

GENESEE & WYOMING INC
Form DEF 14A
April 08, 2014

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
SCHEDULE 14A

Information Required in Proxy Statement
Schedule 14A Information
Proxy Statement Pursuant to Section 14(a) of
the Securities Exchange Act of 1934
(Amendment No.)

Filed by the Registrant
Filed by a Party other than the Registrant

Check the appropriate box:

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

GENESEE & WYOMING INC.

(Name of Registrant as Specified in its Charter)

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

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

Title of each class of securities to which transaction applies:

(1)

Aggregate number of securities to which transaction applies:

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Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11
(set forth the amount on which the filing fee is calculated and state how it was determined):

(3)

Proposed maximum aggregate value of transaction:

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Fee paid previously with preliminary materials.

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Amount Previously Paid:

(1)

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

Filing Party:
(3)

Date Filed:
(4)

GENESEE & WYOMING INC.

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

May 21, 2014

The annual meeting of stockholders of Genesee & Wyoming Inc. (the “Company,” “we,” “us” or “our”) will be held at the Hyatt Regency Greenwich, 1800 East Putnam Avenue, Old Greenwich, Connecticut 06870, on May 21, 2014, at 10:00 a.m., Eastern Daylight Time, for the following purposes:

- to elect the three directors listed herein;
- to approve, in a non-binding, advisory vote, the compensation paid to our named executive officers as described in the attached proxy statement;
- to ratify the selection of PricewaterhouseCoopers LLP as our independent registered public accounting firm for our fiscal year ending December 31, 2014; and
- to transact such other business as may properly come before our annual meeting, or any adjournments or postponements of the meeting.

The Board of Directors of the Company has fixed the close of business on April 1, 2014 as the record date for the determination of stockholders entitled to notice of and to vote at our annual meeting and any adjournments or postponements of the meeting.

The Company is once again taking advantage of the Securities and Exchange Commission rules that allow us to furnish our proxy materials over the Internet to our stockholders rather than in paper form. We believe that this delivery process will expedite our stockholders’ receipt of our proxy materials, reduce the environmental impact of our annual meeting of stockholders and lower the costs of printing and distributing our proxy materials. Accordingly, unless you have previously requested receipt of our proxy materials in paper form, you will receive a Notice of Internet Availability of Proxy Materials (the “Notice”), which we expect to mail on or about April 7, 2014.

To ensure that your shares are properly represented at our annual meeting, whether you attend it or not, please vote your shares over the Internet, by telephone or, if you elect to receive a hard copy of your proxy materials, by completing, signing and returning the proxy card by mail. Please review the voting instructions on the Notice or the proxy card, as the case may be. If your shares are held in “street name,” please contact your bank, broker or other holder of record to determine whether you will be able to transmit voting instructions by telephone or through the Internet, or follow the instructions on the voting form they send to you. Voting procedures are described in the General Information section beginning on page 1 of the proxy statement, as well as on the proxy card and on the Notice.

This Notice of Annual Meeting of Stockholders and proxy statement, along with our annual report to stockholders, which includes our Form 10-K for our fiscal year ended December 31, 2013 and our related audited financial statements, are first being distributed or made available to stockholders, as the case may be, on or about April 7, 2014.

BY ORDER OF THE BOARD OF DIRECTORS

Allison M. Fergus
General Counsel and Secretary

April 7, 2014

GENESEE & WYOMING INC.

Principal Executive Offices:

20 West Avenue

Darien, Connecticut 06820

PROXY STATEMENT

Our Board of Directors, or the Board, is soliciting proxies to be voted at our annual meeting of stockholders to be held at the Hyatt Regency Greenwich, 1800 East Putnam Avenue, Old Greenwich, Connecticut 06870, on May 21, 2014, at 10:00 a.m., Eastern Daylight Time, or at any adjournments or postponements of the annual meeting.

TABLE OF CONTENTS

<u>GENERAL INFORMATION</u>	<u>1</u>
<u>ANNUAL REPORT</u>	<u>5</u>
<u>PROPOSAL ONE: ELECTION OF DIRECTORS</u>	<u>6</u>
<u>RELATED PERSON TRANSACTIONS</u>	<u>12</u>
<u>CORPORATE GOVERNANCE</u>	<u>13</u>
<u>2013 DIRECTOR COMPENSATION</u>	<u>19</u>
<u>EXECUTIVE OFFICERS</u>	<u>25</u>
<u>EXECUTIVE COMPENSATION</u>	<u>26</u>
<u>COMPENSATION DISCUSSION AND ANALYSIS</u>	<u>26</u>
<u>COMPENSATION COMMITTEE REPORT</u>	<u>43</u>
<u>SUMMARY COMPENSATION TABLE</u>	<u>44</u>
<u>2013 GRANTS OF PLAN-BASED AWARDS</u>	<u>45</u>
<u>OUTSTANDING EQUITY AWARDS AT FISCAL YEAR END 2013</u>	<u>48</u>
<u>2013 OPTION EXERCISES AND STOCK VESTED</u>	<u>52</u>
<u>2013 PENSION BENEFITS</u>	<u>52</u>
<u>2013 NONQUALIFIED DEFERRED COMPENSATION</u>	<u>52</u>
<u>POTENTIAL PAYMENTS UPON TERMINATION, CHANGE OF CONTROL AND OTHER EVENTS</u>	<u>55</u>
<u>SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT</u>	<u>58</u>
<u>PROPOSAL TWO: NON-BINDING, ADVISORY VOTE ON EXECUTIVE COMPENSATION</u>	<u>61</u>
<u>PROPOSAL THREE: RATIFICATION OF THE SELECTION OF INDEPENDENT AUDITORS</u>	<u>63</u>
<u>STOCKHOLDER PROPOSALS FOR 2015 ANNUAL MEETING</u>	<u>65</u>
<u>HOUSEHOLDING OF PROXY MATERIALS</u>	<u>66</u>
<u>REPORT OF THE AUDIT COMMITTEE</u>	<u>67</u>
<u>RECONCILIATION OF NON-GAAP FINANCIAL MEASURES</u>	<u>68</u>
<u>OTHER MATTERS</u>	<u>71</u>

GENERAL INFORMATION

Why am I being provided with these proxy materials?

We have made this proxy statement and our annual report for the fiscal year ended December 31, 2013 (the “Annual Report” and collectively with this proxy statement, the “Proxy Materials”) available to you on the Internet or, upon your request, have delivered printed versions of these materials to you by mail in connection with the solicitation by our Board of proxies to be voted at our annual meeting of stockholders. Directors, officers and other Company employees may also solicit proxies by telephone or otherwise. We will bear the cost of this solicitation. Our Board has fixed the close of business on April 1, 2014 as the record date (“Record Date”) for our annual meeting. Only stockholders of record as of the Record Date are entitled to notice of and to vote at our annual meeting or at any adjournments or postponements thereof, in person or by proxy. The Proxy Materials are being made available to you because you owned shares of our common stock as of the close of business on the Record Date. This proxy statement describes the matters on which we would like you to vote and provides information on those matters so that you can make an informed voting decision.

Why did I receive a one-page notice in the mail regarding the Internet availability of proxy materials instead of a full set of Proxy Materials?

Pursuant to rules adopted by the United States Securities and Exchange Commission (the “SEC”), we have elected to provide stockholders access to our Proxy Materials over the Internet. We believe that this e-proxy process will expedite our stockholders’ receipt of Proxy Materials, reduce the environmental impact of our annual meeting and lower the costs of printing and distributing our Proxy Materials. Accordingly, we expect to send a Notice of Internet Availability of Proxy Materials (the “Notice”) on or about April 7, 2014 to stockholders of record entitled to vote at the annual meeting. If you receive the Notice by mail, you will not receive a printed copy of the Proxy Materials unless you specifically request a printed copy.

All stockholders will have the ability to access the Proxy Materials on a website referred to in the Notice, to download printable versions of the Proxy Materials from our website or to request and receive a printed copy of the Proxy Materials from us. Instructions on how to access the Proxy Materials over the Internet or to request a printed copy from us may be found on the Notice. If you receive paper copies of the Proxy Materials, a proxy card will also be enclosed.

What will I be voting on?

- to elect the three directors listed herein (see page 6);
- to approve, in a non-binding, advisory vote, the compensation paid to our named executive officers as described in this proxy statement (see page 61);
- to ratify the selection of PricewaterhouseCoopers LLP (“PwC”) as our independent registered public accounting firm for our fiscal year ending December 31, 2014 (see page 63); and
- to transact such other business as may properly come before our annual meeting or any adjournments or postponements of the meeting.

How many votes must be present to hold the meeting?

The holders of a majority of the voting power of the Company’s Class A Common Stock, par value \$0.01 per share (“Class A Common Stock”), and Class B Common Stock, par value \$0.01 per share (“Class B Common Stock”), must be present in person or by proxy to hold our annual meeting.

How many shares are entitled to vote?

As of the close of business on April 1, 2014, there were 52,081,437 shares of our Class A Common Stock outstanding and entitled to vote, and 1,608,989 shares of our Class B Common Stock outstanding and entitled to vote.

How many votes do I have?

If you are a holder of our Class A Common Stock, then you are entitled to one vote per share of Class A Common Stock that you held as of the close of business on April 1, 2014. If you are a holder of our Class B Common Stock, then you are entitled to ten votes per share of Class B Common Stock that you held as of the close of business on April 1, 2014. All matters expected to be voted on at our annual meeting will be voted on by the holders of our Class A Common Stock and Class B Common Stock, voting together as a single class.

How do I vote my shares without attending the annual meeting?

If you are a stockholder of record or a participant in our employee stock purchase plan, you may vote by granting a proxy in one of the three following ways:

By Internet —You may submit your proxy by going to www.proxyvote.com and by following the instructions on how to complete an electronic proxy card. You will need the 12-digit Control Number included on your Notice or your proxy card in order to vote by Internet.

By Telephone —You may submit your proxy by dialing (800) 690-6903. You will need the 12-digit Control Number included on your Notice or your proxy card in order to vote by telephone.

By Mail —If you have not already received a proxy card, you may request a hard copy of your Proxy Materials from us by following the instructions on your Notice. When you receive the proxy card, mark your selection on the proxy card, date and sign your name exactly as it appears on your proxy card. If you are signing in a representative capacity (for example, as guardian, executor, trustee, custodian, attorney or officer of a corporation), indicate your name and title or capacity. Mail the proxy card in the postage-paid envelope that will be provided to you.

If you hold your shares in street name, you may vote by submitting voting instructions to your bank, broker or other nominee. In most instances, you will be able to do this over the Internet, by telephone or by mail as indicated above. Please refer to information from your bank, broker or other nominee on how to submit voting instructions.

Internet and telephone voting will close at 11:59 p.m. (Eastern Daylight Time) on May 20, 2014 for the voting of shares held by stockholders of record or held in “street name” and will close at 11:59 p.m. (Eastern Daylight Time) on May 18, 2014 for the voting of shares held by participants in our employee stock purchase plan.

Mailed proxy cards representing shares held by stockholders of record or held in “street name” must be received no later than May 20, 2014. Mailed proxy cards representing shares held by participants in our employee stock purchase plan must be received no later than May 18, 2014.

What is the difference between holding shares as a stockholder of record and in “street name” as a beneficial owner? If your shares are registered directly in your name with our transfer agent, Computershare, you are considered, with respect to those shares, the “stockholder of record.” We have sent the Notice or, if requested, the Proxy Materials directly to you.

If your shares are held in a stock brokerage account or by a bank or other holder of record, you are considered the “beneficial owner” of shares held in “street name.” The Notice, or Proxy Materials, if you elected to receive a hard copy, have been forwarded to you by your broker, bank or other holder of record who is considered, with respect to those shares, the stockholder of record. As the beneficial owner, you have the right to direct your broker, bank or other holder of record on how to vote your shares by following their instructions for voting.

How do I vote my shares in person at the annual meeting?

First, as described below, you must satisfy the requirements for admission to the annual meeting. Then, if you are a stockholder of record and prefer to vote your shares at the annual meeting, you must bring proof of identification along with your Notice or proof of ownership. You may vote shares held in “street name” at the annual meeting only if you obtain a signed proxy from the record holder (the broker or other nominee) giving you the right to vote the shares. Shares held through our employee stock purchase plans cannot be voted in person at the annual meeting.

Even if you plan to attend the annual meeting, we encourage you to vote in advance by Internet, telephone or proxy card, if you elected to receive a hard copy of your Proxy Materials, so that your vote will be counted even if you later decide not to attend the annual meeting.

What do I need to do if I want to attend the annual meeting?

You do not need to make a reservation to attend the annual meeting. However, please note that you will need to demonstrate that you were a stockholder on the Record Date to be admitted to the meeting. If your shares are held in the name of your bank, broker or through our employee stock purchase plan or other holder of record, you will need to bring evidence of your stock ownership. If you do not have proof that you owned our stock as of the Record Date, you may not be admitted to the meeting. Attendance at the annual meeting is limited to our stockholders of record, participants of our employee stock purchase plan and beneficial owners, in each case as of the Record Date, members of their immediate families or their named representatives as well as other invitees of the Company. We reserve the right to limit the number of representatives and immediate family members who may attend the meeting. Directions to the meeting are set forth on our website at www.gwrr.com/annualmeeting.

Can I change or revoke my vote?

Yes. If you are a stockholder of record or a participant in the employee stock purchase plan, you may revoke your proxy or change your vote at any time before your proxy is voted. The last vote cast is what counts. To revoke your proxy or change your vote, you must use the same means as you did to originally cast your vote, unless you vote in person at our annual meeting:

if you voted by telephone or through the Internet, follow the same “vote by telephone” or “vote by Internet” instructions provided in the Notice before the closing of those voting facilities at 11:59 p.m. (Eastern Daylight Time) on May 20, 2014 in the case of shares voted by stockholders of record and at 11:59 p.m. (Eastern Daylight Time) on May 18, 2014 in the case of shares voted by participants in our employee stock purchase plan; or

if you voted by mail, send written notice to our Secretary at the address set forth in this proxy statement, for receipt no later than May 20, 2014 in the case of shares voted by stockholders of record and no later than May 18, 2014 in the case of shares voted by participants in our employee stock purchase plan.

If your shares are held in “street name,” please refer to the information forwarded to you by your bank, broker or other holder of record for procedures on revoking or changing your proxy vote.

How many votes are required for the proposals to pass?

Directors are elected by a plurality vote, which means that the three director nominees with the greatest number of votes cast, even if less than a majority, will be elected.

The non-binding, advisory vote on the compensation paid to our named executive officers and the proposal to ratify the selection of PwC as the Company’s independent registered public accounting firm for the Company’s fiscal year ending December 31, 2014 each requires the affirmative vote of a majority of the voting power of the shares of our common stock present in person or represented by proxy and entitled to vote on the matter. It is important to note that these proposals are both non-binding and advisory. Therefore, the Company and/or the Board of Directors may determine to act in a manner inconsistent with the outcomes of such proposals.

How are votes counted?

With respect to the election of directors, you may vote “FOR” all nominees for the Board, or you may “WITHHOLD” authority to vote for one or more nominees. A “WITHHOLD” vote and broker non-vote will have the same effect as an abstention and will not count as a vote “FOR” or “AGAINST” a director because directors are elected by plurality voting, but will be counted for purposes of determining if a quorum is present at the annual meeting.

With respect to the non-binding, advisory vote on the compensation paid to our named executive officers, you may vote “FOR,” “AGAINST,” or “ABSTAIN.” Abstentions will count as an “AGAINST” vote and will count as shares present for determining if a quorum is present at the annual meeting. Broker non-votes will have no effect in determining whether the proposals are approved because the shares subject to the “broker non-vote” will not be deemed entitled to vote on this matter, but will be counted for purposes of determining if a quorum is present at the annual meeting.

With respect to the ratification of the selection of PwC as the Company’s independent registered public accounting firm for the Company’s fiscal year ending December 31, 2014, you may vote “FOR,” “AGAINST,” or “ABSTAIN.” Abstentions will count as an “AGAINST” vote and will count as shares present for determining if a quorum is present at the annual meeting. There are no broker non-votes for auditor ratification because brokers have discretion to vote on the ratification of the selection of the Company’s independent registered public accounting firm.

What if I do not specify a choice for a matter when returning a proxy?

Stockholders should specify their choice for each matter described in the Notice, or the proxy card, as the case may be. If no specific instructions are given, proxies which are signed and returned will be voted FOR the election of each of the director nominees listed herein, FOR the advisory vote on the compensation paid to our named executive officers and FOR the proposal to ratify the appointment of PwC as our independent registered public accounting firm for our fiscal year ending December 31, 2014, and in accordance with the discretion of the holders of the proxy with respect to all other matters that properly come before our annual meeting or any adjournment or postponement thereof.

What if I don't vote my shares by proxy and don't attend the Company's annual meeting?

If you are a "stockholder of record" (that is, your shares are registered in your own name with our transfer agent) or a participant in our employee stock purchase plan and you do not vote your shares, your shares will not be voted. If you are a "beneficial owner" of shares held in "street name," and you do not give your bank, broker or other holder of record specific voting instructions for your shares, under rules of the New York Stock Exchange (the "NYSE"), your bank, broker or other holder of record will be unable to exercise discretionary authority for you with regard to the election of director nominees listed herein or the non-binding advisory vote on the compensation paid to our named executive officers. However, if you are a "beneficial owner" of shares held in "street name," and you do not give your bank, broker or other holder of record specific voting instructions for your shares, your bank, broker or other holder of record will be able to exercise discretionary authority for you with regard to the ratification of the selection of PwC as the Company's independent registered public accounting firm for the Company's fiscal year ending December 31, 2014.

What happens if a nominee for director declines or is unable to accept election?

Our Board does not contemplate that any of the nominees will be unable to serve as a director, but if that contingency should occur prior to the voting of the proxies, the persons named in the proxy card reserve the right to vote for such substitute nominee or nominees as they, in their discretion, may determine. Therefore, if you vote by proxy, and if unforeseen circumstances make it necessary or desirable for our Board to substitute another person for a director nominee, we will vote your shares for that other person.

Will anyone contact me regarding this vote?

No arrangements or contracts have been made with any proxy solicitors as of the date of this proxy statement, although we reserve the right to engage solicitors if we deem them necessary. Such solicitations may be made by mail, telephone, facsimile, e-mail or personal interviews.

Will the annual meeting be webcast?

Our annual meeting will not be webcast.

ANNUAL REPORT

How can I access electronically or receive a copy of the Company's Proxy Materials, including the Annual Report? This proxy statement, the proxy card and the Company's Annual Report are being made available to the Company's stockholders on the Internet at www.proxyvote.com through the notice and access process. The Annual Report includes our audited financial statements for our fiscal year ended December 31, 2013, along with other financial information about our Company, which we urge you to read carefully.

All stockholders will have the ability to access the Proxy Materials on the website referred to in the Notice of Internet Availability and to download printable versions of the Proxy Materials or to request and receive a printed set of the Proxy Materials from us. If you own your shares of common stock of the Company in your name and wish to receive a printed copy or stop receiving printed copies from us, you can make such a request by phone at (800) 579-1639, by e-mail to sendmaterial@proxyvote.com or through the Internet at www.proxyvote.com. You will need your 12-digit Control Number located on your Notice of Internet Availability to make such a request. If you hold your shares of common stock through a bank, broker or other holder of record, please refer to the information provided by that entity for instructions on how to request printed copies of future Proxy Materials. Your choice will remain in effect unless you change your election. You will be provided with the opportunity to receive hard copies of the Proxy Materials in future mailings.

How can I access electronically or receive a copy of the Form 10-K?

Our Form 10-K is included in our Annual Report, which is being made available to the Company's stockholders on the Internet at www.proxyvote.com on or around April 7, 2014.

You can also obtain, free of charge, a copy of our Form 10-K (including the financial statements and the financial statement schedules, if any), by:

- accessing our Internet site at www.gwrr.com/investors;
- writing to us at Genesee & Wyoming Inc., Corporate Communications, 20 West Avenue, Darien, Connecticut 06820; or
- telephoning us at: (203) 202-8900.

You can also obtain a copy of our Form 10-K and other periodic filings that we make with the SEC from the SEC's EDGAR database at www.sec.gov.

PROPOSAL ONE:
ELECTION OF DIRECTORS

Our by-laws allow us to set the size of our Board to be between three and 15 directors, and currently our Board is composed of 10 directors. Our Restated Certificate of Incorporation provides for a classified Board, consisting of three classes of directors, with each class serving staggered three-year terms. As a result, only a portion of our Board is elected each year. The three directors identified below, Messrs. Fuller, Hellmann and Melzer, are to be elected by our stockholders for a three-year term expiring in 2017, or until their respective successors are duly elected and qualified.

Our Board unanimously recommends that stockholders vote FOR the election of each of
Mortimer B. Fuller III, John C. Hellmann and Robert M. Melzer

Proposed For Election as Director
for a Three-Year Term Expiring in 2017

Name and Age on April 1,
2014

Principal Occupation, Business Experience and Other Directorships

Mortimer B. Fuller III

Principal Occupation: Chairman of the Board of Genesee & Wyoming Inc. since 1977.

Business Experience: Chairman of the Board and Executive Chairman of Genesee & Wyoming Inc. from 2007 to 2009; Chairman of the Board and Chief Executive Officer of Genesee & Wyoming Inc. from 1977 to 2007 and President of Genesee & Wyoming Inc. from 1977 to 1997.

Other Directorships: Mr. Fuller does not currently serve on the Board of Directors of any other public companies.

Age 71

Director since 1973

Committees: Mr. Fuller does not currently serve as a member of any of the Committees of our Board.

In connection with his nomination to the Board, the Board believes that Mr. Fuller's legacy familial ownership of the Company from its beginning as a 14-mile short line railroad to a Company operating 111 railroads in the United States, Australia, Canada and Europe, as well as his longstanding leadership as the founder and Chief Executive Officer of Genesee & Wyoming Inc., gives him invaluable insights into the Company's challenges, opportunities and operations.

John C. Hellmann

Age 43

Director since 2006

Principal Occupation: Chief Executive Officer of Genesee & Wyoming Inc. since 2007 and President since 2005.

Business Experience: Chief Financial Officer of Genesee & Wyoming Inc. from 2000 to 2005.

Other Directorships: Association of American Railroads

Committees: Mr. Hellmann does not currently serve as a member of any of the Committees of our Board.

In connection with his nomination to the Board, the Board considered Mr. Hellmann's extensive involvement in orchestrating the Company's growth in his existing and previous managerial capacities, which provides him with in-depth knowledge of the Company's operations, the leadership he has exhibited as Chief Executive Officer and his skill in developing effective strategies for the Company. Mr. Hellmann's significant international business experience and his expertise in valuing and acquiring companies were also recognized when Mr. Hellmann was considered as a nominee.

For additional information on Mr. Hellmann's business experience, see "Executive Officers" on page 25.

Name and Age on April 1,
2014

Principal Occupation, Business Experience and Other Directorships

Robert M. Melzer

Principal Occupation: Retired.

Business Experience: President and Chief Executive Officer of Property Capital Trust (real estate investment trust) from 1992 to 1999; Chief Financial Officer of Property Capital Trust from 1990 to 1996.

Other Directorships: Mr. Melzer does not currently serve on the Board of Directors of any other public companies.

Committees: Mr. Melzer currently serves as a member of the Audit and Compensation Committees of our Board.

Age 73
Director since 1997

In connection with his nomination to the Board, the Board considered Mr. Melzer's extensive knowledge of all facets of managing an organization and his expertise in deal structuring and financial and accounting matters, which are of significant importance to the Board. In his capacity as a member of the Company's Audit Committee, Mr. Melzer has been particularly focused on the quality and integrity of the Company's financial statements since he joined the Board in 1997. As Mr. Melzer has reached age 70, he voluntarily submitted his resignation from the Board to the Chairman of the Governance Committee in accordance with the Company's Corporate Governance Principles. Following consideration and in light of Mr. Melzer's continued contributions to the Board and his significant knowledge and experience with the Company, the resignation was not accepted. If elected, Mr. Melzer has voluntarily agreed to submit his resignation on an annual basis for the remainder of his three year term in furtherance of the Company's Corporate Governance Guidelines.