

PDF SOLUTIONS INC
Form 10-K/A
April 30, 2009
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UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-K/A

(Amendment No. 1)

(Mark One)

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

For the fiscal year ended December 31, 2008

or

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

For the transition period from to

000-31311

(Commission file number)

PDF SOLUTIONS, INC.

(Exact name of registrant as specified in its charter)

Delaware

25-1701361

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(State or Other Jurisdiction of
Incorporation or Organization)

(I.R.S. Employer
Identification No.)

333 West San Carlos Street, Suite 700
San Jose, California
(Address of Principal Executive Offices)

95110
(Zip Code)

(408) 280-7900

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Common Stock, \$0.00015 par value	The NASDAQ Stock Market LLC

Securities registered pursuant to Section 12(g) of the Act:

None

Indicate by check mark if the registrant is a well-known seasoned issuer (as defined in Rule 405 of the Securities Act). Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

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 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 if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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 during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

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 the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

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Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company
(Do not check if a smaller reporting company)

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

The aggregate market value of the voting stock held by non-affiliates of the registrant was approximately \$80.6 million as of June 30, 2008, the last business day of the registrant's most recently completed second quarter, based upon the closing sale price on the NASDAQ Global Market reported for such date. Shares of Common Stock held by each officer and director and by each person who owns 10% or more of the outstanding Common Stock have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

There were 26,258,240 shares of the registrant's Common Stock outstanding as of March 6, 2009.

DOCUMENTS INCORPORATED BY REFERENCE

The following documents (or parts thereof) are incorporated by reference into the following parts of this Form 10-K/A:

None.

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EXPLANATORY NOTE

This Amendment No. 1 (the Amendment) to the Annual Report on Form 10-K for PDF Solutions, Inc. (the Company) for the year ended December 31, 2008 is being filed to provide information in Part III that was previously incorporated by reference from the Company's anticipated proxy statement for the 2009 annual meeting of stockholders, which was expected to be held in May 2009. The Company has delayed the date of the 2009 annual meeting, and as a result, has amended the original Form 10-K filed by the Company with the Securities and Exchange Commission on March 16, 2009 (the Original 10-K) to include the required disclosures in Part III. This Amendment should be read in conjunction with the Original 10-K and the Company's other filings made with the Securities and Exchange Commission. This Amendment does not have any effect on the reported net income, cash flows or stockholders' equity of the Company. Except as otherwise expressly stated herein, this Amendment does not reflect events occurring after the filing of the Original 10-K, or modify or update any other parts or exhibits to the Original 10-K and those unaffected parts or exhibits are not included in this Amendment.

FORWARD-LOOKING STATEMENTS

This Amendment includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 (the Securities Act) and Section 21E of the Securities Exchange Act of 1934, as amended (the Exchange Act). Our actual results could differ materially from those projected in the forward-looking statements as a result of a number of factors, risks and uncertainties discussed in this Amendment. The words may, will, anticipate, continue, could, projected, expects, believes, intends, and assumes, the negative of these terms and similar words used to identify forward-looking statements. All forward-looking statements and information included herein is given as of the filing date of this Amendment with the Securities and Exchange Commission and based on information available to us at the time of this report and future events or circumstances could differ significantly from these forward-looking statements. Unless required by law, we undertake no obligation to update publicly any such forward-looking statements.

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The names of our directors who serve on the Company's Board of Directors (the Board), their ages as of March 31, 2009 and other information about them are set forth below:

Name	Position	Age
Thomas Caulfield, Ph.D	Director	50
R. Stephen Heinrichs	Director	62
John K. Kibarian, Ph.D.	Chief Executive Officer, President and Director	45
Lucio L. Lanza	Chairman of the Board	64
Kimon Michaels, Ph.D.	Vice President, Design For Manufacturability and Director	43
Albert Y.C. Yu, Ph.D.	Director	68

Thomas Caulfield, Ph.D., has served as a director of the Company since September 2006. Dr. Caulfield, who has been appointed Chairman of the Nominating Committee, currently serves as Executive Vice President of Sales, Marketing & Customer Satisfaction for Novellus Systems Inc. Prior to joining Novellus in October 2005, Dr. Caulfield had been employed at IBM for 16 years, serving in several executive management positions. Most recently he served as Vice President of 300MM Semiconductor Operations and was responsible for IBM's premiere semiconductor facility in East Fishkill, New York. Prior to joining IBM, Dr. Caulfield worked at Philips Laboratory as a senior member of the research staff and began his working career at Columbia University. Dr. Caulfield received a B.S. in Physics from St. Lawrence University and a B.S., M.S., and a Ph.D in Materials Science/Metallurgy from Columbia University.

R. Stephen Heinrichs has served as a director of the Company since August 2005 and as the Lead Independent Director since June 2007. Mr. Heinrichs, who has been appointed Chairman of the Audit and Corporate Governance Committee, currently is a private investor and serves on a number of private company boards of directors. Mr. Heinrichs brings over 30 years of experience in finance and operations through positions held in public and private companies, including most recently, before his retirement in 2001, as Chief Financial Officer of Avistar Communications Corporation, a publicly-held video communications company he co-founded and for which he continues to serve as a director on the board of directors. From January 2003, until the company was acquired in 2005, Mr. Heinrichs was also a member of the board of directors of Artisan Components and was its audit committee chairman. Mr. Heinrichs received a B.S. in Accounting from California State University Fresno and is a Certified Public Accountant.

John K. Kibarian, Ph.D., one of our co-founders, has served as President of the Company since November 1991 and as our Chief Executive Officer since July 2000. Dr. Kibarian has served as a director of the Company since December 1992. Dr. Kibarian received a B.S. in Electrical Engineering, an M.S. E.C.E. and a Ph.D. E.C.E. from Carnegie Mellon University.

Lucio L. Lanza has served as the Chairman of the Board since April 2004 and as a director of the Company since November 1995. Mr. Lanza is currently the managing director of Lanza techVentures, an early stage venture capital and investment firm, which he founded in January 2001, and a private investor and serves on a number of private company boards of directors. From 1990 to December 2000, Mr. Lanza served as partner of U.S. Venture Partners, a venture capital firm. Mr. Lanza served as chairman of the board of directors of Artisan Components, Inc.,

acquired by ARM Holdings PLC, a semiconductor intellectual property

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company, from November 1997 until December 2004 and as a director of that company since March 1996. Mr. Lanza has served as a director of ARM Holdings, PLC since December 2004. Mr. Lanza received a doctorate in electronic engineering from Politecnico of Milano.

Kimon Michaels, Ph.D., one of our co-founders, has served in vice presidential capacities for the Company since March 1993 including currently as Vice President, Design for Manufacturability, and as a director of the Company since November 1995. He also served as Chief Financial Officer from November 1995 to July 1998. Dr. Michaels received a B.S. in Electrical Engineering, an M.S. E.C.E. and a Ph.D. E.C.E. from Carnegie Mellon University.

Albert Y.C. Yu, Ph.D., has served as a director of the Company since August 2005. Dr. Yu, who has been appointed Chairman of the Compensation Committee, currently is active in private venture capital investing and serves the board of directors of several high technology companies. Previously, Dr. Yu had been employed with Intel Corporation for almost 30 years until his retirement in 2002. At Intel, he held numerous technical and executive management positions, including Senior Vice President and a member of the Corporate Management Committee, with responsibilities for corporate strategy, microprocessors, chipsets, and software. Dr. Yu received a B.S. from the California Institute of Technology, and an M.S. and Ph.D. from Stanford University, all in electrical engineering.

The Company's amended and restated certificate of incorporation provides that directors shall be divided into three classes, with each class serving for staggered, three-year terms. Pursuant to the Company's amended and restated bylaws, the Board has set the number of directors at seven, consisting of three Class I directors, two Class II directors, and two Class III directors. We currently only have one Class III director; the Board has not appointed a successor following Susan H. Billat's resignation from the Board on August 4, 2008. The term of office for the Class I directors will expire at the annual meeting of the stockholders following the fiscal year ended December 31, 2010; the term of office for the Class II directors will expire at the annual meeting of the stockholders to be held in 2009; and the term of office for the Class III director will expire at the annual meeting of the stockholders following the fiscal year ended December 31, 2009. The terms of the directors, and the members and chairs of each of the committees of the Board, are identified in the following table:

Director	Nominating Committee	Compensation Committee	Audit and Corporate Governance Committee	Special Options Committee	Strategic Committee
John K. Kibarian, Ph.D.(3)				X	X
Lucio L. Lanza*(2)			X		X
Kimon Michaels, Ph.D.(2)					
Thomas Caulfield, Ph.D.(1)	Chair	X	X		
Albert Y.C. Yu, Ph.D.(1)	X	Chair			
R. Stephen Heinrichs(1)	X	X	Chair		X

* Chairman of the Board

(1) Class I Director

(2) Class II Director

(3) Class III Director

SECTION 16(A) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

Section 16(a) of the Exchange Act requires our directors, our executive officers and persons who own more than 10% of the common stock (collectively, the Reporting Persons) to file initial reports of ownership and changes in ownership of our common stock. Reporting Persons are required by SEC regulations to furnish us with copies of all Section 16(a) reports they file. To our knowledge, based

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solely on our review of the copies of such reports received or written representations from certain Reporting Persons that no other reports were required, we believe that during the fiscal year ended December 31, 2008, all Reporting Persons complied with all applicable filing requirements under Section 16(a) of the Exchange Act.

CORPORATE GOVERNANCE

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The Company provides information on its website about its corporate governance policies, including the Company's Code of Ethics, which applies to the Company's President, Chief Executive Officer, Chief Financial Officer and Vice President, Finance and charters for the committees of the Board. These materials can be found at www.pdf.com under the Governance link on the Investor tab.

AUDIT AND CORPORATE GOVERNANCE COMMITTEE

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We renamed our Audit Committee of the Board of Directors the Audit and Corporate Governance Committee of the Board of Directors, effective as of February 3, 2009, and, in conjunction with the renaming of the committee, we adopted a revised charter for the committee to reflect its corporate governance-related duties. The Audit and Corporate Governance Committee is a separately-designated committee established in accordance with Section 3(a)(58)(A) of the Exchange Act.

The Audit and Corporate Governance committee is comprised of three independent directors within the meaning of the rules of the SEC and NASDAQ Marketplace Rules: Dr. Caulfield, Mr. Heinrichs, and Mr. Lanza. Mr. Heinrichs serves as the Chairman of the Audit and Corporate Governance committee. The functions of the Audit and Corporate Governance Committee include: recommending the engagement of the independent registered public accounting firm; monitoring the effectiveness of our internal and external audit efforts; monitoring and assessing the effectiveness of our financial and accounting organization and the quality of our system of internal accounting controls; and overseeing all aspects of the Company's corporate governance functions on behalf of the Board and make recommendations on corporate governance issues. The Sarbanes-Oxley Act of 2002 and rules adopted by the SEC require us to disclose whether the Audit and Corporate Governance Committee includes at least one member who is an audit committee financial expert within the meaning of such Act and rules. The Board has determined that R. Stephen Heinrichs qualifies as its audit committee financial expert. The Board believes that Mr. Heinrichs qualifies as such an expert in light of his more than 30 years experience in finance and operations, holding various positions in public and private companies including acting as the Chief Financial Officer of Avistar Communications Corporation and serving on the board of directors and as the audit committee chairman of Artisan Components, acquired by ARM Holdings PLC. Mr. Heinrichs received a B.S. in Accounting from California State University Fresno and is a Certified Public Accountant. As a result of such background and experience, the Board believes that Mr. Heinrichs possesses: an understanding of generally accepted accounting principles and financial statements; the ability to assess the general application of such principles in connection with accounting estimates, accruals and reserves; experience analyzing and evaluating financial statements that present a breadth and level of complexity of accounting issues generally comparable to those of the Company; an understanding of internal control over financial reporting; and an understanding of Audit and Corporate Governance Committee functions.

ITEM 11. EXECUTIVE COMPENSATION.

COMPENSATION DISCUSSION AND ANALYSIS

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We maintain an executive compensation program for our Named Executive Officers comprised of fixed and performance-variable elements. The individuals listed in the Summary Compensation Table in this Amendment are referred to as the Named Executive Officers. The design and operation of our

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executive compensation program reflect the following objectives, established by our Compensation Committee with input from our Board and other management team members:

- to recruit and retain talented leadership;
- to implement measurable performance targets;
- to tie executive compensation with stockholder value;
- to emphasize performance-based compensation that is progressively weighted with seniority level; and
- to maintain an executive compensation program that encourages our Named Executive Officers to adhere to high ethical standards.

There are four main elements of each Named Executive Officer's total compensation that address and fulfill these objectives. These elements, described in more detail below, are:

- base salary;
- performance bonus;
- long-term equity incentives; and
- perquisites, health and welfare benefits and other compensation.

The compensation that each Named Executive Officer receives is a combination of these elements. The Company has chosen these elements because they align the interests of our stockholders with those of our Named Executive Officers by focusing on compensation that includes pay that links individual performance to the Company's performance, short-term and long-term performance goals, equity-based benefits that promote an ownership mentality with the Company, and benefits that ensure healthy and productive employees.

How Our Executives Compensation is Determined

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Our Compensation Committee develops, reviews and approves each element of compensation for our Company as a whole and for each of our Named Executive Officers. The Compensation Committee also regularly assesses the effectiveness and competitiveness of the program and the elements that we use to determine compensation.

In the first quarter of each year, the Compensation Committee reviews the previous year's performance of each of our Named Executive Officers. In connection with this review, the Compensation Committee reviews and adjusts, as appropriate, annual base salaries for our Named Executive Officers, determines their discretionary incentive bonuses based on their prior year's performance and reviews their total compensation against market data. The Compensation Committee also, on occasion, meets with our Chief Executive Officer to obtain recommendations with respect to the Company's compensation programs and practices generally. The Compensation Committee considers, but is not bound to accept, management's recommendations with respect to Named Executive Officer compensation.

The Compensation Committee discusses our Chief Executive Officer's compensation package with him, but makes decisions with respect to his compensation without him present. The Compensation Committee has the ultimate authority to make decisions with respect to the compensation of our Named Executive Officers.

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In making compensation decisions, it has been the practice of the Compensation Committee to review the historical levels of each element of a Named Executive Officer's total compensation and to compare each element with that of other named executive officers in an appropriate market comparison group, which includes other comparable high-technology companies within our industry of similar size in terms of revenue and market capitalization. In prior years, the comparison of each Named Executive Officer's compensation to market compensation data has been prepared by our internal human resources staff with the assistance of an external compensation consultant. Our staff refers to, among other things, market data obtained from both Radford High-Tech Executive Surveys and proxy data from peer companies. This data has then been presented to our Chief Executive Officer and the Compensation Committee in accordance with the process described above.

Even though the Compensation Committee reviews market compensation data, we do not believe that it is appropriate to establish compensation levels based solely on benchmarking. Our Compensation Committee relies upon the judgment of its members in making compensation decisions, after reviewing the performance of the Company and carefully evaluating a Named Executive Officer's performance during the year against established goals, leadership qualities, operational performance, business responsibilities, career with the Company, current compensation arrangements, and long-term potential to enhance stockholder value. While competitive market compensation paid by other companies is one of the many factors that the Compensation Committee considers in assessing the reasonableness of compensation, the Compensation Committee does not attempt to maintain a certain target percentile within a peer group or otherwise rely entirely on that data to determine Named Executive Officer compensation. Instead, the Compensation Committee incorporates flexibility into our compensation programs and in the assessment process to respond to and adjust for the evolving business environment. We strive to achieve an appropriate mix between equity incentive awards and cash payments in order to meet our objectives, however we do not rigidly apply any particular apportionment goal and it does not control our compensation decisions. Our mix of compensation elements is designed to reward recent results and motivate long-term performance through a combination of cash and equity incentive awards. We believe the most important indicator of whether our compensation objectives are being met is our ability to motivate our Named Executive Officers to deliver superior performance and to retain them to continue their careers with the Company on a cost-effective basis.

Base Salaries

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In general, base salaries for our Named Executive Officers are initially established through arms-length negotiation at the time the executive is hired, taking into account such executive's qualifications, experience, prior salary and competitive salary information for companies that are comparable to ours. Base salaries of our Named Executive Officers are reviewed annually and adjustments to base salaries are based on the scope of an executive's responsibilities, individual contribution, prior experience and sustained performance. Decisions regarding salary increases take into account the Named Executive Officer's current salary and the amounts paid to the Named Executive Officer's peers outside the company. In addition to considering the competitive pay practices of other companies, we also consider the amounts paid to a Named Executive Officer's peers inside the Company by conducting an internal analysis which compares the pay of each Named Executive Officer to other members of the management team. Base salaries are also reviewed in the case of promotions or other significant changes in responsibility. Base salaries are not automatically increased if the Compensation Committee believes that other elements of compensation are more appropriate in light of our stated objectives. This strategy is consistent with our intent of offering compensation that is both cost-effective and contingent on the achievement of performance objectives.

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In the first quarter of 2008, the Compensation Committee reviewed the base salaries for all of the Named Executive Officers employed by us at that time and established the base salaries to be in effect during fiscal year 2008. These base salaries were set based on the Compensation Committee's analysis of the foregoing factors. Pursuant to this determination, the base salary of Mr. Hartgring was increased to \$240,000 in February 2008 and the base salaries of all of our other Named Executive Officers remained the same. The actual base salaries paid to all of our Named Executive Officers for 2008 are set forth in the Summary Compensation Table below.

Performance Bonuses

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It is the Compensation Committee's objective to ensure that performance bonuses made to the Named Executive Officers are tied to the Company's overall financial performance and stockholder value. At the beginning of each fiscal year, the Board establishes annual financial goals for the Company to meet by the end of the fiscal year. Additionally, at the end of each fiscal quarter, the Board establishes specific numbers-based financial targets for the next quarter. At the end of each fiscal year, the Compensation Committee determines, based on the financial performance of the Company for the fiscal year, whether to establish a performance bonus pool and, if so, the size of such performance bonus pool. If a performance bonus pool has been created, then the Compensation Committee evaluates each Named Executive Officer's level of performance and contribution toward the Company's overall financial performance and determines whether to award a bonus to each Named Executive Officer and the size of such bonus. This structuring of discretionary performance bonuses based on a pay-for-performance method motivates and rewards the Named Executive Officers for their contributions to strong annual business performance by making a substantial portion of their total cash compensation received variable and dependent upon the Company's annual financial performance, as determined at the discretion of the Compensation Committee.

In fiscal year 2008, the primary financial performance measures for funding the performance bonus pool consisted of total revenue (determined in accordance with generally accepted accounting principles in the United States of America, or GAAP), non-GAAP net income and non-GAAP net income per share. In addition, the Company also looked at certain non-GAAP financial measures that exclude the effects of the following: stock-based compensation expense, amortization of acquired technology and intangible assets, restructuring charges, impairment of goodwill and certain intangible assets, and their related income tax effects. The Company's management believes that these non-GAAP financial measures provide a useful supplemental analysis of the Company's ongoing operations in light of the fact that none of these categories of expense has a current effect on the future uses of cash (with the exception of restructuring charges) nor do they have value with regards to the generation of current or future revenues. The Company believes that concurrently evaluating both GAAP and non-GAAP data provides valuable supplemental information on its financial operating results, allows the Company to assess its profitability and performance, and provides an appropriate basis for analyzing whether and to what extent to fund the executive performance bonus pool.

Although management uses these non-GAAP financial measures internally to measure profitability and performance, these non-GAAP results are not considered an alternative to, or a substitute for, GAAP financial information, and may be different from similarly titled non-GAAP measures used by other companies. In particular, these non-GAAP financial measures are not a substitute for GAAP measures of income as a measure of performance, or to cash flows from operating, investing and financing activities as a measure of liquidity. When the Company presents its financial results to investors, we provide a reconciliation of these non-GAAP financial measures to the comparable GAAP financial measures.

After completing the review discussed above, the Compensation Committee decided not to establish a performance bonus pool for 2008.

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Long-Term Equity Incentives

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The goals of our long-term, equity-based incentive awards are to align the interests of our Named Executive Officers with the interests of our stockholders and to provide each Named Executive Officer with an incentive to manage the Company from the perspective of an owner with an equity stake in the business. Because vesting is based on continued service, our equity-based incentives also facilitate the retention of our Named Executive Officers through the vesting period of the awards. In determining the size of the long-term equity incentives to be awarded to our Named Executive Officers, we take into account a number of internal factors, such as the relative job scope, the value of existing long-term incentive awards, individual performance history, prior contributions to the Company, the size of prior grants and competitive market data. Based upon these factors, the Compensation Committee determines the size of the long-term equity incentives at levels it considers appropriate to create a meaningful opportunity for reward predicated on the creation of long-term stockholder value.

To reward and retain our Named Executive Officers in a manner that best aligns employees' interests with stockholders' interests, we use stock options as the primary incentive vehicle for long-term compensation opportunities. We believe that issuing stock options is an effective tool to meet one of the objectives of our compensation program by increasing long-term stockholder value through the tying of the value of the stock options to our future financial performance. Because stock option recipients are only able to profit from stock options if our stock price increases relative to the stock option's exercise price, we believe that stock options provide meaningful incentives to achieve an increase in the overall value of our stock over time.

Consistent with the process in place in prior years, annual grants of options to the Named Executive Officers are typically approved by the Compensation Committee during the fourth quarter of the year. While the vast majority of stock option awards to our Named Executive Officers have been made pursuant to this annual process, the Compensation Committee retains the discretion to make stock option awards to Named Executive Officers at other times, including in connection with the hiring of a Named Executive Officer, for retention purposes or for other circumstances recommended by management or the Compensation Committee.

Consistent with the practice for all of our employees, the exercise price of each stock option grant made to a Named Executive Officer is the fair market value of the Company's common stock on the grant date, which our equity incentive plans determine to be the closing price of our common stock on the NASDAQ Global Market on the date of grant. Except as otherwise described in this Form 10-K/A, stock option awards to our Named Executive Officers typically vest over a four-year period as follows: 25% of the shares underlying the option vest on the first anniversary of the date of grant and the remainder of the shares underlying the option vest in equal monthly installments over the remaining 36 months thereafter. We do not have any security ownership requirements for our Named Executive Officers.

There were no stock option grants made to our Named Executive Officers in 2008. However, in an effort to reduce the overhang of outstanding stock options and to incentivize and retain individuals providing services to the Company and its subsidiaries, on June 10, 2008, the Company offered each holder of outstanding Company stock options with exercise prices equal to or greater than \$10.00 per share the right to tender such stock options for cancellation in exchange for restricted stock rights granted under the Company's 2001 Stock Plan based upon a 4.2 stock option shares to 1.0 restricted stock right exchange ratio. The offer included our Named Executive Officers. Pursuant to the tender offer, restricted stock rights received in exchange for cancelled options would be subject to vesting schedules ranging from 15 months to 51 months from the date of grant of the restricted stock rights (which schedule applied would depend on when the stock options that would be cancelled in exchange for the restricted stock rights were originally granted). All of our Named Executive Officers elected to participate in the offer. In

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deciding whether to make the offer, our Board considered a variety of alternatives to address the issues of the stock option overhang and the significant number of out-of-the-money options. Ultimately, our Board determined that, by exchanging stock options according to the terms of the offer, the Company would reduce the number of shares of stock subject to equity awards, thereby reducing potential dilution to our stockholders. Additionally, the Board determined that some option holders could benefit from the opportunity to choose between what we believe is the more certain benefit associated with restricted stock rights and the potentially more valuable, though less certain, benefit those holders may realize by retaining their stock options. By providing for the grant of replacement awards consisting of restricted stock rights rather than new at-the-money stock options, the Board also sought to strengthen the Company's equity-based retention incentives while further aligning our existing equity compensation programs with our overall compensation philosophy.

Perquisites, Health and Welfare Benefits and Other Compensation

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The establishment of competitive benefit packages for our Named Executive Officers is an important factor in attracting and retaining highly qualified personnel. Our Named Executive Officers are eligible to participate in all of our employee benefit plans, including medical, dental, vision, group life and disability insurance, in each case on the same basis as other employees. We believe that these health and welfare benefits help ensure that the company has a productive and focused workforce through reliable and competitive health and other benefits.

We do not generally provide significant perquisites or personal benefits to our Named Executive Officers.

Tax Deductibility of Executive Compensation and Accounting Policies