing to the Corporate Secretary, Genesee & Wyoming Inc., 66 Field Point Road, Greenwich, Connecticut 06830, attention: the Board, non-management directors or the name of the individual director, as applicable. Communications are distributed to the Board, or to any individual director or directors as appropriate, depending on the facts and circumstances outlined in the communication. In that regard, the Board has requested that certain items that are unrelated to its duties and responsibilities should be excluded, such as:

spam;

junk mail and mass mailings;

resumes and other forms of job inquiries;

surveys; and

business solicitations or advertisements.

In addition, material that is unduly hostile, threatening, illegal or similarly unsuitable will be excluded, with the provision that any communication that is filtered out must be made available to any non-management director upon request. Any concerns relating to accounting, internal controls or auditing matters will be brought to the attention of the Audit Committee.



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PROXY

**GENESEE & WYOMING INC.**

PROXY

**Annual Meeting of Stockholders**

**to be held on Wednesday, May 28, 2008**

**This Proxy is solicited on behalf of the Board of Directors**

The undersigned hereby appoints MARK W. HASTINGS and TIMOTHY J. GALLAGHER, and each of them, proxies for the undersigned, with full power of substitution, to represent and vote as designated on the reverse side, all shares of the Class A Common Stock and all shares of the Class B Common Stock ( if any), of GENESEE & WYOMING INC. ( the Company ) held of record by the undersigned on April 1, 2008 at the Annual Meeting of Stockholders of the Company to be held at the Rye Town Hilton, 699 Westchester Avenue, Rye Brook, New York 10573, on Wednesday, May 28, 2008 at 10:00 a.m., local time, or at any adjournment or postponement thereof.

**This Proxy is solicited on behalf of the Board of Directors of the Company. This Proxy will be voted as specified by the undersigned. This Proxy revokes any prior proxy given by the undersigned. Unless authority to vote for one or more of the nominees is specifically withheld according to the instructions, a signed Proxy will be voted FOR the election of the three nominees for directors, and unless otherwise specified, FOR the other proposal listed herein and described in the accompanying Proxy Statement. The proxies, in their discretion, are authorized to vote upon such other business as may properly come before the Annual Meeting. The undersigned acknowledges receipt with this Proxy of a copy of the Notice of Annual Meeting of Stockholders and Proxy Statement dated April 21, 2008, describing more fully the proposals set forth herein.**

*(continued and to be signed and dated on reverse side)*

**Address Change/Comments (Mark the corresponding box on the reverse side)**

**p FOLD AND DETACH HERE p**

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Mark Here

**THIS PROXY WILL BE VOTED AS DIRECTED, OR IF NO DIRECTION IS INDICATED, WILL BE VOTED FOR THE PROPOSALS.**

for Address

..

Change or

Comments

PLEASE SEE REVERSE SIDE

**THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR THE ELECTION OF ALL DIRECTOR NOMINEES AND FOR PROPOSAL 2**

1. Election of Directors

2. Proposal to ratify the selection of PricewaterhouseCoopers LLP as the Company's independent registered public accounting firm for the fiscal year ending December 31, 2008

FOR AGAINST ABSTAIN

.. .. .

Nominees:

FOR WITHHELD FOR ALL

ALL ALL EXCEPT

01 Mortimer B. Fuller III

.. .. .

02 John C. Hellmann

03 Robert M. Melzer

3. In their discretion, the proxies are authorized to vote upon such other business as may properly come before the Annual Meeting.

Instructions: To withhold authority to vote for any individual nominee(s), mark For All Except and write the name(s) of the nominee(s) on the line above.

Dated: \_\_\_\_\_, 2008

\_\_\_\_\_  
Signature of Stockholder

\_\_\_\_\_  
Signature of Stockholder (if held jointly)

Please date and sign name exactly as it appears hereon. Executors, administrators, trustees, etc. should so indicate when signing. If the stockholder is a corporation, the full corporate name should be inserted and the proxy signed by an officer of the corporation, indicating his/her title.

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**WE ENCOURAGE YOU TO TAKE ADVANTAGE OF INTERNET OR TELEPHONE VOTING,  
BOTH ARE AVAILABLE 24 HOURS A DAY, 7 DAYS A WEEK.**

**Internet and telephone voting is available through 11:59 PM Eastern Time  
the day prior to the Annual meeting day.**

**Your Internet or telephone vote authorizes the named proxies to vote your shares in the same manner  
as if you marked, signed and returned your proxy card.**

<b>Internet</b>		<b>Telephone</b>
<b><a href="http://www.proxyvoting.com/gwr">http://www.proxyvoting.com/gwr</a></b>		<b>1-866-540-5760</b>
Use the internet to vote your proxy.		Use any touch-tone telephone to
Have your proxy card in hand when	<b>OR</b>	vote your proxy. Have your proxy
you access the web site.		card in hand when you call.

If you vote your proxy by Internet or by telephone, you do NOT need to mail back your proxy card.

To vote by mail, mark, sign and date your proxy card and return it in the enclosed postage-paid envelope.

Choose **MLink<sup>SM</sup>** for fast, easy and secure 24/7 online access to your future proxy materials, investment plan statements, tax documents and more. Simply log on to **Investor ServiceDirect<sup>®</sup>** at [www.lasalleshareholderservices.com/isd/](http://www.lasalleshareholderservices.com/isd/) where step-by-step instructions will prompt you through enrollment.

**You can view the Annual Report and Proxy Statement  
on the internet at [www.gwrr.com/proxy](http://www.gwrr.com/proxy)**