

CHEESECAKE FACTORY INCORPORATED

Form DFAN14A

May 07, 2003

SCHEDULE 14A
 SCHEDULE 14 INFORMATION
 Proxy Statement Pursuant to Section 14(a) of the Securities
 Exchange Act of 1934
 Filed by the Registrant []
 Filed by a Party other than the Registrant [x]
 Check the appropriate box:
 [] Preliminary Proxy Statement
 [] Definitive Proxy Statement
 [] Definitive Additional Materials
 [X] Soliciting Material Pursuant to Section
 240.14a-11(c) or Section 240.14a-12
 Name of Registrant as Specified in Its Charter:
 The Cheesecake Factory Incorporated
 Name of Person(s) Filing Proxy Statement:
 Culinary Workers Union, Local 226
 Payment of Filing Fee (check the appropriate box)
 [] \$125 per Exchange Act Rules 0-11(c) (1) (ii),
 14a-6(i) (1), or 14a-6(j) (2).

[Culinary Workers Local 226
 1630 S. Commerce St.
 Las Vegas NV]

Dear Fellow Cheesecake Factory Shareholder:

We are writing you to urge you to vote FOR our six shareholder proposals seeking reform of The Cheesecake Factory's stock option and corporate governance policies. The proposals will be voted on by shareholders at The Cheesecake Factory's May 13, 2003 annual meeting. The proposals are 2 through 7 on the Company's white proxy card, and 2 through 7 on our blue card. We urge you to vote FOR our proposals on both proxy cards.

ISS and New York State Common Are Supporting Our Proposals
 Institutional Shareholder Services (ISS) - the leading provider of proxy voting and corporate governance services - and the New York State Common Retirement Fund - which oversees \$114 billion in state retirement assets - have announced that they will support the Culinary Union's shareholder proposals. The New York State Common Retirement owns approximately 900,000 shares of The Cheesecake Factory, or approximately 1.8% of the outstanding shares of the company. Below are summaries of the proposals and recommendations of ISS and the New York State Common Retirement Fund:

| | | | |
|--|---|-----|--------------|
| Proposals on Culinary Management Proxy Card | New York State Common Retirement Fund | ISS | ISS Comments |
|--|---|-----|--------------|

| | | | |
|-----------------------|--|----------|--|
| 1. Elect Directors | | WITHHOLD | "We recommend shareholders WITHHOLD votes from [the directors] for |
|-----------------------|--|----------|--|

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| | | | |
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| | | | implementing a dead-hand poison pill." |
| 2. Submit Option Plan to a Vote | FOR | FOR | "ISS believes that all stock-based incentive plans should be put to a shareholder vote." |
| 3. Expense Stock Options | FOR | FOR | "We believe that Stock options should be expensed along with other forms of compensation." |
| 4. Submit Poison Pill to Vote | FOR | FOR | "We agree with the proponent that the current pill should be redeemed and any new pill be put to a shareholder vote." |
| 5. Declassify the Board | FOR | FOR | "The ability to elect directors is the single most important use of the shareholder franchise, and all directors should be accountable on an annual basis." |
| 6. Separate Chairman and CEO | FOR | FOR | "The company has not designated a lead director, has not established governance guidelines, has not established a committee of outside directors to annually review the CEO's performance, nor are the committee chairpersons nominated by independent directors. Absent an offsetting governance structure, we believe |

that a company of this size should be able to find two qualified people willing to serve in the separate positions of chairman and CEO."

7. Remove

Supermajority

Vote Requirement FOR FOR

Supermajority vote requirements generally serve to lock in provisions that are harmful to shareholders. Requiring approval by more than a simple majority of voting shares may entrench management by preventing action that may benefit shareholders."

REASONS TO SUPPORT OUR PROPOSALS:

* In our view Cheesecake Factory has awarded an excessive amount of stock options to managers at the company, leading to significant shareholder dilution. From 1995 through 2002 more than 7.6 million stock options have been exercised by managers -- or over 15% of the outstanding shares in 2002. There is the potential of an additional 17% of the company's shares being introduced into the market through the exercise of stock options, further diluting shareholders.

* We feel Cheesecake Factory has been able to award such a large number of stock options because the company doesn't account for the cost of the options in the income statement, and because the company has not subjected its largest stock option plan to a shareholder vote. By voting for our two proposals recommending that the Company begin expensing stock options and subject all stock option plans to shareholder approval, shareholders will have a better understanding of the costs of the Cheesecake Factory's stock option plan, and the ability to approve all stock option plans that dilute shareholders.

* We believe the Cheesecake Factory board of directors has elected to insulate and entrench themselves behind an array of anti-takeover devices that restrict shareholder rights. By voting for our corporate governance proposals, Cheesecake shareholders can send a strong message that it is time for the company to modernize its corporate governance. If the recent corporate scandals are any guide, good corporate governance is vital to protecting shareholder value.

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The Culinary Workers Union and affiliated benefit plans own approximately 30,000 shares of The Cheesecake Factory. If you have any questions, please call 702-387-7005.