

TRANSGENOMIC INC
Form DEF 14A
April 28, 2006

SCHEDULE 14A INFORMATION

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

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 Rule 14a-11(c) or Rule 14a-12

Transgenomic, Inc.

(Name of Registrant as Specified in its Charter)

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

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TRANSGENOMIC, INC.

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

July 12, 2006

The Annual Meeting of Stockholders of Transgenomic, Inc. (the Company) will be held at the offices of Kutak Rock LLP, 222 South 14th Street, 14th Floor, Omaha, Nebraska, on Wednesday, July 12, 2006, at 10:30 a.m. Central Daylight Time, for the following purposes:

- (1) To elect two Class III directors.
- (2) To ratify the appointment of Deloitte & Touche LLP as independent auditor for the Company for the year ending December 31, 2006.
- (3) To approve amendments to the Fourth Amended and Restated 1997 Stock Option Plan in the form of the 2006 Equity Incentive Plan.
- (4) To transact such other business as may properly come before the meeting or any adjournment thereof.

Please read the enclosed Proxy Statement for important information about the Annual Meeting.

Only stockholders of record at the close of business on May 15, 2006, are entitled to notice of, and to vote at, the Annual Meeting.

Please sign and return the enclosed proxy card using the envelope provided. You can revoke your proxy at any time. If you attend the Annual Meeting in person you may withdraw your proxy and vote in person.

By Order of the Board of Directors

Michael A. Summers, Interim Chief Executive Officer

Omaha, Nebraska

June 1, 2006

IMPORTANT: IT IS IMPORTANT THAT WE RECEIVE YOUR PROXY TO ENSURE A QUORUM AT THE ANNUAL MEETING. BY PROMPTLY RETURNING YOUR PROXY CARD TO US, YOU WILL SAVE THE COMPANY THE EXPENSE OF FURTHER PROXY SOLICITATION.

Transgenomic, Inc.

12325 Emmet Street

Omaha, Nebraska 68164

PROXY STATEMENT

for

ANNUAL MEETING OF STOCKHOLDERS

of

TRANSGENOMIC, INC.

We are sending this Proxy Statement to you in connection with our request for your proxy to use at the Annual Meeting of Stockholders of Transgenomic, Inc. (the Company) to be held on July 12, 2006. Only those owners of our common stock of record at the close of business on May 15, 2006 (the Record Date) are entitled to vote at the Annual Meeting. This Proxy Statement, along with the Notice of the Annual Meeting, the Annual Report to Stockholders and a proxy card are being first mailed to stockholders on or about June 2, 2006.

Your proxy is being solicited by the Board of Directors of the Company and will give them the power to vote on your behalf at the Annual Meeting. All shares of the Company's common stock represented by properly executed and unrevoked proxies will be voted by the Board of Directors or Chief Executive Officer in accordance with the directions given by those proxies. Where no instructions are indicated, the Board of Directors will vote **FOR** each of the proposals that will be considered at the Annual Meeting. In addition, the Board of Directors believes outstanding shares owned by executive officers and directors of the Company will be voted **FOR** each such proposal. Shares owned by these persons total 4,688,054 and represent approximately 10% of the total shares outstanding as of the Record Date.

You may revoke your proxy at any time before it is exercised by the Board of Directors at the Annual Meeting. If you decide to do this, you will need to give the Secretary of the Company written notice that you want to revoke the proxy or you can submit a new proxy to the Secretary. In addition, if you attend the Annual Meeting in person, you may withdraw your proxy and vote in person. Shares of common stock entitled to vote and represented by properly executed, returned and unrevoked proxies will be considered present at the Annual Meeting for purposes of establishing a quorum. This includes shares for which votes are withheld, abstentions are cast or there are broker nonvotes. The holders of at least a majority of our common stock issued and outstanding on the Record Date must be present at the Annual Meeting, either in person or by proxy, in order for there to be a quorum.

Voting Securities and Beneficial Ownership by Principal Stockholders and Our Directors and Officers

On the Record Date there were 49,189,672 issued and outstanding shares of our common stock. Each share of common stock is entitled to one vote on each matter to be voted on at the Annual Meeting. Stockholders do not have the right to cumulate votes in the election of directors.

This table shows the beneficial ownership of our common stock by our directors, by those of our executive officers who are named in the Summary Compensation Table, by all of our current executive officers and directors as a group, and by each person we believe beneficially owns more than 5% of our outstanding common stock as of May 15, 2006, the record date established for our Annual Meeting of Stockholders. Each stockholder named in this table has sole voting and investment power over the shares he beneficially owns and all such shares are owned directly by the stockholder unless otherwise indicated. Stock ownership information of persons other than our executive officers and directors is based on available information including, but not limited to, Schedules 13D, 13F or 13G filed with the Securities and Exchange Commission.

Name	Number of Shares	Percent
	Beneficially Owned	of Class
Directors and Executive Officers		
Collin J. D. Silva, Chairman of the Board ⁽¹⁾	4,906,154 ⁽²⁾	9.9%
Michael A. Summers, Chief Financial Officer and Interim Chief Executive Officer	250,000 ⁽³⁾	*
Mitchell L. Murphy, Vice President, Secretary and Treasurer ⁽⁴⁾	204,000 ⁽⁵⁾	*
Gregory J. Duman, Director	245,400 ⁽⁶⁾	*
Jeffrey L. Sklar, M.D., Ph.D., Director	43,000 ⁽⁷⁾	*
Roland J. Santoni, Director	36,000 ⁽⁸⁾	*
Parag Saxena, Director	15,000 ⁽⁹⁾	*
Gregory T. Sloma, Director	15,000 ⁽¹⁰⁾	*
All directors and executive officers as a group (8 persons)	5,714,554 ⁽¹¹⁾	11.4%
Other Shareholders		
Kopp Investment Advisors, Inc.	8,200,930 ⁽¹²⁾	16.7%
David M. Knott	4,880,285 ⁽¹³⁾	9.9%
LBI Group Inc.	4,969,554 ⁽¹⁴⁾	9.9%
Mazama Capital Management, LLC	3,847,148 ⁽¹⁵⁾	7.8%
Michael A. Roth and Brian J. Stark	3,811,881 ⁽¹⁶⁾	7.6%
INVESCO Private Capital, Inc.	2,292,426 ⁽¹⁷⁾	4.7%

* Represents less than 1% of the outstanding Common Stock of the Company.

(1) Effective April 3, 2006, Mr. D. Silva resigned as Chief Executive Officer of the Company.

(2) Consists of 2,771,538 shares owned by Mr. D. Silva, 1,400,000 shares owned by the Arthur P. D. Silva Trust, of which Collin J. D. Silva is the sole trustee, 484,616 shares owned by D. Silva, LLC, of which Mr. D. Silva is the managing member, and vested options to purchase 250,000 at \$1.03 per share.

(3) Consists of vested options to purchase 100,000 shares at \$1.09 and 150,000 shares at \$1.03 per share.

(4) Effective April 27, 2006, Mr. Murphy resigned as Vice President, Secretary and Treasurer of the Company.

(5) Consists of 4,000 shares owned by Mr. Murphy and vested options to purchase 50,000 shares at \$5.00 per share, 10,000 shares at \$11.94 per share, 2,500 shares at \$9.91 per share, 10,000 shares at \$6.38 per share, 27,500 shares at \$6.24 per share, 50,000 shares at \$1.92 per share and 50,000 shares at \$1.03 per share.

(6) Consists of 25,400 shares owned by Mr. Duman and vested options to purchase 15,000 shares at \$10.00 per share, 200,000 shares at \$6.00 per share and 5,000 shares at \$2.57 per share.

(7) Consists of vested options to purchase 15,000 shares at \$5.00 per share, 9,000 shares at \$13.00 per share, 3,000 shares at \$6.38 per share, 6,000 shares at \$6.16 per share, 5,000 shares at \$2.57 per share and 5,000 shares at \$1.09 per share.

(8) Consists of 2,500 shares owned by Mr. Santoni and vested options to purchase 17,500 shares at \$10.00 per share, 10,000 shares at \$2.57 per share, 3,000 shares at \$6.16 per share and 3,000 shares at \$6.00 per share.

(9) Consists of vested options to purchase 15,000 shares at \$1.09 per share.

(10) Consists of vested options to purchase 15,000 shares at \$2.57 per share.

(11) Includes vested options to acquire 1,026,500 shares of common stock.

(12) The address of Kopp Investment Advisors, Inc. is 7701 France Avenue South, Suite 500, Edina, Minnesota 55435.

(13) Consists of 4,756,551 shares of common stock and warrants to purchase 123,734 shares at \$1.20 per share. The address of David M. Knott and Dorset Management Group is 485 Underhill Boulevard, Suite 205, Syosset, New York 11791. Knott has additional warrants to purchase 1,460,424 at \$1.20 per share that are not included in the beneficial ownership table because such warrants are subject to a conversion cap which precludes the holder thereof from exercising such warrants to the extent that such owner would beneficially own in excess of 9.9% of the Company's common stock.

- (14) Consists of 3,960,396 shares of common stock and warrants to purchase 1,009,158 shares at \$1.20 per share. The address of each of these beneficial owners is 745 Seventh Avenue, New York, New York 10019. LBI has additional warrants to purchase 575,000 at \$1.20 per share that are not included in the beneficial ownership table because such warrants are subject to a conversion cap which precludes the holder thereof from exercising such warrants to the extent that such holder would beneficially own in excess of 4.9% and 9.9% of the Company's common stock.
- (15) The address of Mazama Capital Management, LLC is One Southwest Columbia Street, Suite 1500, Portland Oregon 97258.
- (16) Consists of 2,722,772 shares of common stock and warrants to purchase 1,089,109 shares at \$1.20 per share. The address for the named individuals is 3600 South Lake Drive, St. Francis, Wisconsin 53235. These warrants are subject to a conversion cap which precludes the holder thereof from exercising such warrants to the extent that such owner would beneficially own in excess of 4.9% and 9.9% of the Company's common stock.
- (17) These shares are held by entities affiliated with INVESCO Private Capital, Inc., which disclaims beneficial ownership of these shares. The address of INVESCO Private Capital, Inc. is 1166 Avenue of the Americas, New York, New York 10036.

PROPOSAL TO ELECT CLASS III DIRECTORS

Board of Directors and Committees

Our entire Board of Directors consists of seven positions of which six are currently occupied. The Board of Directors is divided into three classes with directors in each class serving for a term of three years. The terms of office of the current Class I, Class II and Class III directors will expire in 2007, 2008 and 2006, respectively.

The Board of Directors has nominated Gregory J. Duman and Roland J. Santoni as Class III directors to serve three-year terms expiring in 2009. Mr. Duman and Mr. Santoni are current members of the Board of Directors and each has expressed an intention to continue to serve on the Board of Directors if they are elected. The Board of Directors knows of no reason why Mr. Duman or Mr. Santoni might be unavailable to serve. There are no arrangements or understandings between either Mr. Duman or Mr. Santoni and any other person pursuant to which they were selected as nominees.

The election of a director requires the affirmative vote of a plurality of the shares present in person or represented by proxy at the meeting and entitled to vote. This means that votes withheld and broker nonvotes with respect to the election of directors will have no effect on the election of directors. If Mr. Duman or Mr. Santoni is unable to serve as a director, the Board of Directors may nominate a substitute nominee. In that case, the Board of Directors will vote all valid proxies that voted in favor of Mr. Duman or Mr. Santoni, as the case may be, for the election of the substitute nominee.

The Board of Directors recommends that the stockholders vote FOR the election of Mr. Duman and Mr. Santoni as Class III Directors.

The following table sets forth information about our directors, including the nominees who are to be voted on at the Annual Meeting. The Board of Directors has determined that Messrs. Duman, Saxena, Sloma, Sklar and Santoni are independent directors of the Company under the listing standards adopted by the Nasdaq Stock Market. All directors have held the positions with the companies (or their predecessors) set forth under Principal Occupation for at least five years, unless otherwise indicated.

Name	Age	Principal Occupation	Director Since	Term To Expire
NOMINEES				
Gregory J. Duman	50	President of Prism Technologies LLC ⁽¹⁾	2000	2006
Roland J. Santoni	64	Vice President of West Development, Inc. ⁽²⁾	2000	2006

DIRECTORS CONTINUING IN OFFICE

Collin J. D Silva	49	Chairman of the Board ⁽³⁾	1997	2007
Parag Saxena	50	Chief Executive Officer of INVESCO Private Capital, Inc.	1999	2007
Gregory T. Sloma	54	President of G.O. Incorporation ⁽⁴⁾	2004	2008
Jeffrey L. Sklar, M.D., Ph.D.	58	Professor of Pathology, Yale University School of Medicine ⁽⁵⁾	1997	2008

- (1) From 2001 to 2003, Mr. Duman was Executive Vice President and Chief Financial Officer of the Company. From 2000 to 2001, Mr. Duman was Chief Financial Officer of Artios, Inc. From 1983 to 2000, Mr. Duman served in several capacities including Controller, Chief Financial Officer and Executive Vice President of Transaction Systems Architects, Inc.
- (2) From 1977 to 2003, Mr. Santoni was Professor of Law at Creighton University. In addition, from 1978 to 2003, he served Of Counsel with the law firm of Erickson & Sederstrom, P.C.
- (3) From 1997 to April 3, 2006, Mr. D Silva was Chief Executive Officer of the Company. Mr. D Silva is also a director of Bruker Biosciences Corporation, formerly known as Bruker Daltonics, Inc.
- (4) Mr. Sloma is also a director of West Corporation. From 2004 to 2006, Mr. Sloma was Executive Vice President and Chief Financial Officer of SpeedNet Services, Inc. From 1996 to 2003, Mr. Sloma served in several capacities including President, Chief Operating Officer, Chief Executive Officer, and Vice Chairman and Director of Mergers & Acquisitions for DTN Corporation. In September 2003, DTN Corporation filed a pre-packaged Chapter 11 reorganization petition in bankruptcy. DTN Corporation emerged from bankruptcy on October 31, 2003.
- (5) From 1989 to 2003, Dr. Sklar was Professor of Pathology, Harvard Medical School.

Information regarding our other executive officers is found in our Form 10-K that is part of the Annual Report to Stockholders that accompanies this Proxy Statement. The Board of Directors has adopted a code of ethical conduct that applies to our principal executive officers and senior financial officers as required by Section 406 of the Sarbanes Oxley Act of 2002. This code of ethical conduct is embodied within our Business Ethics Policy, which applies to all persons associated with the Company, including our directors, officers, and employees, and complies with the listing standards adopted by the Nasdaq Stock Market. The Business Ethics Policy is available on our website at www.transgenomic.com.

The Board of Directors conducts its business through meetings of the Board and actions taken by written consent in lieu of meetings and by the actions of its committees. During the year ended December 31, 2005, the Board of Directors held nine meetings and acted by written consent in lieu of a meeting one time. Other than Mr. Saxena, all directors attended at least 75% of the meetings of the Board of Directors and of the committees of the Board of Directors on which they served during 2005. Mr. Saxena attended six meetings of the Board of Directors, two Audit Committee meetings and two Compensation Committee meetings.

The Board of Directors has established and assigned certain responsibilities to an Audit Committee and a Compensation Committee. We do not have a standing nominating committee. The Board determined that due to the relatively small size of the Board, and due to the policy on director nominations, which is described below, it was not necessary to form a separate committee to evaluate director nominations. Under the director nomination policy, director candidates are identified primarily through suggestions made by directors, management and stockholders of the Company. We have implemented no material changes to the procedures by which stockholders may recommend nominees for the Board of Directors. The Board of Directors will consider director nominees recommended by

stockholders that are submitted in writing to the Secretary of the Company in a timely manner and which provide necessary biographical and business experience information regarding the nominee. All candidates for director will be evaluated based on their independence, character, judgment, diversity of experience, financial or business acumen, ability to represent and act on behalf of all stockholders, and the needs of the Board. In general, the Board expects to nominate incumbent directors who express an interest in continuing to serve on the Board. The independent directors of the Company review and consider all candidates to serve as a director of the Company who are properly suggested by directors, management and stockholders of the Company, and the Board of Directors selects its nominees to serve as a director of the Company from among those candidates who are recommended to the Board of Directors by a majority of the independent directors of the Company.

Audit Committee. The Audit Committee's primary duties and responsibilities include monitoring the integrity of our financial statements, monitoring the independence and performance of our external auditors, and monitoring our compliance with applicable legal and regulatory requirements. The functions of the Audit Committee also include reviewing periodically with independent auditors the performance of the services for which they are engaged, including reviewing the scope of the annual audit and its results, reviewing with management and the auditors the adequacy of our internal accounting controls, reviewing with management and the auditors the financial results prior to the filing of quarterly and annual reports, and reviewing fees charged by our independent auditors. Our independent auditors report directly and are accountable solely to the Audit Committee. The Audit Committee has the sole authority to hire and fire the independent auditors and is responsible for the oversight of the performance of their duties, including ensuring the independence of the independent auditors. The Audit Committee also approves in advance the retention of, and all fees to be paid to, the independent auditors. The rendering of any auditing services and all non-auditing services by the independent auditors is subject to the approval in advance of the Audit Committee. The Audit Committee operates under a written charter which is available on our website at www.transgenomic.com and is attached hereto as Exhibit A. The Audit Committee is required to be composed of directors who are independent of the Company under the rules of the Securities and Exchange Commission and under the listing standards of the Nasdaq Stock Market. The current members of the Audit Committee are directors Santoni, Saxena and Sloma. The Board of Directors has determined that Mr. Sloma qualifies as an "audit committee financial expert" under the rules of the Securities and Exchange Commission. The Audit Committee met seven times during 2005 and took action by unanimous written consent one time.

Compensation Committee. The Compensation Committee reviews and approves our compensation policy, changes in salary levels and bonus payments to our executive officers and other management and determines the timing and terms of awards made pursuant to our stock option plan. The Compensation Committee currently consists of directors Sklar, Santoni and Saxena, each of whom has been determined by the Board of Directors to be independent under the listing standards of the Nasdaq Stock Market. The Compensation Committee met five times during 2005.

Section 16(a) Beneficial Ownership Reporting Compliance. Item 405 of Regulation S-K requires disclosure of any known late filing or failure by an insider to file a report required by Section 16 of the Securities Exchange Act of 1934. We believe all Section 16 reports were filed in a timely manner during 2005 except as follows:

Reporting Person	Total Number of Forms Filed Late	Total Number of Transactions Late
Collin D. Silva	1	1
Mitchell L. Murphy	1	1
Parag Saxena	1	1
Michael A. Summers	1	1

Compensation of Directors

Directors who are also our officers or affiliates are not separately compensated for serving on the Board of Directors other than reimbursement for out-of-pocket expenses related to attendance at board and committee meetings. Independent directors are paid an annual retainer of \$12,000. In addition, they receive a fee of \$1,200 for attending meetings in person, or \$600 for participating in a meeting by teleconference, as well as reimbursement for out-of-pocket expenses related to attendance at board and committee meetings. Independent directors serving on any committee of the Board of Directors are paid an additional annual retainer of \$2,500, except that the additional retainer paid to independent directors serving on the Audit Committee is \$5,000.

Our non-employee and non-affiliated directors are issued options to purchase 15,000 shares of common stock under our stock option plan upon initial appointment to the Board. For options granted prior to March 28, 2003, such options vest at the rate of 20% per year of service on the Board. Additional grants were made from time to time so that each non-employee director would hold 15,000 unvested options at any time. Effective March 28, 2003, the options granted to a non-employee and non-affiliated director upon initial appointment to the Board vest at the rate of 33 1/3% per year of service on the Board. Additional grants of options to purchase 5,000 shares of common stock will be made on a date reasonably close to each anniversary of such director's appointment to the Board to be determined by the Compensation Committee in its sole discretion, with such options vesting on the third anniversary of the grant. All options granted to non-employee directors have exercise prices that represented or exceeded the fair market value of our stock on the grant date. Exercise prices on outstanding options granted to our non-employee directors range from \$1.00 to \$13.00 per share. On December 28, 2005, the Company's Directors approved a plan to accelerate the vesting of all outstanding stock options. Aside from the acceleration of the vesting date, the terms and conditions of the stock option award agreements governing the underlying stock option grants remained unchanged. All such options were out-of-the money, and accordingly, the accelerated vesting resulted in no compensation expense since there was no intrinsic value associated with these fixed awards at the date of modification. Accelerating the vesting of these options allows the Company to avoid recognition of compensation expense associated with these options in future periods.

EXECUTIVE COMPENSATION

Compensation of Executive Officers

The following table sets forth information regarding the annual and long-term compensation paid by us to our Chief Executive Officer, our two other executive officers for services rendered during the three years ended December 31, 2005.

SUMMARY COMPENSATION TABLE

(a)	(b)	Annual Compensation			Long-Term Compensation			
		(c) Salary	(d) Bonus	(e) Other Annual Compensation ⁽¹⁾	(f) Restricted Stock Award(s)	(g) Underlying Securities	(h) LTIP Payouts ⁽²⁾	(i) All Other Compensation ⁽³⁾
Name and Principal Position	Year	(\$)	(\$)	(\$)	(\$)	(#)	(\$)	(\$)
Collin J. D. Silva ⁽⁴⁾								
President and Chief Executive Officer	2005	165,453	35,000			250,000		26,489
	2004	140,568						15,311
	2003	142,308						5,927
Michael A. Summers ⁽⁵⁾								
Chief Financial Officer	2005	160,890	25,000			250,000		19,509
	2004	54,578						1,135
	2003							
Mitchell L. Murphy ⁽⁶⁾								
Vice President, Secretary and Treasurer	2005	145,346				50,000		17,235
	2004	135,544						14,468
	2003	120,000				50,000		5,986

(1) No disclosure is required in this column pursuant to applicable Securities and Exchange Commission regulations, as the aggregate value of items covered by this column does not exceed the lesser of \$50,000 or 10% of the annual salary and bonus shown for each respective executive officer named.

(2) We do not have a long-term incentive plan as defined in Item 402 of Regulation S-K under the Securities Exchange Act of 1934, as amended.

(3) These amounts consist of accrued vacation to be taken in the future or paid in cash upon termination of employment, 401(k) Company matching contributions, reimbursed moving expenses and auto allowances, as applicable.

(4) Mr. D. Silva resigned his position as President and Chief Executive Officer on April 3, 2006. He continues as Chairman of the Board.

(5) Mr. Summers joined the Company and assumed the role of Chief Financial Officer on July 31, 2004. He assumed the additional role of Interim Chief Executive Officer on April 3, 2006.

(6) Mr. Murphy resigned his position as Vice President, Secretary and Treasurer on April 27, 2006.

Options/SAR Grants in Last Fiscal Year

The Compensation Committee may grant either qualified or non-qualified stock options to the officers and employees of the Company and nonqualified stock options to nonemployee directors and advisors under our stock option plan. The following table shows the options granted during 2005 to those executive officers of the Company whose compensation is reported in the Summary Compensation Table.

(a) Name	(b) Number of Securities Underlying Options/SARs Granted	(c) % of Total Options/SARs Granted to Employees in Fiscal Year ⁽²⁾	(d) Exercise or Base Price (\$/Sh)	(e) Expiration Date	(f) Grant Date Present Value ⁽³⁾
	Collin J. D Silva	250,000	21%	\$ 1.03	8/11/2015
Michael A. Summers	100,000	8%	\$ 1.09	1/1/2015	\$ 26,000
Michael A. Summers	150,000	13%	\$ 1.03	8/11/2015	\$ 38,000
Mitchell L. Murphy	50,000	4%	\$ 1.03	8/11/2015	\$ 13,000

(1) The exercise price of all options granted to executive officers during fiscal 2005 is equal to the fair market value of our common stock on the date of grant. Each option expires ten years from the date of grant. No stock appreciation rights (SARs) may be granted under our stock option plan.

(2) Percentages based on total option grants during 2005 of 1,183,500.

(3) The grant date present value was estimated using the Black-Scholes option pricing model, with the following assumptions: risk-free interest rate of 4.15%, volatility ranging from 35% to 85%, an expected option life of three years and no common stock dividends.

Aggregated Option/SAR Exercises in Last Fiscal Year and FY-End Option/SAR Values

The following table sets forth certain information concerning the number of exercised and unexercised options and the value of such options at the end of 2005 held by the executive officers of the Company whose compensation is reported in the Summary Compensation Table.

(a) Name	(b) Shares Acquired on Exercise(#)	(c) Value Realized (\$) ⁽¹⁾	(d) Number of Securities Underlying Unexercised Options/SARs at Year End(#)	(e) Value of Unexercised Options/SARs at Year End(\$) ⁽¹⁾
	Collin J. D Silva			Unexercisable 250,000/250,000
Michael A. Summers			Unexercisable 250,000/250,000	Unexercisable \$0 /\$0
Mitchell L. Murphy			Unexercisable 200,000/200,000	Unexercisable \$0 /\$0

(1) Based on the difference between the closing sale price of the Common Stock on the exercise date or December 31, 2005 and the related option exercise price.

Equity Compensation Plan Information

The following equity compensation plan information summarizes plans and securities approved and not approved by security holders as of December 31, 2005:

PLAN CATEGORY	(a) Number of securities to be issued upon exercise of outstanding options, warrants and rights	(b) Weighted-average exercise price of outstanding options, warrants and rights	(c) Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
Equity compensation plans approved by security holders	5,563,098	\$ 4.31	683,133
Equity compensation plans not approved by security holders			
Total	5,563,098	\$ 4.31	683,133

Long-Term Incentive Plans and Other Matters

We do not maintain a long-term incentive plan or pension plan (as defined in Item 402 of SEC Regulation S-K) for our executive officers and have not repriced any options or SARs for any executive officer during the last fiscal year.

Stock Option and Other Compensation Plans

Stock Option Plan. Our Fourth Amended and Restated 1997 Stock Option Plan allows us to grant options to our employees, directors and advisors, which gives them the right to buy our common stock at a fixed price, even if the market value of our stock goes up. The Compensation Committee of our Board of Directors administers our stock option plan and it has the sole authority to set the number, exercise price, term and vesting provisions of the options granted under the plan, except that any award made to a director serving on the Compensation Committee must be ratified by a majority of the entire Board of Directors. Under the terms of the plan, the exercise price of an incentive stock option, as defined under the Internal Revenue Code of 1986, as amended, cannot be less than the fair market value of our common stock on the date the option is granted. In general, options will expire if not exercised within ten years from the date they are granted. The Compensation Committee may also require that an option holder remain employed by us for a specified period of time before an option may be exercised. The Compensation Committee establishes these vesting provisions on an individual basis. The Compensation Committee will also decide whether options will be nonqualified options or structured to be qualified options for U.S. income tax purposes. Either incentive or nonqualified stock options ma