STERICYCLE INC
Form DEF 14A
April 16, 2009
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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of the

Securities Exchange Act of 1934

(Amendment No. __)

Filed by the Registrant x 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))**

x Definitive Proxy Statement

¨ Definitive Additional Materials

¨ Soliciting Material Pursuant to §240.14a-12

STERICYCLE, 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):

x 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:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

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¨ Fee paid previously with preliminary materials.

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(1) Amount Previously Paid:

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(3) Filing Party:

(4) Date Filed:

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NOTICE OF 2009 ANNUAL MEETING OF STOCKHOLDERS

TO BE HELD ON MAY 28, 2009

Dear Stockholder:

You are cordially invited to attend our 2009 Annual Meeting of Stockholders on Thursday, May 28, 2009, at 11:00 a.m., Chicago time, at the Hilton Garden Inn, 26225 North Riverwoods Boulevard, Mettawa, Illinois 60045.

At the Annual Meeting, you will be asked to consider and vote upon the following matters:

- the election of a Board of Directors to hold office until the 2010 Annual Meeting of Stockholders
- ratification of the appointment of Ernst & Young LLP as our independent public accountants for the fiscal year ending December 31, 2009
- any other matters that properly come before the meeting

Only stockholders of record at the close of business on the record date of April 1, 2009 are entitled to vote at the Annual Meeting.

Admission to the Annual Meeting will be by an admissions card. If you plan to attend the meeting in person, please complete and return the Reservations Form on the back cover of this Proxy Statement and an admissions card will be mailed to you. All Reservations Forms must be received by May 22, 2009. An admissions card is not transferable and will admit only the stockholder or stockholders to whom it was issued. If you need directions to the meeting, please call Investor Relations at (800) 643-0240 ext. 2012.

For the convenience of our stockholders who do not plan to attend the Annual Meeting in person and who want to have their shares voted, we have enclosed a proxy card. If you do not plan to attend the Annual Meeting, please complete and return the proxy card in the envelope that we have provided. If you return your proxy card and later decide to attend the Annual Meeting in person, or if for any other reason you want to revoke your proxy, you may do so at any time before your proxy is voted.

For the Board of Directors

Mark C. Miller
Chairman, President and Chief Executive Officer

Jack W. Schuler
Lead Director

April 16, 2009

Lake Forest, Illinois

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28161 North Keith Drive

Lake Forest, Illinois 60045

PROXY STATEMENT

2009 Annual Meeting of Stockholders

To Be Held on May 28, 2009

We are furnishing this Proxy Statement in connection with the solicitation of proxies by our Board of Directors for use at our 2009 Annual Meeting of Stockholders on Thursday, May 28, 2009, at 11:00 a.m., Chicago time, at the Hilton Garden Inn, 26225 North Riverwoods Boulevard, Mettawa, Illinois 60045. We are mailing this Proxy Statement and the accompanying materials to our stockholders beginning on or about April 16, 2009.

In this Proxy Statement, we, us, our or the Company refers to Stericycle, Inc.

GENERAL

Stock

Our authorized capital stock consists of common stock, par value $0.01 per share (common stock), and preferred stock, par value $0.01 per share (preferred stock). As of April 1, 2009, the record date for the Annual Meeting, we had 84,919,301 shares of common stock outstanding. We did not have any shares of preferred stock outstanding.

Stockholders Entitled To Vote

Only holders of our common stock who were stockholders of record at the close of business on the record date of April 1, 2009 are entitled to notice of and to vote their shares of record at the Annual Meeting. Each outstanding share of common stock is entitled to one vote.

Quorum

Holders of a majority of the outstanding shares of common stock entitled to vote at the Annual Meeting who are present in person or represented by proxy will constitute a quorum to conduct business at the meeting. The inspectors of election appointed at the meeting will determine the existence of a quorum and tabulate the votes cast at the meeting.

Voting

The eight directors to be elected at the Annual Meeting (**Item 1**) will be elected by a plurality of the votes cast by stockholders present in person or represented by proxy, entitled to vote and voting. The proposal to ratify the appointment of Ernst & Young LLP as our independent public accountants for the fiscal year ending December 31, 2009 (**Item 2**) and each other matter to be voted on at the Annual Meeting will require for approval the affirmative vote of a majority of the shares present in person or represented by proxy and entitled to vote.

A stockholder may withhold authority to vote for one or more nominees for director and may abstain from voting on one or more of the other matters to be voted on at the Annual Meeting. Shares for which authority is

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withheld or that a stockholder abstains from voting will be counted for purposes of determining whether a quorum is present. Shares for which authority is withheld or that a stockholder abstains from voting will have no effect on the voting for the election of directors (which, as noted, requires a plurality of the votes cast). Shares that a stockholder otherwise abstains from voting will be included in the total of votes cast and will have the effect of votes against the matter in question.

If a broker or nominee indicates on a proxy card that it does not have discretionary authority to vote on a particular matter, the shares will be taken into account in determining whether a quorum is present (if the shares are voted on any other matter) but will not be included in the total of votes cast and thus will have no effect on the outcome of voting on the matter.

Telephone and Internet Voting

Stockholders whose shares are registered in their names directly with our stock registrar and transfer agent, Wells Fargo Shareowner Services, may vote their shares telephonically, by calling (800) 560-1965, or via the internet, by going to www.eproxy.com/srcl. Stockholders whose shares are registered in the name of a brokerage firm, bank or other nominee may be able to vote their shares telephonically or via the internet. You should check the information provided by your broker, bank or other nominee to see what options are available to you.

Proxies

If a stockholder properly completes and returns the accompanying proxy card, the shares of stock represented by the proxy will be voted as the stockholder directs. **If no directions are given, the persons appointed as proxy holders will vote the shares in accordance with the recommendations of our Board of Directors**, i.e., they will vote the shares **for** the election of the nominees for director described in this proxy statement (Item 1) and **for** ratification of the appointment of Ernst & Young LLP as our independent public accountants for the fiscal year ending December 31, 2009 (Item 2).

A stockholder may revoke a proxy at any time before it is voted by filing a signed notice of revocation with the Secretary of the Company or by returning a properly completed proxy card bearing a later date. In addition, a stockholder may revoke a proxy by attending the Annual Meeting in person and requesting to vote. Attendance at the meeting in person will not, by itself, revoke the proxy.

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STOCK OWNERSHIP

Stock Ownership by Directors and Officers

The following table provides information about the beneficial ownership of shares of our common stock as of April 1, 2009 by (1) each of our directors, (2) each of our executive officers listed in the Summary Compensation Table on page 15 and (3) all of our directors and executive officers as a group:

	Amount and Nature of Beneficial Ownership(1)	Percent of Class(2)
Directors (and nominees)		
Mark C. Miller(3)(4)	2,306,718	2.7%
Jack W. Schuler(3)	3,171,992	3.7%
Thomas D. Brown	14,947	*
Rod F. Dammeyer(3)	121,629	*
William K. Hall	37,400	*
Jonathan T. Lord, M.D.	61,133	*
John Patience	355,130	*
Thomas R. Reusché	55,249	*
Ronald G. Spaeth	9,947	*
Officers		
Frank J.M. ten Brink(3)	407,216	*
Richard T. Kogler	209,772	*
Michael J. Collins	80,678	*
Richard L. Foss	272,598	*
All directors and executive officers as a group (14 persons)	7,135,781	8.4%

* Less than 1%.

(1) This column includes shares of common stock issuable upon the exercise of stock options exercisable as of or within 60 days after April 1, 2009. These shares are held as follows: Mr. Miller, 877,781 shares; Mr. Schuler, 25,277 shares; Mr. Brown, 14,947 shares; Mr. Dammeyer, 57,629 shares; Mr. Hall, 33,400 shares; Dr. Lord, 59,133 shares; Mr. Patience, 109,005 shares; Mr. Spaeth, 9,947 shares; Mr. ten Brink, 322,369 shares; Mr. Kogler, 203,364 shares; Mr. Collins, 80,451 shares; and Mr. Foss, 250,187 shares.

(2) Shares of common stock issuable under stock options exercisable as of or within 60 days after April 1, 2009 are considered outstanding for purposes of computing the percentage of the person holding the option or warrant but are not considered outstanding for purposes of computing the percentage of any other person.

(3) The shares shown as beneficially owned by Mr. Miller include 380,000 shares owned by a limited liability company of which Mr. Miller and his wife are the two managers and their respective revocable trusts are the two equal members. Mr. Miller disclaims beneficial ownership of any of the 190,000 shares allocable to the membership interest of his wife s revocable trust. The shares shown as beneficially owned by Mr. Schuler include 45,640 shares owned by his wife, 264,463 shares owned by trusts for the benefit of his adult children and 300,994 shares owned by a family foundation of which he is a co-trustee, regarding all of which Mr. Schuler disclaims any beneficial ownership. The shares shown as beneficially owned by Mr. Dammeyer include 4,000 shares owned by his wife, regarding which Mr. Dammeyer disclaims any beneficial ownership. The shares shown as beneficially owned by Mr. Patience include 1,000 shares owned by his wife, regarding which Mr. Patience disclaims any beneficial ownership. The shares shown as beneficially owned by Mr. ten Brink

include 350 shares owned by his wife, regarding which Mr. ten Brink disclaims any beneficial ownership.

(4) Mr. Miller, who is Chairman of the Board of Directors, is also our President and Chief Executive Officer.

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Stock Ownership of Certain Stockholders

The following table provides information about the beneficial ownership of our common stock by each person who was known to us to be the beneficial owner as of the record date (April 1, 2009) of more than 5% of our outstanding common stock:

Name and Address of Beneficial Owner	Amount and Nature of Beneficial Ownership(1)	Percent of Class
FMR LLC(1) 82 Devonshire Street Boston, Massachusetts 02109	4,820,601	5.6%

(1) The shares shown as beneficially owned are derived from the Schedule 13G that FMR LLC filed with the U.S. Securities and Exchange Commission on February 17, 2009.

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Item 1

ELECTION OF DIRECTORS

Our Board of Directors is currently composed of nine directors. The size of our Board will be reduced to eight directors as of the Annual Meeting because one of our incumbent directors, Thomas R. Reusché, is not standing for reelection.

With the exception of Mark C. Miller, our Chairman of the Board, President and Chief Executive Officer, all of our directors are outside directors (i.e., directors who are neither officers nor employees of ours). The Board has determined that all of our outside directors are independent under the applicable listing standards of the NASDAQ Stock Market.

Each director elected at the Annual Meeting will hold office until our annual meeting of stockholders in 2010 or until his successor is elected and qualified.

All eight nominees for election as directors are incumbent directors.

Nominees for Director

The following table provides information about the nominees for election as directors.

Nominee	Position with the Company	Age
Mark C. Miller	Chairman of the Board of Directors, President and Chief Executive Officer	53
Jack W. Schuler	Lead Director	68
Thomas D. Brown	Director	60
Rod F. Dammeyer	Director	68
William K. Hall	Director	65
Jonathan T. Lord, M.D.	Director	54
John Patience	Director	61
Ronald G. Spaeth	Director	65

Mark C. Miller has served as our President and Chief Executive Officer and a director since joining us in May 1992 and became Chairman of the Board of Directors in August 2008. From May 1989 until he joined us, Mr. Miller served as vice president for the Pacific, Asia and Africa in the international division of Abbott Laboratories, a diversified health care company, which he joined in 1976 and where he held a number of management and marketing positions. Mr. Miller received a B.S. degree in computer science from Purdue University, where he graduated Phi Beta Kappa.

Jack W. Schuler serves as the lead director of our Board of Directors and served as the Chairman of the Board from January 1990 until becoming lead director in August 2008. From January 1987 to August 1989, Mr. Schuler served as president and chief operating officer of Abbott Laboratories, a diversified health care company, where he served as a director from April 1985 to August 1989. Mr. Schuler serves as a director of Medtronic, Inc., a medical technology company, and Quidel Corporation, a developer and manufacturer of point-of-care diagnostic tests. He is a co-founder of Crabtree Partners LLC, a private investment firm in Lake Forest, Illinois, which was formed in June 1995. Mr. Schuler received a B.S. degree in mechanical engineering from Tufts University and a M.B.A. degree from the Stanford University Graduate School of Business Administration.

Thomas D. Brown has served as a director since May 2008. From 1974 until his retirement in 2002, Mr. Brown held various sales, marketing and management positions at Abbott Laboratories, a diversified health care company, where he served as a senior vice president and the president of the diagnostics division from 1998 to 2002 and as corporate vice president for worldwide commercial operations from 1993 to 1998. He is a director

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of Quidel Corporation, a developer and manufacturer of point-of-care diagnostic tests, and Cepheid, a molecular diagnostics company. Mr. Brown received a B.A. degree from the State University of New York at Buffalo.

Rod F. Dammeyer has served as a director since January 1998. He is the President of CAC, LLC, a private company providing capital investment and management advisory services, and is the retired vice chairman of Anixter International, where he served from 1985 until February 2001, and retired managing partner of corporate investments of Equity Group Investments, L.L.C., where he served from 1995 until June 2000. Mr. Dammeyer serves as a director of Quidel Corporation, a developer and manufacturer of point-of-care diagnostic tests, and also serves as a trustee of Van Kampen Investments, Inc. He received a B.S. degree from Kent State University.

William K. Hall has served as a director since August 2006. He is a private equity investor who has served since 2000 as chairman of the board and chief executive officer of Procyon Technologies, Inc., a privately-owned holding company. From 1994 to 2000, Mr. Hall was chairman and chief executive officer of Falcon Building Products, Inc., a manufacturer and distributor of construction products. He currently serves on the boards of Actuant Corporation, a diversified industrial products manufacturer, A. M. Castle & Co., a specialty metals and plastics distributor, Great Plains Energy Incorporated, a diversified energy producer, and W.W. Grainger, a supplier of facilities maintenance products. Mr. Hall received a B.S.E. degree in aeronautical engineering, a M.S. degree in mathematical statistics, and M.B.A. and Ph.D. degrees in business from the University of Michigan.

Jonathan T. Lord, M.D. has served as a director since August 2004. Dr. Lord is chief innovation officer/senior vice president at Humana Inc., a health benefits company, which he joined in April 2000. From October 1999 to April 2000, Dr. Lord served as president of Health Dialog, a health information provider, and from April 1997 to October 1999, he served as chief operating officer of the American Hospital Association, a national organization representing hospitals, health care networks and their patients. Dr. Lord received a B.S. degree in chemistry and a M.D. degree from the University of Miami.

John Patience has served as a director since our incorporation in March 1989. He is a co-founder and partner of Crabtree Partners LLC, a private investment firm in Lake Forest, Illinois, which was formed in June 1995. From January 1988 to March 1995, Mr. Patience was a general partner of a venture capital firm that he co-founded which led our initial capitalization. He received B.A. and LL.B. degrees from the University of Sydney in Sydney, Australia, and a M.B.A. degree from the Wharton School of Business of the University of Pennsylvania.

Ronald G. Spaeth has served as a director since May 2008. Mr. Spaeth served as president of Evanston Northwestern Healthcare Foundation from 2002 to 2007 and as the president and chief executive officer of Highland Park (Illinois) Hospital from 1983 to 2002. He is a director of Cole Taylor Bank and also serves as a director of several private companies. Mr. Spaeth is a member of the board of commissioners of the Joint Commission on the Accreditation of Healthcare Organizations and was formerly a member of the board of trustees of the American Hospital Association, chairman of the board of trustees of the Illinois Hospital Association and chairman of the board of governors of the American College of Healthcare Executives. He received a B.S. degree from Case Western Reserve University and a M.B.A. degree from the University of Chicago Graduate School of Business.

Committees of the Board

Our Board of Directors has standing Compensation, Audit and Nominating and Governance Committees. All of the members of each committee are outside directors who are independent under the applicable listing standards of the NASDAQ Stock Market.

Compensation Committee

The Compensation Committee makes recommendations to the full Board of Directors concerning the base salaries and cash bonuses of our executive officers and reviews our employee compensation policies generally. The Committee also administers our stock option plans as they apply to our executive officers.

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Audit Committee

The Audit Committee assists the Board of Directors in fulfilling its oversight responsibilities relating to the integrity of our financial statements, the qualifications and experience of our independent accountants, the performance of our internal audit function and our independent accountants, and our compliance with legal and regulatory requirements.

Nominating and Governance Committee

The Nominating and Governance Committee identifies and evaluates possible nominees for election to the Board of Directors and recommends to the full Board a slate of nominees for election at the annual meeting of stockholders. The Committee also recommends to the full Board director assignments to the Board s committees. In addition, the Committee develops, recommends to the full Board and oversees the implementation of our corporate governance policies and practices.

The Committee considers a variety of factors in evaluating a candidate for selection as a nominee for election as a director. These factors include the candidate s personal qualities, including, in particular, the candidate s probity, independence of judgment and analytical skills, and the candidate s professional experience, educational background, knowledge of our business and health care services generally, and experience serving on the boards of other public companies. The Committee has not established any minimum qualifications that a candidate must possess. In determining whether to recommend an incumbent director for re-election, the Committee also considers the director s preparation for and participation in meetings of the Board of Directors and the committee or committees of the Board on which he serves.

In identifying potential candidates for selection in the future as nominees for election as directors, the Committee will rely on suggestions and recommendations from the full Board, management, stockholders and others and, when appropriate, may retain a search firm for assistance. The Committee will consider candidates proposed by stockholders and will evaluate any candidate proposed by a stockholder on the same basis that it evaluates any other candidate. Any stockholder who wants to propose a candidate should submit a written recommendation to the Committee indicating the candidate s qualifications and other relevant biographical information and providing preliminary confirmation that the candidate would be willing to serve as a director. See Communications with the Board.

Committee Charters

The charters of the Compensation, Audit and Nominating and Governance Committees are available on our website, www.stericycle.com, under About Us/Corporate Governance.

Committee Members and Meetings

The following table provides information about the membership of the committees of the Board of Directors during 2008:

Director	Compensation Committee	Audit Committee	Nominating and Governance Committee
Jack W. Schuler		x	x*
Thomas D. Brown		x	
Rod F. Dammeyer(1)		x*	x
William K. Hall	x		
Jonathan T. Lord, M.D.	x*		x
John Patience		x	x
Thomas R. Reusché		x	
Ronald G. Spaeth	x		

* Chair of committee

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(1) The Board of Directors has determined that Mr. Dammeyer, the Chair of the Audit Committee, is an audit committee financial expert as described in the applicable rules of the U.S. Securities and Exchange Commission.

Our Board of Directors held five meetings in person or by teleconference during 2008 and acted without a formal meeting on a number of occasions by the unanimous written consent of the directors. The Audit Committee held eight meetings in person or by teleconference during the year. The Compensation Committee held one meeting by teleconference during the year, and the Nominating and Governance Committee held three meetings in person during the year.

All of our directors attended in person or participated by teleconference in all of the meetings of the Board of Directors during 2008 with the exception that three directors each missed one meeting (with two of them missing the same meeting). All of the members of the Audit, Compensation and Nominating and Governance Committees attended in person or participated by teleconference in all of the meetings of those committees during the year.

We encourage our directors to attend the annual meeting of stockholders. All of the nominees for election as directors attended the 2008 Annual Meeting of Stockholders, and we anticipate that all of our directors will attend this year s Annual Meeting.

Lead Director

We amended our bylaws in August 2008 to require the Board of Directors to appoint one of our outside directors as the lead director if and when our president and chief executive, or any other officer or employee, is serving as the Chairman of the Board. The lead director is required to be independent under the listing standards of the NASDAQ Stock Market, and serves at the Board s pleasure until the next election of directors by the stockholders.

Working with the Chairman of the Board, the lead director is responsible for coordinating the scheduling and agenda of board meetings and the preparation and distribution of agenda materials. The lead director presides when the Board meets in executive session or in the absence of the Chairman of the Board and may call special meetings of the Board when he considers appropriate. In general, the lead director oversees the scope, quality and timeliness of the flow of information from our management to the Board and serves as an independent point of contact for stockholders wishing to communicate with the Board other through the Chairman of the Board.

In August 2008, our Chairman of the Board, Jack W. Schuler, resigned as Chairman (but not as a director), and the Board of Directors appointed our President and Chief Executive Officer, Mark C. Miller, to the additional position of Chairman of the Board and appointed Mr. Schuler as the lead director.

Corporate Governance

Executive Sessions of the Board

Our Board of Directors excuses Mr. Miller, our Chairman of the Board, President and Chief Executive Officer, as well as any of our other executive officers who may be present by invitation, from a portion of each meeting of the Board in order to allow the Board, with our lead director presiding, to review Mr. Miller s performance as President and Chief Executive Officer and to enable each director to raise any matter of interest or concern without the presence of management.

Board Evaluation

Our directors annually review the performance of the Board of Directors and its committees and the performance of their fellow directors by completing confidential evaluation forms that are returned to

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Mr. Schuler as the Chair of the Nominating and Governance Committee. At a subsequent meeting of the Board, Mr. Schuler leads a discussion with the full Board of any issues and suggestions for improvement identified in his review of these evaluation forms.

Policy on Related Party Transactions

The Board of Directors has adopted a written policy requiring certain transactions with related parties to be approved in advance by the Audit Committee. For purposes of this policy, a related party includes any director or executive officer or an immediate family member of any director or executive officer. The transactions subject to review include any transaction, arrangement or relationship (or any series of similar transactions, arrangements and relationships.) in which (i) we or one of our subsidiaries will be a participant, (ii) the aggregate amount involved exceeds $100,000 and (iii) a related party will have a direct or indirect interest. In reviewing proposed transactions with related parties, the Audit Committee will consider the benefits to us of the proposed transaction, the potential effect of the proposed transaction on the director s independence (if the related party is a director), and the terms of the proposed transaction and whether those terms are comparable to the terms available to an unrelated third party or to employees generally.

There were no transactions during 2008 that required the Audit Committee s approval.

Succession Planning

The Board of Directors annually reviews and approves our succession planning for our President and Chief Executive Officer, our other executive officers and a number of other officers.

Required Resignation on Change in Job Responsibilities

By informal agreement, the Board of Directors has adopted a policy that a director must tender his resignation if the director s principal occupation or business association changes substantially from the position that he held when originally elected to the Board. The Nominating and Governance Committee will then review the circumstances of the director s new position or retirement and recommend to the full Board whether to accept or reject the director s resignation in light of the contribution that he can be expected to continue to make to the Board of Directors.

Communications with the Board

Stockholders who would like to communicate with the Board may do so by writing to the Board of Directors, Stericycle, Inc., 28161 North Keith Drive, Lake Forest, Illinois 60045. Our Investor Relations department will process all communications received. Communications relating to matters within the scope of the Board s responsibilities will be forwarded to the Chairman of the Board and at his direction to the other directors, and communications relating to ordinary day-to-day business matters that are not within the scope of the Board s responsibilities will be forwarded to the appropriate officer or executive. Communications addressed to the lead director will be forwarded to him and at his direction to the other directors, and communications addressed to a particular committee of the Board will be forwarded to the chair of that committee and

at his direction to the other members of the committee.

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AUDIT COMMITTEE REPORT

Under the Audit Committee s charter, the Audit Committee of the Board of Directors assists the Board in fulfilling its oversight responsibilities relating to the integrity of the Company s financial statements, the qualifications and experience of Company s independent accountants, the performance of the Company s internal audit function and independent accountants, and the Company s compliance with applicable legal and regulatory requirements. The Committee s charter is available on the Company s website, www.stericycle.com, under About Us/Corporate Governance. The current members of the Committee, who served during 2008, are Messrs. Dammeyer (Chair), Brown, Patience, Reusché and Schuler.

In regard to our role, we note that it is the responsibility of the Company s management to prepare financial statements in accordance with accounting principles generally accepted in the United States, and that it is the responsibility of the Company s independent public accountants to audit those financial statements. The Committee s responsibility is one of oversight, and we do not provide expert or other special assurance regarding the Company s financial statements or the quality of the audits performed by the Company s independent public accountants.

In carrying out our oversight responsibility, we review and discuss with both management and the Company s independent public accountants all quarterly and annual financial statements prior to their issuance. We reviewed and discussed with both management and Ernst & Young LLP the quarterly and annual financial statements for the fiscal year ended December 31, 2008. Our reviews and discussions with Ernst & Young LLP included executive sessions without the presence of the Company s management. They also included discussions of the matters required to be discussed pursuant to Statement on Auditing Standards No. 61, *Communication with Audit Committees*, as amended (AICPA, *Professional Standards*, vol. 1 AU section 380), as adopted by the Public Company Accounting Oversight Board in Rule 3200T, including the quality of the Company s accounting principles, the reasonableness of significant judgments and the clarity of disclosures in the Company s financial statements. We also discussed with Ernst & Young LLP matters relating to their independence, including a review of their audit and non-audit fees and the letter and written disclosures that the Committee received from Ernst & Young LLP pursuant to Rule 3526 of the Public Company Accounting Oversight Board, *Communications with Audit Committees Concerning Independence*.

In addition, we continued to monitor the scope and adequacy of the Company s internal controls, including staffing levels and requirements, and we reviewed programs and initiatives to strengthen the effectiveness of the Company s internal controls and steps taken to implement recommended improvements.

On the basis of these reviews and discussions, we recommended to the Board of Directors that the Board approve the inclusion of the Company s audited financial statements in the Company s annual report on Form 10-K for the year ended December 31, 2008 for filing with the U.S. Securities and Exchange Commission.

Audit Committee

Rod F. Dammeyer, Chair

Thomas D. Brown

John Patience

Thomas Reusché

Jack W. Schuler

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COMPENSATION DISCUSSION AND ANALYSIS

Our executive compensation policies have three objectives:

- to attract, motivate and retain highly qualified executive officers
- to make a substantial portion of their compensation dependent on the Company s attainment of a measurable performance target
- to structure a substantial portion of their compensation so that they benefit only if all of our stockholders benefit

Our compensation program for executive officers consists of cash compensation and long-term incentive compensation. Cash compensation is paid in the form of a base salary and a performance incentive bonus (PIB), and long-term incentive compensation is paid in the form of stock options.

We favor cash PIBs and stock options as the principal components of our executive officers compensation because they provide incentives to improve our operating performance and thereby create value for all of our stockholders.

Compensation Decisions

Decisions relating to the compensation of our executive officers are made by the Compensation Committee of our Board of Directors. Decisions of the Committee relating to executive officers base salaries and PIBs are subject to the review and approval of the full Board; decisions of the Committee relating to executive officers stock options are reviewed by the full Board but are not subject to the Board s approval.

Compensation decisions are made with a view to reaching an overall result that, in the Compensation Committee s subjective judgment, is appropriate and fair to the particular executive officer, both in terms of his own compensation and relative to that of the other executive officers, and fair as well to us and to our stockholders. The Committee does not reach this result in a mechanical fashion but, rather, considers each executive officer s role and contribution to our performance, his compensation history and the compensation practices at other companies with which members of the Committee are familiar.

In this regard, at the Committee s regular meeting in February 2009, the Committee reviewed, among other material, (i) each executive officer s cash compensation for 2003-2008, (ii) an analysis of the total rewards for 2008 of our chief executive officer and Chairman, chief operating officer and chief financial officer and (iii) a comparison of these total rewards with the total rewards of similar officers at roughly comparable companies on the basis of an informal survey prepared by our human resources department. The Committee did not use this survey to adjust executive officers compensation to any particular percentile for base salaries, cash bonuses or long-term compensation but simply as background to see where the compensation of our executive officers fell.

We do not have a fixed allocation among the three components of our executive officers compensation. The relative amounts of our executive officers salaries, PIBs and stock options vary to some extent from year to year. Base salaries and PIBs are considered together in order to assure that the cash component of our executive officers compensation falls within an acceptable range, and the cash component is taken into account in determining stock option grants in order to assure that the total potential rewards to our executive officers also fall within an acceptable range.

Compensation decisions are made annually at the regular meeting of the Compensation Committee during the first quarter of year, most commonly in February, when the results of our prior year&; the liquidation preference per share of that series of preferred stock; and

the terms of any other preferences or rights, if any, applicable to that series of preferred stock.

Warrants Outstanding

As of March 1, 2006, warrants to purchase 1,392,002 shares of common stock were outstanding. These warrants have a weighted average exercise price of $3.67 per share and expire between March 2006 and December 2012.

Anti-takeover Effects of Provisions of Our Certificate of Incorporation, Shareholder Rights Plan, and Delaware Law

General. Our certificate of incorporation, our status as a corporation incorporated under Delaware law, and our shareholder rights plan contain provisions that are designed in part to make it more difficult and time-consuming for a person to obtain control of our Company. The provisions of our certificate of incorporation, certain sections of Delaware law, and shareholder rights plan reduce the vulnerability of our Company to an unsolicited takeover proposal. These provisions may also have an adverse effect on the ability of stockholders to influence the governance of our Company.

In addition, because we have a significant amount of authorized but unissued common stock and preferred stock, our board of directors may make it more difficult or may discourage an attempt to obtain control of our Company by issuing additional stock in our Company.

Shareholder Rights Plan. Our board implemented a shareholder rights plan on June 2, 2005, a copy of which has been filed with the SEC, and declared a dividend of one right (Right) for each outstanding share of our common stock to stockholders of record on June 14, 2005. One Right will also attach to each share issued after June 14, 2005. The Rights will only become exercisable, and transferable apart from our common stock, upon the earlier of: the first date of public announcement by the Company or by a person or group (Acquiring Person) of such person s acquisition of 15% or more of the outstanding Common Stock without the prior approval of the Company s Board of Directors, or the tenth business day (subject to extension by the Board) following the commencement of, or public announcement of an intention to commence, a tender or exchange offer which would result in the beneficial ownership of 15% or more of the outstanding Common Stock (the earlier of such dates being called the Distribution Date).

The discussion that follows sets forth the operation of the Rights.

Until the Distribution Date, the Rights will be evidenced by the certificates for the Common Stock and will be transferable only in connection with a transfer of the Common Stock. As soon as practicable following the Distribution Date, separate certificates evidencing the Rights (Right Certificates) will be mailed to holders of record of the Company s Common Stock as of the close of business on the Distribution Date. The Right Certificates alone will evidence the Rights from and after the Distribution Date.

The Preferred Stock purchasable upon exercise of the Rights will be nonredeemable (except as provided below) and junior to any other series of preferred stock the Company may issue (unless otherwise provided in the terms of such other series). Each share of Preferred Stock will have a preferential cumulative quarterly dividend in an amount equal to the greater of (a) $75.00 or (b) 100 times the dividend declared on each share of Common Stock. In the event of liquidation, the holders of Preferred Stock will receive a preferred liquidation payment equal to the greater of (a) $2,200.00 per share, plus accrued dividends to the date of distribution whether or not earned or declared, plus a redemption premium of $1,200.00 per share of Preferred Stock or (b) an amount per share equal to 100 times the aggregate payment to be distributed per share of Common Stock.

Each share of Preferred Stock will entitle the holder to 100 votes on all matters submitted to a vote of the shareholders. The holders of Preferred Stock will generally vote together as one class with the holders of Common Stock. In the event of any merger, consolidation or other transaction in which shares of Common Stock are exchanged for or changed into other securities, cash and/or other property, each share of Preferred Stock will be entitled to 100 times the amount and type of consideration received per share of Common Stock.

Unless an Acquiring Person, within the time period specified (a) publicly announces its withdrawal of its tender or exchange offer, or withdrawal of its intention to commence such tender or exchange offer; and (b) divests a sufficient number of shares of the outstanding Common Stock so that such Acquiring Person would no longer own 15% or more of the outstanding Common Stock, the Company must redeem the Preferred Stock within 364 days thereafter at a redemption price of $2,200.00 per share, plus accrued dividends to the date of redemption, plus a redemption premium of $1,200.00 per share of Preferred Stock. However, if the Acquiring Person, prior to such 364th day either (x) concludes a definitive agreement with the Board of Directors of the Company pursuant to a stock or cash tender or exchange offer for all outstanding Common Stock at a price and on terms approved by a majority of the outside Board members (who are continuing Board members) or (y) (i) publicly announces its withdrawal of its tender or exchange offer, or withdrawal of its intention to commence such tender or exchange offer; and (ii) divests a sufficient number of shares of the outstanding Common Stock so that such person would no longer own securities of the Company representing 15% or more of the outstanding Common Stock, then the Board has the option to retire any amount so outstanding and due for $.001 per Preferred Share.

In the event:

(i) any person becomes an Acquiring Person or

(ii) any Acquiring Person or any of its Affiliates or Associates, directly or indirectly:

(1) consolidates with or merges into the Company or any of its subsidiaries or otherwise combines with the Company or any of its subsidiaries in a transaction in which the Company or such subsidiary is the continuing or surviving corporation of such merger or combination and the Common Stock of the Company remains outstanding and no shares thereof shall be changed into or exchanged for stock or other securities of any other person or of the Company

or cash or any other property,

(2) transfers any assets to the Company or any of its subsidiaries in exchange for capital stock of the Company or any of its subsidiaries or for securities exercisable for or convertible into capital stock of the Company or any of its subsidiaries or otherwise obtains from the Company or any of its subsidiaries any capital stock of the Company or any of its subsidiaries or securities exercisable for or convertible into capital stock of the Company or any of its subsidiaries (other than as part of a pro rata offer or distribution to all holders of such stock),

(3) sells, purchases, leases, exchanges, mortgages, pledges, transfers or otherwise disposes to, from or with the Company or any of its subsidiaries, assets on terms and conditions less favorable to the Company or such subsidiary than the Company or such subsidiary would be able to obtain in arm s-length negotiation with an unaffiliated third party,

(4) receives any compensation from the Company or any of its subsidiaries for services other than compensation for employment or fees for serving as a director at rates in accordance with the Company s (or its subsidiary s) past practice,

(5) receives the benefit (except proportionately as a stockholder) of any loans, advances, guarantees, pledges or other financial assistance or tax credit or advantage, or

(6) engages in any transaction with the Company (or any of its subsidiaries) involving the sale, license, transfer or grant of any right in, or disclosure of, any patents, copyrights, trade secrets, trademarks or know-how or other intellectual property rights which the Company (including its subsidiaries) owns or has the right to use on terms and conditions not approved by the Board of Directors of the Company, or

(iii) while there is an Acquiring Person, there shall occur any reclassification of securities, any recapitalization of the Company, or any merger or consolidation of the Company with any of its subsidiaries or any other transaction or transactions involving the Company or any of its subsidiaries which have the effect of increasing by more than 1% the proportionate share of the outstanding shares of any class of equity securities of the Company or any of its subsidiaries owned or controlled by the Acquiring Person (such events are collectively referred to herein as the Flip-In Events),

then, and in each such case, each holder of a Right, other than the Acquiring Person, will have the right to receive, upon payment of the then current purchase price (the Purchase Price), in lieu of one one-hundredth of a share of Preferred Stock per outstanding Right, that number of shares of Common Stock having a market value at the time of the transaction equal to the Purchase Price (as adjusted to the Purchase Price in effect immediately prior to the Flip-In Event multiplied by the number of one one-hundredths of a share of Preferred Stock for which a Right was exercisable immediately prior to such Flip-In Event) divided by one-half the average of the daily closing prices per share of the Common Stock for the thirty consecutive trading days (Current Market Price) on the date of such Flip-In Event. Notwithstanding the foregoing, Rights held by the Acquiring Person or certain related persons or certain transferees will be null and void and no longer be transferable.

The Company may at its option substitute for a share of Common Stock issuable upon the exercise of Rights such number or fractions of shares of Preferred Stock having an aggregate current market value equal to the Current Market Price of a share of Common Stock. If there are insufficient shares of Common Stock to permit the exercise in full of the Rights in accordance with the foregoing paragraph, the Board of Directors shall, to the extent permitted by applicable law and any material agreements then in effect to which the Company is a party:

(A) determine the excess (such excess, the Spread) of

(1) the value of the shares of Common Stock issuable upon the exercise of a Right in accordance with this paragraph (the Current Value) over

(2) the Purchase Price, and

(B) with respect to each Right, make adequate provision to substitute for the shares of Common Stock issuable in accordance with this paragraph upon exercise of the Right and payment of the Purchase Price.

Unless the Rights are earlier redeemed, if following the first occurrence of a Flip-In Event, (a) the Company were to be acquired in a merger or other business combination in which any shares of the Company s Common Stock are exchanged or converted for other securities or assets (other

than a merger or other business combination in which the voting power represented by the Company s securities outstanding immediately prior thereto continues to represent all of the voting power represented by the securities of the Company thereafter and the holders of such securities have not changed as a result of such transaction), or (b) 50% or more of the assets or earning power of the Company and its subsidiaries (taken as a whole) were to be sold or transferred in one or a series of related transactions (such transactions are collectively referred to herein as the Flip-Over Events), proper provision must be made so that each holder of a Right (other than an Acquiring Person, or related persons) will from and after such date have the right to receive, upon payment of the then current Purchase Price, that number of shares of common stock of the acquiring company having a market value at the time of such transaction equal to the Purchase Price divided by one-half the Current Market Price of such common stock.

At any time until the occurrence of a Flip-In Event, the Board may redeem the Rights in whole, but not in part, at a price of $0.001 per Right. Immediately upon the action of the Board of Directors of the Company authorizing redemption of the Rights, the right to exercise the Rights will terminate, and the only right of the holders of Rights will be to receive the Redemption Price without any interest thereon.

The Rights will expire upon the earlier of (i) June 2, 2008, unless otherwise extended by the Company s shareholders or (ii) redemption or exchange by the Company. Pursuant to the shareholder rights plan, all shares of our Series C Preferred Stock are reserved for issuance upon exercise of the Rights.

The Rights have certain anti-takeover effects. The Rights will cause substantial dilution to a person or group who attempts to acquire us without the approval of our board of directors. Although the shareholder rights plan is not intended to prevent acquisitions through negotiations with our board of directors, the existence of the shareholder rights plan may nevertheless discourage a third party from making a partial tender offer or otherwise attempting to obtain a substantial position in our equity securities or seeking to obtain control of the Company. To the extent any potential acquirers are deterred by our shareholder rights plan, the plan may have the effect

of preserving incumbent directors and management in office or preventing acquisitions of the Company. As a result, the overall effect of the Rights may be to render more difficult or discourage any attempt to acquire us even if such acquisition may be favorable to the interests of our stockholders.

Because our board of directors can redeem the Rights or approve certain offers, the Rights should not interfere with any merger or other business combination approved by our board of directors.

Additional descriptions of the rights plan may be found in either the Form 8-A12G filed with the SEC on June 8, 2005, or the Form 8-K filed with the SEC on June 8, 2005, which filings are incorporated herein by reference. The description and terms of the Rights are set forth in a rights plan between the Company and Computershare Investor Services, LLC., as Rights Agent, which agreement is on file with the SEC and incorporated herein by reference.

Delaware law. We are subject to Section 203 of the Delaware General Corporation Law, (DGCL), an anti-takeover law. In general, the statute prohibits a publicly-held Delaware corporation from engaging in a business combination with an interested stockholder for a period of three years after the date of the transaction in which the person became an interested stockholder. A business combination includes a merger, sale of 10% or more of our assets and certain other transactions resulting in a financial benefit to the stockholder. For purposes of Section 203, an interested stockholder is defined to include any person that is:

the owner of 15% or more of the outstanding voting stock of the corporation;

an affiliate or associate of the corporation and was the owner of 15% or more of the voting stock outstanding of the corporation, at any time within three years immediately prior to the relevant date; and

an affiliate or associate of the persons defined as an interested shareholder.

However, the above provisions of Section 203 do not apply if:

the board of directors approves the transaction that made the stockholder an interested stockholder prior to the date of that transaction;

after completion of the transaction that resulted in the stockholder becoming an interested stockholder, that stockholder owned at least 85% of our voting stock outstanding at the time the transaction commenced, excluding

shares owned by our officers and directors; or

on or subsequent to the date of the transaction, the business combination is approved by our board of directors and authorized at a meeting of our stockholders by an affirmative vote of at least two-thirds of the outstanding voting stock not owned by the interested stockholder.

Stockholders may, by adopting an amendment to the corporation s certificate of incorporation or bylaws, elect for the corporation not to be governed by Section 203, effective 12 months after adoption. Neither our certificate of incorporation nor our bylaws exempt us from the restrictions imposed under Section 203. It is anticipated that the provisions of Section 203 may encourage companies interested in acquiring us to negotiate in advance with our board; however, this statute could prohibit or delay mergers or other change in control attempts, and thus may discourage attempts to acquire us.

DESCRIPTION OF THE WARRANTS TO PURCHASE COMMON STOCK WE MAY OFFER

The following statements with respect to the common stock warrants are summaries of, and subject to, the detailed provisions of a stock warrant agreement to be entered into by us and a stock warrant agent to be selected at the time of issue of either or both of the common stock. The stock warrant agreement may include or incorporate by reference standard warrant provisions substantially in the form of the Common Stock Warrant Agreement to be filed in an amendment to the registration statement which includes this prospectus or filed in a current report on Form 8-K and incorporated by reference in the registration statement which includes this prospectus.

General

The common stock warrants, evidenced by stock warrant certificates, may be issued under a stock warrant agreement independently or together with any other securities offered by any prospectus supplement and may be attached to or separate from such other offered securities. If stock warrants are offered, the applicable prospectus supplement will describe the designation and terms of the stock warrants, including:

the offering price, if any;

the designation and terms of the common stock purchasable upon exercise of the stock warrants;

if applicable, the date on and after which the stock warrants and the related offered securities will be separately transferable;

the number of shares of common stock purchasable upon exercise of one stock warrant and the initial price at which the shares may be purchased upon exercise;

the date on which the right to exercise the stock warrants will commence and expire;

a discussion of certain United States federal income tax considerations;

the call provisions, if any;

the currency, currencies or currency units in which the offering price, if any, and exercise price are payable;

any antidilution provisions of the stock warrants; and

any other terms of the stock warrants.

The shares of common stock issuable upon exercise of the stock warrants will, when issued in accordance with the stock warrant agreement, be fully paid and nonassessable.

Exercise of Stock Warrants

Stock warrants may be exercised by surrendering the stock warrant certificate to the stock warrant agent with the form of election to purchase on the reverse side of the stock warrant certificate properly completed and signed and by payment in full of the exercise price, as set forth in the applicable prospectus supplement. The signature must be guaranteed by a bank or trust company, by a broker or dealer which is a member of the National Association of Securities Dealers, Inc. or by a member of a national securities exchange. Upon receipt of the certificates, the stock warrant agent will requisition from the transfer agent for the common stock for issuance and delivery to or upon the written order of the exercising warrantholder, a certificate representing the number of shares of common stock purchased. If less than all of the stock warrants evidenced by any stock warrant certificate are exercised, the stock warrant agent will deliver to the exercising warrantholder a new stock warrant certificate representing the unexercised stock warrants.

No Rights as Stockholders

Holders of stock warrants will not be entitled, by virtue of being such holders, to vote, to consent, to receive dividends, to receive notice as stockholders with respect to any meeting of stockholders for the election of our directors or any other matter, or to exercise any rights whatsoever as our stockholders.

SELLING SHAREHOLDERS

The selling shareholders listed in any amendment to the registration statement of which this prospectus is a part, or supplement to this prospectus, and any transferees or successors-in-interest to those persons, may from time to time offer and sell, pursuant to this prospectus, some or all of the common shares or warrants, or common shares issued on exercise of warrants, covered by this prospectus. We will not receive any cash proceeds from the sale of securities under this prospectus.

Resales by selling shareholders may be made directly to investors or through a securities firm acting as an underwriter, broker or dealer. When resales are to be made through a securities firm, such securities firm may be engaged to act as the selling shareholder s agent in the sale of the shares by such selling shareholder, or the securities firm may purchase shares from such selling shareholder as principal and thereafter resell such shares from time to time. The fees earned by or paid to such securities firm may be the normal stock exchange commissions or negotiated commissions or underwriting discounts to the extent permissible. In addition, such securities firm may effect resales through other securities dealers, and customary commissions or concessions to such other dealers may be allowed. Sales of securities may be at negotiated prices, at fixed prices, at market prices or at prices related to market prices then prevailing. Any such sales may be made on the American Stock Exchange by block trade, in special or other offerings, directly to investors or through a securities firm acting as agent or principal, or a combination of such methods. Any participating securities firm may be indemnified against certain liabilities, including liabilities under the Securities Act. Any participating securities firm may be deemed to be an underwriter within the meaning of the Securities Act, and any commissions earned by such firm may be deemed to be underwriting discounts or commissions under the Securities Act.

In connection with resales of the securities sold hereunder, a prospectus supplement, if required, will be filed under Rule 424(b) under the Securities Act, disclosing the name of the selling shareholder, the participating securities firm, if any, the number of shares involved, any material relationship the selling shareholder may have with us or our affiliates, and other details of such resale to the extent appropriate. Information concerning the selling shareholders will be obtained from the selling shareholders.

Shareholders may also offer common shares issued in past and future acquisitions by means of prospectuses under other available registration statements or pursuant to exemptions from the registration requirements of the Securities Act, including sales which meet the requirements of Rule 145(d) under that Act, and shareholders should seek the advice of their own counsel with respect to the legal requirements for such sales.

PLAN OF DISTRIBUTION

The common stock and warrants covered by this prospectus are available for use in connection with acquisitions by us of other businesses, assets or securities. The consideration offered by us in such acquisitions, in addition to any securities offered by this prospectus, may include cash, certain assets and/or assumption by us of liabilities of the businesses, assets or securities being acquired. The amount and type of consideration we will offer and the other specific terms of each acquisition will be determined by negotiations with the owners or controlling persons of the businesses, assets or securities to be acquired Factors taken into account in acquisitions may include, among other factors, the quality and reputation of the businesses to be acquired and its management, the strategic market position of the businesses to be acquired, its assets, earning power, cash flow and growth potential, and the market value of its securities, including common stock, when pertinent.

The value of our securities issued in any such acquisition will be offered at prices based upon or reasonably related to the current market value of the securities. The value will be determined either when the terms of the acquisition are tentatively or finally agreed to, when the acquisition is completed, when we issue the securities or during some other negotiated period.

We may offer and issue shares of our common stock and warrants to purchase shares of common stock from time to time in connection with direct and indirect acquisitions of other businesses, properties or assets. We will not receive any cash proceeds from these offerings. We will furnish this prospectus to the security holders or owners of the businesses, properties or assets we are acquiring in exchange for the shares and warrants we offer by this prospectus.

We do not expect to pay underwriting discounts or commissions, although we may pay finders fees from time to time in connection with certain acquisitions. Any person receiving finders fees may be deemed to be an underwriter within the meaning of the Securities Act of 1933, and any profit on the resale of securities purchased by them may be considered underwriting commissions or

discounts under the Securities Act. Except in the case of certain expenses incurred by selling shareholders selling hereunder, we will pay all expenses of the offering of shares and warrants by this prospectus.

We may permit individuals or entities who have received or will receive our common shares in connection with the acquisitions described above, or their transferees or successors-in-interest, to use this prospectus to cover their resale of such shares. We will furnish this prospectus to the security holders or owners of the businesses, properties or assets we are acquiring in exchange for the shares and warrants we offer by this prospectus.

LEGAL MATTERS

Gersten Savage LLP, New York, New York, will pass upon the validity of the shares of common stock and warrants for us in connection with this offering. Gersten Savage owns 56,250 shares of the Company s common stock and a member of the firm owns approximately 57,250 shares.

EXPERTS

The financial statements incorporated in this prospectus by reference to the Annual Report on Form 10-K as of and for the year ended December 31, 2005 have been so incorporated in reliance on the report of Ehrhardt Keefe Steiner & Hottman PC, independent registered public accountants, given on the authority of said firm as experts in auditing and accounting.

Information incorporated by reference in this prospectus regarding our estimated quantities of natural gas and oil reserves were independently determined by Netherland, Sewell & Associates, Inc., independent petroleum engineers, based on operating information provided by us and are incorporated herein upon the authority of such firm as experts in petroleum engineering.