

ALEXANDERS J CORP
Form PRRN14A
May 31, 2012

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

SCHEDULE 14A
(Rule 14a-101)

INFORMATION REQUIRED IN PROXY STATEMENT

SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934

(Amendment No. 2)

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 Under Rule 14a-12

J. ALEXANDER'S CORPORATION
(Name of Registrant as Specified in Its Charter)

PRIVET FUND LP
PRIVET FUND MANAGEMENT LLC
RYAN LEVENSON
BEN ROSENZWEIG
TODD DIENER

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

Payment of Filing Fee (Check the appropriate box):

- No fee required.

o Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.(1)

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(2) Aggregate number of securities to which transaction applies:

(3) 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):

(4) Proposed maximum aggregate value of transaction:

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(3) Filing Party:

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PRELIMINARY PROXY SUBJECT TO COMPLETION

DATED MAY 31 , 2012

THE COMMITTEE TO STRENGTHEN J. ALEXANDER'S
_____, 2012

Dear Fellow J. Alexander's Shareholder:

As of the date of this proxy statement, members of The Committee to Strengthen J. Alexander's (the "Committee," "our" or "we") own an aggregate of 593,985 shares of common stock of J. Alexander's Corporation ("J. Alexander's" or the "Company"), representing approximately 9.9% of the Company's outstanding shares of common stock. We are soliciting proxies to elect [two] experienced and highly qualified director candidates at J. Alexander's upcoming 2012 Annual Meeting of shareholders (the "Annual Meeting"). We are doing so because we believe the current Board of Directors of the Company (the "Board") has consistently failed to act in your best interests. We believe that the Company's Board, currently composed of only three independent directors, would greatly benefit from the addition of highly qualified director nominees to bring fresh and unique perspectives. As one of the Company's largest shareholders, our interests are directly and properly aligned with the interests of other shareholders.

The Committee is composed of Privet Fund LP, ("Privet Fund"), Privet Fund Management LLC ("Privet Management", and together with Privet Fund, "Privet"), Benjamin Rosenzweig and our nominees, Ryan Levenson and Todd Diener (the "Nominees"). By way of introduction, Privet is an investment firm that seeks to identify and invest in small capitalization companies believed to be valued at significant discounts to their intrinsic value. In most cases the companies in which we invest have a long history of underperformance as compared to their peer companies and other relevant benchmarks. Before we decide to commit capital, we engage in significant amounts of research and due diligence, delving deep into business fundamentals and the broader industry environment. Once we are convinced that there is an opportunity to recognize meaningful value, we will then invest. As investors, our approach is to actively engage with management teams and boards of directors in a constructive and collaborative manner to identify and implement strategies that can drive significant increases in shareholder value.

We are seeking your support at the Annual Meeting to elect [two] director candidates in order to ensure that the interests of the shareholders, the owners of J. Alexander's, are properly represented in the boardroom. These director candidates are committed to representing shareholder interests by effectively addressing the critical issues facing the Company and, if elected, are committed to working with management and the Board to maximize value for all shareholders.

Contrary to what the Company has publicly stated, we are not seeking control of the Company's Board, nor are we looking to exit our position after turning a quick profit.

We have one goal - maximize value for the benefit of all shareholders.

We believe that the Company's current management and Board have presided over a period of significant value destruction for the Company's shareholders that cannot be obscured by a recent industry recovery (see "Reasons for Our Solicitation"). We are further troubled by the Company's current restaurant operating margins and history of declining guest counts.

As one of the largest shareholders of the Company, our interests are directly aligned with the interests of all shareholders. The current independent members of the Board directly own just 0.1% of the Company's outstanding shares despite an average tenure of approximately eight years. This compares to our ownership of 9.9% of the outstanding shares of J. Alexander's. We strongly believe the Company's Board would benefit from shareholder representation. We believe that J. Alexander's has a history of poor governance practices that calls into question the Board's independence and its oversight of management. These include excessive compensation for sub-par long term performance, a combined Chairman and CEO position for 22 years, the historical lack of a formal Nominating and Governance Committee and a recently adopted poison pill. We do not believe these actions, all overseen by the current Board, serve the best interests of shareholders.

The Board is currently comprised of [four] directors. We are seeking [two] seats to ensure that the interests of all shareholders are properly represented in the boardroom. If elected, our Nominees will constitute [half] of the Company's Board and are committed to working constructively with the remaining members of the Board and management to address the serious issues facing the Company.

We urge you to consider carefully the information contained in the attached Proxy Statement and then support our efforts by signing, dating and returning the enclosed GOLD proxy card today. The attached Proxy Statement and the enclosed GOLD proxy card are first being furnished to the shareholders on or about June ____, 2012.

Please do NOT sign the Company's [White] proxy card. In order to vote for our Nominees, it is imperative that you disregard all [White] proxy cards and return each and every GOLD proxy card you receive. If you have already voted the [White] proxy card furnished by the Company, you may exercise your right to change your vote by signing, dating and returning a GOLD proxy card at a later date or by voting in person at the Annual Meeting. Please vote each and every GOLD proxy card you receive.

If you have any questions or require any assistance with your vote, please contact Morrow & Co., LLC who is assisting us, at 1-800-607-0088. Their employees are available should you need any help in casting your vote.

Thank you for your support.

Sincerely,

Ryan Levenson, Chairman
The Committee to Strengthen J. Alexander's

YOUR VOTE IS IMPORTANT!

Please mark, sign and date your GOLD proxy card and return it promptly in the enclosed postage-paid envelope, whether or not you plan to attend the meeting. If you own shares in a brokerage account, your broker cannot vote your shares on the election of directors without your instructions. Therefore, it is imperative that you exercise your right as a shareholder and vote the GOLD card.

If you have any questions, require assistance in voting your GOLD proxy card, or need additional copies of the Committee's proxy materials, please contact Morrow & Co. at the phone numbers or the email address listed below.

Morrow & Co., LLC

470 West Avenue

Stamford, CT 06902

Shareholders call toll free at: 1-800-607-0088

Banks and brokers call collect at: (203) 658-9400

Email us at: votegold@morrowco.com

PRELIMINARY PROXY SUBJECT TO COMPLETION

DATED MAY 31 , 2012

ANNUAL MEETING OF SHAREHOLDERS
OF
J. ALEXANDER'S CORPORATION

PROXY STATEMENT
OF
THE COMMITTEE TO STRENGTHEN J. ALEXANDER'S

PLEASE SIGN, DATE AND MAIL THE ENCLOSED GOLD PROXY CARD TODAY

This Proxy Statement and the enclosed GOLD proxy card are being furnished by The Committee to Strengthen J. Alexander's (the "Committee," "our" or "we") to the shareholders of J. Alexander's Corporation ("J. Alexander's" or "Company"). We are writing to seek your support for the election of our [two] director nominees to the Board of Directors of the Company (the "Board") at the Annual Meeting of Shareholders scheduled to be held on [MEETING DATE], 2012, at [MEETING TIME] at [MEETING LOCATION] (including any adjournments or postponements thereof and any meeting that may be called in lieu thereof, the "Annual Meeting"). This proxy statement (the "Proxy Statement") and the enclosed GOLD proxy card are first being furnished to shareholders on or about June __, 2012.

This Proxy Statement and the enclosed GOLD proxy card are being furnished by the Committee in connection with the solicitation of proxies from J. Alexander's shareholders for the following purposes:

1. To elect our [two] director nominees, [Todd Diener and Ryan Levenson] (the "Nominees"), to serve as directors of the Company to hold office until the 2013 annual meeting of shareholders and until their respective successors have been duly elected and qualified, in opposition to certain of the Company's incumbent directors whose terms expire at the Annual Meeting;
2. To ratify the appointment by the Company's Audit Committee of KPMG LLP as the Company's independent registered public accounting firm for fiscal year 2012; and
3. To transact such other business as may properly come before the Annual Meeting or any adjournment or postponement thereof.

[Because of the way the rules regulating proxy solicitations work, we are not able to solicit authority to vote for any of the Company's nominees. As a result, by voting on the enclosed GOLD proxy card, you will only be able to vote for our two Nominees and not for a full slate of four director nominees.]

[If our Nominees are elected, the remaining two directors will be the two Company nominees receiving a plurality of the votes cast. According to the Company, an average of 33.8% of the Shares voted in each of the last three years have “withheld” voting authority for Mr. Stout¹. If Mr. Stout is not elected at the Annual Meeting, our Nominees would make a proposal at the first Board meeting following the Annual Meeting to expand the Board by one member and appoint Mr. Stout to fill the vacancy created thereby because our Nominees believe that the Board may benefit from having the perspective of the Company’s Chief Executive Officer. There is no assurance that any of the Company’s nominees will serve as a director if our Nominees are elected. We note that, if elected, our Nominees would not constitute a majority of the Board and would not be able to implement such proposal without the support of additional members of the Board. There is no assurance that Mr. Stout would consent to serve as a director if our Nominees are elected.]

The members of the Committee are Privet Fund LP, a Delaware limited partnership (“Privet Fund”), Privet Fund Management LLC, a Delaware limited liability company (“Privet Management” and, together with Privet Fund, “Privet”), Benjamin Rosenzweig and the Nominees. The members of the Committee are deemed participants in this proxy solicitation.

The Company has set the record date for determining shareholders entitled to notice of and to vote at the Annual Meeting as of May 21, 2012 (the “Record Date”). The mailing address of the principal executive offices of the Company is 3401 West End Avenue, Suite 260, P.O. Box 24300, Nashville, Tennessee, 37202. Shareholders of record at the close of business on the Record Date will be entitled to vote at the Annual Meeting. According to the Company, as of the Record Date, there were 5,994,453 shares of common stock, \$0.05 par value per share (the “Shares”), outstanding and entitled to vote at the Annual Meeting. As of the Record Date, the members of the Committee beneficially owned an aggregate of 593,985 Shares, representing approximately 9.9% of the Shares outstanding (based on the Company’s proxy statement). We intend to vote such Shares (i) FOR the election of our Nominees to the Board; and (ii) FOR the ratification of the appointment of KPMG LLP as the Company’s independent registered public accounting firm for its 2012 fiscal year.

THIS SOLICITATION IS BEING MADE BY THE COMMITTEE AND NOT ON BEHALF OF THE BOARD OR MANAGEMENT OF THE COMPANY. WE ARE NOT AWARE OF ANY OTHER MATTERS TO BE BROUGHT BEFORE THE ANNUAL MEETING OTHER THAN AS DESCRIBED HEREIN. SHOULD OTHER MATTERS, WHICH WE ARE NOT AWARE OF A REASONABLE TIME BEFORE THIS SOLICITATION, BE BROUGHT BEFORE THE ANNUAL MEETING, THE PERSONS NAMED AS PROXIES IN THE ENCLOSED GOLD PROXY CARD WILL VOTE ON SUCH MATTERS IN THEIR DISCRETION.

WE URGE YOU TO SIGN, DATE AND RETURN THE GOLD PROXY CARD IN FAVOR OF THE ELECTION OF OUR NOMINEES AND IN FAVOR OF THE APPOINTMENT OF KPMG LLP AS THE COMPANY’S INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM FOR ITS 2012 FISCAL YEAR.

IF YOU HAVE ALREADY SENT A WHITE PROXY CARD FURNISHED BY THE COMPANY’S MANAGEMENT OR THE BOARD, YOU MAY REVOKE THAT PROXY AND VOTE FOR EACH OF THE PROPOSALS DESCRIBED IN THIS PROXY STATEMENT, INCLUDING THE ELECTION OF THE COMMITTEE’S NOMINEES, BY SIGNING, DATING AND RETURNING THE ENCLOSED GOLD PROXY CARD. THE LATEST DATED PROXY IS THE ONLY ONE THAT COUNTS. ANY PROXY MAY BE REVOKED AT ANY TIME PRIOR TO THE ANNUAL MEETING BY DELIVERING A WRITTEN NOTICE OF REVOCATION OR A LATER DATED PROXY FOR THE ANNUAL MEETING TO THE COMMITTEE TO STRENGTHEN J. ALEXANDER’S, C/O MORROW & CO., WHICH IS ASSISTING IN THIS SOLICITATION, OR TO THE SECRETARY OF THE COMPANY, OR BY VOTING IN PERSON AT THE ANNUAL MEETING.

Important Notice Regarding the Availability of Proxy Materials for the Annual Meeting

This Proxy Statement and GOLD proxy card are available at

[INTERNET ADDRESS OF ONLINE PROXY STATEMENT AND PROXY CARD]

1 35.5% withheld in 2011, 38.9% withheld in 2010 and 27.0% withheld in 2009.

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IMPORTANT VOTING INSTRUCTIONS

Your vote is important, no matter how many Shares you own. The Committee urges you to sign, date, and return the enclosed GOLD proxy card today to vote FOR the election of our [two] independent Nominees.

If your Shares are registered in your own name, please sign and date the enclosed GOLD proxy card and return it to The Committee, c/o Morrow & Co., LLC (“Morrow”) in the enclosed postage-paid envelope today.

If your Shares are held with a broker, you are considered the beneficial owner of the Shares, and these proxy materials, together with a GOLD voting instruction form, are being forwarded to you by your broker. Your broker cannot vote your Shares on your behalf without your instructions. Please sign, date and return the GOLD voting instruction form in the enclosed postage-paid envelope today.

Whether your shares are registered in your own name or held with a broker, you should be able to vote either via the Internet or by toll-free telephone. In order to vote via the Internet or toll-free telephone, you will need your “control number.” Your “control number” appears on your GOLD proxy card and/or GOLD voting instruction form. Please refer to the enclosed instructions on how to vote electronically.

Since only your latest dated proxy card will count, we urge you not to return any white proxy card you receive from the Company. Even if you return management’s white proxy card marked “withhold” as a protest against the incumbent directors, it will revoke any GOLD proxy card you may have previously sent to us.

Remember, you can only vote FOR our [two] independent Nominees on our GOLD proxy card. So please make certain that the latest dated proxy card you return is the GOLD proxy card and please vote each and every GOLD proxy card or GOLD voting instruction form you receive.

If you have any questions, require assistance in voting your GOLD proxy card, or need additional copies of the Committee’s proxy materials, please contact Morrow & Co. at the phone numbers or the email address listed below.

Morrow & Co., LLC

470 West Avenue

Stamford, CT 06902

Shareholders call toll free at: 1-800-607-0088

Banks and brokers call collect at: (203) 658-9400

Email us at: votegold@morrowco.com

BACKGROUND TO THE SOLICITATION

After years of monitoring and investing in the restaurant industry, in early 2011 Privet concluded that the valuations in the casual dining sector were not indicative of what Privet viewed as the positive emerging economic trends. Of all the companies that Privet evaluated, Privet concluded that the common equity of J. Alexander's Corp. presented the most compelling long-term investment opportunity. (See "Reasons for Our Solicitation"). As a result, on May 25, 2011, Privet made its initial investment in the Company and continued from time-to-time thereafter to purchase additional shares of J. Alexander's common stock.

The following is a chronology of material events leading up to this proxy solicitation:

On September 23, 2011, Ryan Levenson, Founder and Managing Member of Privet, and Ben Rosenzweig, Privet's analyst responsible for the J. Alexander's investment, held a conference call with Lonnie Stout, Chairman and Chief Executive Officer of the Company and R. Greg Lewis, Chief Financial Officer of the Company, to introduce themselves and discuss the Company's strategy and business fundamentals.

On October 24, 2011, Privet's beneficial ownership of J. Alexander's exceeded 5% and, as a result, on November 3, 2011, Privet filed a Schedule 13D with the Securities and Exchange Commission reporting ownership of 464,237 shares of J. Alexander's common stock, representing 7.7% of the Company's outstanding Shares.

On November 9, 2011, Messrs. Levenson and Rosenzweig held a conference call with Messrs. Stout and Lewis to further discuss the Company's strategy and business fundamentals, as well as some of management's explanations for the Company's historical operational underperformance compared to its peers¹.

On December 20, 2011, Messrs. Levenson and Rosenzweig met with Messrs. Stout and Lewis at the Company's headquarters in Nashville, TN to discuss the Company's operating strategy, business fundamentals, capital allocation philosophy and historical performance. During the course of the meeting Messrs. Levenson and Rosenzweig focused the discussion on ways in which the Company could reduce its operating costs and increase returns on new restaurant openings. (See, "Reasons for Our Solicitation").

Based on Privet's conclusions relating to the Company's operational underperformance and belief that the Company's Board has failed to maximize value for shareholders, Privet concluded that the Board would benefit from the addition of shareholder representation on the Board in general and directors who possessed experience in the casual dining industry as well as capital markets expertise in particular. Privet began to evaluate potential candidates with senior restaurant leadership experience who would be interested in serving as directors of the Company.

¹ See "Reasons for Our Solicitation" for data regarding the Company's financial performance as compared to that of a peer group of publicly traded casual dining companies that we believe are appropriately viewed as peer companies.

On January 25, 2012, Messrs. Levenson and Rosenzweig were introduced to Todd Diener. Mr. Rosenzweig and Mr. Diener had a lengthy telephone conversation discussing the casual dining industry as well as Mr. Diener's extensive past experiences as the President of Chili's and On the Border restaurants.

On January 26, 2012 Messrs. Levenson and Rosenzweig had another telephone conversation with Mr. Diener to get his perspective on J. Alexander's and the possibility of Mr. Diener serving as a candidate on a potential slate of director nominees to be proposed by Privet in the event the Company declined to consider making changes to the Board.

On January 26, 2012, Messrs. Levenson and Rosenzweig attempted to schedule another conference call with Messrs. Lewis and Stout. Mr. Lewis informed the Privet representatives that the Company was in a "quiet period" and was unwilling to speak until the Company reported its first quarter earnings. Based on historical earnings releases, Privet estimated that this date would be sometime in the middle of March. Messrs. Levenson and Rosenzweig emphasized that they were not seeking to discuss J. Alexander's historical financial performance, but rather the possibility of adding new directors to the Company's Board.

On January 27, 2012, Mr. Levenson had a telephone conversation with James Pappas, Managing Partner of JCP Management, LLC, an investment management company, to discuss the possibility of Mr. Pappas serving as a candidate on a potential slate of director nominees to be proposed by Privet in the event the Company declined to consider making changes to the Board.

On January 30, 2012, Messrs. Levenson and Rosenzweig spoke telephonically with Mr. Lewis and the Company's outside counsel in an attempt to engage in a discussion regarding the composition of the Company's Board. Messrs. Levenson and Rosenzweig recommended that the Board consider four individuals, each of whom would provide valuable experience to assist the Company in improving its operational and financial performance. Messrs. Levenson and Rosenzweig expressed their desire to work cooperatively and constructively with the Company's management and Board to enhance shareholder value, indicating that they were prepared to discuss various proposals that would enhance the capabilities of the Board. Messrs. Levenson and Rosenzweig noted that the J. Alexander's Bylaws contained complicated requirements regarding shareholder nominations of candidates for election as directors and, most significantly, established a short "window period" of only 15 days during which nominations could be submitted. Specifically, they noted that the window period for nominations at the upcoming 2012 Annual Meeting would close on February 3, 2012, and any nominations received after that date could be rejected unless the Company either waived or extended the deadline. Messrs. Levenson and Rosenzweig advised Mr. Lewis that Privet preferred not to go through the formal nomination process, preferring instead a collaborative discussion with management and the Board of Directors. The Company declined to engage in any discussion regarding the individuals that had been suggested by Messrs. Levenson and Rosenzweig during the call.

Given the Company's refusal to engage in any discussion of additional director nominees, immediately following the call Messrs. Levenson and Rosenzweig sent an e-mail to Mr. Lewis with background information on the four individuals who had been suggested for consideration as director candidates. A response as to whether the Board was willing to consider any of such individuals for election as a director was requested by the close of business on February 1, 2012 to ensure that Privet would have the ability to formally nominate director candidates if the Company continued its refusal to engage in collaborative discussions. Below are excerpts from the above-referenced e-mail:

Greg,

As we discussed on the phone today it is our intention to nominate the following four highly qualified individuals to the Board:

Todd Diener
James Pappas
Ben Rosenzweig
Ryan Levenson

To be clear, we have no desire to run the Company day to day but feel that we are proposing directors whose monetary interests are aligned with all shareholders, whose unique experience and expertise will benefit management and shareholders alike and who are eager to work with you and the rest of the management team in building the business.[...]

As we have said all along, our business is to work constructively with the management teams in which we invest and we hope to do so with you and Lonnie. We would like to hear back from you by 5:00 p.m. ET on Wednesday, February 1st. However, if we cannot meet some resolution, we will be forced by the terms of the J. Alexander's bylaws to submit a formal nomination package and other materials such as a proxy statement in order to preserve our rights. We are substantially complete in preparing all materials, but again, would prefer to work with management in a collaborative way to minimize disruption and expense.

Thank you for your time today and we look forward to hearing back from you. Please reply to this email to confirm receipt.

On February 1, 2012, Privet received an electronic letter from Mr. Stout (who had not participated in the January 30, 2012 telephone call) stating that the "unanimous" view of the Company's Board was "to reject your proposal." Since the Company was unwilling to consider as director candidates any of the four individuals who had been informally suggested by Messrs. Levenson and Rosenzweig, and made such determination without any meeting or discussion, Privet concluded that the only remaining option was to submit a formal Notice of Intent to Nominate (the "Nomination Notice") director candidates in accordance with the Company's Bylaws to preserve the ability to bring one or more shareholder nominations forward at the Annual Meeting if cooperative discussions with the Company failed.

On February 2, 2012, Privet delivered a letter to the Company nominating four individuals, Ryan Levenson, Ben Rosenzweig, Todd Diener and James Pappas (the “Potential Nominees”) for election as directors. While Privet has never sought control, Privet nominated four individuals in order to preserve its rights to respond appropriately in the event that the size of the Board was altered prior to the Annual Meeting.

On February 2, 2012, Mr. Levenson discussed with Mr. Pappas the possibility of working together to solicit proxies in furtherance of the election of director candidates at the Company’s Annual Meeting.

On February 3, 2012, Privet, certain entities of which Mr. Pappas is a principal, as well as each of the Potential Nominees entered into a Joint Filing and Solicitation Agreement. This agreement resulted in the formation of “The Committee To Strengthen J. Alexander’s”.

On February 3, 2012, Privet’s Schedule 13D was amended to report the foregoing developments, add as participants the parties to the Joint Filing and Solicitation Agreement and disclose that the members of the newly formed group collectively owned 752,725 Shares of J. Alexander’s common stock representing 12.6% of the outstanding common stock.

On February 6, 2012, Messrs. Levenson and Rosenzweig contacted Messrs. Stout and Lewis in an attempt to schedule a conference call to discuss Privet’s nominations. Although Messrs. Levenson and Rosenzweig conveyed that the sole topic of discussion was Privet’s Nomination Notice, Mr. Lewis reiterated to the Privet representatives that the Company was in a “quiet period” and unwilling to speak at all until the Company reported its first quarter earnings.

On February 15, 2012, representatives of Privet again contacted Mr. Lewis in an attempt to schedule a conference call to discuss Privet’s Nomination Notice. Privet’s counsel received an email response from the Company’s outside counsel stating that the Company was in the process of reviewing Privet’s Nomination Notice, would send a request for additional information in the future and would set up a call once the Company was in receipt of the requested additional information.

On February 29, 2012, having still not received an information request from the Company, Privet’s counsel sent an email to the Company’s outside counsel reiterating Privet’s intent to cooperate with the Company and urging the Company not to engage in any transactions that could result in the disenfranchisement of the Company’s shareholders.

On March 1, 2012, approximately one month after Privet’s Nomination Notice had been submitted, the Company’s outside counsel sent a request for additional information about the Potential Nominees to Privet’s counsel.

On March 5, 2012, the Company adopted a new shareholder rights plan (or “poison pill”), lowering the triggering threshold from 20% to 15% of the outstanding shares. Similar to the poison pill it replaced, this new plan is not slated to be voted on by shareholders.

On March 7, 2012, the Potential Nominees delivered their responses to the Company's information request. Privet believes the information requested by the Company was not required in connection with the nomination of director candidates, but the Potential Nominees nevertheless responded in the hope of constructive dialogue.

On March 7, 2012, Privet also delivered a letter to Messrs. Stout and Lewis outlining Privet's belief that the new poison pill was not in the best interests of shareholders and reiterating the willingness of the Potential Nominees to meet with the incumbent directors in an attempt to reach a mutually cooperative resolution with the Company.

On March 16, 2012, still unable to conduct discussions with the Company, Privet delivered a letter to the Company requesting a shareholder list and other corporate records as permitted by the Tennessee Business Corporation Act as well as confirmation regarding the size of the Board.

On March 23, 2012, the Company requested that Privet sign a confidentiality agreement as a condition precedent to inspecting the Company's records. Privet complied with this request.

On March 29, 2012, the Company provided Privet with most of the requested information and confirmed that the size of the Board was currently set at four.

On April 2, 2012, Privet delivered a letter to the independent members of the Company's Board urging them to exercise their fiduciary duties and reiterating Privet's belief that a proxy contest was not in the best interests of the Company's shareholders.

On April 25, 2012, Messrs. Levenson and Rosenzweig sent an e-mail to Mr. Stout seeking a constructive dialogue and advancing two specific settlement proposals in an effort to avoid the expense and disruption of a proxy contest. Below are excerpts from the e-mail:

Lonnie,

As we have stated on numerous occasions, we do not think it is in the Company's or its shareholders' best interests to use shareholder capital to engage in a costly proxy contest. We have been, and continue to be, interested in working cooperatively and constructively with the Company. Unfortunately, your responses to our nomination of director candidates, which now apparently includes delaying the Company's annual meeting, have only strengthened our belief that significant shareholder representation is urgently needed on the Board. Once again, we are directly reaching out to you in order to exhaust every alternative prior to commencing a solicitation. To that end, we are prepared to offer specific settlement terms that we believe would be in the best interests of the Company and all shareholders.

Please share with the Board that Privet would agree to one of the following two alternatives:

1. The Board is expanded by one member, to a total of five, one incumbent director does not stand for re-election and the two vacancies are filled by Privet Nominees as selected by Privet
2. The Board is expanded by three members, to a total of seven, (i) two of the newly created seats are filled by Privet Nominees as selected by Privet and (ii) the third newly created seat is to be an independent director selected by a four person Nominating Committee consisting of the two Privet Nominees, Mr. Steakley and Ms. Rector

Both alternatives result in a minority of Board seats being occupied by Privet Nominees.

On April 27, 2012, Privet received a letter from Mr. Lewis, dated April 25, 2012, indicating that the Board had determined to reject all of the Potential Nominees.

On April 27, 2012, Messrs. Levenson and Pappas spoke telephonically to discuss the Company's rejection of Privet's Potential Nominees. They also discussed various aspects of a possible solicitation of proxies by the Committee and concluded that, should the Committee solicit proxies for the election of two directors, those candidates would be Messrs. Diener and Levenson (the "Nominees").

On May 3, 2012, Privet received a letter from Mr. Lewis, dated May 2, 2012, acknowledging receipt of Privet's April 25th settlement offer and providing the following response:

Please be advised that the independent directors have considered the [settlement] proposals, and the Company has determined not to engage in discussions with you concerning the proposals.

On May 3, 2012, the parties to the Joint Filing and Solicitation Agreement executed an amendment to the Joint Filing and Solicitation Agreement, through which Mr. Pappas and his affiliated entities ceased being parties of the Joint Filing and Solicitation Agreement and members of the Committee.