

BSQUARE CORP /WA
Form DEF 14A
April 05, 2004

Table of Contents

OMB APPROVAL

OMB Number:	3235-0059
Expires:	February 28, 2006
Estimated average burden hours per response	12.75

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

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of the Securities
Exchange Act of 1934 (Amendment No.)

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

Check the appropriate box:

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

BSQUARE CORPORATION

(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):

- x No fee required.
- o Fee computed on table below per Exchange Act Rules 14a-6(i)(4) and 0-11.

1) Title of each class of securities to which transaction applies:

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:

Edgar Filing: BSQUARE CORP /WA - Form DEF 14A

5) Total fee paid:

o Fee paid previously with preliminary materials.

o Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

1) Amount Previously Paid:

2) Form, Schedule or Registration Statement No.:

3) Filing Party:

4) Date Filed:

SEC 1913 (02-02)

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

Table of Contents

BSQUARE CORPORATION

NOTICE OF ANNUAL MEETING OF SHAREHOLDERS

TO BE HELD ON APRIL 29, 2004

TO THE SHAREHOLDERS:

Notice is hereby given that the 2004 Annual Meeting of Shareholders of BSQUARE CORPORATION, a Washington corporation (the Company), will be held on Thursday, April 29, 2004 at 10:00 a.m., local time, at the Company's offices at 3150 139th Avenue S.E., Suite 500, Bellevue, Washington 98005, for the following purposes:

1. To elect three Class I directors to serve for the ensuing three years and until their successors are duly elected.
2. To transact such other business as may properly come before the meeting or any adjournment or adjournments thereof.

The foregoing items of business are more fully described in the Proxy Statement accompanying this Notice.

The Board of Directors has fixed the close of business on February 25, 2004 as the record date for the determination of shareholders entitled to vote at this meeting. Only shareholders of record at the close of business on February 25, 2004 are entitled to receive notice of and to vote at the meeting and any adjournment thereof.

All shareholders are invited to attend the meeting in person. However, to ensure your representation at the meeting, you are urged to mark, sign, date and return the enclosed proxy card as promptly as possible in the postage-prepaid envelope enclosed for that purpose. Any shareholder attending the meeting may vote in person even if the shareholder has previously returned a proxy.

By Order of the Board of Directors

/s/ SCOTT MAHAN

Scott Mahan

Vice President, Finance & Operations,
Chief Financial Officer, Secretary and Treasurer

Bellevue, Washington

April 5, 2004

TABLE OF CONTENTS

PROCEDURAL MATTERS

PROPOSAL ONE Election of Directors

CORPORATE GOVERNANCE

ADDITIONAL INFORMATION RELATING TO DIRECTORS AND OFFICERS OF THE COMPANY

APPENDIX A

AUDIT COMMITTEE CHARTER

APPENDIX B

COMPENSATION COMMITTEE CHARTER

Table of Contents

BSQUARE CORPORATION

PROXY STATEMENT FOR 2004 ANNUAL MEETING OF SHAREHOLDERS

PROCEDURAL MATTERS

General

The enclosed Proxy is solicited on behalf of BSQUARE CORPORATION, a Washington corporation (the Company), for use at the 2004 Annual Meeting of Shareholders (the Annual Meeting) to be held on April 29, 2004 at 10:00 a.m., local time, and at any adjournment thereof, for the purposes set forth herein and in the accompanying Notice of Annual Meeting of Shareholders. The Annual Meeting will be held at the Company's principal executive offices at 3150 139th Avenue S.E., Suite 500, Bellevue, Washington 98005. The Company's telephone number at its principal business office is (425) 519-5900.

These proxy solicitation materials were mailed on or about April 5, 2004 to all shareholders entitled to vote at the Annual Meeting.

Record Date and Principal Share Ownership

Only shareholders of record at the close of business on February 25, 2004 (the Record Date) are entitled to receive notice of and to vote at the Annual Meeting. The only outstanding voting securities of the Company are shares of Common Stock, no par value. As of the Record Date, 37,607,723 shares of the Company's Common Stock were issued and outstanding, held by 155 shareholders of record. See Security Ownership of Principal Shareholders, Directors and Management below for information regarding beneficial owners of more than five percent of the Company's Common Stock.

Revocability of Proxies

Any proxy given pursuant to this solicitation may be revoked by the person giving it at any time prior to its use by delivering to the Secretary of the Company a written instrument revoking the proxy or a duly executed proxy bearing a later date or by attending the Annual Meeting and voting in person.

Voting and Solicitation

Each holder of Common Stock is entitled to one vote for each share held.

This solicitation of proxies is made by the Company, and all related costs will be borne by the Company. In addition, the Company may reimburse brokerage firms and other persons representing beneficial owners of shares for their expenses in forwarding solicitation material to such beneficial owners. Proxies may also be solicited by certain of the Company's directors, officers and other employees, without additional compensation, personally or by telephone.

Quorum; Abstentions; Broker Non-Votes

At the Annual Meeting, inspectors of election will determine the presence of a quorum and tabulate the results of the voting by shareholders. A quorum exists when holders of a majority of the total number of outstanding shares of Common Stock that are entitled to vote at the Annual Meeting are present at the Annual Meeting in person or by proxy. A quorum is necessary for the transaction of business at the Annual Meeting. Abstentions and broker non-votes will be included in determining the presence of a quorum at the Annual Meeting. Broker non-votes occur when a person holding shares in street name, meaning through a bank or brokerage account, does not provide instructions as to how his or her shares should be voted and the bank or broker does not have discretion to vote those shares or, if the bank or broker has discretion to vote such shares, does not exercise such discretion. The three nominees for election to the Board of Directors who receive the greatest number of votes cast for the election of directors by the shares present, in person or by proxy, will be elected to the Board of Directors. For the election of directors,

Table of Contents

abstentions and broker non-votes will have the effect of neither a vote for nor a vote against the nominee, and thus will have no effect on the outcome. Shareholders are not entitled to cumulate votes in the election of directors. If a quorum is present, approval of all other matters that properly come before the meeting requires that the votes cast in favor of such actions exceed the votes cast against such actions.

All shares entitled to vote and represented by properly executed, unrevoked proxies received prior to the Annual Meeting will be voted at the Annual Meeting in accordance with the instructions indicated on those proxies. If no instructions are indicated on a properly executed proxy, the shares represented by that proxy will be voted *for* the election of the three Class I directors nominated by the Board of Directors.

If any other matters are properly presented for consideration at the Annual Meeting, including, among other things, consideration of a motion to adjourn the Annual Meeting to another time or place (including, without limitation, for the purpose of soliciting additional proxies), the persons named in the enclosed proxy and acting thereunder will have discretion to vote on those matters in accordance with their best judgment. The Company does not currently anticipate that any other matters will be raised at the Annual Meeting.

Deadline for Receipt of Shareholder Proposals

Shareholders are entitled to present proposals for action at a forthcoming meeting if they comply with the requirements of the proxy rules promulgated by the Securities and Exchange Commission (the "SEC"). Proposals of shareholders of the Company intended to be presented for consideration at the Company's 2005 Annual Meeting of Shareholders must be received by the Company no later than December 3, 2004 in order that they may be considered for inclusion in the proxy statement and form of proxy relating to that meeting.

In addition, the Company's Bylaws establish an advance notice procedure with regard to certain matters, including shareholder proposals not included in the Company's proxy statement, to be brought before an annual meeting of shareholders. In general, nominations for the election of directors may be made by: (i) the Board of Directors or a committee appointed by the Board of Directors, or (ii) any shareholder entitled to vote who has delivered written notice to the Secretary of the Company 90 days prior to the date one year from the date of the immediately preceding annual meeting of shareholders (or, with respect to an election of directors to be held at a special meeting, the close of business on the tenth day following the date on which notice of such meeting is first given to shareholders), which notice must contain specified information concerning the nominees and concerning the shareholder proposing such nominations. The Company's Bylaws also provide that the only business that shall be conducted at an annual meeting is business that is brought before such meeting: (i) by or at the direction of the Board of Directors, or (ii) by any shareholder entitled to vote who has delivered written notice to the Secretary of the Company 90 days prior to the date one year from the date of the immediately preceding annual meeting of shareholders, which notice must contain specified information concerning the matters to be brought before such meeting and concerning the shareholder proposing such matters. Accordingly, shareholders who intend to present a proposal at the Company's 2005 Annual Meeting of Shareholders without inclusion of such proposal in the Company's proxy materials are required to provide proper notice of such proposal to the Company no later than January 29, 2005. A copy of the full text of the Bylaw provisions discussed above may be obtained by writing to the Secretary of the Company. All notices of proposals by shareholders, whether or not included in the Company's proxy materials, should be sent to BSQUARE CORPORATION, 3150 139th Avenue S.E., Suite 500, Bellevue, Washington 98005, Attention: Secretary.

The Board of Directors has adopted additional requirements specifically with respect to shareholder nominations for the election of directors. See Corporate Governance Director Nomination Process.

Table of Contents**Security Ownership of Principal Shareholders, Directors and Management**

The following table sets forth certain information regarding the beneficial ownership of Common Stock of the Company as of December 31, 2003 as to:

each person who is known by the Company to own beneficially more than five percent of the outstanding shares of Common Stock;

each director and each nominee for director of the Company;

each of the named executive officers shown in the summary compensation table in Information Regarding Executive Officer Compensation below; and

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

Beneficial ownership is determined in accordance with the rules of the SEC. For purposes of calculating the number of shares beneficially owned by a shareholder and the percentage ownership of that shareholder, shares of Common Stock subject to options that are currently exercisable or exercisable within 60 days of December 31, 2003 by that shareholder are deemed outstanding. These options are listed below under the heading Number of Shares Underlying Options Exercisable On or Prior to February 29, 2004 and are not treated as outstanding for the purpose of computing the percentage ownership of any other shareholder. This table is based on information supplied by officers, directors, principal shareholders and filings made with the SEC. Percentage ownership is based on 37,607,723 shares of Common Stock outstanding as of February 25, 2004.

Unless otherwise noted below, the address for each shareholder listed below is: c/o BSQUARE Corporation, 3150 139th Avenue S.E., Suite 500, Bellevue, Washington 98005. Unless otherwise noted, each of the shareholders listed below has sole investment and voting power with respect to the Common Stock indicated, except to the extent shared by spouses under applicable law.

Name and Address of Beneficial Owner	Number of Shares	Number of Shares Underlying Options Exercisable On or Prior to February 29, 2004	Percent of Common Stock Outstanding
Entities affiliated with TA Associates, Inc. (1) 125 High Street High Street Tower Suite 2500 Boston, MA 02110	5,019,224		13.3%
William T. Baxter (2) 9623 SE 16th Street Bellevue, WA 98004	4,112,795	184,375	11.4
WM Advisors, Inc. (3) 1201 Third Avenue 22nd Floor Seattle, WA 98101-3000	3,998,600		10.6
Entities affiliated with Columbia Wanger Asset Management, L.P. (4) 227 West Monroe Street Suite 3000 Chicago, Illinois 60606	3,500,000		9.3
Wellington Management Company, L.L.P. (5) 75 State Street Boston, MA 02109	3,375,000		9.0

Table of Contents

Name and Address of Beneficial Owner	Number of Shares	Number of Shares Underlying Options Exercisable On or Prior to February 29, 2004	Percent of Common Stock Outstanding
Wells Fargo & Company (6) 420 Montgomery Street San Francisco, CA 94104	2,212,275		5.9
First BanCorp (7) 1519 Ponce de Leon Ave. Santurce, Puerto Rico 00908	1,976,500		5.3
Scot E. Land (8)	1,433,333	136,543	4.2
Donald B. Bibeault (9)		53,125	*
William L. Larson		191,563	*
Elliott H. Jurgensen, Jr.		51,563	*
Elwood D. Howse, Jr.		64,063	*
Brian T. Crowley		153,438	*
Brian M. Deutsch		154,063	*
Tracy A. Rees	1,000	76,125	*
Nogi A. Asp		37,500	*
Scott M. Sedlik		24,413	*
James R. Ladd		37,500	*
Scott E. Bufkin	100		*
All executive officers and directors as a group (15 persons)	5,547,228	1,164,271	17.2%

* Less than 1%.

- (1) Includes 3,424 shares held by TA Associates, Inc., 3,722,076 shares held by TA/Advent VIII L.P., 1,073,990 shares held by Advent Atlantic & Pacific III, L.P., 114,497 shares held by TA Investors L.L.C. and 105,237 shares held by TA Executives Fund L.L.C., all of which are funds managed by TA Associates.
- (2) The holding shown is as of December 31, 2003 as reported on Schedule 13G filed by Mr. Baxter.
- (3) The holding shown is as of December 31, 2003 as reported on a Schedule 13G filed by WM Advisors, Inc.
- (4) The holding shown is as of December 31, 2003 as reported on Schedule 13G filed on behalf of Columbia Wanger Asset Management, L.P., WAM Acquisition GP, Inc., the general partner of Columbia Wanger Asset Management, L.P., and Columbia Acorn Trust. Includes 3,500,000 shares held on behalf of discretionary clients of Liberty Wanger Asset Management, L.P., including Liberty Acorn Trust.
- (5) The holding shown is as of December 31, 2003 as reported on Schedule 13G filed by Wellington Management Company, L.L.P. Includes 3,375,000 shares held on behalf of discretionary clients of Wellington Management Company, L.L.P.
- (6) The holding shown is as of December 31, 2003 as reported on Schedule 13G filed on behalf of Wells Fargo & Company and Wells Capital Management Incorporated.
- (7) The holding shown is as of December 31, 2003 reported on Schedule 13G filed by First BanCorp.

Table of Contents

- (8) Includes 1,372,222 shares held by Encompass Group US Information Technology Partners 1 L.P., a fund managed by Encompass Ventures. Mr. Land is a managing director of Encompass Ventures. Mr. Land directly or indirectly shares voting and investment power with respect to such shares but disclaims beneficial ownership thereof.
- (9) Mr. Bibeault became a director in July 2003.

Table of Contents**PROPOSAL ONE****ELECTION OF DIRECTORS****General**

The Company currently has authorized seven directors; however, the Company's Board of Directors is currently comprised of six members and one Board seat remains vacant. The Board of Directors intends to leave the remaining seat vacant until an appropriate individual is identified and elected by the Board of Directors. The Board of Directors is divided into three classes with overlapping three-year terms. A director serves in office until his or her respective successor is duly elected and qualified unless the director is removed, resigns or by reason of death or other cause is unable to serve in the capacity of director. When the vacant Board seat is filled, such director will be a Class III director. Any additional directorships resulting from an increase in the number of directors will be distributed among the three classes so that, as nearly as possible, each class will consist of an equal number of directors. Set forth below is certain information furnished to the Company by the director nominees and by each of the incumbent directors whose terms will continue following the Annual Meeting. There are no family relationships among the Company's directors and officers.

Nominees For Directors

Three Class I directors are to be elected at the Annual Meeting for three-year terms ending in 2007. The Board of Directors has nominated Scot E. Land, William L. Larson and Elliott H. Jurgensen, Jr. for election as Class I directors.

Unless otherwise instructed, the proxy holders will vote the proxies received by them for Messrs. Land, Larson and Jurgensen. The proxies cannot be voted for more than three nominees. Messrs. Land, Larson and Jurgensen are current directors of the Company, and each has indicated that he will serve if elected. The Company does not anticipate that either Mr. Land, Mr. Larson or Mr. Jurgensen will be unable or unwilling to stand for election, but if that occurs, all proxies received will be voted by the proxy holders for another person or persons nominated by the Board of Directors.

Vote Required for Election of Directors

If a quorum is present and voting, the three nominees for election to the Board of Directors who receive the greatest number of votes cast for the election of directors by the shares present, in person or by proxy, will be elected to the Board of Directors.

Nominees for Class I Directors

The name of each nominee and certain information about him as of the Record Date are set forth below:

Name of Nominee	Age	Positions with the Company	Director Since
Scot E. Land	49	Director	1998
William L. Larson	47	Director	1998
Elliott H. Jurgensen, Jr.	59	Director	2003

Scot E. Land has been a director of the Company since February 1998 and is a member of the Company's Audit Committee and the Chairman of the Compensation Committee. Mr. Land was elected to the Company's Board of Directors in connection with the purchase of shares of the Company's preferred stock by affiliates of Encompass Group, a venture capital firm, prior to the Company's initial public offering. Mr. Land is currently a managing director of Encompass Ventures, a position he has held since September 1997. Prior to joining Encompass, Mr. Land was a Senior Technology Analyst and Strategic Planning Consultant with Microsoft Corporation from June 1995 to September 1997, and a technology research

Table of Contents

analyst and investment banker for First Marathon Securities, a Canadian investment bank, from September 1993 to April 1995. From October 1988 to February 1993, Mr. Land was the President and Chief Executive Officer of InVision Technologies, a publicly traded company founded by Mr. Land in October 1988 that designs and manufactures high-speed computer-aided topography systems for automatic explosives detection for aviation security. Prior to founding InVision Technologies, Mr. Land served as a principal in the international consulting practice of Ernst & Young LLP, an accounting and consulting firm, from April 1984 to October 1988. Mr. Land serves as a director of Radiant Communications Corp. and several privately held companies.

William L. Larson has been a director of the Company since September 1998 and is a member of the Company's Compensation Committee. Mr. Larson is currently a private investor. From September 1993 to January 2001, Mr. Larson served as the Chief Executive Officer of Network Associates, Inc., a software company, where he also served as President and a director since October 1993 and as Chairman of the Board since April 1995. Mr. Larson also served as Chairman of the Board of McAfee.com Corporation, a software company, from October 1998 to January 2001. From August 1988 to September 1993, Mr. Larson served as a Vice President of SunSoft, Inc., a systems software subsidiary of Sun Microsystems, where he was responsible for worldwide sales and marketing. Prior to that, Mr. Larson held various executive positions at Apple Computer, Inc. and Spinnaker Software and was a consultant with Bain & Company. Mr. Larson holds degrees from Stanford Law School and the Wharton School of Finance and Commerce at the University of Pennsylvania. Mr. Larson is a member of the California Bar Association and serves on the boards of several technology companies.

Elliott H. Jurgensen, Jr. has been a director of the Company since January 2003 and is a member of the Company's Audit Committee and Compensation Committee. Mr. Jurgensen retired from KPMG LLP in 2003 after 32 years, including 23 years as a partner. During his career he held a number of leadership roles including: National Partner in Charge of KPMG's Hospitality Industry Practice from 1981 to 1993, Managing Partner of the Bellevue, Washington office from 1982 to 1991, and Managing Partner of the Seattle, Washington office from 1993 to 2002. His professional experience focused on providing business advisory and audit services to clients ranging from emerging businesses to large multinational public companies. His industry experience includes software, e-commerce, life sciences, hospitality, long-term care and manufacturing. He is also a director of Toolbuilders Laboratories, Inc., a developer of innovative software security and development tools for government and commercial enterprises. Mr. Jurgensen has a B.S. in accounting from San Jose State University and is a Certified Public Accountant.

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT SHAREHOLDERS VOTE FOR THE ELECTION OF MESSRS. LAND, LARSON AND JURGENSEN TO THE BOARD OF DIRECTORS.

Directors Continuing in Office

Class II Directors - Terms expire at the 2005 Annual Meeting of Shareholders

Donald B. Bibeault has been Chairman of the Board of Directors of the Company since July 2003. Mr. Bibeault is currently President of Bibeault & Associates, Inc., a turnaround-consulting firm, a position he has held since 1975. During that period, Mr. Bibeault has served as chairman, chief executive officer, or chief operating officer of numerous corporations, including Pacific States Steel, PLM International, Best Pipe and Steel, Inc., Ironstone Group, Inc., American National Petroleum, Inc., Tyler-Dawson Supply and Iron Oak Supply Corporation. He has also served as special turnaround advisor to the chief executive officers of Silicon Graphics Inc., Varity Corporation, and Yipes Networks. He has been a member of the Board of Overseers of Columbia Business School, a trustee of Golden Gate University and a member of the University of Rhode Island Business Advisory Board. Mr. Bibeault received a B.S. in electrical engineering from the University of Rhode Island, an M.B.A. from Columbia University and a PhD from Golden Gate University.

Brian T. Crowley has been the President and chief executive officer and a director of the Company since July 2003. From April 2002 to July 2003, Mr. Crowley served as the Company's Vice President, Product

Table of Contents

Development. From December 1999 to April 2002, Mr. Crowley held various positions at DataChannel, a market leader in enterprise portals, including Vice President of Engineering and Vice President of Marketing. From April 1999 to December 1999, Mr. Crowley was Vice President, Operations of Consortio, a software company. From December 1997 to April 1999, Mr. Crowley was Director of Development at Sequel Technology, a network solutions provider. From 1986 to December 1997, Mr. Crowley held various positions at Applied Microsystems Corporation, including Vice President and General Manager of the Motorola products and quality assurance divisions. Mr. Crowley holds a B.S. in Electrical Engineering from Arizona State University.

Class III Director - Term expires at the 2006 Annual Meeting of Shareholders

Elwood D. Howse, Jr. has been a director of the Company since November 2002 and is the Chairman of the Audit Committee. Mr. Howse is President of Cable & Howse, LLC, a Northwest venture capital management firm, a position he has held since 1981. Mr. Howse has also served as a director of OrthoLogic Corporation, a provider of orthopedic rehabilitation products, since September 1987. In addition, he also serves as a director of several private companies and charitable institutions. Mr. Howse received both a B.S. in engineering and an M.B.A. from Stanford University.

CORPORATE GOVERNANCE

Board Independence

The Board of Directors has determined that, after consideration of all relevant factors, Messrs. Howse, Jurgensen, Land and Larson, constituting a majority of the Company's Board of Directors, qualify as independent directors as defined under applicable rules of The Nasdaq Stock Market, Inc. ("Nasdaq") and that such directors do not have any relationship with the Company that would interfere with the exercise of their independent business judgment.

Standing Committees and Attendance

The Board of Directors of the Company held a total of 10 meetings during 2003. The Board of Directors has an Audit Committee, a Compensation Committee, a Strategic Planning Committee and an IPO Litigation Committee. The Board of Directors currently has no nominating committee or similar committee performing such functions.

The Audit Committee currently consists of Messrs. Howse (Committee Chairman), Land and Jurgensen. The Board of Directors has determined that, after consideration of all relevant factors, Messrs. Howse, Jurgensen and Land qualify as independent directors under applicable rules of Nasdaq and the Securities and Exchange Commission (the "SEC"). Each member of the Audit Committee is able to read and understand fundamental financial statements, including the Company's balance sheets, statements of operations and statements of cash flow. Further, no member of the Audit Committee has participated in the preparation of the financial statements of the Company or any current subsidiary of the Company at any time during the past three years. The Board of Directors has designated Mr. Jurgensen as the Audit Committee financial expert as defined under applicable SEC rules, who also is therefore deemed to possess the requisite financial sophistication required under applicable Nasdaq rules. The Board of Directors of the Company adopted a written amended and restated Audit Committee Charter on March 25, 2004, a copy of which is attached to this proxy statement as Appendix A. The Audit Committee is responsible for overseeing the Company's independent auditors, including their selection, retention and compensation, reviewing and approving the scope of audit and other services by the Company's independent auditors, reviewing the accounting principles, policies, judgments and assumptions and auditing practices and procedures to be used for the Company's financial statements and reviewing the results of the Company's audits. The Audit Committee is also responsible for reviewing the adequacy and effectiveness of the Company's internal controls and procedures, including risk management, establishing procedures regarding complaints concerning accounting or auditing matters, reviewing and approving

Table of Contents

related-party transactions, and reviewing compliance with the Company's Code of Business Conduct and Ethics. The Audit Committee held four regular meetings and two special meetings during 2003.

The Compensation Committee currently consists of Messrs. Land (Committee Chairman), Larson and Jurgensen. The Board of Directors has determined that, after consideration of all relevant factors, Messrs. Land, Jurgensen and Larson qualify as independent and non-employee directors under applicable Nasdaq and SEC rules, respectively, and qualify as outside directors pursuant to the Internal Revenue Code and the regulations promulgated thereunder. The Board of Directors of the Company adopted a written Compensation Committee Charter on March 25, 2004, a copy of which is attached to this proxy statement as Appendix B. The Compensation Committee approves the general compensation policies of the Company as well as the compensation plans and specific compensation levels for executive officers. The Compensation Committee did not hold any meetings in 2003 but acted by unanimous written consent on one occasion.

The Strategic Planning Committee currently consists of Messrs. Bibeault, Howse, Jurgensen, Land and Larson. The Company has been considering alternative debt or equity financing sources to fund the research and development, manufacturing, marketing and distribution expenses associated with the Company's Power Handheld device, and the Company has initiated steps to seek additional debt or equity financing sources. Some of these alternatives would involve the creation of a subsidiary in which certain of our current or former officers and directors could have a financial interest. In November 2003, the Board of Directors established a Strategic Planning Committee consisting of Messrs. Bibeault, Howse, Jurgensen, Land and Larson, none of whom would have a direct financial interest in the subsidiary and/or potential outside financing. The Strategic Planning Committee has been charged with broad responsibility for evaluating and reviewing all issues concerning the most advantageous way to finance the expenses associated with the Company's Power Handheld device while maximizing value for the Company and its shareholders.

The IPO Litigation Committee currently consists of Messrs. Jurgensen and Howse. As previously disclosed in the Company's filings with the Securities and Exchange Commission, the Company and certain of its current and former officers and directors were named as defendants in a consolidated class action lawsuit alleging violations of the federal securities laws in connection with the Company's initial public offering. In May 2003, the Board of Directors established a special IPO Litigation Committee consisting of Messrs. Jurgensen and Howse, neither of whom was a defendant in the class action litigation. The IPO Litigation Committee has the sole authority to review any proposed agreement to settle the class action litigation on behalf of the Company and to decide whether or not the Company should enter into or reject any proposed settlement.

No director attended fewer than 75% of the aggregate of the meetings of the Board of Directors and committees thereof, if any, upon which such director served during the period for which he has been a director or committee member.

Director Nomination Process

Given the size of the Company's Board of Directors, the Board has determined that nomination responsibilities should be handled by the entire Board of Directors. The Company's goal is to assemble a Board that brings to the Company a variety of perspectives and skills derived from high quality business and professional experience. In making its determinations, the Board considers such factors as it deems appropriate to develop a Board and committees that are diverse in nature and comprised of experienced and seasoned advisors. These factors may include judgment, knowledge, skill, diversity (including factors such as race, gender or experience), integrity, experience with businesses and other organizations of comparable size, including experience in software products and services, business, finance, administration or public service, the interplay of a candidate's experience with the experience of other Board members, familiarity with national and international business matters, experience with accounting rules and practices, the desire to balance the considerable benefit of continuity with the periodic injection of the fresh perspective provided by new members and the extent to which a candidate would be a desirable addition to the Board and any committees of the Board. In addition, directors are expected to be

Table of Contents

able to exercise their best business judgment when acting on behalf of the Company and its shareholders, act ethically at all times and adhere to the applicable provisions of the Company's Code of Business Conduct and Ethics. Other than consideration of the foregoing, there are no stated minimum criteria, qualities or skills for director nominees, although the Board may also consider such other factors as it may deem are in the best interests of the Company and its shareholders. The Board does, however, believe it is preferable that more than one member of the Board meet the criteria for an audit committee financial expert as defined by applicable SEC rules, and that a majority of the members of the Board meet the definition of independent director under applicable Nasdaq rules.

The Board identifies nominees by first evaluating the current members of the Board willing to continue in service. Current members of the Board with skills and experience that are relevant to the Company's business and who are willing to continue in service are considered for re-nomination, balancing the value of continuity of service by existing members of the Board with that of obtaining a new perspective. The Board will also take into account an incumbent director's performance as a Board member. If any member of the Board does not wish to continue in service, if the Board decides not to re-nominate a member for re-election, or if the Board decides to recommend that the size of the Board be increased, the Board shall identify the desired skills and experience of a new nominee in light of the criteria described above. Current members of the Board and management are polled for suggestions as to individuals meeting the Board's criteria. Research may also be performed to identify qualified individuals. To date, the Company has not engaged third parties to identify, evaluate or assist in identifying potential nominees, although the Company reserves the right in the future to retain a third party search firm, if appropriate.

It is the policy of the Board of Directors of the Company to consider suggestions for persons to be nominated for director that are submitted by shareholders. The Board will evaluate shareholder suggestions for director nominees in the same manner as it evaluates suggestions for director nominees made by management, then-current directors or other sources. Shareholders suggesting persons as director nominees should send information about a proposed nominee to the Corporate Secretary at the Company's address at least 120 days prior to the anniversary of the mailing date of the prior year's proxy statement. This information should be in writing and should include a signed statement by the proposed nominee that he or she is willing to serve as a director of the Company, a description of the nominee's relationship to the shareholder and any information that the shareholder feels will fully inform the Board about the proposed nominee and his or her qualifications. The Board may request further information from the proposed nominee and the nominating shareholder (including proof of ownership and holding period) and may also seek the consent of both the nominee and the nominating shareholder to be identified in the Company's proxy statement. The Company has not received any recommendations from shareholders of director candidates for the Annual Meeting.

Compensation Committee Interlocks and Insider Participation

No interlocking relationship exists between any member of the Company's Board of Directors or Compensation Committee and any member of the Board of Directors or Compensation Committee of any other company, nor has any such interlocking relationship existed in the past.

Compensation of Directors

The Company has established a compensation plan to attract and retain qualified non-employee directors to serve on the Company's Board of Directors. If the non-employee director meets certain attendance requirements, the Company will pay annual cash fees of \$16,000 to directors who do not serve on any Board committees, \$20,000 to directors who serve on any Board committee other than the Audit Committee, and \$24,000 to directors who serve on the Audit Committee. In addition, all directors are reimbursed for reasonable expenses incurred in attending Board of Directors and committee meetings. As compensation for his services as Chairman of the Board, Mr. Bibeault receives \$2,083 per month.

Table of Contents

Each newly elected non-employee director also receives, as of the date of his or her election, an option under the Company's amended and restated stock option plan to purchase 100,000 shares of the Company's Common Stock at an exercise price equal to the closing price of the Company's Common Stock on the date of the grant. These options vest quarterly over a two-year period.

In the fourth quarter of 2003, the Board of Directors approved on-going scheduled grants of options under the Company's amended and restated stock option plan to each non-employee director. Options to purchase 12,500 shares and 25,000 shares of the Company's Common Stock are to be granted each fiscal quarter to all non-employee directors and to Mr. Bibeault as the Chairman of the Board, respectively, at an exercise price equal to the closing price of the Company's Common Stock on the date of grant. These options shall vest quarterly over a two-year period.

The following table sets forth certain information concerning compensation of non-employee directors in 2003:

Name	Year	Aggregate Director Compensation	All Other Compensation
Donald B. Bibeault <i>Chairman</i>	2003	\$ 10,417	\$ 469,897(1)
Elwood D. Howse, Jr.	2003	24,000	
Elliott H. Jurgensen, Jr.	2003	24,000	
William L. Larson	2003	20,000	
Scot E. Land	2003	24,000	
Jeffery T. Chambers (2)	2003	8,000	

(1) During the second quarter of 2003, the Company hired Bibeault & Associates as turnaround consultants. Under this consulting arrangement, the Company paid Bibeault & Associates \$355,314 of consulting fees in 2003. In July 2003, the Company named Mr. Bibeault, the President of Bibeault & Associates, as Chairman of the Company's Board of Directors and entered into a six-month consulting agreement with Mr. Bibeault. Under the new agreement, Mr. Bibeault provides the Company with 10 days per month of onsite consulting services. Mr. Bibeault received \$114,583 under this consulting agreement in 2003.

(2) Mr. Chambers resigned as a director in July 2003.

The following table sets forth options grants to non-employee directors in 2003:

Name	Grant Date	Number of Shares Underlying Options	Exercise Price
Donald B. Bibeault <i>Chairman</i>	7/24/2003	200,000	\$ 1.00
	10/21/2003	25,000	1.57
Elwood D. Howse, Jr.	10/21/2003	12,500	1.57
Elliott H. Jurgensen, Jr.	1/16/2003	100,000	1.29
	10/21/2003	12,500	1.57
William L. Larson	2/19/2003	100,000	1.08
	10/21/2003	12,500	1.57
Scot E. Land	2/19/2003	100,000	1.08
	10/21/2003	12,500	1.57
Jeffery T. Chambers (1)	2/19/2003	100,000	1.08

(1) Mr. Chambers resigned as a director in July 2003.

