

UNIFIRST CORP
Form 4
July 26, 2016

FORM 4

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

OMB APPROVAL

OMB Number: 3235-0287
Expires: January 31, 2015
Estimated average burden hours per response... 0.5

Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. See Instruction 1(b).

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

(Print or Type Responses)

1. Name and Address of Reporting Person *
DIFILLIPPO DAVID A

(Last) (First) (Middle)
68 JONSPIN ROAD
(Street)

WILMINGTON, MA 01887

(City) (State) (Zip)

2. Issuer Name and Ticker or Trading Symbol
UNIFIRST CORP [UNF]

3. Date of Earliest Transaction (Month/Day/Year)
07/26/2016

4. If Amendment, Date Original Filed(Month/Day/Year)

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

____ Director _____ 10% Owner
 Officer (give title below) _____ Other (specify below)
Senior VP of Operations

6. Individual or Joint/Group Filing(Check Applicable Line)
 Form filed by One Reporting Person
____ Form filed by More than One Reporting Person

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)	5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Beneficial Ownership (Instr. 4)			
			Code	V	Amount	(A) or (D)	Price			
Common Stock	07/26/2016		M		155	A	\$ 37.92	3,512	D	
Common Stock	07/26/2016		M		222	A	\$ 27.08	3,734	D	
Common Stock	07/26/2016		M		890	A	\$ 42.55	4,624	D	
Common Stock	07/26/2016		S		1,267 (1)	D	\$ 115.48	3,357	D	
Common Stock								150	I (2)	By Daughter

Edgar Filing: UNIFIRST CORP - Form 4

Common Stock	150	I <u>(2)</u>	By Daughter
Common Stock	150	I <u>(2)</u>	By Son

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

SEC 1474
(9-02)

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned
(e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)	5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)	6. Date Exercisable and Expiration Date (Month/Day/Year)	7. Title and Amount of Underlying Securities (Instr. 3 and 4)	8. Pr Deri Secu (Inst	
						Date Exercisable	Expiration Date	Title	Amount or Number of Shares
						Code	V	(A)	(D)
Common Stock Option (right to buy)	\$ 37.92	07/26/2016		M	155	<u>(3)</u> 11/06/2017	Common Stock (\$0.10 par value)	155	S
Common Stock Option (right to buy)	\$ 27.08	07/26/2016		M	222	<u>(4)</u> 11/11/2018	Common Stock (\$0.10 par value)	222	S
Common Stock Option (right to buy)	\$ 42.55	07/26/2016		M	890	<u>(5)</u> 11/10/2019	Common Stock (\$0.10 par value)	890	S

Reporting Owners

Reporting Owner Name / Address

Relationships

Director 10% Owner Officer Other

DIFILLIPPO DAVID A
 68 JONSPIN ROAD
 WILMINGTON, MA 01887

Senior VP of Operations

Signatures

/s/ David Whitman,
 Attorney-in-Fact

07/26/2016

**Signature of Reporting Person

Date

Explanation of Responses:

* If the form is filed by more than one reporting person, *see* Instruction 4(b)(v).

** Intentional misstatements or omissions of facts constitute Federal Criminal Violations. *See* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

(1) Represents shares sold pursuant to a Rule 10b5-1 sales plan.

Represents shares owned by David DiFillippo's children. David DiFillippo disclaims beneficial ownership of these reported securities,
 (2) except to the extent of his pecuniary interest therein, and this report shall not be deemed an admission that he is the beneficial owner of these securities for purposes of Section 16 or any other purpose.

(3) This stock option became vested and exercisable 100% on the fifth anniversary of the grant date (11/6/2012).

(4) This stock option became vested and exercisable 100% on the fifth anniversary of the grant date (11/11/2013).

(5) This stock option became vested and exercisable 100% on the fifth anniversary of the grant date (11/10/2014).

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, *see* Instruction 6 for procedure.

Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number. th="1%">

2,722

*

--

2,722

--

Gary Miller

2,450

*

2,450

--

--

William King

2,041

*

Signatures

3

	2,041
	--
	--
Elliott Smith	
	1,667
	*
	--
	--
	--
Jeffrey Meshel	
	1,667
	*
	--
	--
	--
Karl Brenza	
	1,667
	*
	--
	--
	--
Chris Shufeldt	
	1,519
	*
	--
Explanation of Responses:	4

Daniel Pietro

--
--
833
*
--
--
--

Roger Lockhart

833
*
--
--
--

Thomas Corona

400
*
--
--
--

Gene Super

340
*
--
--
--

Explanation of Responses:

5

SHARES OF COMMON STOCK
BEING SOLD IN THE OFFERING

SHARES
BENEFICIALLY
OWNED AFTER
THE OFFERING(1)

NAME OF SELLING STOCKHOLDER

UPON
EXERCISE OF
OTHER
WARRANTS

UPON
CONVERSION
OF SERIES B OR
SERIES D
PREFERRED
STOCK
(2)(3)

UPON
PAYMENT OF DEBENTURE
FACILITY (4)

NUMBER

%

James C. Craig Jr	--	--	--	*
Martin & Linda Mennes	--	--	--	*
Claude Ware	6,288	--	--	*
Claude & Hee Jin Ware	--	--	--	*
Jacob Kohannim	--	--	--	*
Jean Zurstrassen	--	--	--	*
Robert E. Dettle	--	--	--	*
SDIRA FBO John Green (Roth/IRA)	--	--	--	*
Tracy Standridge, Kay L Standridge	--	--	--	*
Gregoire Dstreel	--	--	--	*
Wolfe LP	--	--	--	*
Byron Rosenstein	--	--	--	*
Earl P. Correa	--	--	--	*
Paul Sanberg	--	--	--	*
Michael J. Leja (20)	--	--	--	*
David P. Garmus, Caren M. Garmus	--	--	--	*

Explanation of Responses:

SDIRA FBO Rosa Maria Lukens	--	--	--	*
Kimball & Cross Investment Management Corp.	3,686	--	--	*
Market Pathways Financial	--	--	--	*
William Tonyes	--	--	--	*
SDIRA FBO David W. Komar				
ROL IRA	--	--	--	*
David & Michael Lega	--	--	--	*
Gary Miller	--	--	--	*
William King	--	--	--	*
Elliott Smith	1,667	--	--	*
Jeffrey Meshel	1,667	--	--	*
Karl Brenza	1,667	--	--	*
Chris Shufeldt	1,519	--	--	*
Daniel Pietro	833	--	--	*
Roger Lockhart	833	--	--	*
Thomas Corona	400	--	--	*
Gene Super	340	--	--	*

* Less than 1%.

(1) Assumes that all shares being offered by each selling stockholder under this prospectus are sold and that each selling stockholder acquires no additional shares of common stock before the completion of this offering.

(2) The holders of the Series B Convertible Preferred Stock, the Series C Convertible Preferred Stock and the Series D Convertible Preferred Stock are subject to a conversion blocker that caps the number of shares eligible for conversion so that the holder will not beneficially own more than 9.999% of the outstanding Common Stock after such conversion. The 9.999% conversion blocker currently prevents North Sound Legacy Fund LLC, North Sound Legacy Institutional Fund LLC, North Sound Legacy International Ltd, and SDS Capital Group SPC, Ltd. from converting any of their Convertible Preferred Stock into shares of common stock. North Sound Legacy Fund LLC, North Sound Legacy Institutional Fund LLC and North Sound Legacy International Ltd. are the only holders of the Series B Convertible Preferred Stock and the Series D Convertible Preferred Stock.

(3) Under an agreement between P-Com and the holders of the Series C Convertible Preferred Stock, Series D Convertible Preferred Stock and P-Com's Series C Warrants, P-Com is required to register the resale of a number of shares equal to 125% of the shares of common stock initially issuable upon conversion or exercise of these securities. This results in the following additional shares being registered for resale by the selling stockholders, which are not reflected in the table above:

Series C Convertible Preferred Stock	884,713
Series D Convertible Preferred Stock	111,111
Series C Warrants	366,675
Total Additional Shares Being Registered	1,362,499

(4) Under an agreement between P-Com and SDS Capital Group SPC, Ltd., P-Com is required to register the resale of a number of shares equal to 6,000,000 shares of Common Stock which shares may be used to make quarterly installment payments to SDS Capital Group SPC, Ltd. under the Promissory Notes, dated November 26, 2004 and March 21, 2005. In the event that P-Com elects to make amortization payments in shares of Common Stock, P-Com is limited to the number of shares it may use in the event that such payment would cause SDS Capital Group SPC, Ltd. to beneficially own more than 9.9% of the outstanding Common Stock.

(5) Convertible securities include shares of Series B Convertible Preferred Stock and Series D Convertible Preferred Stock of P-Com.

(6) For purposes of determining beneficial ownership in accordance with Rule 13d-3 of the Securities Exchange Act of 1934, as amended, this total includes shares beneficially owned by North Sound Legacy Fund LLC, North Sound Legacy Institutional Fund LLC and North Sound Legacy International Ltd.

(7) Mr. Roberts is Chairman of the Board of Directors of P-Com.

(8) For purposes of determining beneficial ownership in accordance with Rule 13d-3 of the Securities Exchange Act of 1934, as amended, this total includes shares beneficially owned by Margaret Josling and TKB Ventures. Mr. Josling resigned as a Director of P-Com, effective March 1, 2005.

(9) Mr. Fromm is a Director of P-Com.

(10) Mr. Roos is a Director of P-Com.

(11) Represents 30,944 shares held by the Century Trust dated 12/19/94. David Wilstein and Susan Wilstein, trustees of the Century Trust dated 12/19/94, have voting and dispositive power over the shares of common stock held by the trust.

(12) Represents 30,944 shares held by the Helen Jones Marital Trust. Michael Rucker, trustee of the Helen Jones Marital Trust, has voting and dispositive power over the shares of common stock held by the trust.

(13) Represents 26,933 shares held by the Allen Solomon Trust. Allen Solomon, trustee of the Allen Solomon Trust, has voting and dispositive power over the shares of common stock held by the trust.

(14) Represents 24,756 shares held by the David Wiener Revocable Trust - 96. David Wiener, trustee of the David Wiener Revocable Trust - 96, has voting and dispositive power over the shares of common stock held by the trust.

(15) Represents 17,049 shares held by the James R and Diane R. Fisher Living Trust. James R. and Diane R. Fisher, trustees of the James R. and Diane R. Fisher Living Trust, have voting and dispositive power over the shares of common stock held by the trust.

(16) Represents 16,667 shares held by the Newberg Family Trust. Bruce Newberg, trustee of the Newberg Family Trust, has voting and dispositive power over the shares of common stock held by the trust.

Edgar Filing: UNIFIRST CORP - Form 4

(17) Represents 15,944 shares held by the Julius H. Roma Revocable Trust. Julius H. Roma, trustee of the Julius H. Roma Revocable Trust, has voting and dispositive power over the shares of common stock held by the trust.

(18) Represents 15,471 shares held by the Judith Ellen Olinger Revocable Trust. Judith Ellen Olinger, trustee of the Judith Ellen Olinger Revocable Trust, has voting and dispositive power over the shares of common stock held by the trust.

(19) Represents 4,556 shares held by the Michael J. Leja Revocable Trust. Michael J. Leja, trustee of the Michael J. Leja Revocable Trust, has voting and dispositive power over the shares of common stock held by the trust.

-25-

PLAN OF DISTRIBUTION

We are registering, on behalf of the selling stockholders, 5,569,524 shares of common stock that are currently outstanding, 4,365,214 shares of common stock that are issuable upon conversion of our outstanding convertible preferred stock, 4,923,643 shares of common stock that are issuable upon exercise of outstanding warrants and warrants that will be outstanding prior to the effectiveness of the registration statement of which this prospectus is a part and 6,000,000 shares of common stock that may be issued as payment under our outstanding promissory notes. We issued these securities to the selling stockholders in private placement transactions. The selling stockholders named in the table above or their pledgees, donees, transferees or other successors-in-interest who receive convertible securities from the selling stockholders as a gift, partnership distribution or other non-sale related transfer after the date of this prospectus may sell the shares of common stock listed in the table above from time to time. Each selling stockholder will act independently in making decisions regarding the timing, manner and size of each sale. The sales may be made on the OTC Bulletin Board or on any stock exchange or automated interdealer quotation system on which the common shares are listed or quoted at the time of sale, in the over-the-counter market, through put or call option transactions relating to the shares, in negotiated transactions, or a combination of such methods of sale or otherwise, at prices and on terms then prevailing or at prices related to the then current market price. The selling stockholders may effect these transactions by selling the shares of common stock to or through broker-dealers, or not. The shares of common stock may be sold through one or more of, or a combination of, the following:

- o a block trade in which the broker-dealer will attempt to sell the shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- o purchases by a broker-dealer as principal and resale by such broker-dealer for its account under this prospectus;
- o "at the market" to or through market makers into an existing market for the shares;
- o an exchange distribution in accordance with the rules of the applicable exchange;
- o through transactions in options, swaps or other derivative securities (whether exchange-listed or otherwise);
- o ordinary brokerage transactions and transactions in which the broker solicits purchasers;
- o in privately negotiated transactions; and
- o any other method permitted by applicable law.

To the extent required, this prospectus may be amended or supplemented from time to time to describe a specific plan of distribution. In effecting sales, broker-dealers engaged by the selling stockholders may arrange for other broker-dealers to participate in the resales.

The selling stockholders may enter into hedging transactions with broker-dealers in connection with distributions of the shares. In these transactions, broker-dealers may engage in short sales of the shares in the course of hedging the positions they assume with the selling stockholders. The selling stockholders may also sell shares short and redeliver the shares to close out those short positions. The selling stockholders may enter into options or other transactions with broker-dealers that require the delivery to the broker-dealer of the shares. The broker-dealer may then resell or otherwise transfer the shares covered by this prospectus. The selling stockholders also may loan or pledge the shares to a broker-dealer. The broker-dealer may sell the shares so loaned, or upon default the broker-dealer may sell the pledged shares under this prospectus.

Broker-dealers or agents may receive compensation in the form of commissions, discounts or concessions from the selling stockholders. Broker-dealers or agents may also receive compensation from the purchasers of the shares for whom they act as agents or to whom they sell as principals, or both. Compensation as to a particular broker-dealer might be in excess of customary commissions and will be in amounts to be negotiated in connection with the sale. Broker-dealers or agents and any other participating broker-dealers or the selling stockholders may be deemed to be "underwriters" within the meaning of Section 2(11) of the Securities Act of 1933, as amended, in connection with sales of the shares. Accordingly, any such commission, discount or concession received by them and any profit on the resale of the shares purchased by them may be deemed to be underwriting discounts or commissions under the Securities Act. Because the selling stockholders may be deemed to be "underwriters" within the meaning of Section 2(11) of the Securities Act, the selling stockholders will be subject to the prospectus delivery requirements of the Securities Act. In addition, any shares covered by this prospectus which qualify for sale in compliance with Rule 144 promulgated under the Securities Act may be sold under Rule 144 rather than under this prospectus. The selling stockholders have advised us that they have not entered into any agreements, understandings or arrangements with any underwriters or broker-dealers regarding the sale of their shares, and that there is no underwriter or coordinating broker acting in connection with the proposed sale of the shares by the selling stockholders.

The shares will be sold only through registered or licensed brokers or dealers if required under applicable state securities laws. In addition, in certain states the shares may not be sold unless they have been registered or qualified for sale in the applicable state or an exemption from the registration or qualification requirement is available and is complied with.

Under applicable rules and regulations under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), any person engaged in the distribution of the shares may not simultaneously engage in market making activities with respect to our common stock for a restricted period before the commencement of the distribution. In addition, the selling stockholders will be subject to applicable provisions of the Exchange Act and the associated rules and regulations under the Exchange Act, including Regulation M, provisions of which may limit the timing of purchases and sales of the shares of our common stock by the selling stockholders.

We will make copies of this prospectus available to the selling stockholders and have informed the selling stockholders of the need to deliver copies of this prospectus to purchasers at or before the time of any sale of the shares.

We will bear all costs, expenses and fees in connection with the registration of the shares. The selling stockholders will bear all commissions and discounts, if any, attributable to the sales of the shares. The selling stockholders may agree to indemnify any broker-dealer or agent that participates in transactions involving sales of the shares against various liabilities, including liabilities arising under the Securities Act.

DESCRIPTION OF CAPITAL STOCK

This section describes the material terms of our capital stock and related terms of our certificate of incorporation and bylaws as currently in effect. This summary is not complete. For more detailed information, please see our certificate

of incorporation and bylaws. All share numbers relating to our common stock have been adjusted to reflect the 1-for-30 reverse split of our common stock effected on July 19, 2004.

-27-

AUTHORIZED CAPITAL STOCK

We are currently authorized to issue a total of 37,000,000 shares of capital stock consisting of:

- o 35,000,000 shares of common stock, par value \$0.0001 per share; and
- o 2,000,000 shares of preferred stock, par value \$0.0001 per share.

COMMON STOCK

Holders of our common stock are entitled to one vote for each share held on all matters submitted to a vote of our stockholders. Holders of common stock are entitled to receive dividends, ratably, if any, as may be declared by our board of directors out of legally available funds, subject to any preferential dividend rights of any outstanding preferred stock. If we liquidate, dissolve or wind up, the holders of our common stock are entitled to share ratably in all assets remaining after satisfaction of liabilities and the liquidation preference of any shares of preferred stock that are outstanding at that time. Holders of common stock have no preemptive rights and no right to convert their common stock onto any other securities. There are no redemption or sinking fund provisions applicable to our common stock. The rights, preferences and privileges of holders of our common stock are subject to, and may be adversely affected by, the rights of holders of shares of any series of preferred stock that we may designate and issue in the future without further stockholder approval. As of March 31, 2005, 11,810,280 shares of our common stock were issued and outstanding.

PREFERRED STOCK

Our board of directors is authorized to issue from time to time, without further stockholder approval, up to an aggregate of 2,000,000 shares of preferred stock in one or more series and to fix or alter the designations, preferences, rights and any qualifications, limitations or restrictions of the shares of each series, including the dividend rights, dividend rates, conversion rights, voting rights, term of redemption, including sinking fund provisions, redemption price or prices, liquidation preferences and the number of shares constituting any series or designations of any series. We may issue preferred stock in ways that may delay, defer or prevent a change in control of the company without further action by our stockholders and may adversely affect the voting and other rights of the holders of our common stock. The issuance of preferred stock with voting and conversion rights may adversely affect the voting power of the holders of our common stock, including the loss of voting control to others.

Series A Junior Participating Preferred Stock

We have designated 500,000 shares of our preferred stock as Series A Junior Participating Preferred Stock, which are issuable under certain circumstances pursuant to our stockholder rights plan, which is described in more detail below. No shares of Series A Junior Participating Preferred Stock are currently issued or outstanding.

Series B Convertible Preferred Stock

We have designated 1,000,000 shares of our preferred stock as Series B Convertible Preferred Stock, of which approximately 108,406 shares were issued and outstanding as of March 31, 2005. The holders of Series B Convertible Preferred Stock are entitled to certain rights and preferences with respect to the holders of our common stock, including the following:

- o Voting. Except as required by the Delaware law, the holders of Series B Convertible Preferred Stock are not entitled to any voting rights.

o Conversion. The Series B Convertible Preferred Stock has a stated value of \$21.138 per share. Each share of Series B Convertible Preferred Stock is convertible into a number of shares of common stock equal to the stated value plus any accrued and unpaid dividends divided by an initial conversion price of \$6.00. This conversion price is subject to adjustment for any stock splits, stock dividends or similar transactions. Pursuant to an agreement with us, the holders of Series B Convertible Preferred Stock are obligated to convert their shares into shares of common stock as soon as reasonably practicable. However, no holder of Series B Convertible Preferred Stock will be required to convert its shares into shares of common stock if the conversion would cause the holder or any of its affiliates, individually or in the aggregate, to beneficially own more than 9.999% of our outstanding common stock.

-28-

o Dividends. Holders of Series B Convertible Preferred Stock are entitled to receive dividends, if any, as may be declared by our board of directors out of legally available funds. Holders of Series B Convertible Preferred Stock are also entitled to share pro-rata, on an as-converted basis, in any dividends or other distributions that may be declared by the board of directors with respect to the common stock.

o Liquidation. If we liquidate, dissolve or wind up, the holders of Series B Convertible Preferred Stock are entitled to receive the stated value of their shares plus all accrued and unpaid dividends prior to any amounts being paid to the holders of our common stock. In addition, the holders of Series B Convertible Preferred Stock are entitled to share ratably together with the holders of common stock in all remaining assets after the satisfaction of all other liquidation preferences.

o Redemption. The holders of Series B Convertible Preferred Stock have the right to require us to purchase all of their shares of Series B Convertible Preferred Stock upon the occurrence of certain events, such as the following:

o We fail to remove any restrictive legend from certificates representing shares of our common stock that are issued to holders who convert their shares of Series B Convertible Preferred Stock;

o We make an assignment for the benefit of creditors or apply for or consent to the appointment of a receiver or trustee;

o Any bankruptcy, insolvency, reorganization or other proceeding for the relief of debtors is instituted by or against us and is not dismissed within 60 days;

o We sell substantially all of our assets, merge or consolidate with any other entity or engage in a transaction that results in any person or entity acquiring more than 50% of our outstanding common stock on a fully diluted basis;

o We fail to pay when due any payment with respect to any of its indebtedness in excess of \$250,000;

o We breach any agreement for monies owed or owing in an amount in excess of \$250,000 and the breach permits the other party to declare a default or otherwise accelerate the amounts due under that agreement; or

o We permit a default under any agreement to remain uncured and the default would or is likely to have a material adverse effect on our business, operations, properties or financial condition.

Series C Convertible Preferred Stock

We have designated 10,000 shares of our preferred stock as Series C Convertible Preferred Stock, of which approximately 6,066 shares were issued and outstanding as of March 31, 2005. The holders of Series C Convertible Preferred Stock are entitled to certain rights and preferences with respect to the holders of our common stock, including the following:

o Voting. The holders of Series C Convertible Preferred Stock are entitled to vote together with the holders of our common stock, as a single class, on all matters submitted to a vote of our stockholders. The holders of Series C Convertible Preferred Stock are entitled to a number of votes equal to the number of shares of common stock that would be issued upon conversion of their shares of Series C Convertible Preferred Stock.

o Conversion. The Series C Convertible Preferred Stock has a stated value of \$1,750 per share. Each share of Series C Convertible Preferred Stock is convertible into a number of shares of common stock equal to the stated value, plus any accrued and unpaid dividends, divided by an initial conversion price of \$3.00. This conversion price is subject to adjustment for any stock splits, stock dividends or similar transactions. The conversion price is also subject to

adjustment in the event that we make a dilutive issuance of common stock or other securities that are convertible into or exercisable for common stock at an effective per share purchase price that is less than the conversion price of the Series C Convertible Preferred Stock that is in effect at the time of the dilutive issuance. The holders of Series C Convertible Preferred Stock may convert their shares into shares of common stock at any time. However, no holder of Series C Convertible Preferred Stock may convert its shares into shares of common stock if the conversion would cause the holder or any of its affiliates, individually or in the aggregate, to beneficially own more than 9.999% of our outstanding common stock.

-29-

o Dividends. Holders of Series C Convertible Preferred Stock are entitled to receive, out of legally available funds, dividends at the rate of 6% per annum beginning on the first anniversary of their date of issuance and 8% per annum beginning on the second anniversary of their date of issuance. Dividends are payable semi-annually, either in cash or shares of our common stock.

o Liquidation. If we liquidate, dissolve or wind up, the holders of Series C Convertible Preferred Stock are entitled to receive the stated value of their shares plus all accrued and unpaid dividends prior to any amounts being paid to the holders of Series B Convertible Preferred Stock and common stock. In addition, the holders of Series C Convertible Preferred Stock are entitled to share ratably together with the holders of Series B Convertible Preferred Stock and common stock in all remaining assets after the satisfaction of all other liquidation preferences.

o Redemption. The holders of Series C Convertible Preferred Stock have the right to require us to purchase all of their shares of Series C Convertible Preferred Stock upon the occurrence of certain events, such as the following:

o We fail to remove any restrictive legend from certificates representing shares of our common stock that are issued to holders who convert their shares of Series C Convertible Preferred Stock;

o We make an assignment for the benefit of creditors or apply for or consent to the appointment of a receiver or trustee;

o Any bankruptcy, insolvency, reorganization or other proceeding for the relief of debtors is instituted by or against us and is not dismissed within 60 days;

o We sell substantially all of our assets, merge or consolidate with any other entity or engages in a transaction that results in any person or entity acquiring more than 50% of our outstanding common stock on a fully diluted basis;

o We fail to pay when due any payment with respect to any of its indebtedness in excess of \$250,000;

o We breach any agreement for monies owed or owing in an amount in excess of \$250,000 and the breach permits the other party to declare a default or otherwise accelerate the amounts due under that agreement; or

o We permit a default under any agreement to remain uncured and the default would or is likely to have a material adverse effect on our business, operations, properties or financial condition.

Series D Convertible Preferred Stock

We have designated 2,000 shares of our preferred stock as Series D Convertible Preferred Stock, of which 2,000 shares were issued and outstanding as of March 31, 2005. The holders of Series D Convertible Preferred Stock are entitled to certain rights and preferences with respect to the holders of our common stock, including the following:

o Voting. The holders of Series D Convertible Preferred Stock are entitled to vote together with the holders of our common stock and holders of Series C Convertible Preferred Stock, as a single class, on all matters submitted to a vote of our stockholders. The holders of Series D Convertible Preferred Stock are entitled to a number of votes equal to the number of shares of common stock that would be issued upon conversion of their shares of Series D Convertible Preferred Stock.

o Conversion. The Series D Convertible Preferred Stock has a stated value of \$1,000 per share. Each share of Series D Convertible Preferred Stock is convertible into a number of shares of common stock equal to the stated value divided by an initial conversion price of \$4.50. This conversion price is subject to adjustment for any stock splits, stock dividends or similar transactions. The holders of Series D Convertible Preferred Stock may convert their shares into

shares of common stock at any time. However, no holder of Series D Convertible Preferred Stock may convert its shares into shares of common stock if the conversion would cause the holder or any of its affiliates, individually or in the aggregate, to beneficially own more than 9.999% of our outstanding common stock.

-30-

- o Dividends. Holders of Series D Convertible Preferred Stock are entitled to share pro-rata, on an as-converted basis, in any dividends or other distributions that may be declared by the board of directors with respect to the common stock.
- o Liquidation. If we liquidate, dissolve or wind up, the holders of Series D Convertible Preferred Stock and the holders of Series C Convertible Preferred Stock are entitled to receive the stated value of their respective shares plus all accrued and unpaid dividends, pari passu, and prior to any amounts being paid to the holders of Series B Convertible Preferred Stock and common stock. In addition, the holders of Series D Convertible Preferred Stock are entitled to share ratably together with the holders of Series C Convertible Preferred Stock, Series B Convertible Preferred Stock and common stock in all remaining assets after the satisfaction of all other liquidation preferences.
- o Redemption. The holders of Series D Convertible Preferred Stock have the right to require us to purchase all of their shares of Series D Convertible Preferred Stock upon the occurrence of certain events, such as the following:
 - o We fail to remove any restrictive legend from certificates representing shares of our common stock that are issued to holders who convert their shares of Series D Convertible Preferred Stock;
 - o We make an assignment for the benefit of creditors or apply for or consent to the appointment of a receiver or trustee;
 - o Any bankruptcy, insolvency, reorganization or other proceeding for the relief of debtors is instituted by or against us and is not dismissed within 60 days;
 - o We sell substantially all of our assets, merge or consolidate with any other entity or engages in a transaction that results in any person or entity acquiring more than 50% of our outstanding common stock on a fully diluted basis;
 - o We fail to pay when due any payment with respect to any of its indebtedness in excess of \$250,000;
 - o We breach any agreement for monies owed or owing in an amount in excess of \$250,000 and the breach permits the other party to declare a default or otherwise accelerate the amounts due under that agreement; or
 - o We permit a default under any agreement to remain uncured and the default would or is likely to have a material adverse effect on our business, operations, properties or financial condition.

ANTI-TAKEOVER PROVISIONS

Anti-Takeover Effects of Our Certificate of Incorporation and Bylaws.

Provisions of our certificate of incorporation and bylaws may delay, defer or discourage another party from acquiring control of us. We expect that these provisions, which are summarized below, discourage coercive takeover practices or inadequate takeover bids. These provisions are also designed to encourage persons seeking to acquire control of us to first negotiate with our board of directors, which we believe may result in an improvement of the terms of any such acquisition in favor of our stockholders. However, they also give the board the power to discourage acquisitions that some stockholders may favor.

Undesignated Preferred Stock. The ability to authorize undesignated preferred stock makes it possible for our board of directors to issue preferred stock with super voting, special approval, dividend or other rights or preferences that could impede the success of any attempt to acquire us. These and other provisions may have the effect of deferring, delaying or discouraging hostile takeovers, or changing control or management of us.

Classified Board of Directors. Our certificate of incorporation provides for the board of directors to be divided into three classes, each with a staggered three-year term. As a result, only one class of directors is elected at each annual meeting of stockholders, and each of the two other classes of directors continue to serve for the remainder of their respective three-year term. The classification of directors has the effect of making it more difficult for stockholders to change the composition of our board. Our certificate of incorporation provides that the number of directors is fixed in the manner provided in the bylaws. Our bylaws provide that the number of directors will be fixed from time to time by the board or by the stockholders at an annual meeting.

-31-

Requirements for Advance Notification of Stockholder Meetings, Vacancies and Newly Created Directorships. Our bylaws prohibit the conduct of any business at a special meeting of the stockholders other than as specified in the notice of special meeting. This provision may have the effect of deferring, delaying or discouraging hostile takeovers, or changes in control or management of our company. Additionally, vacancies and newly created directorships may be filled by a majority of the directors then in office, even though less than a quorum. This provision may defer, delay or discourage a potential acquiror from conducting a solicitation of proxies to elect the acquiror's own slate of directors or otherwise attempting to obtain control of us.

Amendment Provisions. Our certificate of incorporation grant our board of directors the authority to amend and repeal our bylaws without a stockholder vote in any manner not inconsistent with the laws of the State of Delaware or our certificate of incorporation.

Stockholder Rights Plan

We currently have in effect a stockholder rights plan, which is governed by the terms and conditions contained in the Amended and Restated Rights Agreement, dated as of January 24, 2001, between us and Fleet National Bank, as rights agent. In the event that we are acquired in a asset purchase or other business combination transaction or 50% or more of our consolidated assets or earning power is sold, each holder of our common stock will have the right to receive that number of shares of common stock of the acquiring company which at the time of such transaction will have a market value of two times the exercise price of the right. In the event that any person becomes the beneficial owner of 15% or more of the outstanding shares of our common stock proper provision shall be made so that each holder of our common stock, other than the acquiring person, will thereafter have the right to receive that number of shares of our common stock or preferred stock (or cash, other securities or property) of having a market value of two times the exercise price of the right.

The rights plan has certain anti-takeover effects. The rights plan will cause substantial dilution to a person or group that attempts to acquire us on terms not approved by our board of directors. The rights plan should not interfere with any asset purchase or other business combination approved by the board of directors because the rights granted to each holder of common stock may be redeemed by us prior to such asset purchase or other business combination.

VALIDITY OF THE SHARES

The validity of the shares of our common stock offered by this prospectus will be passed upon for us by Sheppard, Mullin, Richter & Hampton LLP.

EXPERTS

The consolidated financial statements of P-Com, Inc. as of December 31, 2004, and for the year then ended, have been incorporated by reference into this prospectus and in the registration statement to which this prospectus relates in reliance upon the report of Aidman, Piser & Company, P.A., the Company's independent registered public accounting firm, and upon the authority of said firm as experts in accounting and auditing.

The consolidated financial statements of P-Com, Inc. as of December 31, 2003, and for the year then ended, have been incorporated by reference into this prospectus and in the registration statement to which this prospectus relates in reliance upon the report of Aidman, Piser & Company, P.A., the Company's independent registered public accounting firm, and upon the authority of said firm as experts in accounting and auditing.

The financial statements of Speedcom Wireless Corporation as of December 31, 2002, and for the year then ended, have been incorporated by reference into this prospectus and in the registration statement to which this prospectus relates in reliance upon the report of Aidman, Piser & Company, P.A., Speedcom's independent auditors, and upon the authority of said firm as experts in accounting and auditing.

The consolidated financial statements of P-Com, Inc. as of December 31, 2001 and 2002, and for the three years ended December 31, 2002, have been incorporated by reference into this prospectus and in the registration statement to which this prospectus relates in reliance upon the report (which includes an explanatory paragraph relating to the our ability to continue as a going concern as described in Note 1 to the financial statements), of PricewaterhouseCoopers, LLP, independent accountants, given upon the authority of said firm as experts in accounting and auditing.

-32-

INCORPORATION BY REFERENCE

The SEC allows us to "incorporate by reference" certain information we have filed with it, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is an important part of this prospectus. We incorporate by reference into this prospectus and refer you to the documents listed below:

- o Our Annual Report on Form 10-K and Form 10-K/A for the fiscal year ended December 31, 2004, filed with the SEC on March 23, 2005 and May 13, 2005;
- o Our Quarterly Report on Form 10-Q for quarterly period ended March 31, 2005, filed with the SEC on May 12, 2005;
- o Our Current Reports on Form 8-K, filed with the SEC on February 10, 2005, March 1, 2005, March 15, 2005, March 28, 2005, April 28, 2005 and May 13, 2005.
- o The financial statements of Speedcom Wireless Corporation for its year ended December 31, 2002 and its nine-months ended September 30, 2003; and, certain pro-forma financial information related to our purchase of Speedcom Wireless Corporation, as filed with the SEC on Form 8-K dated December 24, 2003 and Form S-1 dated December 19, 2003.

You may request, orally or in writing, a copy of these filings. We will provide the requested copies of these filings to you at no cost. Please direct your requests to:

P-Com, Inc. 3175 S. Winchester Boulevard Campbell, CA 95008 Telephone: (408) 866-3666 Attention: Daniel W. Rumsey

This prospectus is accompanied by a copy of our amended Annual Report on Form 10-K/A for the fiscal year ended December 31, 2004 and our Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2005. You should read these reports to obtain additional information about our business, financial condition and results of operations.

WHERE YOU CAN FIND MORE INFORMATION

We file reports, proxy statements and other information with the Securities and Exchange Commission ("SEC"). Copies of these reports, proxy statements and other information may be inspected and copied at the public reference facilities maintained by the SEC at:

Judiciary Plaza Room 1024
450 Fifth Street, N.W.
Washington, D.C. 20549

Copies of these materials can also be obtained by mail at prescribed rates from the Public Reference Room of the SEC at the address set forth above or by calling the SEC at 1-800-SEC-0330. The SEC maintains a website that contains reports, proxy statements and other information about issuers, including us, that file electronically with the SEC. The address of the SEC's website is <http://www.sec.gov>.

Information on any website of ours or the website of any of our subsidiaries is not part of this prospectus and you should not consider information contained on any such websites as part of this prospectus, unless that information is also contained in this prospectus. You should rely only on the information incorporated by reference or provided in

this prospectus or any prospectus supplement. We have not authorized anyone else to provide you with different information. You should not assume that the information in this prospectus or any prospectus supplement is accurate as of any date other than the date on the front page of those documents.

-33-

PART II**INFORMATION NOT REQUIRED IN PROSPECTUS****ITEM 14. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION.**

All costs and expenses incurred in connection with the sale and distribution of the common stock being registered for sale will be paid by the Registrant. The following is an itemized statement of these costs and expenses. All amounts shown are estimates except for the Securities and Exchange Commission registration fee.

SEC Registration Fee	\$ 163.76
Printing and Engraving Expenses	10,000.00
Legal Fees and Expenses	10,000.00
Accounting Fees and Expenses	20,000.00
Miscellaneous	0

Total \$40,163.76

* To be completed by amendment

ITEM 15. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

Section 102 of the Delaware General Corporation Law allows a corporation to include in its certificate of incorporation a provision that eliminates the personal liability of the directors of that corporation to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except where the director breached the duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit. The Registrant's certificate of incorporation contains a provision that eliminates the personal liability of its directors in accordance with Section 102 of the Delaware General Corporation Law.

Section 145 of the Delaware General Corporation Law authorizes a court to award, or a corporation's board of directors to grant, indemnification to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities (including reimbursement for expenses incurred) arising under the Securities Act. Article VII of the Registrant's bylaws provides for mandatory indemnification of its directors and permissible indemnification of its officers, employees and other agents to the maximum extent permitted under the Delaware General Corporation Law. The Registrant has entered into indemnification agreements with its officers and directors, which are intended to provide the Registrant's officers and directors with indemnification to the maximum extent permitted under the Delaware General Corporation Law.

ITEM 16. EXHIBITS.

See Index of Exhibits on page II-4.

ITEM 17. UNDERTAKINGS.

(a) The undersigned Registrant hereby undertakes:

(1) to file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

Explanation of Responses:

(i) to include any prospectus required by section 10(a)(3) of the Securities Act;

(ii) to reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;

(iii) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the Registration Statement;

(2) that, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) Insofar as indemnification for liabilities arising under the Securities Act, may be permitted to directors, officers and controlling persons of the Registrant pursuant to the provisions referenced in Item 14 of this Registration Statement or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act, and is therefore unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer, or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered hereunder, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Pre-Effective Amendment to Form S-2 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Campbell, State of California, on this 20th day of May, 2005.

P-COM, INC.

Date:

By: /s/ Daniel W. Rumsey

Daniel W. Rumsey
Chief Restructuring Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Daniel W. Rumsey, the undersigned's true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for the undersigned and in his name, place and stead, in any and all capacities (including the undersigned's capacity as a director and/or officer of P-Com, Inc.), to sign any or all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto each of said attorneys-in-fact full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully for all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that each of said attorneys-in-fact, or his or her substitute, acting alone, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the date indicated.

Name	Title	Date
/s/ Daniel W. Rumsey Daniel W. Rumsey	Chief Restructuring Officer (Principal Executive Officer, Principal Financial Officer and Principal Accounting Officer)	May 20, 2005
/s/ George P. Roberts George P. Roberts	Chairman of the Board	May 20, 2005
/s/ Frederick Fromm Frederick Fromm	Director	May 20, 2005
/s/ Richard Reiss Richard Reiss	Director	May 20, 2005
/s/ R. Craig Roos R. Craig Roos	Director	May 20, 2005
/s/ Daniel W. Rumsey	Director	May 20, 2005

Explanation of Responses:

Daniel W. Rumsey

-35-

INDEX OF EXHIBITS

EXHIBIT NUMBER	DESCRIPTION OF DOCUMENT
3.1(1)	Restated Certificate of Incorporation, as amended and restated through October 12, 2004
3.1A(4)	Amended and Restated Certificate of Designation of the Series A Junior Participating Preferred Stock
3.1B(10)	Certificate of Designation, Preferences and Rights of Series B Convertible Preferred Stock
3.1C(11)	Certificate of Designation, Preferences and Rights of Series C Convertible Preferred Stock
3.1D(13)	Certificate of Designation, Preferences and Rights of Series D Convertible Preferred Stock
3.2(12)	Bylaws, as amended and restated through December 3, 2003
4.1(13)	Form of Common Stock Certificate
4.2(14)	Amended and Restated Rights Agreement, dated January 24, 2001, between Registrant and BankBoston, N.A
5.1	Opinion of Sheppard, Mullin, Richter & Hampton, LLP
10.1*(15)	1995 Stock Option/Stock Issuance Plan (as amended and restated through July 17, 2002)
10.2*	Amendment to 1995 Stock Option/Stock Issuance Plan, effective as of December 3, 2003
10.3*(16)	Employee Stock Purchase Plan, as amended
10.18(17)	Form of Indemnification Agreement by and between the Company and each of its officers and directors and a list of signatories.
10.62(19)	Warrant to Purchase Stock, dated January 14, 2000, issued to Greyrock Capital.
10.63(18)	Registration Rights Agreement, dated January 14, 2000, by and between P-Com, Inc. and Greyrock Capital.
10.64(18)	Antidilution Agreement, dated January 14, 2000, by and between P-Com, Inc. and Greyrock Capital.
10.65(18)	Warrant to Purchase Stock, dated January 14, 2000, issued to Silicon Valley Bank. 10.66(18) Registration Rights Agreements, dated January 14, 2000, by and between P-Com, Inc. and Silicon Valley Bank.
10.67(18)	Antidilution Agreement, dated January 14, 2000, by and between P-Com, Inc. and Silicon Valley Bank.
10.90*(25)	Employment and Continuity of Benefits Agreement by and between George Roberts and P-Com, Inc., dated May 31, 2001.

- | | |
|------------|--|
| 10.92(27) | Common Stock PIPES Agreement, dated June 26, 2002, by and among P-Com, Inc and the investors signatory thereto. |
| 10.98#(28) | Engagement Letter Agreement by and between P-Com, Inc. and Cagan McAfee Capital Partners dated December 10, 2001 and Addendum dated June 13, 2002. |
| 10.99(28) | Warrant Issuance Agreement by and between P-Com, Inc. and Cagan McAfee Capital Partners dated December 1, 2001. |

-36-

EXHIBIT NUMBER	DESCRIPTION OF DOCUMENT
10.100(28)	Accounts Receivable Purchase Agreement by and between P-Com, Inc. and Silicon Valley Bank dated June 26, 2002.
10.101#(28)	OEM Agreement by and between P-Com, Inc. and Shanghai Datang Mobile Communications dated July 1, 2002.
10.107(30)	Loan and Security Agreement between P-Com, Inc. and Silicon Valley Bank dated September 20, 2002
10.108(30)	Loan and Security Agreement (Exim Program) between P-Com, Inc. and Silicon Valley Bank dated September 20, 2002.
10.109(30)	Secured Promissory Notes issued to Silicon Valley Bank dated September 20, 2002. 10.110(30) Warrant to Purchase Stock Agreement between P-Com, Inc. and Silicon Valley Bank dated September 20, 2002.
10.111(30)	Amendment to OEM Agreement between P-Com, Inc. and Shanghai Datang Mobile Communication effective July 1, 2002.
10.113(30)	Addendum II to Engagement Letter, dated December 10, 2001, between P-Com, Inc. and Cagan McAfee Capital Partners, effective as of January 9, 2003.
10.117(10)	Securities Purchase Agreement, dated May 28, 2003, by and among P-Com, Inc., North Sound Legacy Fund LLC, North Sound Legacy Institutional Fund LLC and North Sound Legacy International Ltd.
10.118(31)	Promissory Note, dated March 21, 2005, between P-Com, Inc. and SDS Capital Group SPC, Ltd.
10.119(31)	Promissory Note, dated March 31, 2005, between P-Com, Inc. and SDS Capital Group SPC, Ltd.
10.120(31)	Promissory Note, dated May 3, 2005, between P-Com, Inc. and SDS Capital Group SPC, Ltd.
10.121(31)	Warrant Agreement, dated March 21, 2005, between P-Com, Inc. and SDS Capital Group SPC, Ltd.
10.122(31)	Warrant Agreement, dated March 31, 2005, between P-Com, Inc. and SDS Capital Group SPC, Ltd.
10.123(31)	Warrant Agreement, dated May 3, 2005, between P-Com, Inc. and SDS Capital Group SPC, Ltd.
23.1(32)	Consent of Aidman, Piser & Company, P.A.
23.2(32)	Consent of PricewaterhouseCoopers LLP

* Compensatory benefit arrangement.

Confidential treatment has been granted as to certain portions of these exhibits.

Edgar Filing: UNIFIRST CORP - Form 4

- (1) Incorporated by reference to the exhibits filed as part of the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2004.
- (4) Incorporated by reference to Exhibit 3.2C of the Registrant's Form 8-A/A filed with the Securities and Exchange Commission on December 22, 1998.
- (10) Incorporated by reference to the exhibits filed as part of the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2003.
- (11) Incorporated by reference to the exhibits filed as part of the Registrant's Current Report on Form 8-K, filed with the Securities and Exchange Commission on October 7, 2003.
- (13) Incorporated by reference to the exhibits filed as part of the Registrant's Registration Statement on Form S-1 (File No. 33-88492), declared effective with the Securities and Exchange Commission on March 2, 1995.
- (14) Incorporated by reference to Exhibit 4.10 to the Registrant's Form 8-A/A, filed with the Securities and Exchange Commission on May 7, 2001.
- (15) Incorporated by reference to Exhibit 99.1 to the Registrant's Registration Statement on Form S-8 (File No. 333-55604), filed with the Securities and Exchange Commission on February 14, 2001.
- (16) Incorporated by reference to Exhibit 99.1 to the Registrant's Registration Statement on Form S-8 (File No. 333-63762), filed with the Securities and Exchange Commission on June 25, 2001.
- (17) Incorporated by reference to the identically numbered exhibit to the Registrant's Registration Statement on Form S-1 (File No. 33-88492) declared effective with the Securities and Exchange Commission on March 2, 1995.
- (18) Incorporated by reference to the exhibits filed as part of the Registrant's Current Report on Form 8-K, filed with the Securities and Exchange Commission on January 25, 2000.
- (19) Incorporated by reference to the exhibits filed as part of the Registrant's Registration Statement on Form S-3/A (File No. 333-70937), filed with the Securities and Exchange Commission on May 4, 2000.
- (20) Incorporated by reference to Exhibit 10.79 to the Registrant's Registration Statement on Form S-3/A (File No. 333-70937), filed with the Securities and Exchange Commission on August 24, 2000.
- (21) Incorporated by reference to the exhibits filed as part of the Registrant's Current Report on Form 8-K, filed with the Securities and Exchange Commission on August 11, 2000.
- (22) Incorporated by reference to Exhibit 10.85 to the Registrant's Quarterly Report on Form 10-Q/A for the quarter ended September 30, 2000.
- (23) Incorporated by reference to the exhibits filed as part of the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2000.
- (24) Incorporated by reference to Exhibit 10.90 to the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2001.
- (25) Incorporated by reference to Exhibit 10.92 to the Registrant's Current Report on Form 8-K, filed with the Securities and Exchange Commission on June 26, 2002.

(26) Incorporated by reference to the exhibits filed as part of the Registrant's Quarterly Report on Form 10-Q for the quarter June 30, 2002.

(27) Incorporated by reference to the exhibits filed as part of the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2002.

(28) Incorporated by reference to the exhibits filed as part of the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2003.

(29) Incorporated by reference to Exhibit 16.1 to the Registrant's Current Report on Form 8-K, filed with the Securities and Exchange Commission on August 14, 2003.

(30) Incorporated by reference to Exhibit 99.1 to the Registrant's Registration Statement on Form S-8 (File No. 333-120455) filed with the Securities and Exchange Commission on November 12, 2004.

(31) Incorporated by reference to Exhibit 99.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 6, 2005.

(32) Previously filed.

-37-
