HEARTLAND PAYMENT SYSTEMS INC
Form 10-K/A
July 10, 2009
Table of Contents

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

FORM 10-K/A

(Amendment No. 3)

(Mark One)

x **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the fiscal year ended December 31, 2008

OR

¨ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the transition period from to

Commission File No. 001-32594

HEARTLAND PAYMENT SYSTEMS, INC.

(Exact name of registrant as specified in its charter)

Delaware	22-3755714
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification Number)

90 Nassau Street, Princeton, New Jersey 08542

(Address of principal executive offices) (Zip Code)

(609) 683-3831

(Registrant s telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Common Stock, $0.001 par value	**New York Stock Exchange**

Securities registered pursuant to Section 12(g) of the Act:

NONE

(title of Class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. ¨ YES x NO

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. ¨ YES x NO

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. x YES ¨ NO

Indicate by check mark if disclosure of delinquent filer pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant s knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ¨

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See definition of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ¨ Accelerated filer x Non-accelerated filer ¨ Smaller reporting company ¨

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). ¨ YES x NO

The aggregate market value of the voting and non-voting common stock held by non-affiliates computed by reference to the price at which the common stock was last sold on the New York Stock Exchange on June 30, 2008 was approximately $674 million.

As of March 4, 2009, there were 37,442,292 shares of the registrant s common stock, $0.001 par value, outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

None.

Table of Contents

EXPLANATORY NOTE

This Amendment No. 3 to Form 10-K on Form 10-K/A (the Amended Filing) amends the Annual Report on Form 10-K for the year ended December 31, 2008 filed with the Securities and Exchange Commission (the SEC) on March 16, 2009, Amendment No. 1 to Form 10-K on Form 10-K/A filed with the SEC on April 30, 2009, and Amendment No. 2 to Form 10-K on Form 10-K/A filed with the SEC on May 11, 2009 (collectively, the Original Filing), of Heartland Payment Systems, Inc. (the Company). The purpose of this amendment is to supplement the Original Filing in response to comments received from the SEC on June 2, 2009 in connection with its review of the Original Filing (the SEC Comments) and to update certain information consistent with the disclosures made in the Executive Compensation section of the Company s Proxy Statement on Schedule 14A for the Company s 2009 Annual Meeting of Stockholders filed with the SEC on July 6, 2009 (the Proxy Statement).

In accordance with Rule 12b-15 under the Exchange Act of 1934, as amended, each item of the Original Filing that is amended by this Amended Filing is also restated in its entirety, and this Amended Filing is accompanied by currently dated certifications on Exhibit 31.1 by the Company s Chief Executive Officer and Exhibit 31.2 by the Company s Chief Financial Officer. The Original Filing was amended to: (i) revise the Compensation Discussion and Analysis and the Compensation Committee Interlocks and Insider Participation section of Item 11 of Part III of the Original Filing in response to the SEC Comments and to update certain information consistent with the Proxy Statement, (ii) re-file the Company s Amended and Restated Credit Agreement with JPMorgan Chase (the Credit Agreement) to include all of the Credit Agreement s attachments in response to the SEC Comments, and (iv) revise the Exhibit Index to reflect the re-filing the Credit Agreement and the filing of the new certifications.

Except as described above, no other changes have been made to the Original Filing. The Original Filing continues to speak as of the date of the filing of the Original Filing, and other than expressly indicated in this Amended Filing, we have not updated the disclosures contained therein to reflect any events which occurred at a date subsequent to the date of the filing of the Original Filing. Accordingly, this Amended Filing should be read in conjunction with the Original Filing and our other reports filed with the SEC subsequent to the filing of the Original Filing, including any amendments to those filings.

Table of Contents

Heartland Payment Systems, Inc.

Annual Report on Form 10-K/A

For the Year Ended

December 31, 2008

TABLE OF CONTENTS

Table of Contents

ITEM 11. EXECUTIVE COMPENSATION

COMPENSATION DISCUSSION AND ANALYSIS

This compensation discussion and analysis discusses the principles and objectives underlying our executive compensation policies and the most significant factors relevant to an analysis of these policies and provides information about the fiscal year 2008 compensation programs for our named executive officers as well as information concerning new executive officer compensation arrangements approved in 2009.

Compensation Objectives

The primary objective of our compensation program is to provide our named executive officers with strong incentives to drive our growth and profitability, while achieving a successful balance between near-term performance and our long-term success. The Board of Directors and the Compensation Committee observe that while our stock price is not controllable by our management, an incentive structure that encourages superior short-term performance (relative to the industry, and the overall equity market) while also focusing attention on building for long-term growth is most likely to result in our stock outperforming the broad equity markets, such as the Dow Jones Industrial Average and the S&P 500 over both the near- and long-term. Ultimately, it is that outperformance of the stock (measured as the total return, inclusive of dividends) that is most important to our stockholders and the compensation objectives are thus intended to focus management on that outcome.

Table of Contents

The compensation program adopted by the Board of Directors and the Compensation Committee is designed to align individual compensation with our growth and profitability, our near-term performance relative to our industry, our long term success in creating stockholder value, the market for our executive talent and the market for securities investment. This is done using a mix of at risk annual short-term incentive cash compensation, balanced by performance-based long-term equity incentives.

The factors we consider in setting executive compensation levels are:

1. Performance (short-term and long-term results against our budgets and established performance objectives);

2. Overall cost (relative to budget and our overall financial position);

3. Relative internal value of positions;

4. Retention factors;

5. Regulatory guidelines (for example, Internal Revenue Code Section 162(m)); and

6. Compensation data regarding an executive s historical compensation compared to selected comparable companies.

Elements of Compensation

The elements of our compensation program include the following:

- wages (salary);
- annual performance-based incentive cash compensation;
- stock incentive programs (stock options, restricted stock units, etc.); and
- severance arrangements.

We choose to pay each element, in large part, for the following reasons:

- **Wages:** Salary provides guaranteed cash compensation to secure the services of our executive talent.
- **Annual Performance-Based Compensation:** Our named executive officers are eligible to receive annual performance-based cash compensation in order to reward and incentivize the short-term financial and operating performance of the Company. Such rewards may be unrelated to share price performance for the applicable period (either absolute or relative), because the

equity markets performance on a short-term basis can diverge significantly from our actual financial and operating performance.

Stock Incentive Programs: Providing named executive officers with the opportunity to create significant wealth through stock ownership is viewed as a powerful tool to attract and retain highly qualified executives, to achieve strong long-term stock price performance and to help align our executives interests with our stockholders interests.

Severance: Named executive officers were provided with severance packages in consideration for delivering to us a non-competition/non-solicitation agreement. We believe the severance package enhances the enforceability of the non-competition/non-solicitation agreement. The Board of Directors believes that such agreements serve to reduce the likelihood that competitors will seek to hire our named executive officers who have significant knowledge about our operations and short- and long-term strategies. New named executive officers may be offered a severance package to the extent that it is a necessary part of the employment offer, recognizing that the new executive is joining a team with members who have such a package. In addition, we believe the severance arrangements provide a valuable retention tool for our named executive officers.

Table of Contents

Other Benefits: Named executive officers do not participate in any retirement or pension plan other than our standard 401(k) plan because participation in the long-term appreciation in the value of our stock is expected to provide significant retirement value if we perform. Named executive officers also participate in various medical, dental, life, and disability programs offered by the Company to employees at large.

Determining Executive Compensation

It is the responsibility of the Compensation Committee to administer our compensation programs and practices to ensure that they are in line with our compensation objectives. For the fiscal year 2008 and again in fiscal year 2009, the Compensation Committee engaged the services of an independent compensation consulting firm, Frederic W. Cook & Co., Inc. (FW Cook) to review our compensation structure. FW Cook reports to the Compensation Committee and does not perform any other work for the Company besides advising on executive compensation matters.

The Compensation Committee, with FW Cook, developed a peer group of companies, identifying other publicly-traded U.S.-based companies in the Software and Services S&P GICS group with a similar size and market value. Based on these objective factors, the peer group of companies used for fiscal year 2008 market comparisons were:

ACI Worldwide	*Acxiom*	*Convergys*
CSG Systems	*Cybersource*	*DealerTrak Holdings*
Efunds	*Euronet Worldwide*	*Global Cash Access*
Global Payments	*Jack Henry*	*Mantech International*
Maximus	*Moneygram International*	*Sykes Enterprises*
TSS	*Ultimate Software*	*Verifone Holdings*
	Wright Express	

While we do not directly benchmark our named executive officers compensation to the compensation of our peers executives, FW Cook s comparisons and analysis served as a reference point both to examine compensation for 2008 and on which to base changes to compensation figures and programs in 2008 and 2009. In general, peer group comparisons showed that total annual cash compensation for each of Robert O. Carr, our Chairman and Chief Executive Officer, and Robert H.B. Baldwin, Jr., our President and Chief Financial Officer, as compared to the executive officers of our peer companies with similar titles and/or job responsibilities was below the median. The findings of the study are set forth in the table below:

	Heartland Payment Systems			Peer Group			Percentage Heartland Payment Systems Executives 2008 Target Compensation Below the Median
Executive	**2008 Actual Wages**	**2008 Target Bonus**	**2008 Target Cash Compensation**	**2008 Median Salary**	**2008 Target Bonus**	**2008 Target Cash Compensation**	
Robert O. Carr	$ 450,000	$ 225,000	$ 675,000	$ 550,000	90.0%	$ 1,040,000	(35.1)%
Robert H.B. Baldwin, Jr.	$ 350,000	$ 175,000	$ 525,000	$ 412,000	65.0%	$ 760,000	(30.9)%
Charles H.N. Kallenbach	$ 250,000	$ 125,000	$ 375,000	(b)	(b)	(b)	(b)
Sanford C. Brown	$ 308,558	(a)	(a)	(b)	(b)	(b)	(b)
Thomas M. Sheridan	$ 232,320	$ 58,080	$ 290,000	(b)	(b)	(b)	(b)

(a) Mr. Brown s wages were commission-based for 2008.
(b) Not included in 2008 study.

Table of Contents

The following are the elements of 2008 compensation as set by the Compensation Committee:

Wages: Wages for our named executive officers are generally based on the executive s specific areas of accountability as well as market competitiveness and budget considerations. Robert O. Carr, our Chairman and Chief Executive Officer, and Robert H.B. Baldwin, Jr., our President and Chief Financial Officer are each accountable for the financial performance of the entire Company. Charles H.N. Kallenbach, our General Counsel, Chief Legal Officer and Secretary, is accountable for our compliance with regulatory requirements and legal affairs. Sanford C. Brown, our Chief Sales Officer, is accountable for the Company s sales and sales force. Mr. Brown s 2008 wages were determined as a factor of growth in our installed margin, which is defined as estimated net revenues of installed merchants less processing and servicing costs. Installed margin is the measure by which we evaluate our sales performance. Thomas M. Sheridan, our Chief Portfolio Officer, is accountable for the oversight of the performance of our merchant portfolios. Executive officer wages are set at levels that are proportionately higher than other managers in our Company to recognize their greater role in our success and additional roles and managerial responsibilities. Our Chief Executive Officer, Robert O. Carr, annually reviews the responsibility and performance of the named executive officers that report to him and also recommends the wages and annual cash bonuses for the named executive officers, except for himself, to the Compensation Committee. The Compensation Committee reviews those recommendations and, with any modifications it considers appropriate, approves the wages and annual cash bonuses. The Compensation Committee independently assesses the responsibility and performance of our Chief Executive Officer and sets his wages and annual cash bonus.

In 2008, and based on FW Cook s analysis of peer group executive compensation, we began to raise base salaries for Mr. Carr and Mr. Baldwin towards, but still lower than, the median level as compared to executives of our peer companies with similar titles and/or job responsibilities. In recognition of Mr. Kallenbach s effectiveness as our General Counsel, and the increasing importance of that role in our success, Mr. Kallenbach received a salary increase in 2008. While the base salary increases for Mr. Carr and Mr. Baldwin were designed to raise their base compensation toward the peer group median, the actual amount of the increase for each of Mr. Carr and Mr. Baldwin and to our other named executive officers was determined in the discretion of the Compensation Committee, considering various other factors, including affordability within our budgets and business plans, an executive s experience and responsibilities, individual performance evaluations, and our Chief Executive Officer s recommendations (except for his own base salary). For the 2008 fiscal year, the Compensation Committee approved wage increases for our named executive officers as set forth in the table below:

Annual Wages

Executive	2007 Actual Wages	2008 Actual Wages	2008 Percent Increase
Robert O. Carr	$ 350,000	$ 450,000	28.6%
Robert H.B. Baldwin, Jr.	$ 276,056	$ 350,000	26.8%
Charles H.N. Kallenbach	$ 190,000	$ 250,000	31.6%
Sanford C. Brown	$ 476,425	$ 308,558	(35.2)%(a)
Thomas M. Sheridan	$ 225,896	$ 232,320	2.8%

(a) Mr. Brown s wages were commission-based for 2007 and for 2008.

Annual Performance-Based Compensation: We believe that some portion of annual cash compensation for our named executive officers should be at risk, i.e. contingent upon successful company and individual performance. Therefore, annual performance-based compensation for named executive officers is tied to overall company performance, extraordinary individual performance, or both. For all of our named executive officers, the target bonus is set at 35-50% of their annual wages, and the actual pay-out is determined in the discretion of our Chief Executive Officer, except with respect to his own compensation, and the Compensation Committee based on our financial operating performance and the executive s individual results.

Historically, in determining bonus awards for our executives, our Chief Executive Officer and the Compensation Committee review various financial performance measurements in relation to the applicable annual budget for such measurements. Specific measurements used to examine performance may include (i) revenues, (ii) expenses, (iii) operating income and (iv) net income. This review is performed with reference to the applicable

Table of Contents

budget or budgets for each executive i.e., the executive s individual budget, the budget for the executive s particular business unit, the budget for the business unit or units that report to the executive and/or the Company-wide budget. While specific targets are not set for these performance measures, the Chief Executive Officer and the Compensation Committee will typically require actual performance for a fiscal year to meet budget for the measurements listed above in order to pay bonuses at target levels.

With respect to our Chief Sales Officer, Sanford C. Brown, cash compensation is determined based on our sales and is paid in the form of commission-based wages. For additional information, see the discussion of Wages above.

Additionally, when determining executive bonuses, our Chief Executive Officer and the Compensation Committee also consider individual factors, such as an executive s performance reviews, sales results, individual contributions towards meeting collective performance goals, as well as more subjective factors such as exhibited leadership, client relationship development, internal development, effectiveness at mitigating adverse developments and macro-economic and prevailing market factors. Ultimately, the amount of an executive s bonus (and whether the executive receives a bonus for a particular fiscal year) is determined in the discretion of the Chief Executive Officer, subject to final determination by the Compensation Committee, and, with respect to the Chief Executive Officer s bonus, is determined in the discretion of the Compensation Committee.

The relevant budgets and performance measures considered to determine bonuses for our named executive officers are set forth in the table below:

Executive	**Reference Budget(s)**	**Performance Measure(s)**
Robert O. Carr	Company-wide	Revenues, expenses, operating income, net income
Robert H.B. Baldwin, Jr.	Company-wide	Revenues, expenses, operating income, net income
Charles H.N. Kallenbach	Legal	Expenses, transaction and litigation outcomes
Sanford C. Brown	N/A	Mr. Brown s cash compensation is in the form of commission-based wages
Thomas M. Sheridan	Merchant portfolios	Repricing of merchant accounts and managing card processing results

When we set the 2008 goals, we considered them to be ambitious, but attainable and designed to cause incentive payments to reflect meaningful performance requirements. Exceptional performance may result in payment of an annual bonus to an executive that exceeds the executive s target. In 2008, actual performance results for net revenue exceeded budget, but operating income and net income on a Company-wide basis did not meet budgeted expectations. Our performance relative to the targeted performance levels described was approximately +4.4% for net revenue, (12.3)% for operating income and (7.7)% for net income. The Compensation Committee, however, determined that these results were primarily due to factors and circumstances outside of our executive officers control. Particularly, the extent of the significant downturn in macro-economic conditions in the United States that occurred in 2008 was not foreseeable at the time 2008 budgets were prepared and approved. These negative macro-economic and prevailing market conditions negatively impacted our performance for 2008. Furthermore, at the time bonuses for 2008 were determined in 2009, the intrusion of our processing system had been discovered and publicly announced. The intrusion added to the uncertainty regarding our future performance and financial condition caused by the ongoing negative economic conditions. At such time, the Compensation Committee determined that extraordinary efforts and commitment would be required from our executives to deal with the issues raised by the processing system intrusion. In light of these circumstances, and in order to reward our executives for their continued commitment to our Company in uncertain conditions, to incentivize future performance and to help retain valuable executives at a time when we placed an emphasis on consistency and institutional stability, the Compensation Committee determined to pay bonuses to our named executive officers at target levels, notwithstanding our performance for 2008.

Table of Contents

The table below sets forth the target bonus and 2008 annual performance-based compensation earned by each named executive officer. Annual bonuses were paid in the form of cash during 2008.

Annual Incentive Bonus Information as of December 31, 2008

Executive	2007 Target Bonus	2007 Bonus	2008 Target Bonus	2008 Bonus
Robert O. Carr	$ 175,000	$ 109,197	$ 225,000	$ 225,000
Robert H.B. Baldwin, Jr.	$ 138,028	$ 81,117	$ 175,000	$ 175,000
Charles H.N. Kallenbach	$ 95,000	$ 95,000	$ 125,000	$ 125,000
Sanford C. Brown	(a)	(a)	(a)	(a)
Thomas M. Sheridan	$ 112,948	$ 36,532	$ 58,080	$ 58,080

(a) Mr. Brown s compensation was commission based for 2007 and for 2008 and therefore all of his cash compensation with respect to 2007 and 2008 is set forth within the table titled Annual Wages, above.

Stock Incentive Programs: Equity based compensation is an integral part of our overall compensation program. We believe that stock options and restricted stock units effectively focus our executives on increasing long-term value to our stockholders, help to build real ownership, and provide employment retention. These stock-based incentives, which in recent years have consisted solely of stock option and restricted stock unit grants, are based on various factors primarily relating to the responsibilities of the individual officer or employee, his or her past performance, anticipated future contributions and prior option grants. In general, the Compensation Committee bases its decisions to grant stock-based incentives on recommendations of our Chief Executive Officer and the Compensation Committee s analysis of relevant compensation information, with the intention of keeping the executives overall compensation, including the equity component of that compensation, at a competitive level in line with our budgets for the executive s position and reflective of the executive s contribution to the Company s performance. The Compensation Committee also considers the number of shares of common stock outstanding, the number of shares of common stock authorized for issuance under its equity compensation plans, the number and value at various stock prices of options and shares held by the executive officer for whom an award is being considered and the other elements of the officer s compensation, as well as our compensation objectives and policies described above. As with the determination of base salaries and annual performance-based compensation, the Compensation Committee exercises subjective judgment and discretion after taking into account the above criteria.

Awards to named executive officers pursuant to the 2008 Equity Incentive Plan are generally made annually and the grant is usually made on the second full trading day after the most recent financial results are announced, with the price of the grant set as of the close of trading on that second day. Other than the 2008 performance-based stock options described below, Sanford Brown was the only named executive officer to receive an option award in fiscal 2008.

2008 Performance-Based Stock Options. In the third quarter of 2008, our Board of Directors approved a performance-based stock option program under our 2008 Equity Incentive Plan. The purpose of this award was to reward long-term operating success and also the subsequent increase in stockholder value that we expected such performance would create. Under this program, we granted 2.5 million performance-based stock options to our employees, of which an aggregate of 1.375 million were granted to our named executive officers. These stock options were granted to those employees who the Board of Directors determined could have a significant impact on successfully integrating the Network Services business, which we acquired in May 2008, and effectively executing our growth plan. These stock options have a five-year term and will vest in equal amounts in 2011, 2012 and 2013 only if as of the vesting date or over the term of the stock options, both of the following performance conditions are achieved:

- Consolidated net revenue grows at a compound annual rate of at least 15%; and
- Fully diluted EPS grows at a compound annual rate of at least 25%

At the time these performance-based options were granted, we believed that these performance goals would be highly difficult for our Company to attain as they represent growth well beyond what our competitors in the industry normally achieve and provided our executives with significant incentives to drive the long-term growth of

Table of Contents

our Company. As of the date of this Form 10-K/A, due in large part to macro-economic conditions and the processing system intrusion, which negatively affected our stock price and financial performance, we believe that these performance goals are going to be extraordinarily difficult to attain. For additional information regarding 2008 performance-based stock option awards granted to our named executive officers on August 6, 2008, see Grants of Plan-Based Awards.

New Executive Officer Compensation Arrangements in 2009

In light of the challenges facing our Company resulting from the previously announced intrusion of our processing system, the current macro-economic and prevailing market conditions and the significant reduction of equity ownership suffered by our Chief Executive Officer as a result of previously announced forced sales of all of his shares of our common stock through margin calls by his lender, the Compensation Committee retained FW Cook to review and recommend changes to our compensation structure and philosophy. As part of this review, FW Cook examined the overall compensation package of our Chief Executive Officer, Robert O. Carr, in order to identify long-term incentive alternatives to motivate and retain our Chief Executive Officer. FW Cook analyzed chief executive officer compensation practices among our peers as well as examples of extraordinary equity awards to chief executive officers of mid-cap companies granted within the past two years. The peer group of companies used to analyze the cash compensation of our named executive officers for 2009 are identified above within this Compensation Discussion and Analysis, except that Cybersource and Ultimate Software were not included, and, Genpact, GSI Commerce and Microsystems were added to, such peer group. Based on this review, on May 11, 2009, the Compensation Committee approved the equity awards to our Chief Executive Officer and the cash and equity awards to certain of our named executive officers summarized below.

Equity compensation is an integral element of our overall executive compensation program. We believe that equity ownership by our executives will strongly align the interests of our executives with the long-term interests of our stockholders. However, as previously disclosed, Mr. Carr, was forced to dispose of all of his shares of our common stock earlier this year, impairing this desired alignment. Even with the increase in Mr. Carr s cash compensation in 2008, FW Cook s analysis also indicated that Mr. Carr s current cash-based compensation is approximately 45% below the median cash compensation received by chief executive officers of our industry peer group in 2009. Therefore, the Compensation Committee is reviewing and analyzing potential changes to Mr. Carr s base salary for 2009 with FW Cook.

Our Board of Directors believes that Mr. Carr s deep understanding of our business and industry, as well as his strong relationship with our commission-only sales force makes Mr. Carr uniquely qualified for the position of our Chief Executive Officer, and that Mr. Carr has contributed significantly to our historically high growth and price-to-earnings multiples and should continue to make such contributions in the future. Under the circumstances, the Board of Directors and Mr. Carr agreed that providing a significant equity component as a one-time grant will have the effect of incentivizing Mr. Carr to achieve strategic corporate goals and drive our long-term performance. This award will also provide an important tool to retain Mr. Carr, who the Board of Directors deems extremely important to our future success.

Specifically, as explained in greater detail below, the majority of shares underlying the equity grant approved by our Compensation Committee will provide a benefit for Mr. Carr only through extraordinary corporate performance, as measured by the price of our common stock. Directly linking the vesting of Mr. Carr s award to increases in the price of our common stock will provide Mr. Carr with a reward that is commensurate with the results experienced by our stockholders. Mr. Carr and the Board of Directors believe this equity award will better align Mr. Carr s interests with the long-term interests of our stockholders as compared to any additional cash compensation.

On May 11, 2009, Mr. Carr was granted: (i) an option to purchase up to 1,395,000 shares of our common stock and (ii) 265,000 restricted stock units, under our 2008 Equity Incentive Plan. The exercise price of all of the options is $8.88, which was the fair market value of our common stock (as determined pursuant to our 2008 Equity Plan) on the date of grant. 465,000 of such options and all of the restricted stock units will vest in four equal annual installments beginning on the first anniversary of the grant date, provided that Mr. Carr remains an employee of our Company as of the relevant vesting date. 465,000 of such options will begin to vest only after the closing price of our common stock is $17.76 per share or more and the remaining 465,000 of such options will begin to vest only

Table of Contents

after the closing price of our common stock is $26.64 per share or more. These performance-contingent portions of the award require that the price hurdle listed above be achieved for 30 consecutive days at any time on or before May 11, 2013 (the final vesting date for such options) for such portions of the award to be eligible for vesting. Once a price per share target is met, the tranche of the performance-contingent options tied to such price target will vest in four equal annual installments, retroactive to the date of grant, provided that Mr. Carr remains an employee of our Company as of the relevant vesting date. We believe that these price per share targets, which were recommended by FW Cook as part of their analysis, represent goals that are both reasonable for which to strive, but difficult to attain since they are two times and three times the fair market value of our common stock on the date of grant, respectively.

In the event of a change of control of our Company (as defined in our 2008 Equity Plan), 100 percent of the unvested time-based portion of the award will vest. The unvested portion of the performance-contingent options will vest upon a change of control only to the extent that applicable price per share goals have previously been met or the price is achieved in connection with the transaction. We believe these change of control price targets encourage Mr. Carr to maximize value to our stockholders in connection with a transaction.

According to FW Cook s analysis, the terms of the equity awards to Mr. Carr discussed above fall within the median to the 75th percentile of the secondary peer group with extraordinary Chief Executive Officer equity awards (including new-hire awards and special one-time awards) if the fair value is measured as a percentage of market cap to normalize size differences.

The equity awards granted to Mr. Carr were granted with the understanding that Mr. Carr will agree to extend his covenant not to compete with us and his covenant not to solicit any of our customers or suppliers following termination of his employment for any reason set forth in his Amended and Restated Employee Confidential Information and Noncompetition Agreement dated May 4, 2007 with us from 12 months to 24 months, except upon a change of control of our Company.

As noted above, FW Cook also reviewed and recommended changes to our compensation philosophy with respect to our other executive officers. As part of this review, FW Cook examined the overall compensation packages of each of the named executive officers in order to identify long-term incentive alternatives to motivate and retain each of our named executive officers and to increase their salaries to competitive levels. A major reason for the recommendations is that the substantial decline in our stock price due to macro-economic conditions and the processing system intrusion had the effect of reducing and/or eliminating the value of our named executive officers equity awards. Historically, the equity ownership of our named executive officers was the primary reason that their cash compensation was below the median of their counterparts of our peer group but FW Cook recommended changing the compensation philosophy to provide more cash compensation as well as granting new equity awards to retain and incentivize our named executive officers. The Compensation Committee considered FW Cook s suggestions for each of the named executive officers and (other than with respect to our Chief Executive Officer) discussed them with our Chief Executive Officer. On May 11, 2009, the Compensation Committee approved the cash and equity compensation to our named executive officers summarized below.

Robert H.B. Baldwin, Jr., President and Chief Financial Officer, was granted: (i) an option to purchase up to 95,300 shares of our common stock at an exercise price of $8.88 per share, which vests in four equal annual installments beginning on May 11, 2010 and expires on May 11, 2014; and (ii) 26,000 restricted stock units with each restricted stock unit representing a contingent right to receive one share of our common stock and which vests in four equal annual installments beginning on May 11, 2010. In addition, Mr. Baldwin s base salary was increased from $350,000 to $430,000 (effective January 1, 2009), which brings his target cash compensation in 2009 to the median of target cash compensation of executive officers of our peer group of companies with similar titles and job responsibilities.

Sanford C. Brown, Chief Sales Officer, was granted: (i) an option to purchase up to 65,000 shares of our common stock at an exercise price of $8.88 per share, which vests in four equal annual installments beginning on May 11, 2010 and expires on May 11, 2014; and (ii) 15,000 restricted stock units with each restricted stock unit representing a contingent right to receive one share of our common stock and which vests in four equal annual installments beginning on May 11, 2010. In addition, our Chief Executive Officer is considering potential changes to Mr. Brown s cash compensation and is expected to make a recommendation regarding Mr. Brown s cash compensation to the Compensation Committee.

Charles H.N. Kallenbach, General Counsel, Chief Legal Officer and Secretary, was granted: (i) an option to purchase up to 40,000 shares of our common stock at an exercise price of $8.88 per share, which vests in four equal annual installments beginning on May 11, 2010 and expires on May 11, 2014; and (ii) 15,000 restricted stock units with each restricted stock unit representing a contingent right to receive one share of our common stock and which vests in four equal annual installments beginning on May 11, 2010. In addition, Mr. Kallenbach s base salary was increased from $250,000 to $325,000 (effective January 1, 2009), which brings his target cash compensation in 2009 to the median of target cash compensation of executive officers of our peer group of companies with similar titles and job responsibilities.

In each case, if the named executive officer is not employed by us at the relevant vesting date of the options and the restricted stock units granted, the unvested portion of such options and restricted stock units will terminate. All of such options and restricted stock units were granted under our 2008 Equity Incentive Plan. The closing price of our common stock on the date such options and restricted stock units were granted was $8.88. In the event of a change of control of our Company and a named executive officer s employment upon such change of control is terminated by the Company without cause or by the executive for good reason, 100 percent of the unvested time-based portion of the award will vest for such named executive officer.

Severance: For all of our named executive officers other than Mr. Carr, we have set potential severance payments at one year s continued payment of wages plus a pro rated bonus in order to run concurrently with our named executive officers covenants not to compete with us for 12 months following termination of their employment. As of December 31, 2008, Mr. Carr s severance payments were based on the same formula as the other named executive officers. In connection with the equity awards granted to Mr. Carr in 2009, it was understood that Mr. Carr would agree to extend his covenant not to compete and his covenant not to solicit customers or suppliers from 12 months after termination of his employment to 24 months after termination of his employment and his potential severance payment would be changed to two year s continued payment of wages plus a pro rated bonus in order to run concurrently with his covenant not to compete. A condition to our providing such severance payments is our receipt from the executive officer of a release from future claims against the Company. These severance arrangements provide incentive for our executives to comply with their post-employment covenants and grant us the ability to suspend payment if an executive has breached these covenants. Pursuant to the above-described severance arrangements as of December 31, 2008, Mr. Carr would have had an estimated severance payout of $685,797, Mr. Brown would have had an estimated severance payout of $319,355, Mr. Baldwin would have had an estimated severance payout of $535,797, Mr. Sheridan would have had an estimated severance payout of $359,277, and Mr. Kallenbach would have had an estimated severance payout of $385,797.

Stock Ownership Guidelines

The Company has established an expectation that senior executives will maintain ownership of at least 50% of the net after-tax stock and/or stock options they have been granted (on a cumulative basis) to the first $10 million of value, and 75% of any value in excess of $10 million, until such time as their employment with us terminates. These ownership guidelines are designed to further align executive ownership, long-term strategic thinking and compensation programs to our performance and the interests of our stockholders. Our CEO has historically complied with these stock ownership guidelines. However, in the first quarter of 2009, all of the outstanding shares of common stock owned by our CEO were sold in previously announced forced sales. This has caused our CEO to not currently be in compliance with these stock ownership guidelines. Further, while the Company intends to maintain a guideline ownership requirement for officers, the structure and amounts may change in the future.

Budget and Accounting Considerations

In order for this compensation approach to be effective in generating both short- and long-term value to our stockholders, the Board of Directors recognizes the critical role that the operating budget, and our performance relative to that budget, plays. Historically, the Board of Directors, in its review of the annual expense budget, expected to have good visibility as to our profitability during each coming year, and analyzed those results against its own, and the equity market s, expectations for that profit performance. Then, after a year was completed, if results fell short of those budgeted levels, generally, the variable cash compensation element would likely have been relatively modest, because a significant bonus would have been paid only if quantifiably superior cost management allowed us to exceed our budgeted results. Due to the current macro-economic conditions and expenses incurred in connection with the processing system intrusion, it has become more difficult to predict our profitability, so recently the focus has been less on the budget and profitability and more on subjective criteria such as exhibited leadership, client relationship development, internal development, effectiveness at mitigating adverse developments and macro-economic and prevailing market factors. Additionally, the focus has been on incentivizing and retaining our named executive officers. At the same time, however, named executive officers have a strong incentive to ensure that the appropriate amount of long-term capital investments in infrastructure are made, as one of their most significant wealth opportunities arises from their stock ownership, and recognition that long-term, our stock will not perform unless those ongoing infrastructure investments are made.

For our financial statements, cash compensation is expensed and for our income tax returns, cash compensation is deductible. From the perspective of the named executive officers, such cash compensation is taxable as appropriate for that individual. For equity-based compensation, we do not provide named executive officers with immediately vesting options in order to focus them on their long-term contributions to the Company and on the long-term appreciation in the value of the Company s stock although we do provide our Directors with immediately vesting options and because such immediately vesting options would be expensed entirely on our financial statements when granted. For future vesting options granted to named executive officers, the fair value of such grants is expensed over the vesting period. We provide non-qualified stock options in our grants to named executive officers. Non-qualified stock options provide us with an accounting tax benefit as the fair value of the options are deductible by the Company. Non-qualified stock options provide us with a tax return benefit when the named executive officer exercises such non-qualified stock options. For the named executive officers, non-qualified stock options are generally not taxable until the exercise of such option. The tax impacts of exercises by named executive officers match the tax benefit to us of the exercise. The accounting and tax treatment of compensation pursuant to Internal Revenue Code Section 162(m), FAS 123R, and other applicable rules, is a factor in determining the amounts of compensation for named executive officers.

Summary Compensation Table

The following table shows the compensation paid or to be paid by us, and certain other compensation paid or accrued, during the fiscal years ended December 31, 2008, 2007 and 2006 to our Chief Executive Officer, Chief Financial Officer and each of our three other most highly compensated executive officers, together the Named Executive Officers.

Name and Principal Position	Year	Wages ($)	Option Awards ($)	Non-Equity Incentive Plan Compensation ($)(4)	All Other Compensation ($)	Total Compensation ($)
Robert O. Carr	2008	$ 450,000		$ 225,000	$ 4,718	$ 679,718
Chairman and Chief	2007	$ 350,000		$ 109,197		$ 459,197
Executive Officer(1)	2006	$ 350,000				$ 350,000
Robert H.B. Baldwin, Jr.	2008	$ 350,000	$ 28,018(3)	$ 175,000	$ 4,402	$ 557,420
President and Chief	2007	$ 276,056	$ 65,177(3)	$ 81,117		$ 422,350
Financial Officer(1)	2006	$ 260,001	$ 81,450(3)			$ 341,451
Charles H.N. Kallenbach	2008	$ 250,000	$ 115,938(3)	$ 125,000	$ 3,750	$ 494,688
General Counsel and	2007	$ 190,000	$ 161,024(3)	$ 95,000		$ 446,024
Chief Legal Officer(1,2)						
Sanford C. Brown	2008	$ 308,558	$			