

GREAT ATLANTIC & PACIFIC TEA CO INC

Form PRE 14A

May 10, 2007

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

**SCHEDULE 14A
(Rule 14a-101)**

INFORMATION REQUIRED IN PROXY STATEMENT

SCHEDULE 14A INFORMATION

**PROXY STATEMENT PURSUANT TO SECTION 14(a) OF THE SECURITIES
EXCHANGE ACT OF 1934 (AMENDMENT NO.)**

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
Section 240.14a-11(c)
or Section 240.14a-2.

The Great Atlantic & Pacific Tea Company, Inc.

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than 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 0-12.

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(3) Filing Party:

(4) Date Filed:

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**THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.
2 PARAGON DRIVE
MONTVALE, NEW JERSEY 07645**

**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS
To Be Held July 19, 2007**

To the Stockholders of The Great Atlantic & Pacific Tea Company, Inc.

We will hold the Annual Meeting of Stockholders of The Great Atlantic & Pacific Tea Company, Inc. (the Company) at The Woodcliff Lake Hilton, 200 Tice Boulevard, Woodcliff Lake, New Jersey, on Thursday, July 19, 2007, at 9:00 A.M. (E.D.T.) for the following purposes:

1. To elect eight (8) directors of the Company, each for a term of one (1) year and until their successors are elected and qualified;
2. To consider and vote on a proposal to approve an amendment to the Company's charter in the form attached to the accompanying proxy statement as Appendix D and incorporated herein by reference to eliminate the preemptive rights provisions of Article VII of the Company's charter, which preemptive rights provisions provide stockholders the right to subscribe for and purchase, subject to several exceptions, any new or additional issues of shares of the Company's stock or securities convertible into shares of the Company's stock;
3. To consider and vote on a proposal to approve an amendment to the Company's charter in the form attached to the accompanying proxy statement as Appendix E and incorporated herein by reference to amend Article VIII of the Company's charter to require the Company to indemnify the Company's officers to the maximum extent now or hereafter permitted under the Maryland General Corporation Law and expressly require the Company to advance reasonable expenses incurred by a director or officer who is a party to a proceeding upon meeting certain requirements of the Maryland General Corporation Law;
4. To consider and vote on a proposal to approve an amendment to the Company's charter in the form attached to the accompanying proxy statement as Appendix F and incorporated herein by reference to amend Article VIII of the Company's charter to eliminate the liability of the Company's directors and officers for money damages to the Company or its stockholders except under certain circumstances.
5. To transact such other business as may properly come before the meeting and any adjournments thereof.

Following the adoption of any of the charter amendment proposals, we plan to amend and restate our charter to reflect the amendments, in accordance with Maryland law.

The Board of Directors has fixed May 21, 2007, as the Record Date for this meeting. Only stockholders of record at the close of business on that date are entitled to receive notice and to vote at the meeting or at any adjournment thereof. A complete list of stockholders entitled to vote at the Annual Meeting will be open to the examination of any stockholder present at the Annual Meeting and, for any purpose relevant to the Annual Meeting, during ordinary business hours for at least ten days prior to the Annual Meeting, at the corporate offices of the Company at the address indicated above.

Whether or not you plan to attend the Annual Meeting in person, we urge you to ensure your representation by voting by proxy as promptly as possible. You may vote by completing, signing, dating and returning the

enclosed proxy card by mail, or you may vote by telephone or electronically through the Internet, as further described on the proxy card. If you attend the Annual Meeting and inform the Secretary of the Company in writing that you wish to vote your shares in person, your proxy will not be used.

A copy of the Company's Annual Report to Stockholders for the fiscal year ended February 24, 2007 accompanies this proxy statement.

By Order of the Board of Directors

ALLAN RICHARDS
Senior Vice President, Human Resources,
Labor Relations, Legal Services & Secretary

Dated: [date], 2007

**THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.
2 PARAGON DRIVE
MONTVALE, NEW JERSEY 07645**

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SOLICITATION AND REVOCATION OF PROXIES

This proxy statement is furnished by the Board of Directors of The Great Atlantic & Pacific Tea Company, Inc. (the Company) for use at the Company's Annual Meeting of Stockholders to be held on July 19, 2007 (the Annual Meeting). It is expected that the solicitation of proxies will be primarily by mail. Proxies may also be solicited personally by regular employees of the Company, by telephone or by other means of communication at nominal cost. The Company will bear the cost of such solicitation. It will reimburse banks, brokers and trustees, or their nominees, for reasonable expenses incurred by them in forwarding proxy material to beneficial owners of stock in accordance with the New York Stock Exchange (NYSE) schedule of charges. Any stockholder giving a proxy has the power to revoke it at any time prior to its exercise by giving notice in writing to the Secretary, at the address above, or by casting a ballot at the meeting in person or by proxy. This proxy statement is first being mailed to stockholders on or about May 25, 2007.

The Company has retained [AGENT] to assist in the solicitation of proxies for the meeting and to verify the records relating to the solicitations. [AGENT] will be paid a retainer fee of \$[] and additional fees based upon actual services provided, plus reimbursement of its out-of-pocket expenses.

Voting at Meeting

Only stockholders of record at the close of business on May 21, 2007 will be entitled to vote at the Annual Meeting. As of May 21, 2007, there were [number] shares of the Company's \$1 par value common stock (the Common Stock) each of which is entitled to one vote. There are no appraisal or dissenter's rights with respect to any matter to be voted on at the Annual Meeting. Proxies marked as abstaining (including proxies containing broker non-votes) on any matter to be acted upon by stockholders will be treated as present at the meeting for purposes of determining a quorum but will not be counted as votes cast on such matters. Votes cast at the Annual Meeting will be tabulated by the persons appointed by the Company to act as inspectors of election for the Annual Meeting. A majority of the issued and outstanding shares of Common Stock represented in person or by proxy at the Annual Meeting will constitute a quorum for the transaction of business.

If shares are not voted in person, they cannot be voted on your behalf unless a proxy is given. Subject to the limitations described below, you may vote by proxy:

- (i) by completing, signing and dating the enclosed proxy card and mailing it promptly in the enclosed envelope;
- (ii) by telephone; or
- (iii) electronically through the Internet.

Voting by Proxy Card

Each stockholder may vote by proxy by using the enclosed proxy card. When you return a proxy card that is properly signed and completed, the shares of Common Stock represented by your proxy will be voted as you specify on the proxy card. If you own Common Stock through a broker, bank or other nominee that holds Common Stock for your account in a street name capacity, you should follow the instructions provided by your nominee regarding how to instruct your nominee to vote your shares.

Voting by Telephone or Through the Internet

If you are a registered stockholder (that is, if you own Common Stock in your own name and not through a broker, bank or other nominee that holds Common Stock for your account in street name), you may vote by proxy by using either the telephone or Internet methods of voting. Proxies submitted by telephone or through the Internet must be received by [TIME] on [DATE]. Please see the proxy card provided to you for instructions on how to access the telephone and Internet voting systems. If your shares of Common Stock are

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held in street name for your account, your broker, bank or other nominee will advise you whether you may vote by telephone or through the Internet.

ITEM 1 ELECTION OF DIRECTORS

Eight (8) directors are to be elected to hold office until the next annual meeting and until their successors are elected and shall qualify. The persons named as proxies in the accompanying proxy intend to vote, unless otherwise instructed, for the election to the Board of Directors of the persons named below, each of whom has consented to nomination and to serve when elected. All nominees are presently members of the Board of Directors. The affirmative vote of a majority of the votes cast at the Annual Meeting is required for the election of each director.

Under the rules of the New York Stock Exchange (NYSE) and the Company s Standards of Independence, a majority of the Board of Directors must be comprised of directors who are independent under the rules of the NYSE. However, because Tengelmänn owns more than 50% of the Company s Common Stock, the Company qualifies as a controlled company under the NYSE listing standards and is exempt from this requirement. The Company observes all other criteria established by the NYSE and other governing laws and regulations. The Board is comprised of an equal number of independent (4) and non-independent (4) directors. In its review of director independence, the Board of Directors considers all relevant facts and circumstances, including without limitation, all commercial, banking, consulting, legal, accounting, charitable or other business relationships any director may have with the Company. The Board has adopted categorical standards to assist it in making determinations of independence for directors, a copy of which is attached as Appendix A.

The Board has determined that four (4) of the eight (8) nominees, namely Bobbie Gaunt, Dan Kourkoumelis, Edward Lewis and Maureen Tart-Bezer, are independent directors under the Company s Standards of Independence and the independence requirements in the NYSE listing rules, and that the remaining nominees are not independent under those standards.

The Board recommends a vote FOR the nominees for a one year term ending in 2008.

John D. Barline

Mr. Barline, age 60, is and has been a member of the Board since July 9, 1996. He is a member of the Human Resources & Compensation and Executive Committees.

Mr. Barline, an attorney in private practice since 1973, is currently of counsel at the law firm of Williams, Kastner & Gibbs LLP in Tacoma, Washington. His areas of practice include corporate tax law, mergers and acquisitions, general business law, estate planning and real estate. He provides personal legal services to the Haub family, including Christian W. E. Haub.

Mr. Barline is a member of the board of directors and corporate secretary of Sun Mountain Resorts, Inc. and a director of Wissoll Trading Company, Inc. and Sun Mountain Lodge, Inc., each a small closely held corporation owned primarily by the Haub family. He is also a member of the board of directors of the Le May Automobile Museum.

Dr. Jens-Jürgen Böckel

Dr. Böckel, age 64, is and has been a member of the Board since April 29, 2004.

Dr. Böckel has served as the chief financial officer of Tengelmänn Warenhandels-gesellschaft KG (Tengelmänn) since January 1, 2000. From January, 1995 through December, 1999, Dr. Böckel served as chief financial officer and as a

member of the executive board of Schickedanz Holding Stiftung & Co. KG, in Fürth, Germany.

Dr. Böckel is a member of the supervisory board of Kaiser's Tengemann AG, in Viersen, Germany, OBI AG, in Wermelskirchen, Germany, and Löwa and Zielpunkt GmbH, in Vienna, Austria. He is also chair of the family council and chairman of the advisory board of Fahrzeug-Werke Lueg AG, in Bochum, Germany.

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Bobbie Andrea Gaunt

Ms. Gaunt, age 60, is and has been an independent member of the Board since May 15, 2001. She is Lead Director, Chair of the Human Resources & Compensation Committee and a member of the Audit & Finance, Governance and Executive Committees.

Ms. Gaunt was elected an officer and vice president of the Ford Motor Company in June, 1999, and served as president and chief executive officer of the Ford Motor Company of Canada, Ltd., from 1997 until her retirement from the company in December of 2000. Ms. Gaunt began her automotive career with Ford in 1972 and for over 28 years served in various managerial positions in the areas of sales, marketing, research and building customer relationships. Between the months of June through October, 2004, Ms. Gaunt served as Interim Chief Executive Officer of ADVO, Inc. in Windsor, Connecticut.

Ms. Gaunt is a member of the Board of Advisors of the Katz Business School, and the Board of Trustees at the University of Pittsburgh; is a member (at the request of the Company) of the Board of Directors of Metro, Inc., Montreal, Quebec, Canada and serves as a member of both their Human Resources and Audit Committees; and is a member and chair of the board of the Saugatuck Center for the Arts, in Saugatuck, Michigan.

Dr. Andreas Guldin

Dr. Guldin, age 45, became a member of the Board on May 1, 2007 upon a recommendation to the Governance Committee by Mr. Haub. He is standing for election for the first time. He is a member of the Executive Committee. On May 1, 2007, Dr. Guldin was appointed to the position of Executive Managing Director, Strategy & Corporate Development for the Company.

Dr. Guldin was a Senior Executive Vice President (Corporate Finance) and Co-CFO of Tengelmann Warenhandelsgesellschaft KG, a role which he held from July 2005 until April 2007. He has also served as an advisor to the Executive Chairman and Board of Directors of The Great Atlantic and Pacific Tea Company and he was Lead Negotiator in the acquisition of Pathmark.

Prior to joining Tengelmann, Dr. Guldin served from May 1995 to March 2005 as a member of the Executive Management Team and Chief Financial Officer at E. Breuninger GmbH & Co. (Germany), the most prestigious department store and fashion retailer in Germany. Before that he worked for several years as a business and strategy consultant as a Senior Consultant and Project Leader at PA Consulting and CSC Index, Germany.

Dr. Guldin is a Visiting Faculty Member at the University Stuttgart and Düsseldorf for Finance and Performance Management. He holds a Masters degree in Psychology from J.W. Goethe University in Frankfurt, Germany; a Masters degree in Business Administration from London Business School, UK; and a Doctorate degree in Economics and Business Administration from University of Hohenheim, Germany.

Christian W. E. Haub

Mr. Haub, age 42, is and has been a member of the Board since December 3, 1991. He currently serves as Executive Chairman of the Board of the Company (the Executive Chairman), and Chair of the Executive Committee.

Mr. Haub has served as Executive Chairman of the Company since August 15, 2005. Prior thereto Mr. Haub served as Chief Executive Officer of the Company since May 1, 1998 and Chairman of the Board since May 1, 2001. In addition, Mr. Haub also served as President of the Company from December 7, 1993 through February 24, 2002, and

from November 4, 2002 through November 15, 2004.

Mr. Haub is a partner and Co-Chief Executive Officer of Tengelmann. Mr. Haub is a member (at the request of the Company) of the Board of Directors of Metro, Inc., Montreal, Quebec, Canada, and is on the board of directors of the Food Marketing Institute and on the board of trustees of St. Joseph's University in Philadelphia, Pennsylvania.

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Dan Plato Kourkoumelis

Mr. Kourkoumelis, age 56, is and has been an independent member of the Board since March 21, 2000. Mr. Kourkoumelis is Chair of the Governance Committee and a member of the Audit & Finance and Executive Committees.

Mr. Kourkoumelis was president and chief operating officer of Quality Food Centers, Inc. from May 1989 until September 1996, and thereafter president and chief executive officer of Quality Food Centers, Inc. until September 25, 1998, when he retired after Quality Food Centers, Inc. was acquired. He also served as a director of Quality Food Centers, Inc. from April 1991 until March 1998. Mr. Kourkoumelis is a director of Expeditors International Inc. and a director and past president of the Western Association of Food Chains. Mr. Kourkoumelis is a member of the compensation and audit committees of Expeditors International.

Edward Lewis

Mr. Lewis, age 67, is and has been an independent member of the Board since May 16, 2000. Mr. Lewis is a member of the Audit & Finance, Human Resources & Compensation and Governance Committees.

Mr. Lewis is chairman and founder of Essence Communications Partners, which was formed in 1969. He is director of the leadership council of the Tanenbaum Center for Interreligious Understanding, the Harvard Business School Board of Directors of the Associates, the Economic Club of New York, the New York City Partnership, the Central Park Conservancy, The American Academy of Medicine, The Boys and Girls Club, NYC2012 and the board of Jazz at Lincoln Center for the Performing Arts. He also served as chairman of the Magazine Publishers of America from 1997 to 1999, becoming the first African-American to hold this position in the 75-year history of the organization.

Maureen B. Tart-Bezer

Ms. Tart-Bezer, age 51, is and has been an independent member of the Board since May 15, 2001. Ms. Tart-Bezer is Chair of the Audit & Finance Committee and a member of the Human Resources & Compensation and Governance Committees.

Ms. Tart-Bezer was executive vice president and chief financial officer of Virgin Mobile USA, a wireless MVNO (mobile virtual network operator) venture in the United States from January 2002 through June, 2006. Prior to this position, Ms. Tart-Bezer was executive vice president and general manager of the American Express Company, U.S. Consumer Charge Group through December, 2001. From 1977 to January 2000, Ms. Tart-Bezer was with AT&T Corporation, serving as a senior financial officer of the company, including positions as senior vice president and corporate controller and senior vice president and chief financial officer for the Consumer Services Group. Ms. Tart-Bezer is also a member of the Board of Directors of Playtex Products, Inc., and serves on their audit committee.

ITEM 2 AMENDMENT OF THE CHARTER TO ELIMINATE PREEMPTIVE RIGHTS

On April 24, 2007, the Board of Directors authorized and declared advisable an amendment to the Company's charter that would, if approved by the stockholders at the Annual Meeting, eliminate the preemptive rights of stockholders to subscribe for and purchase, subject to several exceptions, any new or additional issues of shares of the Company's stock of any class, whether now or hereafter authorized, or of securities convertible into such shares, whether now or hereafter authorized, as such preemptive rights are currently provided in Article VII of the Company's charter.

Under Maryland corporation law in existence prior to October 1, 1995, a stockholder of a Maryland corporation formed prior to such date (such as the Company) is entitled to preemptive rights to subscribe to additional shares of stock in such corporation as issued, whether or not preemptive rights are provided in such corporation's charter, subject to several exceptions that developed under Maryland case law.

The Company's charter also provides that stockholders of the Company have the preemptive right to subscribe for and purchase any new or additional issues of shares of its stock of any class, whether now or

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hereafter authorized, or of securities convertible into shares of its stock of any class or classes, whether now or hereafter authorized, other than:

shares issued for not less than their fair value in exchange for services or property other than money;

shares remaining unsubscribed after having been offered to stockholders;

treasury shares sold for not less than their fair value;

shares issued or issuable pursuant to articles of merger;

preferred shares without then present voting power with respect to the election of directors issued for not less than their fair value; and

shares issued and sold to the corporation's officers or other employees or to the officers or other employees of any subsidiary corporation upon such terms and conditions as are approved by the affirmative vote of a majority of all of the shares entitled to vote with respect thereto at a meeting duly called and held for such purpose.

In 1995, the Maryland General Assembly revised the Maryland General Corporation Law to provide that a stockholder of a Maryland corporation formed after October 1, 1995 would not be entitled to preemptive rights except to the extent provided in the charter of the corporation.

The current preemptive rights provision contained in Article VII of the Company's charter could present a procedural barrier to the consummation of certain acquisitions, financings and other transactions that require the issuance of additional stock by the Board of Directors because, except in the circumstances described above, the Company must offer its stockholders the right to participate in issuances of stock and convertible securities to which the preemptive rights provision applies or obtain a waiver of such preemptive rights before the Company may issue such stock. Because the Company's common stock is publicly traded and due to the large number of Company stockholders, the Board believes that elimination of the preemptive rights provision of the charter and under applicable Maryland law would enable the Company to respond more quickly and efficiently to potential business opportunities, to pursue important objectives designed to enhance stockholder value and to provide the Company with greater flexibility to use its capital stock for various business purposes such as acquisitions and capital raising activities as deemed advisable by the Board. In cases where preemptive rights apply and the prompt issuance of shares is necessary, requiring the Company to offer pro rata participation to stockholders or to seek a waiver of their preemptive rights could delay the acquisition or funding and add uncertainty to the proposed transaction.

The proposed amendment would also conform the charter to current Maryland General Corporation Law regarding preemptive rights for corporations formed after October 15, 1995. The Board believes that it is advisable and in the best interests of the Company to amend the charter in order to eliminate the preemptive rights provision of the Company's charter and any preemptive rights otherwise applicable under Maryland law.

A copy of the proposed charter amendment is attached as Appendix D. The adoption of Item 2 requires the affirmative vote of at least two-thirds of the outstanding voting stock of the Company entitled to vote on the matter. Therefore, a stockholder's failure to vote, a broker non-vote or an abstention will have the same effect as a vote against approval of the charter amendment eliminating preemptive rights. A broker non-vote occurs if your shares are held in street name and you do not instruct your broker regarding how your shares should be voted.

The Board of Directors recommends a vote FOR Item 2.

ITEM 3 INDEMNIFICATION OF OFFICERS TO THE FULLEST EXTENT PERMITTED UNDER THE MARYLAND GENERAL CORPORATION LAW AND ADVANCEMENT OF EXPENSES

On April 24, 2007, the Board of Directors authorized and declared advisable an amendment to Article VIII of the Company's charter that would, if approved by the stockholders at the Annual Meeting, require the Company to indemnify the Company's officers to the maximum extent permitted under the Maryland General Corporation Law and expressly require the Company to advance reasonable expenses incurred by a director or

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officer who is a party to a proceeding upon meeting certain requirements of the Maryland General Corporation Law.

The Company's charter currently requires the Company to indemnify directors to the maximum extent *permitted* under the Maryland General Corporation Law. However, the charter only requires the Company to indemnify officers, employees and agents to the extent *required* under the Maryland General Corporation Law. The proposed amendment would revise the charter to require the Company to indemnify officers to the maximum extent permitted under the Maryland General Corporation Law and would align the Company's obligation to indemnify its officers with the indemnity rights currently provided to the Company's directors under the Company's charter.

Under the Maryland General Corporation Law, a corporation is permitted to indemnify any director made a party to any proceeding by reason of service in that capacity against judgments, penalties, fines, settlements, and reasonable expenses actually incurred by the director in connection with the proceeding unless it is established that:

the act or omission of the director was material to the matter giving rise to the proceeding and was either committed in bad faith or was the result of active and deliberate dishonesty; or

the director actually received an improper personal benefit in money, property or services; or

in the case of any criminal proceeding, the director had reasonable cause to believe that the act or omission was unlawful.

However, indemnity is not permitted under Maryland General Corporation Law:

if the proceeding was one by or in the right of the corporation, if the director shall have been adjudged to be liable to the corporation;

if the proceeding was brought by that director against the corporation, except in certain limited circumstances; or

in respect of any proceeding charging improper personal benefit to the director, whether or not involving action in the director's official capacity, in which the director was adjudged to be liable on the basis that personal benefit was improperly received.

Under the Maryland General Corporation Law, unless limited by the charter, a director who has been successful, on the merits or otherwise, in the defense of any proceeding for which indemnity is permitted under the Maryland General Corporation Law, or in the defense of any claim, issue or matter in the proceeding, is required to be indemnified against reasonable expenses incurred by the director in connection with the proceeding, claim, issue or matter in which the director has been successful. In addition, a court of appropriate jurisdiction, upon application of the director, may order indemnification under certain circumstances, including if it determines that the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director has met the standards of conduct permitting indemnification to be made as provided above.

Unless limited by the charter, an officer of a Maryland corporation shall be indemnified as and to the same extent as a corporation is required to indemnify its directors, and a Maryland corporation is permitted to indemnify and advance expenses to an officer of the corporation to the same extent that it may indemnify directors. While the Company's charter does not currently limit the Company from indemnifying its officers to the same extent that it indemnifies the Company's directors, neither does it compel the Company to so indemnify the Company's officers.

In addition, the proposed amendment would revise the charter to include an express requirement that, subject to certain requirements, the Company advance sums for payment of expenses to directors and officers made party to a claim, action, or other proceeding for which indemnity is permitted under the Maryland General Corporation Law. Under the Maryland General Corporation Law, reasonable expenses incurred by a director who is a party to a proceeding may be paid or reimbursed by the corporation in advance of the final disposition of the proceeding upon receipt by the corporation of a written affirmation by the director of the

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director's good faith belief that the standard of conduct permitting indemnification to be made as provided above has been met and a written undertaking to repay the amount if it shall ultimately be determined that standard of conduct has not been met.

The Board of Directors believes that these changes are helpful given the current business and legal environment to recruit and retain quality officers and directors and in order to permit directors and officers to function effectively in their positions. The Board of Directors believes that experienced executives and board members are increasingly wary of the litigation risks associated with their business decisions, and the failure to provide for favorable indemnity rights may make it more difficult for the Company to recruit and retain management. Directors and officers are required to make business decisions that often involve certain risks. In some cases, the decision that is in the best interests of the Company may not be the decision that involves the least risk. The Board of Directors believes that the proposed amendment is in the best interests of the Company because it assists the Company's officers and directors in evaluating and assessing risk in the best interests of the Company and not based upon the prospect or potential of personal liability or expense. The Board believes that it is advisable and in the best interests of the Company to amend the charter to revise the indemnity provisions of Article VIII and conform the charter to common current indemnification practices for Maryland corporations.

A copy of the proposed charter amendment is attached as Appendix E. The adoption of Item 3 requires the affirmative vote of at least two-thirds of the outstanding voting stock of the Company entitled to vote on the matter. Therefore, a stockholder's failure to vote, a broker non-vote or an abstention will have the same effect as a vote against approval of this charter amendment. A broker non-vote occurs if your shares are held in street name and you do not instruct your broker regarding how your shares should be voted.

The Board of Directors recommends a vote FOR Item 3.

ITEM 4 LIMITATION OF LIABILITY OF OFFICERS AND DIRECTORS FOR MONEY DAMAGES

On April 24, 2007, the Board of Directors approved and declared advisable an amendment to Article VIII of the Company's charter that would, if approved by the stockholders at the Annual Meeting, eliminate the liability of the Company's directors and officers for money damages to the Company or its stockholders except under certain circumstances.

Maryland General Corporation Law provides that the charter of a Maryland corporation may include any provision expanding or limiting the liability of its directors and officers to the corporation or its stockholders for money damages except:

to the extent that it is proved that the person actually received an improper benefit or profit in money, property or services for the amount of the benefit or profit in money, property or services actually received; or

to the extent that a judgment or other final adjudication adverse to the person is entered in a proceeding based on a finding in the proceeding that the person's action, or failure to act, was the result of active and deliberate dishonesty and was material to the cause of action adjudicated in the proceeding.

The Company's charter currently contains no such provision, and the proposed amendment would insert a provision into the charter eliminating the liability of the Company's officers and directors for money damages subject to the exceptions provided above.

As with Item 3, the Board of Directors believes that the elimination of liability for money damages as permitted under Maryland law is important and in the best interest of the Company in order to recruit and retain quality officers and

directors, permit directors and officers to function effectively in their positions and conform the Company's charter to common current practices for publicly traded Maryland corporations.

A copy of the proposed charter amendment is attached as Appendix F. The adoption of Item 4 requires the affirmative vote of at least two-thirds of the outstanding voting stock of the Company entitled to vote on the matter. Therefore, a stockholder's failure to vote, a broker non-vote or an abstention will have the same

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effect as a vote against approval of this charter amendment. A broker non-vote occurs if your shares are held in street name and you do not instruct your broker regarding how your shares should be voted.

The Board of Directors recommends a vote FOR Item 4.

BENEFICIAL OWNERSHIP OF SECURITIES**Beneficial Ownership of More Than 5% of the Company's Common Stock**

Except as set forth below, as of May 8, 2007, no person beneficially owned, to the knowledge of the Company, more than 5% of the outstanding shares of the Company's Common Stock.

Name and Address of Beneficial Owner	Amount and Nature of Beneficial Ownership(1)			% of Class
	Total Beneficial Ownership	Sole Voting/Investment Power	Shared Voting/Investment Power	
Christian W. E. Haub(2) 2 Paragon Drive Montvale, NJ 07645	22,584,918	589,047(3)	21,995,871(4)	53.9%
Erivan Karl Haub(2) Wissollstrasse 5-43 45478 Mülheim an der Ruhr, Germany	22,147,471	152,100	21,995,371	52.9%
Karl-Erivan Warder Haub(2) Wissollstrasse 5-43 45478 Mülheim an der Ruhr, Germany	21,995,371	0	21,995,371	52.5%
Georg Rudolf Otto Haub(2) Wissollstrasse 5-43 45478 Mülheim an der Ruhr, Germany	21,995,371	0	21,995,371	52.5%
Tengelmann Warenhandelsgesellschaft KG(2) Wissollstrasse 5-43 45478 Mülheim an der Ruhr, Germany	21,995,371	0	21,995,371	52.5%
Prentice Capital Management LP(5) 623 Fifth Avenue, 32nd Floor New York, NY 10022	3,158,409	0	3,158,409	7.5%
Goodwood, Inc.(6) 212 King Street West, Suite 201 Toronto, Ontario, Canada M5H 1K5	2,077,500	0	2,077,500	5%

(1) For purposes of this table, a person or a group of persons is deemed to have beneficial ownership of any shares which such person has the right to acquire as of July 7, 2007 (60 days after May 8, 2007). For purposes of computing the percentage of outstanding shares held by each person or group of persons named above on a given date, any shares which such person or persons has the right to acquire within 60 days after such date are deemed to be outstanding, but are not deemed to be outstanding for the purpose of computing the percentage ownership of any other person.

- (2) The Company obtained the information regarding Tengelmann Warenhandelsgesellschaft KG (Tengelmann), Erivan Karl Haub (Erivan), Karl-Erivan Warder Haub (Karl), Christian W. E. Haub (Christian) and Georg Rudolf Otto Haub (Georg) from such persons, and from a Schedule 13D filed with the Securities and Exchange Commission (the SEC) on March 4, 2007. Tengelmann is engaged in general retail marketing. It owns, operates and has investments in, through affiliated companies and subsidiaries, several chains of stores, which principally sell grocery and department store items throughout the Federal Republic of Germany, other European countries and the United States. The general partners of Tengelmann are Erivan and Erivan s three sons, Karl, Christian and Georg. Erivan owns a six percent (6%) partnership interest in Tengelmann; the rest is divided equally among Karl, Christian and Georg.

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- (3) Includes options to purchase 456,135 shares of Common Stock, all of which are exercisable within sixty (60) days of May 8, 2007.
- (4) Includes 500 shares of Common Stock held by the wife of Christian W. E. Haub and the 21,995,371 shares of Common Stock that are held by Tengelmann.
- (5) This information has been obtained from a Schedule 13G dated March 19, 2007 and filed with the SEC by Prentice Capital Management LP, a Delaware limited partnership (Prentice Capital Management), and Michael Zimmerman, a United States citizen, with respect to 3,158,409 shares. According to the Schedule 13G Prentice Capital management serves as investment manager to a number of investment funds (including Prentice Capital Partners, LP, Prentice Capital Partners QP, LP, Prentice Capital Offshore, Ltd., Prentice Special Opportunities Master, L.P.) and manages investments for certain entities in managed accounts with respect to which it has voting and dispositive authority over the shares reported in Schedule 13G. Michael Zimmerman is the managing member of (a) Prentice Management GP, LLC, the general partner of Prentice Capital Management, (b) Prentice Capital GP, LLC, the general partner of certain investment funds and (c) prentice Capital GP II, LLC, the managing member of Prentice Capital GP II, LP, which is the general partner of certain investment funds. As such, he may be deemed to control Prentice Capital Management and certain of the investment funds and therefore may be deemed to be the beneficial owner of the securities reported Schedule 13G. Each of Michael Zimmerman and Prentice Capital Management disclaims beneficial ownership of the shares.
- (6) On December 31, 2006, Goodwood Fund (Fund), Arrow Goodwood Fund (Arrow), Goodwood Capital Fund (Capital Fund), The Goodwood Fund 2.0 Ltd. (2.0), KBSH Goodwood Canadian Long/Short Fund (KBSH), MSS Equity Hedge 15 (Hedge 15), Goodwood Inc. (Goodwood), 1354037 Ontario Inc. (Ontario), Peter H. Puccetti (Puccetti), 620088 BC LTD. (BC) and J. Cameron MacDonald (MacDonald), collectively, filed a Schedule 13G with the Securities and Exchange Commission. This Schedule 13G indicates that Goodwood acts as the sole investment manager of each of Fund, Arrow, Capital Fund, 2.0, KBSH and Hedge 15, which are the sole owners of 850,700, 295,900, 110,100, 789,800, 10,900 and 20,100 shares of the Company s Common Stock, respectively. As investment manager, Goodwood is deemed to beneficially own all of the foregoing 2,077,500 shares. Goodwood, however, disclaims such ownership. Ontario Inc. owns all of the capital stock of Goodwood. Messrs. Puccetti and MacDonald control Ontario. Mr. MacDonald is the sole owner of BC. BC directly owns 10,900 shares. Mr. MacDonald directly owns 4,800 Shares.

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The following table sets forth the number of shares of Common Stock of the Company beneficially owned as of May 8, 2007, by each director, each nominee for director, each executive officer of the Company on that date as named and noted in the Summary Compensation Table, *infra*, and by all directors and the executive officers of the Company as a group:

	Shares Beneficially Owned(1)	Stock Option Shares(2)	Deferred Plan(3)	Total	% of Class
John D. Barline	15,626	465	20,948	37,039	*
Jens-Jürgen Böckel	7,952	2,529	9167	19,648	*
Eric Claus	16,186	6,477	0	22,663	*
Christian W. E. Haub(4)	22,128,783	456,135	0	22,584,918	53.9
Brenda Galgano	15,486	21,025			