

NATUS MEDICAL INC
Form DEF 14A
April 29, 2005
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SCHEDULE 14A

(RULE 14A-101)

INFORMATION REQUIRED IN PROXY STATEMENT

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

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NATUS MEDICAL INCORPORATED

(Name of Registrant as Specified In Its Charter)

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

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NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

June 9, 2005

9:30 a.m.

TO OUR STOCKHOLDERS:

The 2005 Annual Meeting of Stockholders of Natus Medical Incorporated will be held on, Thursday, June 9, 2005, at 9:30 a.m. local time at our headquarters, located at 1501 Industrial Road, San Carlos, California 94070 for the following purposes:

1. To elect two directors to serve for a term of three years;
2. To ratify the appointment of BDO Seidman, LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2005;
3. To approve the Amended and Restated 2000 Stock Awards Plan; and
4. To transact such other business as may properly come before the Annual Meeting, including any motion to adjourn to a later date to permit further solicitation of proxies.

The foregoing items of business are more fully described in the Proxy Statement accompanying this Notice. Stockholders who owned shares of our stock at the close of business on Friday, April 15, 2005 are entitled to attend and vote at the meeting. A complete list of these stockholders will be available during normal business hours for ten days prior to the meeting at our headquarters located at 1501 Industrial Road, San Carlos, California 94070. A stockholder may examine the list for any legally valid purpose related to the meeting. The list also will be available during the annual meeting for inspection by any stockholder present at the meeting.

Whether or not you plan to attend the annual meeting, please complete, date, sign and return the enclosed proxy card as promptly as possible in the accompanying reply envelope.

For the Board of Directors of

NATUS MEDICAL INCORPORATED

/s/ James B. Hawkins

JAMES B. HAWKINS

President and Chief Executive Officer

San Carlos, California

April 29, 2005

YOUR VOTE IS IMPORTANT

PLEASE SUBMIT YOUR PROXY AS PROMPTLY AS POSSIBLE BY FOLLOWING THE INSTRUCTIONS ON THE ENCLOSED PROXY CARD.

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NATUS MEDICAL INCORPORATED

**PROXY STATEMENT FOR THE
2005 ANNUAL MEETING OF STOCKHOLDERS**

GENERAL INFORMATION

The Board of Directors of Natus Medical Incorporated, a Delaware corporation, is soliciting the enclosed proxy from you. The proxy will be used at our 2005 Annual Meeting of Stockholders to be held at 9:30 a.m. local time on Thursday, June 9, 2005 at our headquarters, located at 1501 Industrial Road, San Carlos, California 94070. Our internet website is www.natus.com.

This proxy statement contains important information regarding our annual meeting. Specifically, it identifies the proposals on which you are being asked to vote, provides information you may find useful in determining how to vote, and describes the voting procedures.

We use several abbreviations in this proxy statement. We may refer to our company as Natus. The term proxy materials includes this proxy statement, as well as the enclosed proxy card and our Annual Report on Form 10-K for the year ended December 31, 2004.

We are sending the proxy materials on or about May 5, 2005 to all our stockholders as of the record date, April 15, 2005. Stockholders who owned Natus common stock at the close of business on April 15, 2005 are entitled to attend and vote at the annual meeting. On the record date, there were 17,181,812 shares of our common stock issued and outstanding. We had 194 stockholders of record as of the record date and believe that our common stock is held by approximately 3,600 beneficial owners.

Voting Procedures

As a stockholder, you have the right to vote on certain business matters affecting our Company. The three proposals that will be presented at the annual meeting, and upon which you are being asked to vote, are discussed in the sections entitled Proposal No. 1, Proposal No. 2, and Proposal No. 3. Each share of Natus common stock you own entitles you to one vote. The enclosed proxy card indicates the number of shares you own. You can vote by returning the enclosed proxy card and proxy in the envelope provided or by attending the annual meeting.

Every stockholder voting on Proposal No. 1 to elect two directors may cumulate such stockholder's votes and give to one of the candidates to be elected a number of votes equal to the number of directors to be elected multiplied by the number of votes to which such stockholder is entitled, or distribute the stockholder's votes on the same principle among as many candidates as the stockholder thinks fit, provided that votes cannot be

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cast for more than the number of directors to be elected. No stockholder shall be entitled to cumulate votes for a candidate unless such candidate's name has been placed in nomination prior to the voting in accordance with our bylaws and the stockholder, or any other stockholder, has given notice at the annual meeting, prior to the voting, of the intention to cumulate the stockholder's votes. The candidates receiving the highest number of votes, up to the number of directors to be elected, shall be elected.

Methods of Voting

Voting by Mail. By signing and returning the proxy card according to the enclosed instructions, you are enabling our chief executive officer and our vice president finance, who are named on the proxy card as proxies or attorneys-in-fact, to vote your shares at the meeting in the manner you indicate. We encourage you to sign and return the proxy card even if you plan to attend the meeting. In this way, your shares will be voted even if you are unable to attend the meeting.

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Your shares will be voted in accordance with the instructions you indicate on the proxy card. If you submit the proxy card, but do not indicate your voting instructions, your shares will be voted as follows:

FOR the election of the nominees for directors identified in Proposal No. 1;

FOR the ratification of the appointment of BDO Seidman, LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2005, and

FOR the adoption of the Amended and Restated 2000 Stock Awards Plan.

If you received more than one proxy card, it is an indication that your shares are held in multiple accounts. Please submit your proxies according to the instructions on each proxy card to ensure that all of your shares are voted. We encourage you to consolidate multiple accounts by contacting your broker, if you hold your shares through a brokerage account, or otherwise through our transfer agent, EquiServe Trust Company, N.A. at (781) 575-3120. Please note that shares held in certain types of accounts cannot be consolidated with other accounts. For example, retirement and non-retirement accounts generally cannot be consolidated.

Voting in Person at the Meeting. If you plan to attend the annual meeting and vote in person, we will provide you with a ballot at the meeting. If your shares are registered directly in your name, you are considered the stockholder of record and you have the right to vote in person at the meeting. If your shares are held in the name of your broker or other nominee, you are considered the beneficial owner of shares held in your name, and if you wish to vote at the meeting, you will need to bring with you to the annual meeting a legal proxy from your broker or other nominee authorizing you to vote these shares.

Revoking Your Proxy

You may revoke your proxy at any time before it is voted at the annual meeting. In order to do this, you may either:

sign and return another proxy bearing a later date;

provide written notice of the revocation to James B. Hawkins, our President and Chief Executive Officer, prior to the time we take the vote at the annual meeting; or

attend the meeting and vote in person.

Quorum Requirement

A quorum, which is a majority of our outstanding shares as of the record date, must be present in order to hold the meeting and to conduct business. Your shares will be counted as being present at the meeting if you appear in person at the meeting or if you submit a properly executed

proxy card.

Votes Required for Each Proposal

The votes required and method of calculation for the proposals to be considered at the annual meeting are as follows:

Proposal No. 1 Election of Directors. The two director nominees receiving the highest number of votes, in person or by proxy, will be elected as directors. You may vote either for for the director nominees, or withhold your vote and you may cumulate your vote in the manner described in this proxy statement.

Proposal No. 2 Ratification of Appointment of Independent Registered Public Accounting Firm. Ratification of BDO Seidman, LLP as our independent registered public accounting firm will require the affirmative vote of a majority of the shares present at the annual meeting, in person or by proxy. You may vote for or against the proposal to ratify BDO Seidman LLP, as our independent registered public accounting firm, or abstain from voting.

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Proposal No. 3 Approval of Amended and Restated 2000 Stock Awards Plan. Approval of the Amended and Restated 2000 Stock Awards Plan will require the affirmative vote of a majority of the shares present at the annual meeting, in person or by proxy. You may vote for or against approval of the Amended and Restated 2000 Stock Awards Plan, or abstain from voting.

Abstentions and Broker Non-Votes

If you return a proxy card that indicates an abstention from voting in all matters, the shares represented will be counted as present for the purpose of determining a quorum, but they will not be voted on any matter at the annual meeting. Consequently, if you abstain from voting on the proposal to ratify the appointment of BDO Seidman, LLP as our independent registered public accounting firm, or on adoption of the Amended and Restated 2000 Stock Awards Plan, your abstention will have the same effect as a vote against each proposal not so voted upon.

Under the rules that govern brokers who have record ownership of shares that are held in street name for their clients, who are the beneficial owners of the shares, brokers have discretion to vote these shares on routine matters but not on non-routine matters. Thus, if you do not otherwise instruct your broker, the broker may turn in a proxy card voting your shares FOR routine matters but expressly instructing that the broker is NOT voting on non-routine matters. A broker non-vote occurs when a broker expressly instructs on a proxy card that it is not voting on a matter, whether routine or non-routine. Broker non-votes are counted for the purpose of determining the presence or absence of a quorum but are not counted for determining the number of votes cast for or against a proposal.

Proxy Solicitation Costs

We will bear the entire cost of proxy solicitation, including the preparation, assembly, printing and mailing of proxy materials. In addition, we may reimburse brokerage firms and other custodians for their reasonable out-of-pocket expenses for forwarding these proxy materials to you. We expect our transfer agent EquiServe Trust Company, N.A. to tabulate the proxies and act as inspector of the election.

Deadline for Receipt of Stockholder Proposals for Annual Shareholder Meetings

As a stockholder, you may be entitled to present proposals, including nomination of directors, for action at a forthcoming meeting if you comply with the requirements of the proxy rules established by the Securities and Exchange Commission and our bylaws. Proposals of our stockholders intended to be presented for consideration at our 2005 Annual Meeting of Stockholders must have been received by us no later than March 6, 2005, in order that they may be included in the proxy statement and form of proxy related to that meeting.

The advance notice provisions of our bylaws require that any proposal that a stockholder wishes to bring before the meeting must be submitted in writing and received by us not less than 60 days in advance of the date of our proxy statement in connection with the previous year's annual meeting. As a result, we must receive any stockholder proposal to be brought before the 2006 annual meeting, including the nomination of directors, not later than March 6, 2006. However, if the date of our annual meeting is changed by more than 30 days from the date contemplated at the time of the previous year's proxy statement, notice by a stockholder to be timely must be received a reasonable time before the solicitation is made. The advance notice must be accompanied by the information required by our bylaws. If a stockholder does not provide timely notice in accordance with our bylaws, the stockholder will not be permitted to present the proposal to the stockholders for a vote at the meeting.

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In order for proposals to be eligible for inclusion in our proxy statement and proxy card for the 2006 annual meeting pursuant to Rule 14a-8 under the Exchange Act, stockholder proposals would have to be received by us no later than January 5, 2006 and satisfy the conditions established by the Securities and Exchange Commission for stockholder proposals.

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SUMMARY OF PROPOSALS

The Board of Directors has included three proposals on the agenda for our annual meeting. The following is a brief summary of the matters to be considered and voted upon by our stockholders.

Proposal No. 1 Election of Directors

The Board of Directors is divided into three classes. Each class is elected for a term of three years, so that the term of one class of directors expires at each meeting.

The Board of Directors has nominated two persons for election as directors in the class whose term will expire in June 2008, or when their successors are elected and qualified. The nominees are: Kenneth E. Ludlum and Mark D. Michael. All of the nominees are directors and members of the class whose term expires at the meeting.

Present directors whose terms will expire in June 2006 are Doris Engibous and William M. Moore. Present directors whose terms will expire in 2007 are Robert A. Gunst and James B. Hawkins.

Our Board of Directors recommends a vote for the nominees.

Proposal No. 2 Ratification of Appointment of Independent Registered Public Accounting Firm

The second proposal is to ratify the appointment of BDO Seidman LLP, as our independent registered public accounting firm for the fiscal year ending December 31, 2005.

Our Board of Directors recommends a vote to ratify the appointment of BDO Seidman, LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2005.

Proposal No. 3 Approval of the Amended and Restated 2000 Stock Awards Plan

On March 10, 2005 the Compensation Committee recommended and the Board of Directors adopted the Amended and Restated 2000 Stock Awards Plan, subject to shareholder approval. The amendments and restatement of the plan are intended to allow the Company more flexibility in the granting of equity-based compensation to employees, directors and other service providers of the Company.

Our Board of Directors recommends a vote in favor of the Amended and Restated 2000 Stock Awards Plan.

Other Matters

Other than the proposals listed above, our Board of Directors does not intend to present any other matters to be voted on at the meeting. No other matters have been presented by others for action at the meeting in accordance with our bylaws. However, if other matters are properly presented at the meeting and you have signed and returned your proxy card, the proxy holders will have discretion to vote your shares on these matters.

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PROPOSAL No. 1

ELECTION OF DIRECTORS

General

The Board of Directors currently consists of six members and is divided into three classes. Each class is elected for a term of three years, so that the term of one class of directors expires at each meeting.

Kenneth E. Ludlum and Mark D. Michael are members of the class of directors whose terms expire in June 2005. Doris Engibous and William M. Moore are members of the class of directors whose terms expire in 2006. Robert A. Gunst and James B. Hawkins are members of the class of directors whose terms expire in 2007. All of our directors serve until their respective successors are duly elected and qualified or until their earlier resignation or removal.

Nominees

On recommendation of the Nominating and Governance Committee, the Board of Directors has nominated Kenneth E. Ludlum and Mark D. Michael for election to the Board of Directors at the annual meeting. If elected, Mr. Ludlum and Mr. Michael will serve as directors until the annual meeting of stockholders in 2008, and until their successors are elected and qualified or until their earlier resignation or removal.

Mr. Ludlum and Mr. Michael are independent within the meaning of the rules of the Securities and Exchange Commission and the corporate governance standards of The NASDAQ Stock Market. Additional information regarding Mr. Ludlum and Mr. Michael is provided below.

Unless otherwise instructed, the proxy holders will vote the proxies received by them for election of Mr. Ludlum and Mr. Michael. In the event either Mr. Ludlum or Mr. Michael is unable or declines to serve as a director at the time of the annual meeting, an event not now anticipated, it is intended that the shares represented by proxies will be voted for the election of a substitute nominated by the Board of Directors. In the event that additional persons are nominated for election as directors, the proxy holders intend to vote all proxies received by them in such a manner as will assure the election of Mr. Ludlum and Mr. Michael.

Cumulative Voting

Every stockholder voting to elect a director may cumulate such stockholder's votes and give to one of the candidates to be elected a number of votes equal to the number of directors to be elected multiplied by the number of votes to which such stockholder is entitled, or distribute the stockholder's votes on the same principle among as many candidates as the stockholder thinks fit, provided that votes cannot be cast for more than the number of directors to be elected. In their discretion, the proxy holders may, when voting for directors, cumulate the votes represented

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by the proxies received. No stockholder shall be entitled to cumulate votes unless such candidate's name has been placed in nomination prior to the voting and the stockholder, or any other stockholder, has given notice at the annual meeting, prior to the voting, of the intention to cumulate the stockholder's votes. The candidates receiving the highest number of votes, up to the number of directors to be elected, shall be elected.

Information Concerning the Nominees and Incumbent Directors

The following table sets forth, as of April 29, 2005 the name and age of the nominees and each of our other directors whose terms of office continue after the annual meeting, the principal occupation of each and the period during which each has served as a director. Information as to the stock ownership of each of our directors and all of our current executive officers as a group is set forth below under Principal Stockholders.

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Name	Age	Position(s) with Natus	Director Since
<i>Nominees for terms expiring in 2008:</i>			
Kenneth E. Ludlum	51	Director	2002
Mark D. Michael	54	Director	2004
<i>Present directors whose terms expire in 2006:</i>			
Doris Engibous	50	Director	2004
William M. Moore	56	Director	1987
<i>Present directors whose terms expire in 2007:</i>			
Robert A. Gunst	57	Chairman of the Board	2004
James B. Hawkins	49	President, Chief Executive Officer, and Director	2004

Kenneth E. Ludlum has served as a director since 2002. Mr. Ludlum currently is an investor, board member and advisor to medical companies. Mr. Ludlum was president and chief executive officer, and chairman of the board of directors, of Revivant Corporation from June 2003 until its sale to Zoll Medical Corporation in October 2004. From November 2001 to June 2003, Mr. Ludlum served as a consultant to medical and technology companies. From September 2000 to November 2001, Mr. Ludlum was the vice president international of Endovasix, Inc., a medical device company. From 1996 to 2000, Mr. Ludlum was vice president finance and administration and chief financial officer of Perclose, Inc., a medical device company. Prior to that, he was employed in investment banking at Montgomery Securities and Dean Witter Reynolds. He holds a Bachelor of Science degree in Business from Lehigh University and a Masters of Business Administration degree from Columbia University.

Mark D. Michael has served as a director since 2004. Mr. Michael currently serves as a private investor and director. Mr. Michael was senior vice president, legal, general counsel and secretary of 3Com from September 1997 through 2003. Mr. Michael joined 3Com in 1984 as counsel, was named assistant secretary in 1985, and general counsel in 1986. Prior to joining 3Com, Mr. Michael was engaged in the private practice of law with firms in Honolulu, Hawaii from 1977 to 1981 and in San Francisco from 1981 to 1984. Mr. Michael also serves as a director of Nollenberger Capital Partners, Inc. He holds a Juris Doctorate from the University of California at Los Angeles Law School and a Bachelor of Arts degree in History from Stanford University.

Doris Engibous has served as a director since 2004. Ms. Engibous has served as president and chief executive officer of GRAFTcath, an early stage medical device company, since September 2004. From 2003 to September 2004 Ms. Engibous served as a consultant and adviser to medical technology companies. Ms. Engibous served as President of Nellcor, a Tyco Healthcare Group/Tyco International, Ltd. Business from 2000 through 2003. Ms. Engibous previously served in several executive capacities at Nellcor and its successors Mallinckrodt, Inc., and Nellcor Puritan Bennett Inc., including as vice president, general manager, and global business leader, from 1986 through 2000. She holds a Bachelor of Science degree in chemical engineering from the University of Michigan.

William M. Moore has served as a director since our inception and is one of our co-founders. Since February 2004 Mr. Moore has served as a partner of Blue Line Partners, a private equity firm. From March 2003 to February 2004, Mr. Moore served as general partner of Alpine Partners, a venture capital firm. From April 1989 to May 1992, Mr. Moore served as our chief executive officer. From June 1992 to August 1997, Mr. Moore was a general partner of Alpine Partners. Mr. Moore served as chief executive officer of Metasensors, Inc., a medical device company, from August 1997 to March 2003. Mr. Moore holds a Bachelor of Science degree in Business from the University of Utah.

Robert A. Gunst has served as director since 2004 and was appointed Chairman of the Board in December 2004. Mr. Gunst is a private investor and currently serves on the Board of Directors of AmNet Mortgage, Inc. (NASDAQ: AMNT) and is the chairman of its compensation committee. Mr. Gunst was a member of the Board

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of Directors of Garden Fresh Restaurants Corp. from 1996 through its sale in March 2004, serving as Chairman of the Board from January 2003. From 1990 to 1999 he served as president and chief executive officer, and from 1986 to 1999 as director, of the Good Guys, one of the largest specialty retailers of higher-end entertainment electronics in the nation. Mr. Gunst is also a member of the Dean's Advisory Council of the Graduate School of Management at the University of California, Davis. He has a Master's Degree in Business Administration from the University of Chicago's Graduate School of Business and a Bachelor of Arts Degree in Economics from Dartmouth College.

James B. Hawkins joined Natus as president, chief executive officer and director in April 2004. Mr. Hawkins has served as a director since 2004. Prior to joining Natus, Mr. Hawkins was president, chief executive officer and a director of Invivo Corporation, a developer and manufacturer of multi-parameter vital sign monitoring equipment, and its predecessor from August 1985 through January 2004. Mr. Hawkins also served as Secretary of Invivo from July 1986 through January 2004. He earned his undergraduate degree in Business Commerce from Santa Clara University and his Masters degree in Business Administration from San Francisco State University.

There are no family relationships between any director or executive officer.

In December 2004, William New, Jr. M.D., Ph.D. resigned as a director of the Company. Dr. New had served as a director since 1989. In April 2004, Tim C. Johnson resigned as a director of the Company. Mr. Johnson had served as a director since 1986. David Nierenberg, who had been a director of the Company since 1991, did not see re-nomination for his position in June 2004, and therefore his term as a director expired at our 2004 annual meeting. Jim Bochnowski, who had served as a director of the company since 1991 resigned in early 2004. We would like to thank all of these directors for their service to the Company.

Board of Directors Recommendation

The Board of Directors has unanimously approved Kenneth E. Ludlum and Mark D. Michael as its nominees and recommends that stockholders vote FOR the election of Kenneth E. Ludlum and Mark D. Michael.

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REGISTERED PUBLIC ACCOUNTING FIRM**

In accordance with the recommendation of the Audit Committee, the Board of Directors has appointed BDO Seidman, LLP to serve as the independent registered public accounting firm of the Company for the year 2005, and that appointment is being submitted to the stockholders for ratification by majority vote.

Deloitte & Touche, LLP served as the Company's independent auditor for the fiscal year ended December 31, 2002.

On October 14, 2003 the Company appointed BDO Seidman, LLP to serve as the principal independent auditor for the year 2003 and they did so serve for 2003 and 2004. A representative of BDO Seidman, LLP is expected to attend the annual meeting. The representative will have an opportunity to make a statement if he or she desires to do so, and will be available to respond to appropriate stockholder questions.

Audit Fees

The following table presents fees for professional audit services rendered by BDO Seidman, LLP, for the audit of the Company's annual financial statements for the years ended December 31, 2004 and 2003, and fees billed for other services rendered by the firm during those periods.

	FY 2004	FY 2003
	<u> </u>	<u> </u>
Audit Services Fees (1)	\$ 230,900	\$ 96,400
Audit-Related Fees (2)	5,000	1,000
Tax Fees (3)	27,200	-0-
All Other Fees	-0-	-0-
	<u> </u>	<u> </u>
Total Fees	\$ 263,100	\$ 97,400

- Audit services fees are fees for the recurring annual audit of the Company's consolidated financial statements. Audit services fees also include review of the financial statements included in the Company's Quarterly Reports on Form 10-Q. This category also includes fees for services that generally only the principal auditor reasonably can provide to a client, such as procedures related to the audit of income tax provisions and related valuation allowances, consents and assistance with and review of documents filed with the Securities and Exchange Commission.
- Audit-related fees are fees associated with assurance and related services that are reasonably related to the performance of the audit or review of the Company's financial statements. This category includes fees for assistance in financial due diligence related to mergers and acquisitions, and consultations related to the Company's preparations to meet the requirements of Section 404 of the Sarbanes-Oxley Act of 2002.
- Tax Fees consist of the aggregate fees billed for professional services rendered for tax compliance, tax advice and tax planning. For the periods presented above, these fees included fees paid for preparation of U.S. federal and state returns and other tax consulting services.

Policy on Audit Committee Pre-Approval of Audit and Permissible Non-Audit Services of Independent Auditors

Our Audit Committee's policy is to pre-approve all audit and permissible non-audit services provided by our independent auditors. These services may include audit services, audit-related services, tax services and other services. Pre-approval is generally detailed as to the particular service or category of services and is generally subject to a specific budget. Our independent auditors and management are required to periodically report to the Audit Committee regarding the extent of services provided by our independent auditors in accordance with this pre-approval, and the fees for the services performed to date. Our Audit Committee may also pre-approve particular services on a case-by-case basis.

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Board of Directors Recommendation

The Board of Directors recommends that stockholders vote For the ratification of BDO Seidman, LLP to serve as the Company's independent registered public accounting firm for the year 2005. Proxies solicited by the Board of Directors will be voted For ratification unless a contrary vote is specified.

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PROPOSAL No. 3

APPROVAL OF THE AMENDED AND RESTATED 2000 STOCK AWARDS PLAN

In March 2005, the Board of Directors approved, the Amended and Restated 2000 Stock Awards Plan (the Restated Plan) and is asking its stockholders to approve the Restated Plan. The Restated Plan will increase our flexibility in establishing compensation programs for our employees, including our executive officers and directors by providing a broader range of stock based awards to our employees, directors and consultants.

In this discussion, we refer to the 2000 Stock Awards Plan as it exists prior to giving effect to the amendment and restatement that you are being asked to approve as the Prior Plan. The amendments to the Prior Plan contemplated by the Restated Plan are subject to approval by our stockholders and will not become effective until our stockholders approve the Restated Plan. The Restated Plan, as amended, includes the following amendments:

1. Broaden the types of equity awards available; and
2. Establishes quantitative and qualitative performance factors to be used as criteria for the award and vesting of certain types of equity awards.

Reasons for the Amendment and Restatement

Update the Plan. If approved, the amendment would update the Prior Plan by adding Restricted Stock, Stock Bonuses, Stock Appreciation Rights, and Restricted Stock Units to the types of awards available for issuance.

FASB Changes. The Financial Accounting Standards Board has implemented new rules governing stock option accounting. These rules mitigate certain advantages relative to the effect on reported operating results that pertained to awards of stock options as compared to other types of equity awards. With these changes, other forms of equity compensation may be as attractive as stock options. We believe that the amendments are in the best interests of the Company to respond to these types of changes by altering the nature of our own equity compensation programs to ensure that we have the necessary flexibility to compete effectively to attract and retain the personnel we need to operate our business.

Summary of the Amended and Restated 2000 Stock Awards Plan

Below is a summary of the principal provisions of the Restated Plan, assuming approval of the amendments.

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Background. The Board adopted the Prior Plan in August 2000 to allow the Company to provide equity incentives to attract and retain the services of quality individuals, remain competitive in the industry and align the interests of the individuals eligible to participate in the Prior Plan with those of the stockholders. The Board approved the proposed amendments described above on March 10, 2005, with such amendment to be effective upon stockholder approval. The closing price of the Company's common stock on March 10, 2005 was \$8.29 and options with a weighted average exercise price of \$4.36 and covering 2,029,633 shares were outstanding on that date.

If the stockholders do not approve the Restated Plan, the Prior Plan will continue in full force and effect in its current form.

Shares Subject to the Prior Plan. An aggregate of 6,104,851 shares (assuming approval of the above amendment) of the Company's Common Stock have been reserved for issuance under the Prior Plan as of January 1, 2005. The number of shares reserved under the plan increases annually on the first day of the Company's fiscal year, currently January 1, by the lesser of: (a) 1,500,000 shares, (b) seven percent of the

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outstanding Shares of the Company as of the last day of the prior fiscal year or (c) such amount as determined by the Board of Directors. However, no more than the maximum number of shares that may be reserved under the Restated Plan may be issued pursuant to the exercise of Incentive Stock Options.

If any option granted pursuant to the Restated Plan expires or terminates for any reason without being exercised in full, or any award terminates without being issued, the unexercised shares released from such option and award will again become available for issuance under the Restated Plan.

The amendments to the Prior Plan that are effected by the Restated Plan do not change the number of shares available under the plan or the formula or related provisions for annual changes in the number of shares available.

Administration. The Board of Directors or any of its Committees appointed by the Board shall act as the administrator of the Restated Plan. Subject to the terms of the Restated Plan, the administrator determines the persons who are to receive awards, the number of shares subject to each such award and the terms, types and conditions of such awards. The administrator also has the authority to construe and interpret any of the provisions of the Restated Plan or any awards granted thereunder.

In determining whether an award should be made, and/or the vesting schedule for any such award, the administrator may impose whatever conditions to vesting that it determines to be appropriate. For example, the administrator may decide to grant an award only if the participant satisfies performance goals established by the administrator. The administrator may set performance periods and performance goals that differ from participant to participant. The administrator may choose performance goals based on either company-wide or business unit results, as deemed appropriate in light of the participant's specific responsibilities. For purposes of qualifying awards as performance-based compensation under Section 162(m), the administrator may (but is not required to) specify performance goals for the entire company and/or one of our business units. Performance goals may be based on business criteria including: net income, earnings per share, return on equity, or other financial or performance-related measures.

After the end of each performance period, a determination will be made pursuant to Section 162(m) as to the extent to which the performance goals applicable to each participant were achieved or exceeded. The actual award (if any) for each participant will be determined by the level of actual performance.

Eligibility. Employees, officers, directors, and consultants of the Company (and of any subsidiaries and affiliates) whom the Board of Directors deems to have potential to contribute to the future success of the Company (the Participants) are eligible to receive stock options, Restricted Stock, Stock Bonuses, Stock Appreciation Rights, and Restricted Stock Units under the Restated Plan. No person will be granted awards covering more than 1,000,000 shares of Stock in any one fiscal year under the Restated Plan, except that in connection with his or her initial employment, an employee may be granted an award covering an additional 500,000 Shares.

Discretionary Stock Option Awards. The Restated Plan, consistent with the provisions of the Prior Plan, permits the granting of options that are intended to qualify either as Incentive Stock Options (ISOs) or Nonqualified Stock Options (NQSOs).

ISOs may be granted only to employees.

1,208.150

1,101.676

Fourth Quarter

1,219.109

1,049.303

2015

First Quarter

1,266.373

1,154.709

Second Quarter

1,295.799

1,215.417

Third Quarter

1,273.328

1,083.907

Fourth Quarter

1,204.159

1,097.552

2016

First Quarter

1,114.028

953.715

Second Quarter

1,188.954

1,089.646

Third Quarter

1,263.438

1,139.453

Fourth Quarter

1,388.073

1,156.885

2017

First Quarter

1,413.635

1,345.598

Second Quarter

1,425.985

1,345.244

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