

STAMPS.COM INC
Form DEF 14A
April 02, 2008

**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 (Amendment No. ____)**

Filed by the Registrant x
Filed by a party other than the Registrant o
Check the appropriate box:

o Preliminary Proxy Statement
 o Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
 x Definitive Proxy Statement
 o Definitive Additional Materials
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STAMPS.COM INC.

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if Other Than the Registrant)

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(1) Amount previously paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing party:

(4) Date filed:

**12959 Coral Tree Place
Los Angeles, CA 90066-7020
(310) 482-5800**

Dear Stockholder:

You are cordially invited to attend the 2008 Annual Meeting of Stockholders of Stamps.com Inc. to be held at 10:00 a.m. Pacific Daylight Savings Time on Thursday, May 22, 2008, at the Ritz Carlton Marina del Rey, 4375 Admiralty Way, Marina del Rey, California, 90292.

Your vote at the Annual Meeting is important to us. At the Annual Meeting, you will be asked to (i) elect one director, (ii) approve an amendment to our Amended and Restated Certificate of Incorporation to preserve the tax treatment of our tax net operating losses and (iii) ratify the selection of our auditors for 2008. The accompanying Notice of 2008 Annual Meeting of Stockholders and proxy statement describe the matters to be presented at the Annual Meeting. These proxy solicitation materials will first be mailed on or about April 18, 2008 to stockholders entitled to vote at the Annual Meeting.

Our board of directors unanimously recommends that stockholders vote in favor of the election of the nominated director, the amendment to our Amended and Restated Certificate of Incorporation and the ratification of our auditors.

Whether or not you plan to attend the Annual Meeting, please mark, sign, date and return your proxy card in the enclosed envelope as soon as possible. Your stock will be voted in accordance with the instructions you have given in your proxy card. You may attend the Annual Meeting and vote in person even if you have previously returned your proxy card.

Sincerely,

/s/ Ken McBride

Ken McBride
Chief Executive Officer

Los Angeles, California
March 20, 2008

**12959 Coral Tree Place
Los Angeles, CA 90066-7020
(310) 482-5800**

NOTICE OF 2008 ANNUAL MEETING OF STOCKHOLDERS

TO BE HELD MAY 22, 2008

TO THE STOCKHOLDERS OF STAMPS.COM INC.:

NOTICE IS HEREBY GIVEN that the 2008 Annual Meeting of Stockholders of Stamps.com Inc., a Delaware corporation, will be held on May 22, 2008, beginning at 10:00 a.m. Pacific Daylight Savings Time at the Ritz Carlton Marina del Rey, 4375 Admiralty Way, Marina del Rey, California, 90292, for the following purposes:

- (1) To elect one director to serve for a three-year term ending in the year 2011 or until his successor is duly elected and qualified;
To approve an amendment to our Amended and Restated Certificate of Incorporation to effect certain restrictions
- (2) upon transfers in order to preserve tax treatment of our tax net operating losses (our NOL Protective Amendment);
and
- (3) To ratify the appointment of Ernst & Young LLP as our independent auditors for 2008.

The foregoing matters are described in more detail in the enclosed proxy statement. Our board of directors has fixed the close of business on April 11, 2008 as the record date for the determination of our stockholders entitled to notice of, and to vote at, the Annual Meeting and any postponement or adjournment of the meeting. Only those stockholders of record as of the close of business on that date are entitled to notice of and to vote at the Annual Meeting. Our stock transfer books will remain open between the record date and the date of the meeting. A list of stockholders entitled to vote at the Annual Meeting will be available for inspection by any of our stockholders, for any purpose germane to the meeting, at the Annual Meeting and during ordinary business hours at our executive offices for a period of ten days prior to the Annual Meeting.

All stockholders are cordially invited to attend the meeting in person. Whether or not you plan to attend, please sign and return the enclosed proxy as promptly as possible in the envelope enclosed for your convenience. Should you receive more than one proxy because your shares are registered in different names and addresses, each proxy should be signed and returned to assure that all your shares will be voted. You may revoke your proxy at any time before the Annual Meeting. If you attend the Annual Meeting and vote by ballot, your proxy will be revoked automatically and

only your vote at the Annual Meeting will be counted.

YOUR VOTE IS VERY IMPORTANT, REGARDLESS OF THE NUMBER OF SHARES YOU OWN. PLEASE READ THE ATTACHED PROXY STATEMENT CAREFULLY, COMPLETE, SIGN AND DATE THE ENCLOSED PROXY CARD AS PROMPTLY AS POSSIBLE AND RETURN IT IN THE ENCLOSED ENVELOPE.

By Order of the Board of Directors,

/s/ Seth Weisberg

Seth Weisberg
General Counsel and Secretary

Los Angeles, California
March 20, 2008

**12959 Coral Tree Place
Los Angeles, CA 90066-7020**

**PROXY STATEMENT
FOR THE ANNUAL MEETING OF STOCKHOLDERS
TO BE HELD ON MAY 22, 2008**

GENERAL INFORMATION ABOUT VOTING

General

The enclosed proxy is solicited on behalf of the board of directors of Stamps.com Inc., for use at the Annual Meeting of Stockholders to be held on May 22, 2008. The Annual Meeting will begin at 10:00 a.m. Pacific Daylight Savings Time at the Ritz Carlton Marina del Rey, 4375 Admiralty Way, Marina del Rey, California 90292.

Voting

On February 29, 2008, 19,857,285 shares of our common stock were issued and outstanding. As of that date we had no outstanding preferred stock. Each share of our common stock is entitled to one vote at the Annual Meeting.

The nominee for election to our board of directors who receives the greatest number of votes cast for the election of a director by the shares present at the Annual Meeting, in person or by proxy, will be elected director. You may not cumulate votes in the election of directors. The adoption of the proposal to approve an amendment to our Amended and Restated Certificate of Incorporation requires the affirmative vote of a majority of the outstanding shares of our

common stock. The adoption of the proposal to ratify the appointment of our independent auditors requires the affirmative vote of a majority of shares present at the Annual Meeting, in person or by proxy.

A majority of the outstanding shares of our common stock, present in person or represented by proxy, constitutes a quorum for the transaction of business at the Annual Meeting. All votes will be tabulated by the inspector of election appointed for the meeting, who will separately tabulate affirmative and negative votes, abstentions and broker non-votes. Abstentions and broker non-votes are counted as present for purposes of determining the presence or absence of a quorum for the transaction of business. Abstentions will be counted towards the tabulations of votes cast on proposals presented to the stockholders and will have the same effect as negative votes, whereas broker non-votes will not be counted for purposes of determining whether a proposal has been approved. In the election of the director, an abstention or broker non-vote will have no effect on the outcome.

Proxies

If you properly sign and return the enclosed form of proxy, your shares represented will be voted at the Annual Meeting in accordance with your specified instructions. If you do not specify how your shares are to be voted, your shares will be voted FOR the election of the directors proposed by the board unless the authority to vote for the election of a director is withheld and, if no contrary instructions are given, the proxy will be voted FOR our NOL Protective Amendment and FOR the ratification of our independent accountants. You may revoke or change your proxy at any time before the Annual Meeting by filing with our Secretary at 12959 Coral Tree Place, Los Angeles, CA 90066-7020, a notice of revocation or another signed proxy with a later date. You may also revoke your proxy by attending the Annual Meeting and voting in person.

Solicitation

We will bear the entire cost of solicitation, including the preparation, assembly, printing and mailing of this proxy statement, the proxy and any additional solicitation materials furnished to our stockholders. Copies

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of solicitation materials will be furnished to brokerage houses, fiduciaries and custodians holding shares in their names that are beneficially owned by others so that they may forward this solicitation material to such beneficial owners. In addition, we may reimburse such persons for costs incurred in forwarding the solicitation materials to such beneficial owners. The original solicitation of proxies by mail may be supplemented by a solicitation by telephone, telegram or other means by our directors, officers or employees. No additional compensation will be paid to these individuals for soliciting. Except as described above, we do not presently intend to solicit proxies other than by mail.

Deadline for Receipt of Stockholder Proposals

Proposals of stockholders that are intended to be presented by such stockholders at our 2009 annual meeting must be received no later than January 7, 2009 in order that they may be included in the proxy statement and form of proxy relating to that meeting. In addition, the proxy solicited by our board of directors for the 2009 annual meeting will confer discretionary authority to vote on any stockholder proposal presented at that meeting, unless we had received notice of the proposal in accordance with our bylaws not later than March 9, 2009.

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MATTERS TO BE CONSIDERED AT ANNUAL MEETING

PROPOSAL ONE: ELECTION OF DIRECTORS

General

Our certificate of incorporation provides for a classified board of directors consisting of three classes of directors with staggered three-year terms, with each class consisting, as nearly as possible, of one-third of the total number of directors. Our board currently consists of five members.

The five member Board is currently divided into two Class I directors, two Class II directors and one Class III director.

Class III, the class whose term of office expires at the Annual Meeting, currently consists of one director. The director elected to this class will serve for a term of three years, expiring at the 2011 annual meeting of stockholders or until his successor has been duly elected and qualified. The nominee listed below is currently one of our directors.

The nominee for election has agreed to serve if elected, and management has no reason to believe that the nominee will be unavailable to serve. If the nominee is unable or declines to serve as a director at the time of the Annual Meeting, the proxies will be voted for any substitute nominee who may be designated by our board of directors to fill the vacancy.

Unless otherwise instructed, the proxy holders will vote the proxies received by them FOR the nominee named below.

Directors and Executive Officers

The current directors of Stamps.com are as follows:

Name	Age	Position
Mohan P. Ananda ⁽²⁾⁽³⁾	62	Director
Kevin G. Douglas ⁽¹⁾⁽²⁾	45	Director
G. Bradford Jones ⁽¹⁾⁽²⁾	53	Director
Kenneth McBride	40	Chief Executive Officer, Director
Lloyd I. Miller ⁽¹⁾⁽²⁾⁽³⁾	53	Director

(1)

Member of the Audit Committee

(2)

Member of the Nominating Committee

(3)

Member of the Compensation Committee

Nominee for Term Ending Upon the 2011 Annual Meeting

Kenneth McBride, has been one of our directors and has served as our President and Chief Executive Officer since 2001 and also served as our Chief Financial Officer from 2000 to 2004. Previously, Mr. McBride served as our Senior Director of Finance from 1999 to 2000. Before joining us, Mr. McBride was a research analyst for Salomon Smith Barney covering several industries in the high technology area. Mr. McBride has also worked as an engineer and manager in the semiconductor industry. Mr. McBride holds a bachelor's degree, with honors, and a master's degree, in Electrical Engineering from Stanford University. Mr. McBride also holds an MBA from the Graduate School of

Business at Stanford University.

Continuing Directors Whose Terms Expire in 2009

G. Bradford Jones, has been one of our directors since 1998. Mr. Jones is currently a General Partner at Brentwood Venture Capital, which he joined in 1981, and a General Partner of Redpoint Ventures, a firm he co-founded in 1999. Mr. Jones also currently serves on the board of directors of numerous privately-held companies. Mr. Jones received his B.A. in Chemistry from Harvard University, his M.A. in Physics from Harvard University and his J.D./M.B.A. from Stanford University.

Lloyd I. Miller, has been one of our directors since 2002. Mr. Miller is an independent investor and has served on numerous corporate boards including Vulcan International and American Controlled Industries,

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among others. Mr. Miller currently serves as a director of American Banknote Corporation, a global supplier of secure documents, services and systems; Pharms Corporation, a biopharmaceutical company; and Synergy Brands, Inc, a distributor of groceries, and health and beauty aid products. He is a member of the Chicago Stock Exchange, and traded actively on the floor of the CBOT from 1978 to 1992. He is a Registered Investment Advisor. Mr. Miller received his B.A. from Brown University.

Continuing Directors Whose Terms Expire in 2010

Mohan P. Ananda, has been one of our directors since 1998. Mr. Ananda is a founder and currently serves as the chief executive officer and chairman of the board of Angels Now, Inc., an investment and management consulting company, and has served there for more than five years. From 1997 to 1998, Mr. Ananda served as our chief executive officer. From 1986 to 1996, Mr. Ananda was a partner of Ananda & Krause, a law firm. Mr. Ananda also serves on the board of directors of several privately-held companies. Mr. Ananda received his B.S. in Mechanical Engineering from Coimbatore Institute of Technology in India, his M.S. in Aeronautics from the California Institute of Technology, his Ph.D. in Astrodynamics and Control from UCLA, and his J.D. from the University of West Los Angeles.

Kevin G. Douglas, has been one of our directors since 2003. Mr. Douglas is the founder, Chairman and co-CEO of Douglas Telecommunications, Inc., a cellular communications company he started in 1991. Mr. Douglas also serves on the board of numerous private companies. Mr. Douglas received his A.B. from Stanford University and his J.D. from U.C. Hastings College of Law.

Board Committees and Meetings

Our board of directors held five meetings and did not act by unanimous written consent during 2007. Each director attended or participated in 75% or more of the aggregate of (i) the total number of meetings of our board of directors and (ii) the total number of meetings held by all committees of our board on which such director served during 2007.

Our board members are not required to attend our annual meeting and no directors attended our annual meeting in 2007. Our board of directors has an audit committee established in accordance with section 3(a)(58)(A) of the Securities Exchange Act of 1934, a compensation committee and a nominating committee.

Audit Committee. The audit committee currently consists of three directors, Messrs. Douglas, Jones and Miller, and is primarily responsible for approving the services performed by our independent auditors and reviewing their reports

regarding our accounting practices and systems of internal accounting controls. Mr. Jones serves as the chairman of the audit committee. The audit committee acts pursuant to a written charter adopted by the board which is available on our website at <http://investor.stamps.com> and is attached as Annex B to this proxy statement. All members of the audit committee are non-employee directors and are independent pursuant to the rules of The NASDAQ Stock Market. In addition, our board of directors has determined that Messrs. Jones and Miller are audit committee financial experts as defined by applicable SEC rules. Our audit committee held five meetings during 2007.

Compensation Committee. The compensation committee currently consists of two directors, Messrs. Ananda and Miller. The compensation committee is primarily responsible for reviewing and approving our general compensation policies and setting compensation levels for our executive officers. Our compensation committee also has the authority to administer our employee stock purchase plan and our stock incentive plan and to make option grants under our stock incentive plan. All members of the compensation committee are non-employee directors and are independent pursuant to the rules of The NASDAQ Stock Market. The compensation committee acts pursuant to a written charter adopted by the board which is available on our website at <http://investor.stamps.com>. The compensation committee held two meetings and acted by unanimous written consent on 12 separate occasions during 2007.

Nominating Committee. The nominating committee was established in February 2004. The current members of our nominating committee are Messrs. Ananda, Douglas, Jones and Miller, each of whom qualifies as an independent director under the rules of The NASDAQ Stock Market. The nominating committee acts pursuant to a written charter adopted by the board which is available on our website at <http://investor.stamps.com>. The nominating committee held one meeting during 2007.

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The nominating committee consists of a minimum of two members of our board of directors, all of whom shall be independent directors. The responsibilities of the nominating committee include (i) screening and recommending to the Board qualified candidates for election or appointment to our board of directors; (ii) recommending the number of members that shall serve on the board of directors; (iii) evaluating and reviewing the independence of existing and prospective directors; and (iv) reviewing and reporting on additional corporate governance matters as directed by the Board of Directors.

We expect that candidates for independent directors will typically be found through recommendations from current directors. Our stockholders may also recommend candidates by sending the candidate's name, age, resume, amount of stock of Stamps.com beneficially owned and other information required in solicitations of proxies for the election of directors, to the nominating committee under the provisions set forth below for communication with our board of directors. To be timely, a recommendation must be delivered to or mailed and received not less than one-hundred twenty (120) days prior to our annual meeting at which directors are to be elected. No such suggestions from our stockholders were received in time for the 2008 Annual Meeting.

The nominating committee has no predefined minimum criteria for selecting director nominees, although it believes that all independent directors should share qualities such as experience, decision-making ability, good judgment and integrity. In any given search, the nominating committee may also define particular characteristics for candidates to balance the overall skills and characteristics of our board of directors and our perceived needs. However, during any search, the nominating committee reserves the right to modify its stated search criteria for exceptional candidates.

Compensation Committee Interlocks and Insider Participation. The compensation committee currently consists of two directors, Messrs. Ananda and Miller. Neither of these individuals was one of our officers or employees during 2007 or had any relationship with us requiring disclosure. None of our current executive officers has ever served as a member of the board of directors or the compensation committee of any other entity that has or has had one or more

executive officers serving as a member of our board of directors or compensation committee.

Contacting the Board of Directors

Any stockholder who desires to contact our board of directors may do so by writing to the following address: Board of Directors, c/o Legal Department, Stamps.com Inc., 12959 Coral Tree Place, Los Angeles, CA 90066-7020. Communications received are distributed to an independent member, as well as other members as appropriate, of our board of directors depending on the facts and circumstances outlined in the communication received.

Director Independence

The board of directors has determined that, except for Mr. McBride, each of our directors qualifies as an independent director under the rules of The NASDAQ Stock Market. Mr. McBride is not independent because he serves as our chief executive officer.

Director Compensation

Cash Compensation. For 2007, each of our non-employee directors received an annual retainer of \$18,000, \$1,100 for each board meeting attended and \$700 for each board committee meeting attended. Additional annual retainers were paid for service on our audit or compensation committees as follows: the chairman of the audit committee received an additional \$9,000; other members of the audit committee received an additional \$4,000; the chairman of the compensation committee received an additional \$5,000; and other members of the compensation committee received an additional \$2,500. Directors are also reimbursed for all reasonable expenses incurred by them in attending board and committee meetings.

Option Grants. Under the automatic option grant program in effect under our stock incentive plan, each individual who joins our board as a non-employee director will receive, at the time of their initial election or appointment, an automatic option grant to purchase 5,000 shares of our common stock so long as that person has not previously been one of our employees. In addition, on the date of each annual stockholders meeting, each individual who is to continue to serve as a non-employee board member, whether or not that individual

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is standing for re-election at that particular annual meeting, will be granted an option to purchase 5,000 shares of our common stock. Each grant under our automatic option grant program will have an exercise price per share equal to the fair market value per share of our common stock on the grant date, and will have a maximum term of ten years, subject to earlier termination should the optionee cease to serve as a director. All non-employee directors received automatic option grants on June 6, 2007 for 5,000 shares each of our common stock at an exercise price per share of \$13.81, the fair market value per share of our common stock on the grant date.

The following table contains information with respect to the compensation of our non-employee directors for 2007:

Director Compensation Table

Name	Fees Earned or	Option Awards	Total (\$)
------	-------------------	------------------	---------------

	Paid in Cash (\$)	(\$)	
Mohan Ananda	26,300	33,356	59,656
Bradford Jones	36,000	33,356	69,356
Kevin Douglas	28,500	33,356	61,856
Lloyd Miller	37,400	33,356	70,756

Vote Required

Directors are elected by a plurality of the votes of the shares present at the Annual Meeting in person or represented by proxy and entitled to vote on the election of directors.

Recommendation of our Board of Directors

Our Board of Directors recommends that the stockholders vote FOR the election of the nominee listed above.

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PROPOSAL TWO: NOL PROTECTIVE AMENDMENT

AMENDMENT TO AMENDED AND RESTATED CERTIFICATE OF INCORPORATION TO PRESERVE VALUE OF OUR TAX NET OPERATING LOSSES

General

At the Annual Meeting, you will consider and vote on an amendment (the *NOL Protective Amendment*) to our amended and restated certificate of incorporation to impose certain restrictions on the transfer of our common stock.

The NOL Protective Amendment attempts to prevent certain future transfers of our capital stock which could otherwise adversely affect our ability to use our tax net operating loss carryforwards (*NOLs*) for federal and state income tax purposes and certain income tax credits.

The NOL Protective Amendment is contained in a proposed new Article IX to our amended and restated certificate of incorporation which is attached as Annex A to this proxy statement and is incorporated by reference herein (the existing Article IX of our amended and restated certificate of incorporation will not be changed but will be renumbered as Article X). We urge you to read the NOL Protective Amendment in its entirety, as the discussion in this proxy statement is only a summary and does not contain all of the language in the NOL Protective Amendment.

The NOL Protective Amendment will only become effective if our stockholders approve it.

The Problem: Potential Limitations on Our NOLs

The Value of our NOLs. We estimate that our NOLs could save us as much as \$95 million in taxes over the next 15 years. We estimate that we had approximately \$252 million of (pre-tax) federal NOLs and \$149 million of (pre-tax) state NOLs as of December 31, 2007. Furthermore, our federal NOLs do not expire until the years 2019 to 2024, and our state NOLs do not expire until the years 2012 to 2014. To the extent we have future taxable income, and until the NOLs expire, they can be used to eliminate any future ordinary tax on our income (we may still pay minor alternative minimum taxes). Because the amount and timing of our future taxable income, if any, cannot be accurately predicted, we cannot estimate the exact amount of our NOLs that we can ultimately use to reduce our income tax liability.

Although we are unable to quantify an exact value, we believe our NOLs are a very valuable asset.

The Section 382 Limit on Use. Unfortunately, ordinary transfers of our stock between shareholders could result in our undergoing an ownership change as defined in Section 382 of the Internal Revenue Code of 1986, as amended, and the related Treasury Regulations (Section 382). If that were to happen, we would only be allowed to use a limited amount of our then existing NOLs and credits to offset our taxable income subsequent to the ownership change. The annual limit is obtained by multiplying (i) the aggregate value of our outstanding capital stock immediately prior to the ownership change (reduced by certain capital contributions made during the immediately preceding two years and certain other items) by (ii) the federal long-term tax-exempt interest rate in effect for the month of the ownership change. In calculating this annual limit, numerous special rules and limitations apply, including provisions dealing with built-in gains and losses. If we were to experience an ownership change at our current stock price levels, we believe we would be subject to an annual NOL limitation which would result in a material amount of our NOLs expiring unused, resulting in a significant impairment to our NOL assets.

Following a Section 382 Ownership Change . If we were to have taxable income in excess of the NOL limitations following a Section 382 ownership change , we would not be able to avoid tax on the excess income by using our NOLs. Consequently, we would incur corporate income tax on any taxable income during a given year for income earned in excess of the limitation. While any loss carryforwards not used as a result of any Section 382 limitation would remain available to offset income in future years (again, subject to the Section 382 limitation) until the NOLs expire, any ownership change could significantly defer the utilization of the loss carryforwards, accelerate payment of federal income tax and could cause some of the NOLs to expire unused. Because the aggregate value of our outstanding stock and the federal long-term tax-exempt interest rate fluctuate, it is impossible to predict with any accuracy the annual limitation upon the amount of our taxable income that could be offset by such loss carryforwards and credits were an `ownership change` to occur in the future, but it could be material.

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Section 382 Ownership Shift Calculations. Generally, an ownership change occurs under Section 382 if one or more 5-percent shareholders (which in general includes stockholders who own five percent or more in value of a company's capital stock) collectively increase their aggregate percentage ownership by more than 50 percentage points over the lowest percentage of our stock owned by such stockholders during the preceding three-year period. For example, if a single stockholder acquires more than 50% of our common stock within a three-year period, an ownership change would occur. Similarly, if ten persons, none of whom own any shares of our common stock, each acquire at least 5% of our common stock within a three-year period (so that such ten persons own, in the aggregate, more than 50%), an ownership change would occur under Section 382.

In determining an ownership change , Section 382 is very complex, and all of its nuances are beyond the scope of this discussion. Some of the factors that must be considered in making a Section 382 ownership change calculation include the following:

All holders who each own less than five percent of a company's capital stock are generally (but not always) treated as a single 5-percent shareholder. Transactions in the public markets among stockholders who are not 5-percent shareholders are generally not included in the calculation (but not always).

There are several rules regarding the aggregation and segregation of stockholders who otherwise do not qualify as 5-percent shareholders. Ownership of stock is generally attributed to its ultimate beneficial owner without regard to ownership by nominees, trusts, corporations, partnerships or other entities.

Acquisitions by a person which cause that person to become a 5-percent shareholder generally result in a five percentage (or more) point change in ownership, regardless of the size of the final purchase(s) that caused the threshold to be exceeded.

The redemption or buyback of shares by an issuer will increase the ownership of any 5-percent shareholders (including groups of shareholders who are not themselves 5-percent shareholders) and can contribute to an ownership change. In addition, it is possible that a redemption or buyback of shares could cause a holder of less than 5% to become a 5-percent shareholder, resulting in a five percentage (or more) point change in ownership.

Current Ownership Shift. As of December 31, 2007, we estimate that we were at an approximately 34% level of ownership shift, compared with the 50% level that would trigger an ownership change. Because the shift is calculated based on a rolling preceding three year period, it is possible to project how much of the shift will roll-off of the shift calculation over the future three year period assuming no other changes in ownership. Based on this roll-off projection, we believe that the current 34% shift will not materially decrease until 2010. Although we have had similar levels of ownership shifts in the past, in those cases the likelihood of an ownership change was substantially reduced because a material portion of the change was expected to roll off within a shorter period of time than in our current circumstances.

Reasons for the NOL Protective Amendment

Our \$252 million federal NOL and \$149 million state NOL are a significant asset that could save us up to almost \$95 million in taxes over the next 15 years. At our current stock price, the value of our NOLs could be significantly impaired unless we avoid potential transfers that, individually or in the aggregate, could trigger an ownership change under Section 382. Because our federal NOLs do not start expiring until 2019 and our state NOLs do not start expiring until 2012, we will have to continually manage our Section 382 risk for a significant period of time. Our board of directors believes that the provisions of the NOL Protective Amendment will be an important tool in avoiding potential adverse impacts from Section 382 limitations.

We estimate that our ownership shift has increased from approximately 26% as of March 31, 2007 to approximately 34% as of December 31, 2007. Despite our efforts at voluntary compliance, we estimate that we had approximately 20 percentage points of shift in ownership under Section 382 as a result of transactions that occurred during 2007. Because the ownership shifts from these 2007 transactions will not roll off until various dates throughout 2010, if we were to experience additional ownership shifts in 2008 and 2009 similar

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to the 2007 level, we would expect to experience an ownership change. Accordingly, our board of directors believes that it is important to adopt the NOL Protective Amendment at this time.

Currently, when we become aware of any new significant shareholders with the potential to become a 5-percent shareholder, we attempt to contact that person to coordinate any additional purchases in a way that mitigates the Section 382 impact. However, we are not always successful and new 5-percent shareholders have been created despite our best efforts, resulting in our current high level of Section 382 ownership shift. Although we have been able to avoid an ownership change in the past, recent ownership shifts have raised concerns about our ability to continue to manage our Section 382 risk in the same manner as in the past.

Currently, if a shareholder makes a transfer that creates, or increases the ownership of, a 5-percent shareholder, there is nothing we can do to reverse the impact on the ownership shift that results. In contrast, the NOL Protective Amendment would provide a mechanism with the potential to reverse the impact of the transfer on the ownership shift while allowing the purchaser to receive their money from the purchase back.

Our board of directors also believes that adopting the NOL Protective Amendment will offer increased flexibility to continue share buyback programs that benefit existing stockholders. Share buyback programs can impact the Section 382 calculation by reducing our overall stock capitalization and thereby increasing the stock ownership percentage of our existing stockholders. Our board of directors will continue to consider the benefits of future share buyback programs against the risk of increasing the Section 382 ownership levels.

Description and Effect of NOL Protective Amendment

The following is a brief summary of the proposed transfer restrictions. You are urged to read the NOL Protective Amendment in its entirety as set forth in Annex A, as its terms (and not this summary) will govern our legal rights and those of our shareholders.

The NOL Protective Amendment generally restricts any person or entity from attempting to transfer (which includes sales, transfers, dispositions, purchases and acquisitions) any of our stock (or options, warrants or other rights to acquire our stock, or securities convertible or exchangeable into our stock), to the extent that transfer would (i) create or result in an individual or entity (which the NOL Protective Amendment refers to as a `Prohibited Person`) becoming either a 5-percent shareholder of our stock as defined under Section 382 or the beneficial owner (as defined under the Securities Exchange Act of 1934) of five percent (5%) or more of our common stock or (ii) increase the stock ownership percentage of any existing Prohibited Person. The NOL Protective Amendment does not restrict transfers that are sales by a Prohibited Person, although it would restrict any purchasers to the extent that the purchaser is or would become a Prohibited Person.

Some persons who are beneficial owners (as defined under the Securities Exchange Act of 1934) of five percent (5%) or more of our common stock are not 5-percent shareholders (as defined under Section 382) and hence would not affect our ownership shift for purposes of Section 382. We have included these persons in the definition of Prohibited Person because most investors report ownership positions based on the Securities Exchange Act of 1934 definition and including them as Prohibited Person allows us to identify that investor, verify whether they are a 5-percent shareholder under the Section 382 definition and make a determination as to how to proceed. We expect our board of directors to grant waivers, if requested, to allow purchases by any Prohibited Person who is not a 5-percent shareholder under the Section 382 definition.

The NOL Protective Amendment provides that any Transfer that violates the NOL Protective Amendment shall be null and void *ab initio* and shall not be effective to transfer any record, legal, beneficial or any other ownership of the number of shares which result in the violation of the NOL Protective Amendment (which are referred to as *Excess Shares*). The purported acquirer shall not be entitled to any rights as our stockholder with respect to the Excess Shares. Instead, the Excess Shares will be automatically transferred to an agent designated by us for the limited purpose of consummating an orderly arms-length sale of such shares. The net proceeds of the sale will be distributed to the purported transferee to the extent of the price it paid, and any additional amount will go to charity. The NOL Protective Amendment also provides us with various remedies to prevent or respond to a purported transfer which violates its provisions. In particular, the NOL Protective Amendment provides that any person who knowingly violates the NOL Protective Amendment, together with