

ENCORE ACQUISITION CO

Form PRER14A

March 23, 2005

**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. 1)**

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

Encore Acquisition Company

(Name of Registrant as Specified In Its Charter)

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

Payment of Filing Fee (Check the appropriate box):

No fee required.

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(1) Amount Previously Paid:

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(3) Filing Party:

(4) Date Filed:

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**ENCORE ACQUISITION COMPANY**

**777 Main Street**

**Suite 1400**

**Fort Worth, Texas 76102**

**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS**

To the Stockholders of Encore Acquisition Company:

Notice is hereby given that the Annual Meeting of Stockholders of Encore Acquisition Company (the Company) will be held at the Fort Worth Petroleum Club, 777 Main Street, 39th Floor, Fort Worth, Texas 76102, on Tuesday, May 3, 2005, at 9:00 a.m., Fort Worth time. The annual meeting is being held for the following purposes:

(1) to elect seven directors, each for a term of one year;

(2) to amend the Company's Second Amended and Restated Certificate of Incorporation to (a) increase the authorized number of shares of the Company's common stock from 60,000,000 to 144,000,000 and (b) delete Article Six (an outdated provision renouncing corporate opportunities known to former principal stockholders of the Company) in its entirety;

(3) to ratify the appointment of the independent registered public accounting firm for the fiscal year ending December 31, 2005; and

(4) to transact such other business as may properly come before the meeting.

These proposals are described in the accompanying proxy materials. You will be able to vote at the annual meeting only if you were a stockholder of record at the close of business on March 15, 2005.

By Order of the Board of Directors,

Roy W. Jageman  
*Corporate Secretary*

Fort Worth, Texas

April 4, 2005

**YOUR VOTE IS IMPORTANT**

Please sign, date and return the enclosed proxy promptly to ensure that your shares are voted in accordance with your wishes and a quorum is present at the annual meeting. Instead of returning the paper proxy, you may vote by telephone at 1-866-540-5760 or over the Internet by accessing <http://www.proxyvoting.com/eac>. To do so by either method, you will need the control numbers that are printed on your personalized proxy card or voting instruction card.

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**ENCORE ACQUISITION COMPANY**  
**777 Main Street**  
**Suite 1400**  
**Fort Worth, Texas 76102**  
**PROXY STATEMENT**  
**2005 ANNUAL MEETING OF STOCKHOLDERS**  
**May 3, 2005**

The Board of Directors (the Board) of Encore Acquisition Company (the Company) is providing these proxy materials in connection with the Company's annual meeting of stockholders that will be held at the Fort Worth Club, 777 Main Street, 39th Floor, Fort Worth, Texas 76102, on Tuesday, May 3, 2005, at 9:00 a.m., Fort Worth time. Stockholders of record as of March 15, 2005, which is the record date established for the annual meeting by the Board, are entitled and requested to vote on the items of business described in this proxy statement. Each stockholder of record is entitled to one vote for each share registered in the stockholder's name. As of the record date, 32,870,815 shares of the Company's common stock were entitled to be voted at the annual meeting.

This proxy statement and the accompanying notice of annual meeting and proxy are first being sent or given to stockholders of the Company on or about April 4, 2005.

**Voting Procedures**

You may vote your shares in person at the annual meeting, by Internet, by telephone or by mail.

*Voting in Person.* Shares held in your name as the stockholder of record may be voted in person at the annual meeting. If your shares are held in the name of a broker, trustee or another nominee (that is, street name), you may vote the shares in person at the annual meeting only if you obtain a legal proxy from the broker, trustee or nominee that holds your shares giving you the right to vote the shares. **Even if you plan to attend the annual meeting, we recommend that you also submit your proxy or voting instructions as described below so that your vote will be counted if you later decide not to attend the meeting.**

*Voting by Internet.* Stockholders of record of the Company's common stock with Internet access may submit proxies by following the Vote by Internet instructions on their proxy cards. Most stockholders who hold shares beneficially in street name may vote by accessing the website specified on the voting instruction cards provided by their brokers, trustee or nominees. Please check the voting instruction card for Internet voting availability.

*Voting by Telephone.* Stockholders of record of the Company's common stock may submit proxies by following the Vote by Phone instructions on their proxy cards. Most stockholders who hold shares beneficially in street name may vote by phone by calling the number specified on the voting instruction cards provided by their brokers, trustee or nominees. Please check the voting instruction card for telephone voting availability.

*Voting by Mail.* Stockholders of record of the Company's common stock may submit proxies by completing, signing and dating their proxy cards and mailing them in the accompanying pre-addressed envelopes. Stockholders who hold shares beneficially in street name may vote by mail by completing, signing and dating the voting instruction cards provided and mailing them in the accompanying pre-addressed envelopes.

**Changing Your Vote**

You may change your vote at any time prior to the vote at the annual meeting, except that votes submitted through the Internet or telephone must be received by 11:59 p.m., New York time, on May 2, 2005. If you are the stockholder of record, you may change your vote by granting a new proxy bearing a later date

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(which automatically revokes the earlier proxy), by providing a written notice of revocation to the Company's Corporate Secretary prior to your shares being voted, or by attending the annual meeting and voting in person. Attendance at the meeting will not cause your previously granted proxy to be revoked unless you specifically so request. For shares you hold beneficially in street name, you may change your vote by submitting new voting instructions to your broker, trustee or nominee, or, if you have obtained a legal proxy from your broker or nominee giving you the right to vote your shares, by attending the meeting and voting in person.

### **Quorum and Adjournments**

The presence, in person or by proxy, of the holders of a majority of the votes eligible to be cast at the annual meeting is necessary to constitute a quorum at the annual meeting. Both abstentions and broker non-votes (described below) are counted for the purpose of determining the presence of a quorum. If a quorum is not present, the stockholders entitled to vote who are present in person or by proxy at the annual meeting have the power to adjourn the annual meeting from time to time, without notice other than an announcement at the annual meeting, until a quorum is present. At any adjourned annual meeting at which a quorum is present, any business may be transacted that might have been transacted at the annual meeting as originally notified.

### **Required Vote; Effect of Broker Non-Votes and Abstentions**

The nominees for election as directors at the annual meeting who receive the highest number of FOR votes will be elected as directors. This is called plurality voting. The amendments to the Company's Second Amended and Restated Certificate of Incorporation each require the affirmative vote of the holders of a majority of the shares of common stock outstanding on the record date. The ratification of the appointment of the Company's independent registered public accounting firm requires the affirmative vote of a majority of the votes cast at the annual meeting.

In the election of directors, you may vote FOR all or some of the nominees or your vote may be WITHHELD with respect to one or more of the nominees. For the other items of business, you may vote FOR, AGAINST or ABSTAIN. If you elect to ABSTAIN, the abstention has the same effect as a vote AGAINST. If you provide specific instructions with regard to certain items, your shares will be voted as you instruct on such items. If you sign your proxy card or voting instruction card without giving specific instructions, your shares will be voted in accordance with the recommendations of the Board set forth below under Board Recommendation.

Brokers holding shares must vote according to specific instructions they receive from the beneficial owners of those shares. If specific instructions are not received, brokers may generally vote the shares in their discretion. However, the New York Stock Exchange precludes brokers from exercising voting discretion on certain proposals without specific instructions from the beneficial owner. Under the rules of the New York Stock Exchange, brokers will have discretion to vote on all items scheduled to be presented at the annual meeting.

A broker non-vote has the effect of a negative vote when a majority of the issued and outstanding shares is required for approval of a particular proposal and has no effect when a majority of the shares present in person or by proxy and entitled to vote or a plurality or majority of the votes cast is required for approval. Since directors are elected by a *plurality* and the ratification of the appointment of the independent registered public accounting firm requires the affirmative vote of a majority of the votes *cast*, broker non-votes will not affect the outcome of voting on those proposals. Since the amendments to the Company's Second Amended and Restated Certificate of Incorporation each require the affirmative vote of the holders of a majority of the Company's outstanding shares of common stock, broker non-votes will have the same effect as votes against that proposal.

Because abstentions are considered votes cast on a proposal, abstentions will have the same effect as votes against the ratification of the appointment of the Company's independent registered public accounting firm and the amendments to the Company's Second Amended and Restated Certificate of Incorporation.

### **Board Recommendation**

The Board recommends that you vote:

**FOR** the election of the seven persons named in this proxy statement as nominees for election to the Board. If any nominee becomes unable or unwilling to accept nomination or election, the persons acting under proxy will vote for the election of a substitute nominee that the Board recommends.

**FOR** the amendment to the Company's Second Amended and Restated Certificate of Incorporation to increase the authorized number of shares of the Company's common stock from 60,000,000 to 144,000,000.

**FOR** the amendment to the Company's Second Amended and Restated Certificate of Incorporation to delete Article Six (an outdated provision renouncing corporate opportunities known to former principal stockholders of the Company) in its entirety.

**FOR** the ratification of the appointment of Ernst & Young LLP as the Company's independent registered public accounting firm.

### **Voting on Other Matters**

If any other business properly comes before the stockholders for a vote at the meeting, your shares will be voted in accordance with the discretion of the proxy holders, I. Jon Brumley, Jon S. Brumley and Roy W. Jageman. The Board knows of no matters, other than those described above, to be presented for consideration at the annual meeting.

### **CORPORATE GOVERNANCE PRINCIPLES AND BOARD MATTERS**

The Company has adopted a Code of Business Conduct and Ethics for directors, officers (including the Company's principal executive officer, principal financial officer and principal accounting officer) and employees. The Company also has adopted Corporate Governance Guidelines, which, in conjunction with the Company's certificate of incorporation, bylaws and Board committee charters, form the framework for governance of the Company. The Company's Code of Business Conduct and Ethics and Corporate Governance Guidelines are available on the Corporate Governance section of the Company's website at [www.encoreacq.com](http://www.encoreacq.com). The Company will post on its website any amendments to the Code of Business Conduct and Ethics or waivers of the Code of Business Conduct and Ethics for directors and executive officers.

Stockholders may request free printed copies of the Code of Business Conduct and Ethics and the Corporate Governance Guidelines from:

Encore Acquisition Company  
Attention: Corporate Secretary  
777 Main Street, Suite 1400  
Fort Worth, Texas 76102  
(817) 877-9955

### **Director Independence**

The Board had determined that each director nominee is independent, as defined for purposes of the listing standards of the New York Stock Exchange (the NYSE), other than Mr. I. Jon Brumley, who is Chairman and Chief Executive Officer of the Company, and Mr. Jon S. Brumley, who is President of the Company. In making this determination, the Board affirmatively determined that each independent director or nominee had no material relationship with the Company (either directly or as a partner, shareholder or officer of an organization that has a relationship with the Company), and that none of the express disqualifications contained in the NYSE rules applied to any of them.

As contemplated by NYSE rules, the Board has adopted categorical standards to assist it in making independence determinations, under which relationships that fall within the categorical standards are not

required to be disclosed in the proxy statement and their impact on independence need not be separately discussed. The Board, however, considers all material relationships with each director in making its independence determinations. A relationship falls within the categorical standards if it:

Is a type of relationship addressed in Item 404 of Regulation S-K under the Securities Exchange Act of 1934 (the Exchange Act ) or Section 303A.02(b) of the NYSE Listed Company Manual, but under those rules neither requires disclosure nor precludes a determination of independence; or

Consists of charitable contributions by the Company to an organization where a director is an executive officer and does not exceed the greater of \$1 million or 2% of the organization's gross revenue in any of the last 3 years. None of the independent director nominees had relationships relevant to an independence determination that were outside the scope of the Board's categorical standards.

### **Board Structure and Committee Composition**

As of the date of this proxy statement, the Board has eight directors and the following three committees: (1) Audit, (2) Compensation, and (3) Nominating and Corporate Governance. The committee membership and meetings during the last fiscal year and the function of each of the committees are described below. Each of the committees operates under a written charter adopted by the Board. All of the committee charters are available on the Corporate Governance section of the Company's website at [www.encoreacq.com](http://www.encoreacq.com).

#### **Composition of Board Committees**

<b>Name of Director</b>	<b>Audit(1)</b>	<b>Compensation(2)</b>	<b>Nominating and Corporate Governance</b>
Martin C. Bowen	Member		
Ted Collins, Jr.		Member	Chair
Ted A Gardner	Chair		
John V. Genova	Member		
Howard H. Newman(3)		Member	
James A. Winne III		Chair	Member

- (1) Messrs. Collins and Winne served on the Audit Committee until April 2004, when Messrs. Bowen and Genova joined the Audit Committee.
- (2) Mr. Arnold Chavkin served on the Compensation Committee until April 2004. Mr. Chavkin did not stand for reelection in April 2004.
- (3) Mr. Newman is not a nominee for director at the annual meeting.

The Audit Committee held eight meetings in 2004; the Compensation Committee held one meeting and acted by unanimous written consent on two occasions in 2004; and the Nominating and Corporate Governance Committee did not meet in 2004. The Nominating and Corporate Governance Committee met in February 2005 in connection with matters related to the annual meeting.

The Board held nine meetings in fiscal 2004. Each director attended at least 75% of all Board and applicable committee meetings in 2004. Directors are encouraged to attend annual meetings of the Company's stockholders. All of the Company's directors attended the 2004 annual meeting of stockholders.

*Audit Committee.* The Audit Committee's purpose is, among other things, to assist the Board in overseeing: the integrity of the Company's financial statements;

the Company's compliance with legal and regulatory requirements;





the independence, qualifications and performance of the Company's independent registered public accounting firm; and

the performance of the Company's internal audit function.

The Board has determined that all three members of the Audit Committee are independent under the listing standards of the NYSE and the rules of the Securities and Exchange Commission. In addition, the Board has determined that Mr. Gardner is an audit committee financial expert as such term is defined in Item 401(h) of Regulation S-K under the Exchange Act.

The report of the Audit Committee is included in this proxy statement on page 23. The charter of the Audit Committee is available on the Corporate Governance section of the Company's website at [www.encoreacq.com](http://www.encoreacq.com) and also is included as Annex A. A free printed copy also is available to any stockholder who requests it from the address on page 3.

*Compensation Committee.* The Compensation Committee's functions include the following:

review and approve corporate goals and objectives relevant to chief executive officer compensation, evaluate the chief executive officer's performance in light of those goals and objectives, and, either as a committee or together with the other independent directors (as directed by the Board), determine and approve the chief executive officer's compensation level based on this evaluation;

approve, or make recommendations to the Board with respect to, the compensation of other executive officers;

from time to time consider and take action on the establishment of and changes to incentive compensation plans and equity-based compensation plans, including making recommendations to the Board on plans, goals or amendments to be submitted for action by the Company's stockholders;

administer the Company's compensation plans that it is assigned responsibility to administer, including taking action on grants and awards, determinations with respect to achievement of performance goals, and other matters provided in the respective plans;

review from time to time when and as it deems appropriate the compensation and benefits of non-employee directors, including compensation pursuant to equity-based plans, and approve, or recommend to the Board for its action, any changes in such compensation and benefits; and

produce a compensation committee report on executive compensation as required by the Securities and Exchange Commission to be included in the Company's annual proxy statement or annual report on Form 10-K.

The Board has determined that all three members of the Compensation Committee are independent under the listing standards of the NYSE.

The report of the Compensation Committee is included in this proxy statement on page 19. The charter of the Compensation Committee is available on the Corporate Governance section of the Company's website at [www.encoreacq.com](http://www.encoreacq.com). A free printed copy also is available to any stockholder who requests it from the address on page 3.

*Nominating and Corporate Governance Committee.* The Nominating and Corporate Governance Committee's functions include the following:

identify individuals qualified to become Board members, consistent with criteria approved by the Board;

recommend to the Board a slate of director nominees to be elected by the stockholders at the next annual meeting of stockholders and, when appropriate, director appointees to take office between annual meetings;

develop and recommend to the Board the corporate governance guidelines applicable to the Company;



oversee the Board's annual evaluation of its performance of the Board and management; and

recommend to the Board membership on standing Board committees.

The Board has determined that both members of the Nominating and Corporate Governance Committee are independent under the listing standards of the NYSE.

The charter of the Nominating and Corporate Governance Committee is available on the Corporate Governance section of the Company's website at [www.encoreacq.com](http://www.encoreacq.com). A free printed copy also is available to any stockholder who requests it from the address on page 3.

### **Selection of Nominees for the Board**

#### ***Identifying Candidates***

The Nominating and Corporate Governance Committee solicits ideas for potential Board candidates from a number of sources, including members of the Board, executive officers of the Company, individuals personally known to the members of the Board and research. The Nominating and Corporate Governance Committee also has sole authority to select and compensate a third-party executive search firm to help identify candidates, if it deems advisable. In addition, the Nominating and Corporate Governance Committee will consider candidates for the Board submitted by stockholders. Any stockholder submission should include the candidate's name and qualifications for Board membership and should be directed to:

Encore Acquisition Company  
Attention: Corporate Secretary  
777 Main Street, Suite 1400  
Fort Worth, Texas 76102

Although the Nominating and Corporate Governance Committee does not require the stockholder to submit any particular information regarding the qualifications of the stockholder's candidate, the level of consideration that the Nominating and Corporate Governance Committee will give to the stockholder's candidate will be commensurate with the quality and quantity of information about the candidate that the nominating stockholder makes available to the committee. The Nominating and Corporate Governance Committee will consider all candidates identified through the processes described above, and will evaluate each of them on the same basis.

In addition, the Company's bylaws permit stockholders to nominate directors for election at an annual meeting of stockholders whether or not such nominee is submitted to and evaluated by the Nominating and Corporate Governance Committee. To nominate a director using this process, the stockholder must follow the procedures described under "Stockholder Proposals" below.

#### ***Evaluating Candidates***

Each director candidate must meet certain minimum qualifications, including:

the ability to represent the interests of all stockholders of the Company and not just one particular constituency;

independence of thought and judgment;

the ability to dedicate sufficient time, energy and attention to the performance of his or her duties, taking into consideration the nominee's service on other public company boards;

skills and expertise complementary to the existing Board members' skills; and

a high degree of personal and professional integrity.

In addition, the Nominating and Corporate Governance Committee considers other qualities that it may deem to be desirable from time to time, such as the extent to which the candidate contributes to the diversity of the Board with diversity being construed broadly to include a variety of perspectives, opinions,

experiences and backgrounds. The Nominating and Corporate Governance Committee may also consider the ability of the candidate to work with the then-existing interpersonal dynamics of the Board and his or her ability to contribute to the collaborative culture among Board members.

Based on this initial evaluation, the Chairman of the Nominating and Corporate Governance Committee will determine whether to interview the candidate, and if warranted, will recommend that one or more members of the committee, other members of the Board and executives, as appropriate, interview the candidate in person or by telephone. After completing this evaluation and interview process, the committee will make a recommendation to the full Board as to the persons who should be nominated by the Board, and the Board will determine the nominees after considering the recommendation of the Nominating and Corporate Governance Committee.

### Compensation of Directors

The following table provides information on the Company's compensation and reimbursement practices for non-employee directors. At a meeting in February 2005, the Board increased director compensation to the amounts shown below. During 2004, neither Mr. I. Jon Brumley, Mr. Jon S. Brumley nor Mr. Howard H. Newman received any compensation for Board activities.

	Fiscal 2005	Fiscal 2004
Annual Retainer	\$40,000	\$40,000
Additional Retainer for Chair of Audit Committee	\$10,000	\$0
Additional fee for attendance at Board meetings	\$2,000	\$2,000
Additional fee for attendance at committee meetings	\$1,000	\$1,000
Equity-based compensation	3,000 shares of restricted stock issued upon the director's election or reelection to the Board(1)	Options to purchase 5,000 shares of the Company's common stock issued upon the director's election or reelection to the Board(2)
Reimbursement of expenses attendant to Board membership	Yes	Yes

- (1) Shares of restricted stock vest in three equal annual installments beginning three years from the date of grant, subject to earlier vesting in the event of a change in control, death or disability and to such other terms as are set forth in the award agreement.
- (2) Options vest in three equal annual installments beginning one year from the date of grant, subject to earlier vesting in the event of a change in control, death or disability and to such other terms as are set forth in the award agreement.

### Executive Sessions

The Company's non-management directors include all directors other than I. Jon Brumley and Jon S. Brumley. Each of the non-management directors is also independent under the listing standards of the NYSE. The non-management directors meet in executive session without management participation at least three times per year. These meetings are chaired on a rotating basis by the chairmen of the Audit Committee, the Compensation Committee and the Nominating and Corporate Governance Committee.



### **Stockholder Communications**

Individuals may communicate with the entire Board or with the Company's non-management directors. Any such communication should be sent via letter addressed to the member or members of the Board to whom the communication is directed, care of the Company's Corporate Secretary, Encore Acquisition Company, 777 Main Street, Suite 1400, Fort Worth, Texas 76102. All such communications, other than unsolicited commercial solicitations or communications, will be forwarded to the appropriate director or directors for review.

### **PROPOSALS TO BE VOTED ON**

#### **PROPOSAL NO. 1**

#### **ELECTION OF DIRECTORS**

There are seven nominees for election to our Board this year. All of the nominees have served as directors since the last annual meeting. Information regarding the business experience of each nominee is provided below. Each director is elected annually to serve until the next annual meeting or until his successor is elected.

If you sign your proxy or voting instruction card but do not give instructions with respect to voting for directors, your shares will be voted for the seven persons recommended by the Board. If you wish to give specific instructions with respect to voting for directors, you may do so by indicating your instructions on your proxy or voting instruction card.

All of the nominees have indicated to the Company that they will be available to serve as directors. In the event that any nominee should become unavailable, however, the proxy holders, I. Jon Brumley, Jon S. Brumley and Roy W. Jageman, will vote for a nominee or nominees designated by the Board, unless the Board chooses to reduce the number of directors serving on the Board.

#### **Required Vote**

The seven nominees for director who receive the highest number of FOR votes cast in person or by proxy at the annual meeting will be elected as directors.

#### **Board Recommendation**

**The Board recommends a vote FOR the election of each of the following nominees:**

#### **I. Jon Brumley**

Age 65

Mr. I. Jon Brumley has been Chairman of the Board, Chief Executive Officer and a director of the Company since its inception in April 1998. He also served as President of the Company from its inception in April 1998 until August 2002. Beginning in August 1996, Mr. Brumley served as Chairman and Chief Executive Officer of MESA Petroleum (an independent oil and gas company) until MESA's merger in August 1997 with Parker & Parsley to form Pioneer Natural Resources Company (an independent oil and gas company). He served as Chairman and Chief Executive Officer of Pioneer until joining the Company in 1998. Mr. Brumley serves as a director of Hanover Compressor Company. Mr. Brumley received a Bachelor of Business Administration from the University of Texas and a Master of Business Administration from the University of Pennsylvania Wharton School of Business. He is the father of Jon S. Brumley.

#### **Jon S. Brumley**

Age 34

Mr. Jon S. Brumley has been President of the Company since August 2002 and a director of the Company since November 2001. He also held the positions of Executive Vice President - Business

Development and Corporate Secretary from inception in April 1998 until August 2002 and was a director of the Company from April 1999 until May 2001. Prior to joining the Company, Mr. Brumley held the position of Manager of Commodity Risk and Commercial Projects for Pioneer Natural Resources Company. He was with Pioneer since its creation by the merger of MESA and Parker & Parsley in August 1997. Prior to August 1997, Mr. Brumley served as Director Business Development for MESA. Mr. Brumley received a Bachelor of Business Administration in Marketing from the University of Texas. He is the son of I. Jon Brumley.

**Martin C. Bowen**  
Age 61

Mr. Bowen has been a director of the Company since May 2004. Since 1993, Mr. Bowen has been Vice President and Chief Financial Officer of Fine Line, Inc., a private holding company. He also serves on the Board of Directors of AZZ, Inc. and several privately held companies. In addition, he is a Director and Executive Committee Member of the Southwestern Exposition and Livestock Show, President and Chief Executive Officer of Performing Arts Fort Worth and a Council Member of the World Wildlife Fund. Mr. Bowen received a Bachelor of Business Administration in Finance from Texas A&M University, a Bachelor of Foreign Trade from the American Graduate School of International Management and a J.D. from Baylor University School of Law.

**Ted Collins, Jr.**  
Age 66

Mr. Collins has been a director of the Company since May 2001. From 1988 to July 2000, he was a co-founder and president of Collins & Ware, Inc. (an independent oil and gas exploration company which was sold in July 2000). Since that time he has engaged in private oil and gas investments. Mr. Collins is a past President of the Permian Basin Petroleum Association, the Permian Basin Landmen's Association, Midland Petroleum Club and serves as Chairman of the Midland Wildcat Committee. He is a graduate of the University of Oklahoma with a Bachelor of Science in Geological Engineering. Mr. Collins serves on the Board of Directors of Hanover Compressor Company and U.S. Propane L.L.C., the general partner of the general partner of Energy Transfer Partners, L.P. Mr. Collins is also an active board member on the Midland Metropolitan YMCA, the University of Oklahoma Sarkey's Energy Center and the University of Texas Development Board.

**Ted A. Gardner**  
Age 47

Mr. Gardner has been a director of the Company since May 2001. Mr. Gardner is currently an independent investor. Mr. Gardner was a Managing Partner of Wachovia Capital Partners (a private equity investment group) and a Senior Vice President of Wachovia Corporation (a provider of commercial and retail banking and trust services) from 1990 until 2003. Mr. Gardner received a Bachelor of Arts degree in Economics from Duke University and a J.D. and Masters of Business Administration from the University of Virginia. He currently serves on the Board of Directors of Kinder Morgan, Inc. and COMSYS IT Partners Inc.

**John V. Genova**  
Age 50

Mr. Genova has been a director of the Company since May 2004. Beginning January 2005, Mr. Genova became an independent



consultant to the energy industry. In 2004, Mr. Genova was Executive Vice President Refining and Marketing of Holly Corporation (an independent U.S. petroleum refiner). Prior to Holly, Mr. Genova worked over 27 years with ExxonMobil. From January 1999 to December 1999, he served as Vice President of the Gas Department of Exxon Company, International. From December 1999 to March 2002, he served as Director of International Gas Marketing of ExxonMobil International Limited in London. From April 2002 through 2003, Mr. Genova served as Executive Assistant to the Chairman and General Manager, Corporate Planning of ExxonMobil Corporation. Mr. Genova received a Bachelor of Science degree in Chemical and Petroleum Refining Engineering from the Colorado School of Mines.

**James A. Winne III**  
Age 53

Mr. Winne has been a director of the Company since May 2001. Mr. Winne has been a director of Belden & Blake Corporation (an independent oil and gas company) since September 2004 and was elected Chairman of the Board and Chief Executive Officer of Belden & Blake in December 2004. He has been President and Chief Executive Officer of Legend Natural Gas II, L.P. (an independent oil and gas company) since its inception in September 2004. In addition, Mr. Winne has been President and Chief Executive Officer of Legend Natural Gas, L.P. (an independent oil and gas company) since its inception in September 2001. From March 2001 until September 2001, Mr. Winne developed plans for a business that became Legend Natural Gas. He formerly was employed by North Central Oil Corporation (an independent oil and gas company) for 18 years and was President and CEO from September 1993 until March 2001. After attending the University of Houston, he started his career as an independent landman and also worked at Tomlinson Interest, Inc. (an independent oil and gas company) and Longhorn Oil and Gas (an independent oil and gas company) before joining North Central's land department in January 1983. Mr. Winne is a registered land professional with 26 years of experience in the oil and gas industry.

**PROPOSAL NO. 2**  
**AMENDMENTS TO SECOND AMENDED AND**  
**RESTATED CERTIFICATE OF INCORPORATION**

The Board has adopted, subject to stockholder approval, amendments to the Company's Second Amended and Restated Certificate of Incorporation to (a) increase the authorized number of shares of the Company's common stock from 60,000,000 to 144,000,000 and (b) delete Article Six in its entirety, which relates to the Company's renouncing of certain oil and gas opportunities known to former principal stockholders of the Company.

The amendment to the Company's Second Amended and Restated Certificate of Incorporation to increase the authorized shares of common stock will be voted on as proposal 2(a) on the proxy card, while the amendment to the Company's Second Amended and Restated Certificate of Incorporation to delete the Article Six in its entirety will be voted on as proposal 2(b) on the proxy card.

**Proposal 2(a): Increase in Authorized Shares of Common Stock**

*Available Authorized Capital.* The Company's Second Amended and Restated Certificate of Incorporation currently authorizes the Company to issue up to 60,000,000 shares of common stock. As of March 15, 2005:

32,870,815 shares of common stock were issued and outstanding, including 436,261 shares of restricted stock;

1,036,214 shares of common stock were reserved for issuance upon the exercise of stock options granted by the Company;

1,122,932 shares of common stock were available for issuance under the Company's 2000 Incentive Stock Plan; and

24,970,039 shares of common stock were available for future corporate purposes.

The Company's Second Amended and Restated Certificate of Incorporation also authorizes the Company to issue 5,000,000 shares of preferred stock. There are no outstanding shares of preferred stock, and this amendment would not change the number of authorized shares of preferred stock.

*Reasons for and Effects of Increasing the Company's Authorized Common Stock.* The Company believes that the number of shares of common stock currently available for issuance may be insufficient to meet the Company's future needs. The additional shares may be used for various purposes, including:

paying stock dividends or effecting stock splits;

raising capital;

providing equity incentives to employees, officers and directors;

expanding the Company's business through acquisitions; and

other general corporate purposes.

The Board of Directors has preliminarily discussed the possibility of a stock split by means of a stock dividend. However, the Company does not currently have sufficient authorized shares to effect a stock split. If proposal 2(a) is approved by the Company's stockholders, the Board may again consider a stock split in the form of a stock dividend in the near term. A decision on whether to effect a stock split is subject to many factors, including prevailing market conditions, and there can be no assurances that a stock split will occur. Except for considering the possibility of a stock split in the form of a stock dividend, the Company currently has no specific plans to issue the additional shares of common stock that would be authorized by this proposal.

Like the presently authorized but unissued shares of the Company's common stock, the additional shares of common stock authorized by this proposal would be available for issuance without further action by the Company's stockholders, unless further action is required by law, the rules of the New York Stock Exchange or any other stock exchange on which Company common stock may be listed in the future. The authorization of additional shares of the Company's common stock will enable the Company, as the need may arise, to take advantage of market conditions and favorable opportunities without the delay and expense associated with the holding of a special meeting of the Company's stockholders.

The Company could also use the additional shares of common stock to oppose a hostile takeover attempt or delay or prevent changes in control or management. For example, without further stockholder approval, the Company could adopt a "poison pill" that would, under certain circumstances related to an acquisition of shares that the Company did not approve, give certain holders the right to acquire additional shares of common stock at a low price. The Company also could strategically sell shares of common stock in a private transaction to purchasers who would oppose a takeover or favor the current Board. This proposal to increase the authorized number of shares of common stock has been prompted by business and financial considerations, and not by the threat of any hostile takeover attempt (nor is the Company currently aware of any such attempts directed at it). However, stockholders should be aware that approval of this proposal could facilitate future efforts to prevent changes in control of the Board, including transactions in which stockholders might otherwise receive a premium for their shares over then current market prices.

To the extent that additional authorized shares are issued in the future, they may decrease the existing stockholders' percentage equity ownership and, depending on the price at which they are issued, could be dilutive to the existing stockholders. The holders of common stock have no preemptive rights and the Board has no plans to grant such rights with respect to any such shares.

*Resolution Approving the Proposed Amendment to Increase the Authorized Shares of Common Stock*

The following resolution, which will be presented to the annual meeting, will adopt the proposed amendment to the Second Amended and Restated Certificate of Incorporation to increase the authorized shares of common stock:

RESOLVED, that the Second Amended and Restated Certificate of Incorporation of the Company be amended by deleting the first sentence of Article Four and substituting the following in lieu thereof:

The total number of shares of all classes of stock which the Corporation shall have authority to issue is 149,000,000 shares, consisting solely of (i) 144,000,000 shares of common stock, par value \$.01 per share (the Common Stock), and (ii) 5,000,000 shares of preferred stock, par value \$.01 per share (the Preferred Stock).

**Proposal 2(b): Removal of Article Six Relating to Oil and Gas Opportunities**

Article Six of the Company's Second Amended and Restated Certificate of Incorporation provides that certain principal stockholders of the Company and their affiliates may pursue business opportunities related to or competitive with the Company's business of acquiring, developing and exploiting North American oil and natural gas reserves. In addition, as allowed by the Delaware General Corporation Law, the Company in Article Six renounces any interest or expectation in any oil and natural gas opportunities known to a principal stockholder or its affiliates.

Article Six defines "principal stockholders" as Warburg, Pincus Equity Partners L.P., J.P. Morgan Partners (SBIC), LLC, Natural Gas Partners V, L.P. and First Union Capital Partners, Inc. These entities were early investors in the Company and have reduced or disposed of all or substantially all of their ownership interests in the Company. Under Delaware law, directors, officers and controlling stockholders of a corporation may not appropriate a corporate opportunity belonging to the corporation unless the corporation provides otherwise in its certificate of incorporation or by board resolution. For this reason, the Company believes it is no longer necessary to include provisions governing corporate opportunities in the Second Amended and Restated Certificate of Incorporation. The removal of Article Six may make it less desirable for one of the

principal stockholders or its affiliates to acquire a significant interest in the Company in the future. No change will occur to the rights and privileges afforded to the Company's stockholders, other than the principal stockholders, under the current Second Amended and Restated Certificate of Incorporation.

*Resolution Approving the Proposed Amendment to Delete Article Six Relating to Oil and Gas Opportunities*

The following resolution, which will be presented to the annual meeting, will adopt the proposed amendment to the Second Amended and Restated Certificate of Incorporation to delete Article Six relating to oil and gas opportunities:

RESOLVED, that the Second Amended and Restated Certificate of Incorporation of the Company be amended by deleting Article Six thereof in its entirety.

**Required Vote**

The approval of proposal 2(a) and proposal 2(b) each require the affirmative vote of the holders of a majority of the shares of common stock outstanding on the record date. For this reason, abstentions and broker non-votes will effectively count as a vote against the proposal.

**Effectiveness of Amendments**

If either or both of the amendments to the Company's Second Amended and Restated Certificate of Incorporation are approved by the Company's stockholders, such amendment or amendments, as the case may be, will become effective when the Company files a certificate of amendment with the Secretary of State of the State of Delaware.

**Board Recommendation**

**The Board recommends that stockholders vote FOR the amendments of the Second Amended and Restated Certificate of Incorporation.**

**PROPOSAL NO. 3  
RATIFICATION OF THE APPOINTMENT OF  
THE INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Audit Committee of the Board has appointed Ernst & Young LLP as the independent registered public accounting firm to audit the Company's consolidated financial statements as of and for the fiscal year ending December 31, 2005 and the Company's internal controls over financial reporting. During fiscal 2004, Ernst & Young LLP served as the Company's independent registered public accounting firm and also provided certain tax and other audit-related services. See "Principal Accountant Fees and Services" on page 24. Representatives of Ernst & Young LLP are expected to attend the annual meeting, where they will be available to respond to appropriate questions and, if they desire, to make a statement.

**Required Vote**

Ratification of the appointment of Ernst & Young LLP as the Company's independent registered public accounting firm for fiscal 2005 requires the affirmative vote of a majority of the votes cast on the proposal at the annual meeting. If the appointment is not ratified, the Board will consider whether it should select another independent registered public accounting firm.

**Board Recommendation**

**Our Board recommends a vote FOR the ratification of the appointment of Ernst & Young LLP as the Company's independent registered public accounting firm for the 2005 fiscal year.**

**SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

The following table sets forth certain information as of March 15, 2005, regarding the ownership of the Company's common stock by:

all persons known by the Company to be beneficial owners of more than five percent of the Company's stock;

each director nominee;

each of the Company's executive officers named in the Summary Compensation Table below; and

all directors and named executive officers of the Company as a group.

Unless otherwise noted, the persons named below have sole voting and investment power with respect to such shares.

Name and Address of Beneficial Owner	Shares Beneficially Owned(1)(2)	Percent of Class
FMR Corp.(3) 82 Devonshire Street Boston, Massachusetts 02109	4,083,072	12.4
T. Rowe Price Associates, Inc.(4) 100 East Pratt Street Baltimore, Maryland 21202	3,232,532	9.8
Baron Capital Group, Inc.(5) 767 Fifth Avenue New York, NY 10153	2,925,350	8.9
Wellington Management Company, LLP(6) 75 State Street Boston, Massachusetts 02109	1,744,300	5.3
I. Jon Brumley(7)	1,972,540	6.0
Jon S. Brumley	470,340	1.4
Robert S. Jacobs	93,391	*
Thomas H. Olle	32,001	*
Roy W. Jageman	28,885	*
Martin C. Bowen	1,667	*
Ted Collins, Jr.	7,000	*
Ted A. Gardner	5,000	*
John V. Genova	1,667	*
Howard H. Newman	583	*
James A. Winne III	7,000	*
Ronald Baron(5)	2,925,350	8.9
All directors and named executive officers as a group (11 persons)	2,620,074	7.9

\* Less than 1%.

(1) Includes common stock for which the indicated owner has sole or shared voting or investment power.

(2)

Includes options that are or become exercisable within 60 days of March 15, 2005 as follows: Mr. I. Jon Brumley (148,382), Mr. Jon S. Brumley (132,021), Mr. Olle (16,881), Mr. Jageman (14,852), Mr. Jacobs (10,289), Mr. Gardner (5,000), Mr. Collins (7,000), Mr. Winne (7,000), Mr. Bowen (1,667) and Mr. Genova (1,667), and all directors and named executive officers as a group (344,759) upon the exercise of stock options granted pursuant to the Company's 2000 Incentive Stock Plan.

- (3) Based on an amendment to Schedule 13G filed with the Securities and Exchange Commission on February 14, 2005 by FMR Corp., Edward C. Johnson 3d, chairman of FMR Corp. and Abigail P.

Johnson, a director of FMR Corp. Such filing indicates that FMR Corp. has sole voting power with respect to 824,200 shares and that FMR Corp., Edward C. Johnson 3d and Abigail P. Johnson each have sole dispositive power with respect to 4,083,072 shares. Fidelity Management & Research Company, an investment advisor and wholly owned subsidiary of FMR Corp. ( Fidelity ), is the beneficial owner of 3,258,872 shares as a result of acting as investment adviser to various investment companies. Fidelity Management Trust Company, a wholly owned subsidiary of FMR Corp., is the beneficial owner of 824,200 shares as a result of its serving as investment manager of the institutional account(s). Members of the Johnson family, including Edward C. Johnson 3d and Abigail P. Johnson, are the predominant owners of Class B shares of common stock of FMR Corp., representing approximately 49% of the voting power of FMR Corp.