

TreeHouse Foods, Inc.  
Form DEF 14A  
February 27, 2007

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549  
SCHEDULE 14A**

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 ☐

Check the appropriate box:

☐ Preliminary Proxy Statement

☐ **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**

☒ Definitive Proxy Statement

☐ Definitive Additional Materials

☐ Soliciting Material Pursuant to §240.14a-12

**TREEHOUSE FOODS, INC.**

(Name of Registrant as Specified In Its Charter)

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

Payment of Filing Fee (Check the appropriate box):

☒ No fee required.

☐ Fee computed on table below per Exchange Act Rules 14a-6(i)(4) and 0-11.

(1) Title of each class of securities to which transaction applies:

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☐ Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

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**TREEHOUSE FOODS, INC.  
TWO WESTBROOK CORPORATE CENTER  
TOWER TWO, SUITE 1070  
WESTCHESTER, ILLINOIS 60154**

**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS  
ON APRIL 19, 2007**

You are cordially invited to attend the Annual Meeting of Stockholders of TreeHouse Foods, Inc. ( TreeHouse or the Company ) that will be held at Two Westbrook Corporate Center, First Floor, Conference Center (Link Two/Five), Westchester, Illinois 60154, on Thursday, April 19, 2007, at 9:00 a.m., local time. At the annual meeting you will be asked to vote on the following matters:

1. To elect three directors to hold office until the 2010 Annual Meeting of Stockholders;
2. To approve certain amendments to and a restatement of our 2005 Long-Term Incentive Plan which was renamed the TreeHouse Foods, Inc. Equity and Incentive Plan ;
3. To ratify the selection of Deloitte & Touche LLP as our independent registered public accounting firm for fiscal year 2007; and
4. To consider any other business that may properly come before the meeting.

The matters listed above are fully discussed in the proxy statement accompanying this notice. A copy of our 2006 Annual Report is also enclosed.

The record date for the meeting is the close of business on February 26, 2007. Only stockholders of record at that time are entitled to notice of and to vote at the meeting.

Whether or not you attend the Annual Meeting, it is important that your shares be represented and voted at the meeting. Therefore, I urge you to promptly vote and submit your proxy by phone, via the Internet, or by signing, dating, and returning the enclosed proxy card in the enclosed envelope. If you decide to attend the Annual Meeting, you will be able to vote in person, even if you have previously submitted your proxy.

Thomas E. O'Neill  
*Corporate Secretary*

February 27, 2007

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**TREEHOUSE FOODS, INC.  
TWO WESTBROOK CORPORATE CENTER  
TOWER TWO, SUITE 1070  
WESTCHESTER, ILLINOIS 60154**

**PROXY STATEMENT**

We are furnishing this proxy statement in connection with the solicitation of proxies by the Board of Directors of TreeHouse Foods, Inc. ( TreeHouse or the Company ) for use in voting at the Annual Meeting of Stockholders (the Meeting ). The meeting will be held at Two Westbrook Corporate Center, First Floor, Conference Center (Link Two/Five), Westchester, Illinois 60154, on Thursday, April 19, 2007, at 9:00 a.m. local time. This proxy statement is being sent to stockholders on or about March 6, 2007.

The solicitation of proxies from the stockholders is being made by the Board of Directors and management of the Company. The cost of this solicitation, including the cost of preparing and making the proxy statement, the proxy, notice of annual meeting and annual report are all being paid for by the Company.

**Who May Vote**

If you are a stockholder of record as of the close of business on February 26, 2007, you are entitled to vote at the Meeting. As of that date, there were 31,202,473 shares of the Company s common stock outstanding, the only class of voting securities outstanding. You are entitled to one vote for each share of common stock you own, without cumulation, on each matter to be voted upon at the Meeting.

**How Proxies Work**

Only votes cast in person at the Meeting or received by proxy before the beginning of the Meeting will be counted at the Meeting. Giving us your Proxy means you authorize us to vote your shares at the Meeting in the manner you direct. If your shares are held in your name, you can vote by proxy in three convenient ways:

*Via Internet:* Go to [www.proxypush.com/THS](http://www.proxypush.com/THS) and follow the instructions.

*By Telephone:* Call toll-free 1-866-416-3858 and follow the instructions.

*In Writing:* Complete, sign, date and return your proxy card in the enclosed envelope.

If your proxy is properly returned, the shares it represents will be voted at the Meeting in accordance with your instructions. If you do not give specific instructions, your shares will be voted as follows:

FOR the election of each of the three nominees for director set forth herein;

FOR the approval of the TreeHouse Foods, Inc. Equity and Incentive Plan;

FOR the ratification of the selection of our independent registered public accounting firm; and

with respect to any other matter that may properly come before the Meeting, in the discretion of the persons voting the respective proxies.

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The Board of Directors does not intend to bring any matters before the Meeting except those indicated in the notice. If any other matters properly come before the Meeting, however, the persons named in the enclosed proxy, or their duly constituted substitutes acting at the Meeting, will be authorized to vote or otherwise act thereon in accordance with their judgment on such matters.

If you are the beneficial owner of shares held in street name by a broker, your broker, as the record holder of the shares, must vote those shares in accordance with your instructions. If you do not give instructions to your broker, your broker can vote your shares with respect to discretionary items but not with respect to non-discretionary items. On non-discretionary items, for which you do not give instructions, the shares will be treated as broker non-votes. A discretionary item is a proposal that is considered routine under the rules of the New York Stock Exchange. Shares held in street name may be voted by your broker on discretionary items in the absence of voting instructions given by you. The proposals concerning the election of directors and the ratification of the

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independent registered public accounting firm are discretionary. The proposal concerning the approval of the TreeHouse Foods, Inc. Equity and Incentive Plan is non-discretionary.

### **Quorum**

Stockholders of record may vote their proxies by telephone, internet or mail. By using your proxy to vote in one of these ways, you authorize the three officers whose names are listed on the front of the proxy card accompanying this Proxy Statement to represent you and vote your shares. Holders of a majority of the shares entitled to vote at the meeting must be present in person or represented by proxy to constitute a quorum. Of course, if you attend the meeting, you may vote by ballot. If you are not present, your shares can be voted only when represented by a properly submitted proxy.

### **Revoking a Proxy**

Submitting your proxy now will not prevent you from voting your shares at the meeting if you desire to do so, as your proxy is revocable at your option.

### **Required Vote**

The election of the nominees for director will become effective only upon the affirmative vote of shares of common stock representing a plurality of the votes cast for such nominee. The approval of the TreeHouse Foods, Inc. Equity and Incentive Plan and the ratification of the selection of our independent registered public accounting firm and the approval of any other matter that may properly come before the Meeting will become effective only upon the affirmative vote of shares of common stock representing a majority of the votes cast for or against such proposal. We refer to the election of each nominee for director, the approval of the TreeHouse Foods, Inc. Equity and Incentive Plan and the ratification of our independent registered public accounting firm each as a Proposal. Votes cast as for, against or withhold are counted as a vote, while votes cast as abstentions will not be counted as a vote. So called broker non-votes (brokers failing to vote by proxy shares of the common stock held in nominee name for customers) will not be counted at the Meeting.

### **Majority Vote Policy**

Our Corporate Governance Guidelines utilize a majority vote policy in the election of directors. Accordingly, if a nominee receives a greater number of votes marked withhold from his or her election than votes marked for his or her election, that nominee is required to tender his or her resignation following certification of the stockholder vote. The Nominating and Corporate Governance Committee is required to make recommendations to the Board with respect to any such letter of resignation. The Board is required to take action with respect to this recommendation and to disclose their decision-making process.

### **Item 1 *ELECTION OF GEORGE V. BAYLY***

We have a classified Board of Directors (the Board) consisting of three classes. At each annual meeting a class of directors is elected for a term of three years to succeed any directors whose terms are expiring.

At the Meeting, you will elect a total of three directors to hold office, subject to the provisions of the Company's By-laws, until the annual meeting of stockholders in 2010 and until their successors are duly elected and qualified. Unless you indicate otherwise, the shares represented by your proxy will be voted FOR the election of Mr. Bayly, the nominee set forth below. See Who May Vote, Required Vote, Majority Vote Policy, Outstanding Shares and Holdings of Certain Stockholders in this Proxy.

Mr. Bayly has agreed to be nominated and to serve if elected. However, if the nominee at the time of his election is unable or unwilling to serve, or is otherwise unavailable for election, and as a result another nominee is designated by the Board of Directors, then you or your designate will have discretion and authority to vote or refrain from voting for such nominee.



The Nominating and Corporate Governance Committee has recommended Mr. Bayly for nomination for re-election to the Company's Board of Directors. Certain information about Mr. Bayly is contained below.

Name	Age	Director Since	Present Position with the Company
George V. Bayly	64	2005	Director

*George V. Bayly* was elected as a Director on June 6, 2005. Currently, Mr. Bayly serves as Chairman and Interim-Chief Executive Officer of Altivity Packaging LLC located in Carol Stream, IL. Prior to that, Mr. Bayly served as Co-Chairman of U.S. Can Corporation 2003-2006; as well as Chief Executive Officer in 2005. In addition, Mr. Bayly has been a principal of Whitehall Investors, LLC, a consulting and venture capital firm, since January 2002. From January 1991 to December 2002, Mr. Bayly served as Chairman, President and Chief Executive Officer of Ivex Packaging Corporation. From 1987-1991, Mr. Bayly served as Chairman, President and Chief Executive Officer of Olympic Packaging, Inc. Mr. Bayly also held various management positions with Packaging Corporation of America from 1973 to 1987. In addition to our Board, Mr. Bayly serves on the Board of Directors of ACCO, Altivity Packaging LLC and Huhtamaki Oyj. Mr. Bayly holds a B.S. from Miami University and a M.B.A from Northwestern University. Mr. Bayly also served as a Lieutenant Commander in the United States Navy. Mr. Bayly is the Chairman of our Audit Committee and is a member of the Compensation Committee of our Board of Directors.

**RECOMMENDATION:  
THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR THE ELECTION OF  
GEORGE V. BAYLY TO SERVE ON THE COMPANY'S BOARD OF DIRECTORS**

**Item 2 ELECTION OF MICHELLE R. OBAMA**

At the Meeting, you will elect a total of three directors to hold office, subject to the provisions of the Company's By-laws, until the annual meeting of stockholders in 2010 and until their successors are duly elected and qualified. Unless you indicate otherwise, the shares represented by your proxy will be voted FOR the election of Ms. Obama, the nominee set forth below. See Who May Vote, Required Vote, Majority Vote Policy, Outstanding Shares and Holdings of Certain Stockholders in this Proxy.

Ms. Obama has agreed to be nominated and to serve if elected. However, if the nominee at the time of her election is unable or unwilling to serve, or is otherwise unavailable for election, and as a result another nominee is designated by the Board of Directors, then you or your designate will have discretion and authority to vote or refrain from voting for such nominee.

The Nominating and Corporate Governance Committee has recommended Ms. Obama for nomination for re-election to the Company's Board of Directors. As a member of the Nominating and Corporate Governance Committee, Ms. Obama recused herself from the discussion and decision related to her individual nomination for re-election to the Board.

Certain information about Ms. Obama is contained below.

Name	Age	Director Since	Present Position
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**with the  
Company**

Michelle R. Obama	43	2005	Director
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*Michelle R. Obama* was elected as a Director on June 6, 2005. Since March 2005, Ms. Obama has served as the Vice President for Community and External Affairs for the University of Chicago Hospitals. From September 2001 to March 2005, Ms. Obama served as Executive Director of Community Affairs at the University of Chicago Hospitals. In addition, Ms. Obama served as Associate Dean of Students and Director of Community Service for the University of Chicago from September 1997 to March 2005. Ms. Obama also has held numerous positions in the public and non-profit sectors, including Executive Director of the Chicago Office of Public Allies, Assistant Commissioner of Planning and Development for the City of Chicago and Assistant to the Mayor of the City of Chicago. Ms. Obama holds a B.A. from Princeton University and a J.D. from Harvard Law School. Ms. Obama is the Lead Director and a member of the Audit Committee and the Nominating and Corporate Governance Committee of our Board of Directors.

**RECOMMENDATION:**  
**THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR THE ELECTION OF**  
**MICHELLE R. OBAMA TO SERVE ON THE COMPANY'S BOARD OF DIRECTORS**

**Item 3 ELECTION OF GARY D. SMITH**

At the Meeting, you will elect a total of three directors to hold office, subject to the provisions of the Company's By-laws, until the annual meeting of stockholders in 2010 and until their successors are duly elected and qualified. Unless you indicate otherwise, the shares represented by your proxy will be voted FOR the election of Mr. Smith, the nominee set forth below. See Who May Vote, Required Vote, Majority Vote Policy, Outstanding Shares and Holdings of Certain Stockholders in this Proxy.

Mr. Smith has agreed to be nominated and to serve if elected. However, if the nominee at the time of his election is unable or unwilling to serve, or is otherwise unavailable for election, and as a result another nominee is designated by the Board of Directors, then you or your designate will have discretion and authority to vote or refrain from voting for such nominee.

The Nominating and Corporate Governance Committee has recommended Mr. Smith for nomination for re-election to the Company's Board of Directors. As a member of the Nominating and Corporate Governance Committee, Mr. Smith recused himself from the discussion and decision related to his individual nomination for re-election to the Board.

Certain information about Mr. Smith is contained below.

Name	Age	Director Since	Present Position with the Company
Gary D. Smith	64	2005	Director

*Gary D. Smith* was elected as a Director on June 6, 2005. Since January 2001, Mr. Smith has served as Chief Executive Officer and Chairman of Encore Associates, Inc. and since 2005 has been a Managing director of Encore Consumer Capital. From April 1995 to December 2004, Mr. Smith served as Senior Vice President Marketing of Safeway Inc. In addition, Mr. Smith held various management positions at Safeway Inc. from 1961 to 1995. In addition to our Board, Mr. Smith serves on the Board of Directors of The Winery Exchange, Supply Chain Systems Ltd., Altierre Corporation and Philly's Famous Water Ice, Inc. Mr. Smith is the Chairman of the Nominating and Corporate Governance Committee and is a member of the Audit Committee of our Board of Directors.

**RECOMMENDATION:**  
**THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR THE ELECTION OF**  
**GARY D. SMITH TO SERVE ON THE COMPANY'S BOARD OF DIRECTORS**

**Item 4 APPROVAL OF THE AMENDMENT AND RESTATEMENT OF OUR 2005 LONG-TERM STOCK INCENTIVE PLAN**

In connection with our spin-off from Dean Foods Company, our Board adopted, and a majority of our stockholders approved, the TreeHouse Foods, Inc. 2005 Long-Term Stock Incentive Plan. The Compensation Committee of the Board has recommended and the Board has approved, subject to stockholder approval, an amendment and restatement

of the Plan as the TreeHouse Foods, Inc. Equity and Incentive Plan (as amended and restated, the TreeHouse Foods, Inc. Equity and Incentive Plan or the Equity and Incentive Plan ). At the meeting, you will be asked to approve the Equity and Incentive Plan.

**The Amendments to the Plan**

On February 16, 2007, the Compensation Committee recommended and the Board approved, subject to stockholder approval, the amendment and restatement of our 2005 Long-Term Stock Incentive Plan that would increase the maximum number of shares of common stock that may be issued under the Plan by 1,260,000 shares, to 6,010,167 shares, so that there will be 2,240,278 shares available for issuance under awards granted after April 19, 2007, after taking into account the 401,195 shares issued to date under the Plan and the 3,368,694 shares subject to

awards outstanding as of that date. The Compensation Committee believes that increasing the total number of shares available for awards under the plan is necessary to ensure that a sufficient number of shares will be available to fund our compensation programs. If the amendment is not approved, the Company expects that it will not have enough shares in the Plan to provide management and directors an annual market equity grant consistent with prior practices in 2008. If the amendment is approved by our stockholders, we plan to register the offer and sale of the 1,260,000 additional shares of common stock on a registration statement on Form S-8.

On February 16, 2007, the Compensation Committee recommended and the Board approved, subject to stockholder approval, an additional amendment to the Plan that would provide for an incentive bonus component to our annual management compensation program. The proposed amendment would provide for incentive bonuses to be paid under the Equity and Incentive Plan upon substantially similar terms and conditions as, and will replace, our current annual bonus plan.

The following table provides information about shares of our common stock that may be issued under the 2005 Long-Term Stock Incentive Plan as of December 31, 2006:

### Equity Compensation Plan Information

Plan Category	(a) Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights	(b) Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights	(c) Number of Securities Remaining Available for Future Issuance under Equity Compensation Plans (Excluding Securities Reflected in Column(a)
<b>Equity compensation plans approved by security holders:</b>			
2005 Long-Term Stock Incentive Plan	2,200,733	\$ 26.31	980,278
<b>Equity compensation plans not approved by security holders:</b>			
None			
<b>Total</b>	<b>2,200,733</b>	<b>\$ 26.31</b>	<b>980,278</b>

If shares of our common stock are changed into or exchanged for a different kind or number of shares, for example in the event of a stock split, stock dividend or other recapitalization, then the number and kind of shares which may be issued under the Equity and Incentive Plan, the limitations on the number of shares which may be made subject to awards and the terms and provisions of outstanding awards will be appropriately adjusted to reflect such change in the common stock.

In addition, our Compensation Committee recommended and the Board approved additional amendments and the restatement of the plan to add the flexibility to grant stock appreciation rights, or SARs, and other stock based awards, and otherwise update the Plan for current practices and legal requirements. The Equity and Incentive Plan expressly requires that any options or stock appreciation rights be granted with exercise prices that are not less than fair market value (to be determined based on the closing price on the applicable date) and prohibits re-pricing of options or SARs.

In addition to seeking stockholder approval for the additional shares which may be issued under the Equity and Incentive Plan, stockholder approval is necessary for us to meet the requirements for tax deductibility under Section 162(m) of the Internal Revenue Code of 1986, as amended (the Code ). Section 162(m) of the Code limits the annual federal tax deduction for compensation paid to our Chief Executive Officer and the other four most highly compensated executive officers to \$1 million. Certain performance-based compensation is excluded from this limitation. The Equity and Incentive Plan was designed to comply with these performance-based compensation exclusions. However, in order to retain the tax deductibility status on an on-going basis, we are required as a spun-off company to obtain stockholder approval of the performance measures in the Equity and Incentive Plan no later than the date that is twelve months after our first stockholder meeting. As such, we are seeking stockholder approval

of the Equity and Incentive Plan, which contains annual limitations and performance criteria for performance based awards to maintain compliance with Section 162(m) of the Code.

### **Description of the Equity and Incentive Plan**

The following is a summary of our Equity and Incentive Plan, subject to receiving stockholder approval. For a more complete understanding of the Equity and Incentive Plan, please refer to the entire text of the Equity and Incentive Plan, a copy of which is included with this proxy statement as *Appendix A*.

The purposes of the Equity and Incentive Plan are to attract and retain non-employee directors, consultants, executive personnel and other key employees of outstanding ability, to motivate them by means of performance-related incentives and to enable them to participate in our growth and financial success. Eligibility to participate in the Equity and Incentive Plan is limited to our non-employee directors, consultants, and employees (including officers and directors who are employees) and the non-employee directors, consultants, and employees of our subsidiaries. As of February 16, 2007, we had approximately 2,700 employees and consultants and six non-employee directors.

The Equity and Incentive Plan is administered by our Compensation Committee, which consists entirely of independent directors. The Compensation Committee or, with respect to awards to employees who are below the position of TreeHouse senior vice president (or any analogous title) and not executive officers, and if the committee so designates, our Chief Executive Officer or such other officer or officers will, from time to time, determine the specific persons to whom awards under the Equity and Incentive Plan will be granted, the extent of any such awards and the terms and conditions of each award. The Compensation Committee or its designee, pursuant to the terms of the Equity and Incentive Plan, also will make all other necessary decisions and interpretations under the Equity and Incentive Plan.

Under the Equity and Incentive Plan, the Compensation Committee may grant awards of various types of equity-based compensation, including stock options, stock appreciation rights, restricted stock and restricted stock units, performance shares and performance units and other types of stock-based awards, and cash-based compensation consisting of annual bonuses. The maximum number of shares that are available to be awarded under the Equity and Incentive Plan is 6,010,167 shares of common stock of the Company, including 3,368,694 shares subject to outstanding awards as of February 16, 2007 and the 401,195 shares issued to date. As amended, the maximum number of shares of our common stock that may be issued under the Equity and Incentive Plan with respect to incentive stock options may not exceed 1,000,000 shares. In addition, no participant may be granted awards of restricted stock, restricted stock units, performance shares and performance units covering more than 1,500,000 shares in any calendar year and no participant may be granted options and SARs over 1,500,000 shares of our common stock in any calendar year. No more than \$5,000,000 may be paid to any one participant with respect to cash-based awards made during a calendar year.

### ***Performance Shares and Performance Units; Performance Awards; Performance Criteria***

The Compensation Committee may grant awards of performance shares or performance units under the Equity and Incentive Plan based upon the achievement of specified performance objectives or the occurrence of other events, such as a change in control, as determined by the Compensation Committee in its discretion. The Compensation Committee has the authority to determine other terms and conditions of the performance shares and performance units. Participants may not transfer any shares underlying such awards before they vest. The Compensation Committee may also grant Performance Awards under the Equity and Incentive Plan. Performance Awards may be payable in cash or in shares of common stock, and may relate to a single year performance period, such as an annual bonus award, or multi-year periods.

Unless otherwise determined by the Compensation Committee or provided in an employment or individual severance agreement, if a participant's service is terminated by reason of death, disability or retirement during the relevant performance period, the participant (or any designated beneficiary) will be entitled to the same payment in respect of the performance award, performance shares or performance units for that performance period as would have been payable if the participant's service with us had continued until the end of that performance period. If a participant's service is terminated for any other reason, all of the participant's rights to the performance award,



performance shares and performance units will be immediately forfeited and cancelled (unless otherwise determined by the Compensation Committee or provided in an employment or individual severance agreement), and in any event, all such rights will be immediately forfeited and cancelled upon termination of employment for cause.

The Compensation Committee may establish performance goals applicable to any award, including performance awards, performance shares and performance units. When establishing a performance goal, the Compensation Committee will determine the performance period over which performance against the goal will be measured and the amount of cash or number or value of shares earned based on the level of the performance goal achieved. Additional provisions relating to the setting of the performance goal, certifying achievement of performance against the goal and the amount earned, and the ability to use negative discretion to reduce the amount earned apply to awards made to executive officers which are intended to meet the tax deductibility rules for performance-based compensation under section 162(m) of the Code.

The Equity and Incentive Plan provides that the Compensation Committee may base the performance goals upon the relative or comparative attainment of one or more of the following performance criteria, (whether in absolute terms or relative to the performance of one or more similarly situated companies or a published index covering the performance of a number of companies): total stockholder return, stock price, operating earnings or margins, net earnings, return on equity, income, market share, combined ratio, level of expenses, revenue, cash flow and, in the case of persons who are not executive officers, such other criteria as may be determined by the Committee. Performance criteria may be established on a Company-wide basis or with respect to one or more business units or divisions or subsidiaries. When establishing performance criteria for a performance period, the Committee may exclude any or all extraordinary items as determined under U.S. generally accepted accounting principles including, without limitation, the charges or costs associated with restructurings of the Company or any Subsidiary, discontinued operations, other unusual or non-recurring items, the cumulative effects of accounting changes or such other objective factors as the Committee deems appropriate.

#### ***Restricted Stock and Restricted Stock Units***

The Compensation Committee may grant awards of restricted stock and restricted stock units under the Equity and Incentive Plan. The restricted stock and restricted stock units are forfeitable until they vest, and the participant may not transfer the restricted stock before it vests. Unless otherwise determined by the Compensation Committee, the restricted stock and the restricted stock units will vest on the third anniversary of the date of grant (subject to the participant's continued service with us) or upon satisfaction of any additional conditions to vesting, such as the achievement of specified performance objectives or changes in control, as determined by the Compensation Committee in its discretion. Unless otherwise determined by the Compensation Committee or provided in an employment or individual severance agreement, if a participant's service is terminated by reason of death, disability or retirement during the restricted period, a pro rata portion of any restricted stock or restricted stock units held by the participant will vest and become not forfeitable based on the number of full calendar months of the participant's service relative to the number of months in the restricted period at the date of termination. If a participant's service is terminated for any other reason, any restricted stock or restricted stock units held by the participant will be immediately forfeited and cancelled (unless otherwise determined by the Compensation Committee or provided in an employment or individual severance agreement), and, in any event, all such restricted stock and restricted stock units will be immediately forfeited and cancelled upon termination of service for cause.

#### ***Stock Options and Stock Appreciation Rights***

The Compensation Committee may grant awards of stock options and stock appreciation rights under the Equity and Incentive Plan. The stock options may be either incentive stock options (as that term is defined in Section 422 of the Code), which provide the recipient with favorable tax treatment, or options that are not incentive stock options

( non-qualified stock options ). The Compensation Committee has the authority to determine the terms and conditions of the stock options, including the number of shares subject to each stock option and SAR, the exercise price per share, which must be at least the fair market value of a share of our common stock on the date of grant (as determined in accordance with the Equity and Incentive Plan), and when the stock option or SAR will become exercisable. Unless otherwise determined by the Compensation Committee, the stock options and SARs will become vested and exercisable in three approximately equal installments on each of the first three anniversaries

of the date of grant. Options and SARs may also become exercisable upon satisfaction of any additional conditions to vesting, such as the achievement of specified performance objectives or changes in control, as determined by the Compensation Committee in its discretion. The exercise period for any stock options and SARs awarded under the Plan may not extend beyond ten years from the date of grant.

Stock options and SARs awarded under the Equity and Incentive Plan that become vested and exercisable may be exercised in whole or in part. The exercise price must be paid either in cash or cash equivalents or, if permitted by the Compensation Committee, with previously acquired shares of our common stock, by means of a brokered cashless exercise or by a combination of the foregoing provided that the consideration tendered, valued as of the date tendered, is at least equal to the exercise price for the stock options being exercised.

Stock appreciation rights, or SARs, are similar to stock options, except that no exercise price is required to be paid. Upon exercise of a SAR, the participant will received payment equal to the increase in the fair market value of a share of common stock on the date of exercise over the exercise price (fair market value on date of grant) times the number of shares with respect to the SAR is exercised. The payment will be made in cash or shares of common stock of equivalent value.

Unless otherwise determined by the Compensation Committee or provided for in an employment or individual severance agreement, if a participant's service is terminated by reason of death or disability, all stock options and SARs held by the participant at the date of termination will vest and become exercisable and will remain exercisable until the earlier of (i) the second anniversary of such termination (or, for incentive stock options, the first anniversary of such termination) or (ii) the expiration date of the option. If a participant's service is terminated for any other reason, any stock options held by the participant that have not become vested and exercisable will be immediately cancelled and any stock options that have become vested and exercisable will remain exercisable for 90 days following such termination. In any event, all stock options (whether or not then vested and exercisable) will be immediately cancelled upon termination of service for cause.

#### ***Other Stock-Based Awards***

The Equity and Incentive Plan permits the Compensation Committee to grant other forms of stock-based awards with such terms and conditions as the Committee determines, including provisions relating to the impact of termination of service and a change in control. Such awards may include outright grants of shares without restriction or awards structured to meet the requirements of non-U.S. law or practice. Such awards may be settled by the issuance of shares or by a cash payment equal to the value of the shares earned under the award.

#### ***Change in Control***

Except as otherwise provided in an employment or individual severance agreement or award agreement, upon a change in control (as defined in the Equity and Incentive Plan) of the Company, (i) all outstanding stock options and SARs will become immediately vested and exercisable; (ii) the restricted period of all outstanding restricted stock and restricted stock units will immediately lapse; and (iii) each outstanding performance share and performance unit will be cancelled in exchange for 100% of the amount earned upon full achievement of applicable performance criteria. In addition, the Compensation Committee may provide that in connection with a change in control:

each stock option and SAR will be cancelled in exchange for an amount equal to the excess, if any, of the price per share offered in respect of our common stock in conjunction with the transaction giving rise to the change in control or, in the case of a change in control occurring by reason of a change in the composition of our Board of Directors, the highest fair market value of our common stock on any of the preceding 30 trading days (such price, the Change in Control Price ) over the exercise price for such option; and

each share of restricted stock and each restricted stock unit will be cancelled in exchange for an amount equal to the Change in Control Price multiplied by the number of shares of our common stock covered by such award. All amounts payable as a result of a change in control will be paid in cash or, at the discretion of the Compensation Committee, in shares of stock of any new employer.

If a change in control occurs as a result of a merger, reorganization, consolidation or sale of all or substantially all of our assets, any participant whose service is involuntarily terminated (other than for cause) on or after the date on which our stockholders approve the transaction giving rise to the change in control will be treated for purposes of the Equity and Incentive Plan as continuing service with us until the consummation of the change in control and to have been terminated immediately thereafter.

### ***Amendment and Termination***

The Board may terminate or suspend the Equity and Incentive Plan at any time, and from time to time may amend or modify the Equity and Incentive Plan, provided that without the approval by a majority of the votes cast at a duly constituted meeting of stockholders, no amendment or modification to the Equity and Incentive Plan may (i) materially increase the benefits accruing to participants under the Equity and Incentive Plan, (ii) except as a result of an adjustment in capitalization, materially increase the number of shares of stock subject to awards under the Equity and Incentive Plan or the number of awards or amount of cash that may be granted to a participant under the Equity and Incentive Plan, (iii) materially modify the requirements for participation in the Equity and Incentive Plan, or (iv) materially modify the Equity and Incentive Plan in any way that would require stockholder approval under any regulatory requirement that the Compensation Committee determines to be applicable. Consequently, the Equity and Incentive Plan cannot be amended to remove the prohibition on re-pricing or to permit the grant of options or SARs at below fair market value exercise prices without shareholder approval. No amendment, modification, or termination of the Equity and Incentive Plan shall in any material way adversely affect any award previously granted under the Equity and Incentive Plan without the consent of the participant. The Equity and Incentive Plan shall continue in effect, unless sooner terminated by the Board, until February 16, 2017, the tenth anniversary of the date on which the Equity and Incentive Plan was adopted by the Board, at which time no additional awards may be granted after that date.

### ***Summary of Federal Tax Consequences***

The following is a brief description of the federal income tax treatment that generally apply to Equity and Incentive Plan awards. The description is based on current federal tax laws, rules and regulations, which are subject to change, and does not purport to be a complete description of the federal income tax aspects of the Equity and Incentive Plan. A participant may also be subject to state and local taxes.

*Non-Qualified Stock Options.* The grant of a non-qualified stock option will not result in taxable income to the participant. The participant will realize ordinary income at the time of exercise in an amount equal to the excess, if any, of the then fair market value of the stock acquired over the exercise price for those shares, and we will be entitled to a corresponding deduction. Gains or losses realized by the participant upon disposition of such shares will be treated as capital gains or losses, with the basis in such stock equal to the fair market value of the shares at the time of exercise.

*Incentive Stock Options.* The grant of an incentive stock option will not result in taxable income to the participant. The exercise of an incentive stock option will not result in taxable income to the participant if the participant was, without a break in service, employed by us or an affiliate from the date of the grant of the option until the date three months prior to the date of exercise (one year prior to the date of exercise if the participant is disabled). The excess, if any, of the fair market value of the stock at the time of the exercise over the exercise price is an adjustment that is included in the calculation of the participant's alternative minimum taxable income for the tax year in which the incentive stock option is exercised.

If the participant does not sell or otherwise dispose of the stock within two years from the date of the grant of the incentive stock option or within one year after the transfer of such stock to the participant, then, upon disposition of such stock, any amount realized in excess of the exercise price will be taxed to the participant as capital gain, and we will not be entitled to a corresponding deduction. A capital loss will be recognized to the extent that the amount realized is less than the exercise price. If the foregoing holding period requirements are not met, the participant will generally realize ordinary income at the time of the disposition of the shares, in an amount equal to the lesser of (i) the excess, if any, of the fair market value of the stock on the date of exercise over the exercise price, or (ii) the excess, if any, of the amount realized upon disposition of the shares over the exercise price, and we will be entitled to

a corresponding deduction. If the amount realized exceeds the value of the shares on the date of exercise, the additional amount will be capital gain. If the amount realized is less than the exercise price, the participant will recognize no income, and a capital loss will be recognized equal to the excess of the exercise price over the amount realized upon the disposition of the shares.

*Stock Appreciation Rights.* The grant of a stock appreciation right will not result in taxable income to the participant. The participant will realize ordinary income at the time of exercise in an amount equal to the amount of cash or the fair market value of the shares paid upon exercise, and we will be entitled to a corresponding deduction. Gains or losses realized by the participant upon disposition of any shares received will be treated as capital gains or losses, with the basis in such stock equal to the fair market value of the shares at the time of exercise.

*Restricted Stock and Performance Shares.* A grant of restricted stock or performance shares will not result in taxable income to the participant at the time of grant, and we will not be entitled to a corresponding deduction, assuming that the shares are subject to transferability restrictions and that certain restrictions on the shares constitute a substantial risk of forfeiture for federal income tax purposes. Upon vesting, the holder will realize ordinary income in an amount equal to the then fair market value of the vested shares, and we will be entitled to a corresponding deduction. Gains or losses realized by the participant upon subsequent disposition of such shares will be treated as capital gains or losses, with the basis in such shares equal to the fair market value of the shares at the time of vesting. Dividends paid to the holder of restricted stock during the restricted period also will be compensation income to the participant, and we will be entitled to a corresponding deduction when the dividends no longer are subject to a substantial risk of forfeiture or become transferable. A participant may elect pursuant to Section 83(b) of the Code to have income recognized at the date a restricted stock award or performance share award, as the case may be, is granted and to have the applicable capital gain holding period commence as of that date. In such a case, we will be entitled to a corresponding deduction on the date of grant.

*Restricted Stock Units and Performance Units.* A grant of restricted stock units or performance units will not result in taxable income to the participant at the time of grant, and we will not be entitled to a corresponding deduction. Upon vesting and issuance of the underlying shares, the holder will realize ordinary income in an amount equal to the then fair market value of the issued shares, and we will be entitled to a corresponding deduction. Gains or losses realized by the participant upon disposition of such shares will be treated as capital gains or losses, with the basis in such shares equal to the fair market value of the shares at the time of vesting and issuance. Dividend equivalents paid to the holder of restricted stock units during the restricted period also will be compensation income to the participant, and we will be entitled to a corresponding deduction when the dividend equivalents are paid. No election pursuant to Section 83(b) of the Code may be made with respect to restricted stock units and performance units.

*Performance Awards and Other Stock-Based Awards.* A grant of a performance award or other stock-based award will not result in taxable income to the participant at the time of grant, and we will not be entitled to a corresponding deduction. Upon payment of cash or the vesting or issuance of the underlying shares, the participant will realize ordinary income in an amount equal to the cash received or the then fair market value of the issued shares, and we will be entitled to a corresponding deduction. Gains or losses realized by the participant upon subsequent disposition of such shares will be treated as capital gains or losses, with the basis in such shares equal to the fair market value of the shares at the time of vesting and issuance.

*Tax Withholding.* As a condition to the delivery of any shares to the recipient of an award, we may require the recipient to make arrangements for meeting certain tax withholding requirements in connection with the award.

The preceding is based on current federal tax laws and regulations, which are subject to change, and does not purport to be a complete description of the federal income tax aspects of the Equity and Incentive Plan. A participant may also be subject to state and local taxes.





**New Plan Benefits Table**

Awards under the Equity and Incentive Plan will be made at the discretion of the Compensation Committee. On February 15, 2007, the Compensation Committee established the 2007 annual bonus plan for our executive officers as a performance award under the Equity and Incentive Plan. No decisions have been made on the amount and type of equity or long-term awards that are to be made under the Equity and Incentive Plan to participants in the future. The following table sets forth certain information relating to the amount of the 2007 target bonus that would be payable under the performance award to our named executive officers and executive officers as a group. No amounts have been included relating to equity awards as the amounts of any such awards are not determinable at this time.

**NEW PLAN BENEFITS TABLE**

<b>Name and Position</b>	<b>Dollar Value \$(1)</b>	<b>Awards Granted(2)</b>
Sam K. Reed Chief Executive Officer	803,500	
David B. Vermynen President and Chief Operating Officer	428,800	
Dennis F. Riordan Senior Vice President and Chief Financial Officer	217,500	
Thomas E. O'Neill Senior Vice President, General Counsel and Chief Administrative Officer	225,000	
Harry J. Walsh Senior Vice President of Operations	225,000	
Executive Officers as a Group	2,342,550	
Non-Employee Directors as a Group		
Non-Executive Officer Employees as a Group		

(1) Reflects amount of the annual bonus target under 2007 performance award.

(2) Equity and long-term awards subject to Committee discretion and not determinable at this time.

**RECOMMENDATION:  
THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR THE APPROVAL  
OF THE  
EQUITY AND INCENTIVE PLAN**

**Item 5 *RATIFICATION OF THE SELECTION OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM***

Deloitte & Touche LLP audited our financial statements for fiscal year 2006, and has been selected by the Audit Committee of our Board of Directors to audit our financial statements for fiscal year 2007. A representative of Deloitte & Touche LLP will attend our annual meeting, where he or she will have the opportunity to make a statement, if he or she desires, and will be available to respond to appropriate stockholder questions.