

EAGLE MATERIALS INC
Form DEF 14A
June 21, 2013
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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

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

EAGLE MATERIALS INC.

(Name of Registrant as Specified In Its Charter)

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 - 3) 3) Filing Party:

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3811 Turtle Creek Blvd, Suite 1100

Dallas, Texas 75219-4487

June 21, 2013

Dear Fellow Stockholder:

It is my pleasure to invite you to our Annual Meeting of Stockholders, which will be held on Wednesday, August 7, 2013, at Arlington Hall at Lee Park, 3333 Turtle Creek Blvd., Dallas, Texas 75219, at 8:00 a.m. We hope that you will attend the meeting, but we encourage you to vote by proxy whether or not you plan to attend the meeting in person.

This year we are again taking advantage of the Securities and Exchange Commission rules that allow companies to furnish their proxy materials over the Internet. As a result, beginning on June 21, 2013, we are mailing a Notice Regarding the Availability of Proxy Materials, or Notice, to many of our stockholders instead of a paper copy of the materials for the Annual Meeting. The Notice contains instructions on how to access the proxy materials over the Internet and vote online, as well as how stockholders can elect to receive paper copies of the materials. We believe that this process should expedite stockholders' receipt of proxy materials and provide stockholders with the information they need, while being consistent with our objective of conserving our natural resources and reducing the costs of printing and distributing our proxy materials.

If you attend the Annual Meeting and desire to vote your shares personally rather than by proxy, you may withdraw your proxy at any time before it is exercised. **Your vote is very important, whether you own one share or many.**

Thank you for your continued support and interest in Eagle.

Sincerely,

Steven R. Rowley

President and Chief Executive Officer

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EAGLE MATERIALS INC.

3811 Turtle Creek Blvd, Suite 1100

Dallas, Texas 75219-4487

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

To Be Held August 7, 2013

To the Stockholders of Eagle Materials Inc.:

The annual meeting of stockholders of Eagle Materials Inc., which we refer to as the Company, will be held at Arlington Hall at Lee Park, 3333 Turtle Creek Blvd., Dallas, Texas 75219 at 8:00 a.m., local time, on Wednesday, August 7, 2013. At the meeting, stockholders will vote on:

- (1) Election of the three Class I directors identified in the accompanying proxy statement, each to hold office for three years.
- (2) Approval of an advisory resolution regarding the compensation of our named executive officers.
- (3) Approval of our Amended and Restated Incentive Plan, which we refer to as the 2013 Plan.
- (4) Approval of the expected appointment of Ernst & Young LLP as the Company's independent auditors for the fiscal year ending March 31, 2014.
- (5) Any other matters properly brought before the annual meeting, or any adjournment thereof.

The Company's Board of Directors has fixed the close of business on June 10, 2013 as the record date for the determination of stockholders entitled to notice of and to vote at the meeting or any adjournment thereof. Only record holders of the Company's common stock, par value \$0.01 per share, which we refer to as our Common Stock, at the close of business on the record date are entitled to notice of and to vote at the annual meeting. A list of holders of Common Stock will be available for examination by any stockholder at the meeting and, during the ten-day period preceding the meeting date at the executive offices of the Company located at 3811 Turtle Creek Blvd., Suite 1100, Dallas, Texas 75219-4487.

For further information regarding the matters to be acted upon at the annual meeting, I urge you to carefully read the accompanying proxy statement. If you have questions about these proposals or would like additional copies of the proxy statement, please contact: Eagle Materials Inc., Attention: James H. Graass, Secretary, 3811 Turtle Creek Blvd., Suite 1100, Dallas, Texas 75219-4487 (telephone: (214) 432-2000).

You are cordially invited to attend the annual meeting. Your vote is important. Whether or not you expect to attend the annual meeting in person, please vote through the Internet (as described in the Notice) or by telephone or fill in, sign, date and promptly return the accompanying form of proxy in the enclosed postage-paid envelope so that your shares may be represented and voted at the annual meeting. This will not limit your right to attend or vote in person at the annual meeting. Your proxy will be returned to you if you choose to attend the annual meeting and request that it be returned. Shares will be voted in accordance with the instructions contained in your proxy, but if any proxies that are signed and returned to us do not specify a vote on any proposal, such proxies will be voted in the manner, if any, recommended by the Board.

By Order of the Board of Directors

JAMES H. GRAASS

Executive Vice President,

General Counsel and Secretary

Dallas, Texas

June 21, 2013

**IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS FOR
THE ANNUAL MEETING OF STOCKHOLDERS TO BE HELD ON AUGUST 7, 2013.**

**Our proxy statement and 2013 annual report to stockholders
are available to you on the Internet at www.proxyvote.com.**

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EAGLE MATERIALS INC.

3811 Turtle Creek Blvd., Suite 1100

Dallas, Texas 75219-4487

PROXY STATEMENT

INTRODUCTION

The accompanying proxy, mailed or provided online, together with this proxy statement, is solicited by and on behalf of the Board of Directors of Eagle Materials Inc., which we refer to as the Company, for use at the annual meeting of stockholders of the Company and at any adjournment or postponement thereof. References in this proxy statement to we, us, our or like terms also refer to the Company. References to our Board of Directors or Board refer to the Board of Directors of the Company. The Notice Regarding the Availability of Proxy Materials, this proxy statement and accompanying proxy were first mailed to our stockholders on or about June 21, 2013.

Date, Time and Place of the Annual Meeting

The 2013 annual meeting of our stockholders will be held at Arlington Hall at Lee Park, 3333 Turtle Creek Blvd., Dallas, Texas 75219 at 8:00 a.m., local time, on Wednesday, August 7, 2013.

Purposes of the Annual Meeting and Recommendations of our Board of Directors

At the meeting, action will be taken upon the following matters:

- (1) *Election of Directors.* Stockholders will be asked to elect the three Class I directors identified in this proxy statement, each to hold office for a term of three years.

Our Board of Directors recommends that you vote for the election of its three nominees for director named in this proxy statement.

- (2) *Advisory Vote on Compensation of our Named Executive Officers.* We are asking you to approve a non-binding advisory resolution regarding the compensation of our named executive officers as reported in this proxy statement.

Our Board of Directors recommends that you vote for the non-binding advisory resolution approving the compensation of our named executive officers.

- (3) *Approval of our Amended and Restated Incentive Plan.* We are asking you to approve our Amended and Restated Incentive Plan, which we refer to as the 2013 Plan.

Our Board of Directors recommends that you vote for the approval of the 2013 Plan.

- (4) *Approval of the Expected Appointment of Ernst & Young LLP.* We are asking you to approve the expected appointment by our Audit Committee of Ernst & Young LLP as the Company's independent auditors for the fiscal year ending March 31, 2014.

Our Board of Directors recommends that you vote for the approval of the expected appointment of Ernst & Young LLP as the Company's independent auditors for the fiscal year ending March 31, 2014.

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- (5) *Other Business.* In addition, you may be asked to vote upon such other matters, if any, as properly come before the annual meeting, or any adjournment thereof.

Our Board of Directors does not know of any matters to be acted upon at the meeting other than the matters set forth in items (1) through (4) above.

IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS FOR

THE ANNUAL MEETING OF STOCKHOLDERS TO BE HELD ON AUGUST 7, 2013.

Our proxy statement and 2013 annual report to stockholders

are available to you on the Internet at www.proxyvote.com.

Table of Contents**ABOUT THE MEETING****Who Can Vote**

The record date for the determination of holders of the Company's Common Stock, par value \$0.01 per share, which we refer to as our Common Stock, entitled to notice of and to vote at the meeting, or any adjournment or postponement of the meeting, is the close of business on June 10, 2013. In this proxy statement, we refer to this date as the record date. As of the record date, there were 49,553,441 shares of our Common Stock issued and outstanding and entitled to vote at the meeting. Our stock transfer books will not be closed in connection with the meeting. Our Common Stock is listed on the New York Stock Exchange, or NYSE, under the symbol EXP.

How Proxies Will be Voted

Shares represented by valid proxies will be voted at the meeting in accordance with the directions given. If the enclosed proxy card is signed and returned without any direction given, the shares will be voted in the manner, if any, recommended by the Board. The Board does not intend to present, and has no information indicating that others will present, any business at the annual meeting other than as set forth in the attached Notice of Annual Meeting of Stockholders. However, if other matters requiring the vote of our stockholders properly come before the meeting, it is the intention of the persons named in the accompanying form of proxy to vote the proxies held by them in accordance with their best judgment in such matters.

How to Revoke Your Proxy

You have the unconditional right to revoke your proxy at any time prior to the voting thereof by submitting a later-dated proxy, by attending the meeting and voting in person, or by written notice to us addressed to: Eagle Materials Inc., Attention: James H. Graass, Secretary, 3811 Turtle Creek Blvd., Suite 1100, Dallas, Texas 75219-4487. No such revocation shall be effective, however, unless and until received by the Company at or prior to the meeting.

Quorum and Required Vote

The presence at the meeting, in person or represented by proxy, of the holders of a majority of the voting power of the shares of our capital stock entitled to vote on any matter shall constitute a quorum for purposes of such matter. Abstentions and broker non-votes will be included in determining the presence of a quorum at the meeting. The holders of Common Stock will be entitled to one vote per share on each matter that may properly be brought before the meeting or any adjournment thereof. There is no cumulative voting.

Proposal	Required Vote	Effect of Abstentions and Broker Non-Votes
Election of Directors	Majority of votes cast	No effect on outcome of vote
Advisory vote on compensation of our named executive officers	Majority of votes cast	No effect on outcome of vote
Approval of 2013 Plan	Affirmative vote of a majority of votes cast; provided, that the votes cast represent over 50% of our outstanding Common Stock entitled to vote on the proposal (NYSE Voting Requirement)	Abstentions will have the same effect as votes against proposal. Broker non-votes will not be counted as votes cast on this matter; accordingly, broker non-votes will make it more difficult for the NYSE Voting Requirement to be achieved, but if the NYSE Voting Requirement is achieved, they will have no effect on the outcome of the vote.
Approval of the expected appointment of Ernst & Young LLP as our independent auditors for the fiscal year ending March 31, 2014	Affirmative vote of a majority of the shares of Common Stock present in person or represented by proxy at the meeting	Same effect as votes against proposal

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In the past, brokers had discretion to vote in the election of directors if they did not receive instructions from the beneficial owner. Due to a change in the rules of the NYSE, the election of directors is no longer considered a routine matter and thus brokers no longer have this discretionary authority. The advisory vote regarding executive compensation and the approval of the 2013 Plan are also not considered routine, and brokers may not vote your shares with respect to such matters without instructions from you.

Expenses of Soliciting Proxies

The cost of soliciting proxies for the meeting will be borne by the Company. Solicitations may be made on behalf of our Board by mail, personal interview, telephone or other electronic means by officers and other employees of the Company, who will receive no additional compensation therefor. To aid in the solicitation of proxies, we have retained the firm of Georgeson Shareholder Communications, Inc., which will receive a fee of approximately \$9,000, in addition to the reimbursement of out-of-pocket expenses. We will request banks, brokers, custodians, nominees, fiduciaries and other record holders to forward copies of this proxy statement to persons on whose behalf they hold shares of Common Stock and to request authority for the exercise of proxies by the record holders on behalf of those persons. In compliance with the regulations of the Securities and Exchange Commission, or SEC, and the NYSE, we will reimburse such persons for reasonable expenses incurred by them in forwarding proxy materials to the beneficial owners of our Common Stock.

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How You Can Vote

You can vote your shares at the meeting, by telephone, over the Internet or by completing, signing, dating and returning your proxy in the enclosed envelope.

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PROPOSAL NO. 1: ELECTION OF DIRECTORS AND RELATED MATTERS

General

Our Board of Directors is the ultimate decision-making body of the Company, except with respect to those matters reserved to our stockholders. The primary responsibilities of our Board include:

the selection, compensation and evaluation of our Chief Executive Officer and oversight over succession planning;

oversight of our strategic planning;

approval of all our material transactions and financings;

oversight of processes that are in place to promote compliance with law and high standards of business ethics;

advising management on major issues that may arise; and

evaluating the performance of the Board and its committees, and making appropriate changes where necessary.

Members of our Board of Directors are divided into three classes based on their term of office (Class I, II and III). The directors in each such class hold office for staggered terms of three years each. At present, we have three Class I directors, three Class II directors and three Class III directors. Our Board has determined that the Board shall consist of nine directors.

The following table shows the composition of our Board after the annual meeting, assuming the election of the proposed slate of director nominees:

Class	Directors
<i>Class I:</i> Term expires at the 2016 annual meeting and every three years thereafter	Robert L. Clarke Martin M. Ellen Steven R. Rowley
<i>Class II:</i> Term expires at the 2014 annual meeting and every three years thereafter	Laurence E. Hirsch Michael R. Nicolais Richard R. Stewart
<i>Class III:</i> Term expires at the 2015 annual meeting and every three years thereafter	F. William Barnett Ed H. Bowman David W. Quinn

Director Independence

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NYSE corporate governance rules require that our Board of Directors be comprised of a majority of independent directors. Our Board of Directors has determined, upon the recommendation of our Corporate Governance and Nominating Committee, which we refer to as our Governance Committee, that all members of our Board of Directors, other than Mr. Rowley, are independent within the meaning of the independence requirements of the Securities Exchange Act of 1934, as amended, which we refer to as the Exchange Act, and the corporate governance rules of the NYSE.

In determining that eight of our nine directors are independent, our Board of Directors considered the following facts:

Messrs. F. William Barnett, Ed H. Bowman, Robert L. Clarke, Martin M. Ellen and Richard R. Stewart have no relationship with the Company that potentially affects their independence.

From 1987 until his retirement in March 2002, Mr. David W. Quinn was an officer of Centex Corporation, our former parent, which we refer to as Centex. Because it has been over five years since his retirement as an officer of Centex and in light of the absence of any other material relationship with the Company (other than as a director of the Company), our Board of Directors has determined that Mr. Quinn has no material relationship with the Company.

From 1985 until his retirement in March 2004, Mr. Laurence E. Hirsch was an officer of Centex. Mr. Hirsch was also our interim Chief Executive Officer for approximately six months from April 2003 until September 2003 prior to the appointment of Mr. Rowley as Chief Executive Officer in September 2003. Because it has been over five years since Mr. Hirsch retired from Centex or served as an officer of the Company on an interim basis, and in light of the absence of any other material relationship with the Company (other than as a director of the Company), our Board of Directors has determined that Mr. Hirsch has no material relationship with the Company.

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Mr. Michael R. Nicolais entered into an employment relationship with a company owned by another member of our Board of Directors, Laurence E. Hirsch, in 2004. In particular, in April 2004, Mr. Nicolais accepted employment as president of Highlander Partners L.P., or Highlander Partners, a private investment partnership of which Mr. Hirsch is the sole equity owner. In view of, among other things: (1) the fact that Mr. Nicolais has never served as an officer or employee of the Company or any of its parents or subsidiaries; (2) the employment relationship between Mr. Nicolais and Highlander Partners commenced after the completion of the spin-off of the Company from Centex and after the date Mr. Hirsch retired as an executive officer and director of Centex; (3) the investment services provided by Mr. Nicolais to Highlander Partners are largely unrelated to the Company (except to the extent that such services involve investment services relating to a portion of the shares of our Common Stock beneficially owned by Mr. Hirsch); and (4) the fact that, as described above, our Board of Directors has determined that Mr. Hirsch himself has no material relationship with the Company, our Board of Directors determined that Mr. Nicolais has no material relationship with the Company.

Nominees

Each of the nominees listed below is currently a member of our Board of Directors. Each of these nominees has been recommended for nomination by our Governance Committee (with Mr. Clarke abstaining as to his own nomination) after considering the criteria described below under the heading Corporate Governance and Nominating Committee. We have no reason to believe that any of the listed nominees will become unavailable for election, but if for any reason that should be the case, proxies may be voted for substitute nominees. Because this is an uncontested election of directors, a majority of votes cast by the holders of our Common Stock (number of shares voted for a director nominee must exceed the number of votes cast against the director nominee) will be required to elect the nominees for director in accordance with our Bylaws and our Corporate Governance Guidelines. (A plurality voting standard would apply in a contested election.) If an incumbent director is not re-elected, such director will promptly tender his or her resignation to the Chairman of the Board, and a special committee of independent directors will consider the resignation and make a recommendation to the Board as to whether to accept or reject such resignation. The Board will then publicly disclose its decision regarding the resignation and the rationale behind the decision.

Although each of the nominees is standing for election to a three-year term, Mr. Clarke may (if elected) retire from the Board before the completion of his full term in accordance with the Company's director retirement policy.

Recommendation of the Board

Our Board of Directors recommends that holders of Common Stock vote for the election of the nominees listed below to serve as Class I directors for a three-year term ending at our 2016 annual meeting of stockholders:

Robert L. Clarke

Martin M. Ellen

Steven R. Rowley

Table of Contents**Director Qualifications**

Set forth below is information about the nominees standing for election at our 2013 annual meeting, as well as our continuing directors whose terms of office do not expire at such annual meeting. The biographical information appearing below regarding the nominees for director and continuing directors has been furnished to us by the respective nominees and directors. Also included below is a brief description of how each individual's experience qualifies him to serve as a director of the Company.

Nominees for Director Whose Terms Expire at our 2013 Annual Meeting**(Class I Directors)****Business Experience and Principal Occupation;**

Name	Age	Year First Elected	Directorships in Public Corporations and Investment Companies
Robert L. Clarke	70	1994	<p>Mr. Clarke was a partner in the law firm of Bracewell & Giuliani LLP (formerly known as Bracewell & Patterson) from 1971 to December 1985, returned to the firm as a partner in March 1992 and currently is a senior partner in that firm. From December 1985 to February 1992, he was Comptroller of the Currency of the United States. Mr. Clarke is also a director of Stewart Information Services Corporation. Mr. Clarke is a member of the Audit Committee and Compensation Committee of our Board of Directors.</p> <p>Mr. Clarke brings to the Board, the Audit Committee and the Compensation Committee extensive financial and legal experience and knowledge of corporate governance and financial oversight gained from his long legal career, his membership on the boards of other public companies and his service as Comptroller of the Currency of the United States.</p>
Martin M. Ellen	59	2013	<p>Mr. Ellen was appointed to our Board in May 2013. Mr. Ellen has served as Chief Financial Officer and Executive Vice President at Dr Pepper Snapple Group, Inc. since April 2010. Mr. Ellen also served as the Chief Financial Officer and Senior Vice President Finance of Snap-on Inc. from November 2002 to March 2010. Mr. Ellen is a certified public accountant and serves on our Audit Committee.</p> <p>Mr. Ellen brings to the Board and the Audit Committee his extensive management, finance and audit experience gained from over 25 years serving as chief financial officer with public and private companies and prior experience with a major accounting firm.</p>
Steven R. Rowley	60	2003	<p>Mr. Rowley has been the Company's President and Chief Executive Officer and a member of our Board of Directors since September 2003. Mr. Rowley is also a member of the Executive Committee of our Board of Directors. Mr. Rowley joined the Company in 1991 as a plant manager at its Nevada cement operations and subsequently became Executive Vice President of the Company's Illinois Cement Company subsidiary in June of 1995. Mr. Rowley was named the Company's Executive Vice President-Cement in 1998. In 2001, Mr. Rowley's operational responsibilities were expanded to include concrete and aggregates. Mr. Rowley was the Company's Chief Operating Officer from October 2002 until September 2003.</p> <p>Mr. Rowley brings to the Board his extensive executive and operations experience in the construction products industry, including over 20 years of service with the Company.</p>

Table of Contents**Continuing Directors Whose Terms Expire at our 2014 Annual Meeting****(Class II Directors)****Business Experience and Principal Occupation;**

Name	Age	Year First Elected	Directorships in Public Corporations and Investment Companies
Laurence E. Hirsch	67	1985	<p>Mr. Hirsch is chairman of Highlander Partners, a private investment company. He has served as chairman of our Board of Directors from July 1999 to the present and also served in that capacity from January 1994 through December 1997. He was our interim Chief Executive Officer from April 2003 through September 2003. Mr. Hirsch is a member of the Executive Committee of our Board of Directors. Until his retirement on March 31, 2004, Mr. Hirsch served Centex Corporation in various capacities, including as President beginning in 1985, as Chief Executive Officer beginning in July 1988 and as chairman of its board of directors beginning in July 1991. Mr. Hirsch served as a director of Belo Corp. from August 1999 through January 2008 and continued as a director of A. H. Belo until May 2011. Mr. Hirsch served as a director of the Federal Home Loan Mortgage Corp. (Freddie Mac) from November 2009 until February 2012. Mr. Hirsch is currently Chairman of the Center for European Policy Analysis.</p> <p>Mr. Hirsch brings to the Board his extensive executive experience gained through his service as the CEO of a public company. In addition, Mr. Hirsch brings extensive knowledge of the Company through having served as our Chairman for nearly 20 years. Mr. Hirsch also brings valuable experience as an executive officer within the construction products industry and his knowledge of corporate governance and financial oversight gained from his membership on the boards of other public companies.</p>
Michael R. Nicolais	55	2001	<p>In April 2004, Mr. Nicolais became president of Highlander Partners. From August 2002 until March 2004, Mr. Nicolais served as managing director of Stephens, Inc., an investment banking firm. Prior to joining Stephens, Inc., he was a partner in the private investment firm of Olivhan Investments, L.P. from March 2001 until August 2002. From August 1986 to December 2000, he was employed by Donaldson, Lufkin & Jenrette Securities Corporation's Investment Banking Division, most recently in the position of Managing Director and co-head of that firm's Dallas office. Mr. Nicolais has been a member of our Board of Directors since 2001. He also serves as a member of the Compensation Committee and the Governance Committee.</p> <p>Mr. Nicolais brings to the Board, the Governance Committee and the Compensation Committee his extensive knowledge of capital markets, financial analysis and financial oversight gained through his experience as an investment banker and investment manager.</p>
Richard R. Stewart	63	2006	<p>From 1998 until 2006 Mr. Stewart served as President and CEO of GE Aero Energy, a division of GE Power Systems and as an officer of General Electric Company. Mr. Stewart retired from General Electric in 2006. Mr. Stewart's career at General Electric began in 1998 as a result of General Electric's acquisition of the gas turbine business of Stewart & Stevenson Services, Inc. Mr. Stewart began his career at Stewart & Stevenson in 1972 and while at Stewart & Stevenson served in various positions including as Group President and member of the board of directors. Mr. Stewart also served as a director of Plug Power Inc. from July of 2003 to March of 2006. Mr. Stewart became a director of Kirby Corporation in 2008 and a director of Lufkin Industries, Inc. in 2009. Mr. Stewart serves as chairman of the Compensation Committee of our Board of Directors.</p>

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Mr. Stewart brings to the Board and the Compensation Committee his proven leadership and business experience as the former CEO of a manufacturing company. Mr. Stewart also brings corporate governance and compensation experience gained from membership on the boards of other public companies and as an officer with General Electric.

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			Business Experience and Principal Occupation;
Name	Age	Year First Elected	Directorships in Public Corporations and Investment Companies
F. William Barnett	66	2003	Mr. Barnett retired in 2003 from his position as a Director in the Dallas office of McKinsey & Company, Inc., an international consulting firm, after 23 years of employment, where he led the firm's Strategy Practice. Mr. Barnett also served as a director of Papa John's International, Inc. from 2003 until March 2009, and has been an Adjunct Professor at the Yale School of Management and the Jesse H. Jones Graduate School of Business at Rice University. Mr. Barnett currently chairs our Governance Committee.
			Mr. Barnett brings to the Board and the Governance Committee his corporate governance and strategy development and implementation experience gained from his long career in management consulting and his service on another board.
Ed H. Bowman	66	2011	Mr. Bowman served as Chief Executive Officer, President and a director of SOURCECORP from 1996 until 2012. Prior to 1996, Mr. Bowman was a senior executive at First Data Corporation. Mr. Bowman joined our Board in May 2011. Mr. Bowman serves on the advisory board of the J. Mack Robinson College of Business at Georgia State University.
			Mr. Bowman brings to the Board his proven leadership and business experience as the recently retired CEO of an expanding company. Mr. Bowman also brings corporate governance, finance and compensation knowledge gained from his experience at other public companies.
David W. Quinn	71	1994	Mr. Quinn served as a director of Centex from 1989 until its merger with Pulte in 2009, as Vice Chairman of the Board of Directors of Centex from May 1996 to March 2002, as Executive Vice President of Centex from February 1987 to May 1996, and Chief Financial Officer of Centex from February 1987 until June 1997 and again from October 1997 until May 2000. Mr. Quinn is the chairman of the Audit Committee of our Board of Directors.
			Mr. Quinn brings to the Board and the Audit Committee his extensive management, financial and audit experience gained from his 17 years as CFO and/or Vice Chairman of the Company's former parent company and through prior experience as a partner with a major accounting firm. Mr. Quinn also brings corporate governance experience gained from membership on the boards of other public and private companies.

Board Meetings and Attendance Records

During the Company's fiscal year ended March 31, 2013, our Board of Directors held four regularly scheduled meetings; **Payments due by period** Less More than 1 1 34 5 than 5 Contractual obligations Total year years years years

Long-term debt (1)

\$20,714,000 \$3,869,000 \$16,652,000 \$193,000 \$

Interest to be paid on long-term debt (2)

793,000 445,000 345,000 3,000

Operating leases

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14,273,000	5,502,000	7,677,000	1,094,000
Convertible subordinated notes (3)			
7,500,000	5,000,000	2,500,000	
Interest to be paid on convertible subordinated notes			
1,541,000	614,000	927,000	
Mandatorily redeemable convertible preferred stock and redemption premiums (4)			
4,928,000	4,928,000		
Dividends to be paid on mandatorily redeemable convertible preferred stock			
823,000	342,000	481,000	
Employment agreements			
1,719,000	377,000	1,342,000	
Purchase obligations			
1,116,000	576,000	540,000	
Total contractual cash obligations			
\$53,407,000	\$11,725,000	\$37,892,000	\$3,790,000

(1) Approximately \$4.4 million (Tranches A, B and C) can be repaid through preferred pricing reductions from Siemens, including \$2.9 million in less than 1 year, \$1.5 million in years 1-3.

- (2) Interest on long-term debt excludes \$2,020,000 of accrued but unpaid interest on Tranche D presented with long-term debt in (1) above. In addition, approximately \$420,000 of interest on Tranches A, B, C can be repaid through preferred pricing reductions.
- (3) When due, these notes and corresponding interest can be repaid at the option of the Company in common stock.
- (4) Includes approximately \$365,000 of the 8% premium payable upon redemption in December 2006, of which \$176,000 has been accreted as of April 2, 2005.

Net cash used in operating activities improved from \$2.2 million used in the first quarter of 2004 to approximately \$50,000 used in the first quarter of 2005. The improvement was primarily the result of the reduction of \$1.2 million in the net loss between periods which was offset by a net increase in accounts receivable, inventories and prepaid expenses of approximately \$230,000 in 2005, compared to a net increase of approximately \$67,000 in 2004. A net decrease in accounts payable, accrued expenses and accrued compensation of approximately \$204,000 in 2005, compared to a net decrease of approximately \$1.4 million in 2004.

The first quarter of 2005 net increase of \$230,000 in accounts receivable, inventories and prepaid expenses is mainly attributable to an increase of prepaid expenses of approximately \$565,000 due to the timing of our accounting period end, offset by a reduction of approximately \$198,000 in accounts receivable due to the improvement in collection and inventories of approximately \$137,000 due to timing of our accounting period end. The reduction in accounts payable, accrued expenses and accrued compensation in the first quarter of 2005 as compared to the 2004 period is also due to the timing of our accounting period end.

Net cash from investing activities of approximately \$201,000 was used in the first quarter of 2005 to purchase equipment.

Net cash from financing activities decreased from approximately \$1.8 million used in the first quarter of 2004 to approximately \$1.3 million provided in the first quarter of 2005. This decrease is related to the payment of \$1.8 million made to Siemens in January of 2004 on Tranches D and E. In March 2005 proceeds of \$1.7 million were received for the exercise of warrants issued in the March 29, 2002 private placement.

CRITICAL ACCOUNTING POLICIES

Management believes the following critical accounting policies affect the significant judgments and estimates used in the preparation of the financial statements:

Goodwill

The majority of the Company's goodwill resulted from the combination with Helix. On an annual basis, the Company is required to assess whether its goodwill is impaired. The Company elected to perform this analysis on the first day of its fourth quarter in 2004. In order to do this, management applied judgment in determining its reporting units, which represent distinct parts of the Company's business. The reporting units determined by management are the centers, the network and e-commerce. The definition of the reporting units affects the Company's goodwill impairment assessments. The annual goodwill impairment assessment involves estimating the fair value of a reporting unit and comparing it with its carrying amount. If the carrying value of the reporting unit exceeds its fair value, additional steps are required to calculate a potential impairment charge. Calculating the fair value of the reporting units requires significant estimates and long-term assumptions. The Company utilized an independent appraisal firm to test goodwill for impairment as of the first day of the Company's fourth quarter of 2003 and 2004, and each of these tests indicated no impairment. The Company estimates the fair value of its reporting units by applying a weighted average of three methods: quoted market price, external transactions, and discounted cash flow. Significant changes in key

assumptions about the business and its prospects, or changes in market conditions, stock price, interest rates or other externalities, could result in an impairment charge.

Revenue recognition

Revenues from the sale of audiological products are recognized at the time of delivery to the patient. Revenues from hearing care services are recognized at the time those services are performed.

The Company has capitation contracts with certain health care organizations under which the Company is paid an amount for each enrollee of the health maintenance organization to provide to the enrollee a discount on certain hearing products and services. The amount paid to the Company by the healthcare organization is calculated on a per-capita basis and is referred to as capitation revenue. Capitation revenue is earned as a result of agreeing to provide services to members without regard to the actual amount of service provided. Revenue is recorded in the period that the beneficiaries are entitled to health care services.

Allowance for doubtful accounts

Certain of the accounts receivable of the Company are from health insurance and managed care organizations and government agencies. These organizations could take up to nine months before paying a claim made by the Company and also impose a limit on the time the claim can be billed. The Company provides an allowance for doubtful accounts equal to the estimated uncollectible amounts. That estimate is based on historical collection experience, current economic and market conditions, and a review of the current status of each organization's trade accounts receivable.

In order to calculate that allowance, the Company first identifies any known uncollectible amounts in its accounts receivable listing and charges them against the existing allowance for doubtful accounts. Then a specific percent per plan and per aging categories is applied against the remaining receivables to estimate the new allowance. Any changes in the percent assumptions per plan and aging categories could result in a change in the allowance for doubtful accounts. For example, an increase of 10% in the percent used would increase the allowance for doubtful accounts by approximately \$15,000.

Sales returns

The Company provides to all patients purchasing hearing aids a specific return period of at least 30 days if the patient is dissatisfied with the product. The Company provides an allowance in accrued expenses for returns. The return period can be extended to 60 days if the patient attends the Company's H.E.L.P. program. The Company calculates its allowance for returns using estimates based upon actual historical returns. The cost of the hearing aid is reimbursed to the Company by the manufacturer.

RECENT ACCOUNTING PRONOUNCEMENTS

In December 2004, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 123 (revised 2004), Share-Based Payment, (FAS 123(R)). This Statement requires companies to expense the estimated fair value of stock options and similar equity instruments issued to employees. Currently, companies are required to calculate the estimated fair value of these share-based payments and can elect to either include the estimated cost in earnings or disclose the pro forma effect in the footnotes to their financial statements. We have chosen to disclose the pro forma effect. The fair value concepts were not changed significantly in FAS 123(R); however, in adopting this Standard, companies must choose among alternative valuation models and amortization assumptions. The valuation model and amortization assumption we have used continues to be available, but we have not yet completed our assessment of the alternatives. On April 14, 2005 the U.S. Securities and Exchange Commission (the SEC) announced a deferral of the effective date of FAS 123(R) for calendar year companies until the beginning of 2006. Based on the outstanding number of employee stock options and excluding the impact of any future grants at April 2, 2005, the total stock-based employee compensation expense determined under the fair value

method that would be reflected in the financial statements is approximately \$746,000 in 2006 (See Note 1 Description of the Company and Summary of Significant Accounting Policies- Stock-Based Compensation) and \$356,000 in 2007.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

The Company does not engage in derivative transactions. The Company is exposed to Canadian currency exchange rates and the Company is not hedging that exposure. Differences in the fair value of investment securities are not material; therefore the related market risk is not significant. The Company's exposure to market risk for changes in interest rates relates primarily to the Company's long-term debt. The following table presents the Company's financial instruments for which fair value is subject to changing market interest rates:

	Long-Term Debt and Convertible Subordinated Notes						Other notes	Total
	Variable Rate	Yr 1 - 2		Fixed Rate				
	Prime Rate + 1% note due April 2007	11% Yr 3 - 5 8% due November 2008	10 % notes due 2008	10 % notes due 2007	10 % note due Dec 1, 2006			
As of April 2, 2005:	2007	2008	due 2008	due 2007	2006	Other notes	Total	
Estimated cash inflow (outflow) by fiscal year of principal maturity	\$	\$	\$	\$	\$	\$	\$	
2005	(142,000)		(452,000)	(466,000)	(1,725,000)	(348,000)	(3,133,000)	
2006		(2,500,000)	(657,000)	(621,000)	(1,300,000)	(53,000)	(5,131,000)	
2007	(13,654,000)	(2,500,000)	(726,000)	(320,000)		(57,000)	(17,257,000)	
2008		(2,500,000)	(193,000)				(2,693,000)	
2009								
Total	(13,796,000)	(7,500,000)	(2,028,000)	(1,407,000)	(3,025,000)	(458,000)	(28,214,000)	
Estimated fair value	(13,796,000)	(7,500,000)	(2,028,000)	(1,407,000)	(3,025,000)	(458,000)	(28,214,000)	
Carrying Value	(13,796,000)	(7,500,000)	(2,028,000)	(1,407,000)	(3,025,000)	(458,000)	(28,214,000)	

Item 4. Controls and Procedures

The Company's management, with the participation of the Company's chief executive officer and chief financial officer, evaluated the effectiveness of the Company's disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act) as of April 2, 2005. Based on this evaluation, the Company's chief executive officer and chief financial officer concluded that, as of April 2, 2005, the Company's disclosure controls and procedures were (1) designed to ensure that material information relating to the Company, including its consolidated subsidiaries, is made known to the Company's chief executive officer and chief financial officer by others within those entities, particularly during the period in which this report was being prepared and (2) effective, in that they provide reasonable assurance that information required to be disclosed by the Company in the reports that it files or submits under the Securities Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms.

No change in the Company's internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) occurred during the fiscal quarter ended April 2, 2005 that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

PART II

Item 6. Exhibits

- 2.1 Plan of Arrangement, including exchangeable share provisions (incorporated herein by reference to Exhibit 2.3 to the Company's Joint Proxy Statement/Prospectus on Form S-4 (Reg. No. 333-73022)).
- 3.1 Restated Certificate of Incorporation of HEARx Ltd., including certain certificates of designations, preferences and rights of certain preferred stock of the Company (incorporated herein by reference to Exhibit 3 to the Company's Current Report on Form 8-K, filed May 17, 1996 (File No. 001-11655)).
- 3.2 Amendment to the Restated Certificate of Incorporation (incorporated herein by reference to Exhibit 3.1A to the Company's Quarterly Report on Form 10-Q for the period ended June 28, 1996 (File No. 001-11655)).
- 3.3 Amendment to Restated Certificate of Incorporation including one for ten reverse stock split and reduction of authorized shares (incorporated herein to Exhibit 3.5 to the Company's Quarterly Report on Form 10-Q for the period ending July 2, 1999 (File No. 001-11655)).
- 3.4 Amendment to Restated Certificate of Incorporation including an increase in authorized shares and change of name (incorporated herein by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K, filed July 17, 2002 (File No. 001-11655)).
- 3.5 Certificate of Designations, Preferences and Rights of the Company's 1999 Series H Junior Participating Preferred Stock (incorporated herein by reference to Exhibit 4 to the Company's Current Report on Form 8-K, filed December 17, 1999 (File No. 001-11655)).
- 3.6 Certificate of Designations, Preferences and Rights of the Company's Special Voting Preferred Stock (incorporated herein by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K, filed July 19, 2002 (File No. 001-11655)).
- 3.7 Amendment to Certificate of Designations, Preferences and Rights of the Company's 1999 Series H Junior Participating Preferred Stock ((incorporated herein by reference to Exhibit 4 to the Company's Current Report on Form 8-K, filed July 17, 2002 (File No. 001-11655)).
- 3.8 Certificate of Designations, Preferences and Rights of the Company's 1998-E Convertible Preferred Stock (incorporated herein by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K, filed August 28, 2003 (File No. 001-11655)).
- 3.9 Amendment of Restated Certificate of Incorporation (increasing authorized capital) (incorporated herein by reference to Exhibit 3.9 to the Company's Quarterly Report on Form 10-Q, filed August 8, 2004.)
- 3.10 Amended and Restated By-Laws of HearUSA, Inc. ((incorporated by reference to Exhibit 3.9 to the Company's Annual Report on Form 10-K for the fiscal year ended December 27, 2003 (File No. 001-11655)).
- 4.1 Amended and Restated Rights Agreement, dated July 11, 2002 between HEARx and the Rights Agent, which includes an amendment to the Certificate of Designations, Preferences and Rights of the Company's 1999 Series H Junior Participating Preferred Stock (incorporated herein by reference as Exhibit 4.9.1 to the Company's Joint Proxy/Prospectus on Form S-4 (Reg. No. 333-73022)).

- 4.2 Form of Support Agreement among HEARx Ltd., HEARx Canada, Inc. and HEARx Acquisition ULC (incorporated herein by reference as Exhibit 99.3 to the Company's Joint Proxy Statement/Prospectus on Form S-4 (Reg No. 333-73022)).
- 4.3 Form of 2003 Convertible Subordinated Note due November 30, 2008 (incorporated herein by reference as Exhibit 4.1 to the Company's Current Report on Form 8-K, filed December 31, 2003).
- 9.1 Form of Voting and Exchange Trust Agreement among HearUSA, Inc., HEARx Canada, Inc and HEARx Acquisition ULC and ComputerShare Trust Company of Canada (incorporated herein by reference as Exhibit 9.1 to the Company's Joint Proxy Statement/Prospectus on Form S-4 (Reg. No. 333-73022)).
- 31.1 CEO Certification, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
- 31.2 CFO Certification, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
- 32 CEO and CFO Certification, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

HearUSA Inc.
(Registrant)

May 10, 2005

/s/ Stephen J. Hansbrough

Stephen J. Hansbrough
Chief Executive Officer
HearUSA, Inc.

/s/ Gino Chouinard

Gino Chouinard
Chief Financial Officer
HearUSA, Inc.