

Heritage-Crystal Clean, Inc.
Form PRE 14A
March 23, 2010

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

SCHEDULE 14A
Proxy Statement Pursuant to Section 14(a) of
the Securities Exchange Act of 1934

Filed by the Registrant
Filed by a Party other than the Registrant
Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, For Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to §240.14a-12

HERITAGE-CRYSTAL CLEAN, INC.
(Name of Registrant as Specified In Its Charter)

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

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.
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 - (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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 - (2) Form, Schedule or Registration Statement No.:

- (3) Filing Party:
- (4) Date Filed:



HERITAGE-CRYSTAL CLEAN, INC.

2175 Point Boulevard, Suite 375
Elgin, Illinois 60123

NOTICE OF ANNUAL MEETING OF SHAREHOLDERS
TO BE HELD ON MAY 6, 2010

To the shareholders of Heritage-Crystal Clean, Inc.:

The Annual Meeting of Shareholders of Heritage-Crystal Clean, Inc. (the “Company”) will be held at the Holiday Inn located at 495 Airport Road, Elgin, Illinois 60123 on May 6, 2010, at 10:00 A.M., Central Time, for the following purposes:

1. To elect two directors to serve for terms of three years or until their successors are duly elected and qualified;
2. To ratify the appointment of Grant Thornton LLP as our independent registered public accounting firm for fiscal 2010;
3. To amend the Amended and Restated Certificate of Incorporation to increase the number of authorized shares of Common Stock of the Company from 15,000,000 shares to 18,000,000 shares; and
4. To consider and transact such other business as may properly come before the meeting or any adjournment or postponement thereof.

Only shareholders of record at the close of business on March 31, 2010 are entitled to receive notice of and to vote at the Annual Meeting or any adjournments or postponements thereof. Whether or not you expect to attend the Annual Meeting, we encourage you to vote your shares as soon as possible. Please sign, date and mail the included proxy card in the envelope provided. It is important that your shares be represented at the Annual Meeting, whether your holdings are large or small.

By Order of the Board of Directors,

Gregory Ray, Chief Financial Officer, Vice President,
Business Management and Secretary

April [•], 2010

Important Notice Regarding the Availability Of Proxy Materials

for the Annual Meeting of Shareholders Meeting To Be Held On May 6, 2010.

Our Proxy Statement and Annual Report to Shareholders for fiscal 2009 are available on Heritage-Crystal Clean, Inc.'s website at www.crystal-clean.com under “Investor Relations.”

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You may also request hard copies of these documents free of charge by writing to: Heritage-Crystal Clean, Inc., 2175 Point Boulevard, Suite 375, Elgin, Illinois 60123, Attention: Secretary.

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HERITAGE-CRYSTAL CLEAN, INC.
2175 Point Boulevard, Suite 375
Elgin, Illinois 60123

PROXY STATEMENT FOR ANNUAL MEETING OF SHAREHOLDERS
TO BE HELD ON MAY 6, 2010

About the 2010 Annual Meeting

This Proxy Statement is being furnished to the shareholders of Heritage-Crystal Clean, Inc. (the "Company") on or about April [•], 2010 in connection with the solicitation of proxies on behalf of the Board of Directors of the Company for use at the Annual Meeting of Shareholders (the "Annual Meeting") to be held on May 6, 2010 at the time and place and for the purposes set forth in the accompanying Notice of Annual Meeting, and at any adjournments or postponements of that meeting. The Annual Report to Shareholders for fiscal 2009 accompanies this Proxy Statement. If you did not receive a copy of the Annual Report, you may obtain one by writing to the Secretary of the Company. This Proxy Statement and the Annual Report are also available on the Company's website at www.crystal-clean.com.

Voting Procedures

Voting Rights. Only shareholders who owned common stock of the Company at the close of business on March 31, 2010 (the "record date") may attend and vote at the Annual Meeting or any adjournment or postponement of the Annual Meeting. On the record date, [•] shares of Common Stock were outstanding. Shareholders are entitled to one vote per share of common stock that they own as of the record date on each matter that may properly come before the Annual Meeting.

If your shares are registered directly in your name with our transfer agent, you are considered the shareholder of record with respect to those shares, and these proxy materials are being sent directly to you. As the shareholder of record, you have the right to grant your voting proxy directly to us, or to vote in person at the Annual Meeting. If your shares are held in a stock brokerage account or by a bank or other nominee, you are considered the beneficial owner of shares held in "street name," and these proxy materials are being forwarded to you by your broker, bank or nominee who is considered the shareholder of record with respect to those shares. As the beneficial owner, you have the right to direct your broker, bank or nominee on how to vote and are also invited to attend the Annual Meeting. However, since you are not the shareholder of record, you may not vote these shares in person at the Annual Meeting, unless you request, complete and deliver a legal proxy from your broker, bank or nominee. Your broker, bank or nominee has enclosed a voting instruction card for you to use in directing the broker, bank or nominee regarding how to vote your shares.

Quorum. The presence, in person or by properly executed proxy, of a majority of the outstanding common stock on the record date is necessary to constitute a quorum at the Annual Meeting. If a quorum is not present at the time the Annual Meeting is convened, the Company may adjourn or postpone the Annual Meeting. Shares that are represented at the Annual Meeting but abstain from voting on any or all matters will be counted as shares present and entitled to vote in determining the presence of a quorum. If a broker indicates on a proxy that it lacks discretionary authority as to certain shares to vote on particular matters, commonly referred to as "broker non-votes", those shares will still be counted for purposes of determining the presence of a quorum at the meeting. A broker non-vote occurs when a broker holding shares registered in street name is permitted to vote, in the broker's discretion, on routine matters without receiving instructions from the client, but is not permitted to vote without instructions on non-routine matters, and the broker returns a proxy card with no vote on the non-routine matter. Under the rules and regulations of the primary trading markets applicable to most brokers, the ratification of the appointment of Grant Thornton LLP as our

independent registered public accounting firm for fiscal 2010 is considered a routine matter on which a broker has the discretion to vote if instructions are not received from the client.

The inspector of election appointed for the Annual Meeting will determine the number of shares of our common stock present at the Annual Meeting, determine the validity of proxies and ballots, determine whether or not a quorum is present, and count all votes and ballots.

Required Vote. Directors are elected by a plurality of all of the votes cast, in person or by proxy. A “plurality” means that the individuals who receive the largest number of votes are elected as directors up to the maximum number of directors to be elected at the meeting. Abstentions and broker non-votes have no effect on the election of directors, except to the extent that the failure to vote for a director nominee results in another nominee receiving a larger number of votes.

The proposal to approve the ratification of the appointment of Grant Thornton LLP as our independent registered public accounting firm for fiscal 2010 will be approved if holders of a majority of the shares present in person or represented by proxy at the Annual Meeting and entitled to vote on the proposal are voted in favor of the proposal. Abstentions will have the effect of a no vote and broker non-votes will have no effect on the outcome of this proposal.

The proposal to approve the Amended and Restated Certificate of Incorporation (the "Charter Amendment") will be approved if at least a majority of the shares outstanding are voted in favor of the proposal. Abstentions and broker non-votes will have the effect of a vote against this proposal.

All common stock represented at the Annual Meeting by properly executed proxies received prior to or at the Annual Meeting and not properly revoked will be voted at the Annual Meeting in accordance with the instructions indicated in such proxies. If no instructions are indicated, such proxies will be voted FOR the election of the Board's director nominees, the proposal to ratify the appointment of Grant Thornton LLP as our independent registered public accounting firm for fiscal 2010 and the proposal to approve the Charter Amendment and in the discretion of the proxy holders for all other matters that come before the Annual Meeting. The Board of Directors of the Company does not know of any matters, other than the matters described in the Notice of Annual Meeting attached to this Proxy Statement that will come before the Annual Meeting.

Any proxy given pursuant to this solicitation may be revoked by the person giving it at any time before it is voted. Proxies may be revoked by:

- filing with the Secretary of the Company, at or before the Annual Meeting, a written notice of revocation bearing a date later than the date of the proxy;
- duly executing and dating a subsequent proxy relating to the common stock and delivering it to the Secretary of the Company at or before the Annual Meeting; or
- attending the Annual Meeting and voting in person (although attendance at the Annual Meeting will not in and of itself constitute a revocation of a proxy).

Any written notice revoking a proxy should be sent to: Heritage-Crystal Clean, Inc., 2175 Point Boulevard, Suite 375, Elgin, Illinois 60123, Attention: Secretary.

Other

The proxies are solicited by the Board of Directors of the Company. In addition to the use of the mail, proxies may be solicited personally or by telephone or facsimile transmission, by directors, officers or employees of the Company or persons employed by the Company for the purpose of soliciting proxies. It is contemplated that brokerage houses, custodians, nominees and fiduciaries will be requested to forward the soliciting material to the beneficial owners of Common Stock held of record by such persons, and will be reimbursed for expenses incurred therewith. The cost of solicitation of proxies will be borne by the Company.

The date of this Proxy Statement is April [•], 2010.

PROPOSAL 1:

ELECTION OF DIRECTORS

At the Annual Meeting, our shareholders will vote on the nomination of two directors to be elected for three-year terms expiring at the 2013 Annual Meeting. The Board is divided into three classes, denominated as Class I, Class II and Class III. Members of each class hold office for staggered three-year terms. The terms of the Class II directors expire on the date of the 2010 Annual Meeting. It is the intention of the persons named in the accompanying form of

proxy to nominate as directors and, unless otherwise specified in a proxy by a shareholder, to vote such proxy for the election of the persons named below as nominees. In the event any of the nominees should become unable to serve as a director, proxies may be voted for another nominee recommended by the Board.

Directors are elected by a plurality of all of the votes cast, in person or by proxy. This means that nominees receiving the highest number of votes at the Annual Meeting will be elected, even if these votes do not constitute a majority of the votes cast.

Nominees for Election at the 2010 Annual Meeting.

The following table sets forth certain information with respect to the two director nominees, all of whom are currently Class II Board members.

Name	Age	Principal Occupation and Other Information
Donald Brinckman	79	Mr. Brinckman has served as a director on our Board since 2002. Mr. Brinckman was the Founder of Safety-Kleen in 1968. Mr. Brinckman served as President of Safety-Kleen from 1968 until 1998, excluding portions of 1990-1991 and 1993-1997, and for most of the thirty-year period he also served as Safety-Kleen's Chief Executive Officer. Mr. Brinckman was appointed Chairman of Safety-Kleen's Board of Directors in August 1990 and served in that capacity until 1998. Mr. Brinckman has in the past served as a director of Johnson Outdoors Inc., Paychex, Inc. and Snap-On Inc.

The Board has concluded that Mr. Brinckman should be a director of the Company because of his extensive industry experience, including being founder and former Chairman of the largest firm in the Company's industry. Additionally, his significant stock ownership aligns his interests with those of other stockholders.

Charles E. Schalliol	62	Mr. Schalliol has served as a director on our Board since March 2008. Mr. Schalliol served as the Director, Office of Management and Budget, State of Indiana, from 2004 to 2007. Mr. Schalliol served as the President and CEO of BioCrossroads, Indiana's life science initiative, from 2003 to 2004. Mr. Schalliol served in various executive positions, including strategic planning and investment banking, with Eli Lilly & Company from 1978 to 2003. Mr. Schalliol serves as Chairman of the Board of Directors of First Merchant's Corporation since 2007 and as a director since 2004 and a director of four venture capital funds. Mr. Schalliol holds a business degree with high distinction from Indiana University and a law degree from Yale University.
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The Board has concluded that Mr. Schalliol should be a director of the Company because of his financial and executive experience with the above entities and other Board experience. His legal experience also benefits the Company.

The Board recommends a vote FOR approval of the director nominees.

The following tables set forth information with respect to our directors who are not up for election at the 2010 Annual Meeting.

Class III Directors — Terms Expire in 2011.

Name	Age	Principal Occupation and Other Information
Bruce Bruckmann	56	Mr. Bruckmann has served as a director on our Board since 2004. Mr. Bruckmann has been a Managing Director of Bruckmann, Rosser, Sherrill & Co., Inc., a private equity investment firm, since January 1995. From March 1994 to January 1995, Mr. Bruckmann served as Managing Director of Citicorp Venture Capital, Ltd. and as an executive officer of 399 Venture Partners, Inc. (formerly Citicorp Investments, Inc.). From 1983 until March 1994, Mr. Bruckmann served as Vice President of Citicorp Venture Capital, Ltd. Mr. Bruckmann is also a director of Town Sports International, Inc., a fitness club operator, MWI Veterinary Products, Inc., a distributor of veterinary products, H&E Equipment Services L.L.C., a renter and distributor of industrial and construction equipment, and Mohawk Industries, Inc., a floor covering manufacturer. Mr. Bruckmann also serves as director for a private company.

The Board has concluded that Mr. Bruckmann should be a director of the Company because of his extensive experience in investing in and advising public and private companies, as well as the fact that his significant stock ownership aligns his interests with those of other shareholders. His broad exposure to financing and funding issues also benefits the Company.

Carmine Falcone	63	Mr. Falcone has served as a director on our Board since March 2008. Mr. Falcone served in various operating and executive positions with Shell Group from 1968 through 2004, including roles as Executive Vice President, Oil Products, Shell Canada, as Director — Strategic Planning for Global Oil Products, Shell International, and from 1999 to 2004 as Vice President Manufacturing and Supply, Shell Oil Products USA. Following his retirement from Shell in 2004, Mr. Falcone established CELICO Ventures LLC, a commercial real estate company, which he continues to operate. Mr. Falcone is currently Chairman of the Board of Integrative Energy of Houston (Upstream Oil & Gas) and Chairman of the Board of The Plaza Group of Houston (Chemicals Marketing). Mr. Falcone was a director of Centurion Energy of Calgary from 2006 to 2007. Mr. Falcone holds a Chemical Engineering degree with honors from McGill University.
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The Board has concluded that Mr. Falcone should be a director of the Company because of his demonstrated skills in engineering and management with one of the world's largest and most preeminent diversified oil companies. Mr. Falcone's expertise is also helpful to

the company in evaluating growth opportunities.

Robert W. Willmschen, Jr. 62 Mr. Willmschen has served as a director on our Board since March 2008. Mr. Willmschen served as Chief Financial Officer of Safety-Kleen from 1981 to 1997 and as Controller of Safety-Kleen from 1979 to 1981. He was Executive Vice President, Finance of ABC Rail Products Corporation for approximately one year in 1998. Since 1999, Mr. Willmschen has been engaged in managing his private investments. Mr. Willmschen also has nine years experience in public accounting, including Audit Manager with Arthur Andersen LLP.

The Board has concluded that Mr. Willmschen should be a director of the Company because of his demonstrated financial experience in the Company's industry area. His CPA and public accounting experience is also beneficial to the Company and he is a designated financial expert for the Board.

Class I Directors — Terms Expire in 2012.

Name	Age	Principal Occupation and Other Information
Joseph Chalhoub	64	Mr. Chalhoub, founder of Heritage-Crystal Clean, LLC, has served as our President, Chief Executive Officer and director since the formation of the Company in 1999. He started his career with Shell Canada as a process engineer, and he then worked for several years at SNC, an engineering firm. In 1977 he founded Breslube Enterprises and built this into the largest used oil re-refiner in North America before selling a controlling interest to Safety-Kleen in 1987. Mr. Chalhoub then served as an executive of Safety-Kleen from 1987 to 1998 and he was President of Safety-Kleen from 1997 to 1998. Mr. Chalhoub holds a Chemical Engineering degree with high distinction from École Polytechnique, Montréal.

The Board has concluded that Mr. Chalhoub should be a director of the Company because he is President and Chief Executive Officer. In addition, his significant stock ownership aligns his interests with those of other shareholders. The Company and the Board benefit from his prior experience and knowledge gained as a senior executive of both the Company and Safety-Kleen.

Fred Fehsenfeld, Jr.	59	Mr. Fehsenfeld has served as a director on our Board since 1999. Mr. Fehsenfeld is the general partner and has served as Chairman of the Board of Directors of Calumet Specialty Products Partners, L.P. (“Calumet Partners”) since 2006. Mr. Fehsenfeld has served as the Vice Chairman of the Board of the predecessor to Calumet Partners since 1990. Mr. Fehsenfeld has worked for The Heritage Group in various capacities since 1977 and has served as its Managing Trustee since 1980. Mr. Fehsenfeld received his B.S. in Mechanical Engineering from Duke University and his M.S. in Management from the Massachusetts Institute of Technology Sloan School.
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The Board has concluded that Mr. Fehsenfeld should be a director and Chairman of the Company’s Board because of his significant executive experience referred to above, as well as the fact that his significant stock ownership aligns his interests with those of other shareholders. Mr. Fehsenfeld’s engineering and management training and senior leadership roles in other companies also benefit the Company.

SECTION 16(a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

Section 16(a) of the Securities Exchange Act of 1934 requires the Company's executive officers and directors, and persons who own more than ten percent of the Company's Common Stock, to file initial reports of ownership and changes in ownership with the SEC. Based on a review of the copies of such forms furnished to the Company and written representations from the Company's executive officers and directors, to the knowledge of the Company, all

Section 16(a) filing requirements applicable to its officers, directors and greater than ten percent beneficial owners were complied with during fiscal 2009.

SECURITIES BENEFICIALLY OWNED BY MANAGEMENT AND PRINCIPAL SHAREHOLDERS

The following table sets forth information regarding the beneficial ownership of our common stock as of March 31, 2010 for:

- each director and named executive officer;
- each person or entity who is known by us to own beneficially more than 5% of any class of outstanding voting securities; and
- all of our executive officers and directors as a group.

The number of shares beneficially owned by each shareholder is determined under rules promulgated by the SEC. The information is not necessarily indicative of beneficial ownership for any other purpose. Under these rules, beneficial ownership includes any shares as to which the individual or entity has sole or shared voting or investment power and any shares as to which the individual or entity has the right to acquire beneficial ownership within 60 days after March 31, 2010 through the exercise of any stock option, warrant or other right. The inclusion in the following table of those shares, however, does not constitute an admission that the named shareholder is a direct or indirect beneficial owner. Unless otherwise indicated below, to our knowledge, all persons listed below have sole voting and investment power with respect to their shares of common stock, except to the extent authority is shared by spouses under applicable law. Unless otherwise indicated below, the address of each director and named executive officer listed below is Heritage-Crystal Clean, Inc., 2175 Point Boulevard, Suite 375, Elgin, Illinois 60123.

Name	Number of Shares Beneficially Owned(1)	Percent
Non-employee Directors:		
Donald Brinckman(2)	550,439	5.1%
Bruce Bruckmann(3)	1,044,590	9.7%
Carmine Falcone	8,289	*
Fred Fehsenfeld, Jr.(4)	1,012,965	9.4%
Charles Schalliol	21,680	*
Robert Willmschen, Jr.	14,289	*
Beneficial Owners owning more than 5% of common stock (other than directors and named executive officers):		
The Heritage Group(5)	3,389,958	31.5%
Bruckmann, Rosser, Sherrill & Co. II, L.P.(3)	951,530	8.8%
Royce & Associates, LLC	628,347	5.8%
Named Executive Officers:		
Joseph Chalhoub(6)	1,643,447	14.7%
Gregory Ray(7)	325,007	3.0%
John Lucks	166,684	1.5%
Tom Hillstrom	24,017	*
All directors and named executive officers as a group (10 persons)	4,801,422	42.0%

* Less than 1%

- (1) Includes the following options to purchase shares of common stock exercisable within 60 days after March 31, 2010: Mr. Chalhoub: 436,027 shares; Mr. Lucks: 130,869 shares; Mr. Ray: 130,222 shares; and Mr. Hillstrom: 7,909 shares.
- (2) Consists of shares held in trust for which Mr. Brinckman has voting control.
- (3) Based on Schedule 13G filed with the SEC on February 17, 2009, BRS-HCC Investment Co., Inc. is wholly owned by Bruckmann, Rosser, Sherrill & Co. II, L.P., or BRS II, and related persons, with BRS II owning 99.81% of BRS-HCC Investment Co., Inc. BRSE LLC is the general partner of BRS II, and by virtue of such status may be deemed to be the beneficial owner of the shares held by BRS II. Bruce Bruckmann is a member and manager of BRSE LLC, and, together with Harold O. Rosser, Stephen C. Sherrill and Thomas J. Baldwin, shares the power to direct the voting or disposition of shares held by BRS II and BRS-HCC Investment Co., Inc.; however, none of these persons individually has the power to direct or veto the voting or disposition of shares held by BRS II or BRS-HCC Investment Co., Inc. BRSE LLC and Messrs. Bruckmann, Rosser, Sherrill and Baldwin expressly disclaim beneficial ownership of the shares held by BRS-HCC Investment Co., Inc. The address of this stockholder is 126 East 56th Street, New York, NY 10022.

- (4) Based on a Schedule 13G/A filed with the SEC on January 19, 2010. Includes 10,000 shares held by Mr. Fehsenfeld's family members (specifically, his spouse and two children). Mr. Fehsenfeld disclaims beneficial ownership of the shares of common stock owned by these family members except to the extent of his pecuniary interest therein. In addition, Mr. Fehsenfeld serves as one of five trustees who together are empowered to act on behalf of The Heritage Group. Mr. Fehsenfeld disclaims beneficial ownership of the shares of common stock owned by The Heritage Group except to the extent of his pecuniary interest therein.
- (5) Based on a Schedule 13G/A filed with the SEC on January 19, 2010. The Heritage Group is a general partnership formed under the laws of the State of Indiana. Thirty grantor trusts own all of the outstanding general partner interests in The Heritage Group. Five trustees, acting on behalf of each of these trusts, have the duty and have been empowered to carry out the purposes of the general partnership pursuant to the Articles of Partnership. The five trustees are Fred M. Fehsenfeld, Jr., James C. Fehsenfeld, Nicholas J. Rutigliano, William S. Fehsenfeld and Amy M. Schumacher. The address of The Heritage Group is 5400 West 86th Street, Indianapolis, Indiana 46268.
- (6) Joseph Chalhoub has voting control over the shares held by the entity named J. Chalhoub Holdings, Ltd., but disclaims beneficial ownership, other than to the extent of his pecuniary interest therein.
- (7) Includes shares held in trust for which Mr. Ray has voting control.

CORPORATE GOVERNANCE

General

Our business and affairs are managed under the direction of our Board of Directors. Our bylaws specify that the Board shall initially consist of seven directors, with such number thereafter to be determined from time to time by the Board. We currently have seven directors. Our Board of Directors has an audit committee, a compensation committee and a nominating and governance committee (the "nominating committee"). Fred Fehsenfeld, Jr. serves as the Chair of our Board.

Director Independence

Our Board of Directors is comprised of a majority of independent directors. In general, the Board of Directors determines whether a director is independent by following the listing standards of the Nasdaq Global Select Market (the "Nasdaq listing standards"), in addition to other factors it may deem relevant. The Board of Directors has determined that each of the following directors is independent: Bruce Bruckmann, Carmine Falcone, Charles E. Schalliol and Robert W. Willmschen, Jr.

Board Meetings

The Board of Directors met seven times during fiscal 2009. Independent directors of the Company meet regularly as a group in conjunction with regularly scheduled meetings of the Board of Directors. Each director attended at least 75% of all Board and applicable committee meetings held during the period that such director served in fiscal 2009.

The Audit Committee

The audit committee was formed in connection with our initial public offering and met six times in fiscal 2009. The audit committee has functions that include appointing, terminating, evaluating, and setting the compensation of our independent registered public accounting firm; meeting with the independent registered public accounting firm to review the scope, accuracy and results of the audit; and making inquiries as to the adequacy of our accounting, financial and operating controls. Mr. Willmschen is the Chair and Messrs. Falcone and Schalliol are the other members of the audit committee. The Board of Directors has determined that Messrs. Willmschen, Falcone and Schalliol are independent in accordance with Nasdaq listing standards and the rules and regulations of the SEC. In addition, the Board of Directors has also determined that Mr. Willmschen is an "audit committee financial expert" in accordance with the standards established by the SEC. The audit committee charter is available both on our website and in print. See "Availability of Certain Documents."

The Compensation Committee

The compensation committee met four times during fiscal 2009. Mr. Bruckmann is the Chair and Messrs. Falcone and Schalliol are the other members of the compensation committee.

The compensation committee's responsibilities include, among other duties, the responsibility to:

- review and approve corporate goals and objectives relevant to the compensation for executive officers, evaluate the performance of executive officers in light of those goals and objectives, and recommend the compensation level of executive officers based on this evaluation. The compensation and performance of the Chief Executive Officer is also then reviewed with and subject to approval by the Board;
-

administer incentive compensation plans and equity-based plans established or maintained by the Company from time to time, such as the 2008 Omnibus Plan;

-