

NATIONAL HOLDINGS CORP
Form DEF 14A
July 01, 2014

**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.)**

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 14(a)-12

NATIONAL HOLDINGS CORPORATION
(Name of Registrant as Specified in Charter)

Payment of filing fee (check the appropriate box):

No fee required

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

(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:

(5) Total fee paid:

Fee paid previously with preliminary materials.

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:

NATIONAL HOLDINGS CORPORATION

Notice of Annual Meeting of Stockholders
To Be Held Monday, July 28, 2014 at 2:00 P.M. EST

To the Stockholders:

The Annual Meeting of Stockholders (the “Annual Meeting”) of National Holdings Corporation (the “Company”) will be held on Monday, July 28, 2014 at 2:00 P.M. (local time) at the offices of Troutman Sanders LLP, The Chrysler Building, 405 Lexington Avenue, New York, New York 10174, for the following purposes:

1. To elect five (5) class I directors to serve until the 2017 Annual Meeting of Stockholders and until their successors are elected and qualified;
2. To approve an amendment to the Company’s certificate of incorporation to increase the total number of authorized shares of common stock, par value \$0.02 per share (the “Common Stock”), from 150,000,000 shares to 250,000,000 shares;
3. To approve an amendment to the Company’s certificate of incorporation to effect a reverse stock split of the Common Stock at a split ratio of not less than one-for-eight and not more than one-for-twenty, to be effective, if at all, at such time as the Company’s Board of Directors shall determined in its sole discretion; and
4. To transact such other business as may properly come before the Annual Meeting or any adjournment thereof.

Owners of record at the close of business on June 24, 2014 (the “Record Date”) are entitled to notice of and to vote at the Annual Meeting or at any adjournments or postponements thereof. A complete list of the stockholders entitled to notice of and to vote at the Annual Meeting will be made available for inspection by any stockholder of record at the offices of the Company during market hours from the Record Date through the time of the Annual Meeting.

Your vote is very important. For this reason, the Company's Board of Directors is soliciting your proxy to vote your shares of the Common Stock at the Annual Meeting. The entire cost of soliciting proxies will be borne by the Company. The cost of solicitation will include the fees and expenses of Georgeson, Inc., the Company's proxy solicitor, and the cost of supplying necessary additional copies of the solicitation materials and the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 2013 (collectively the "Annual Report") to beneficial owners of shares held of record by brokers, banks, or other nominees, including the reasonable expenses of such record holders for completing the mailing of such materials and Annual Report to such beneficial owners.

In voting at the Annual Meeting, each stockholder of record on the Record Date shall be entitled to one vote on all matters. Holders of a majority of the outstanding shares of Common Stock must be represented in person or by proxy in order to achieve a quorum to vote on all matters.

All stockholders are cordially invited to attend the Annual Meeting in person. The Company is also providing proxy material access to our stockholders via the Internet. See "Important Notice Regarding the Availability of Proxy Materials for the Stockholder Meeting to be Held on July 28, 2014." Please give the proxy materials your careful attention.

You may vote by signing, voting and returning the proxy card in the envelope provided or by following the instructions on the proxy card to submit your proxy or voting instructions electronically over the Internet or by telephone. If you attend the Annual Meeting, you may vote in person even if you have previously returned your proxy card or you have submitted your proxy or voting instructions electronically over the Internet or by telephone. Please review the instructions for each voting option described in this proxy statement. Your prompt cooperation will be greatly appreciated.

The proxy statement, the attached Notice of Meeting, the enclosed proxy card and the Annual Report are being mailed to stockholders on or about July 1, 2014.

If you have questions or need assistance in voting your shares, please call:

480 Washington Blvd, 26th Floor

Jersey City, NJ 07310

(Toll Free) (888) 607-9252

E-mail: NHLD@georgeson.com

By Order of the Board of Directors
/s/ Alan B. Levin

Alan B. Levin – Secretary

Boca Raton, Florida

July 1, 2014

2

NATIONAL HOLDINGS CORPORATION

410 Park Ave, 14th Floor

New York, NY 10022

PROXY STATEMENT

ANNUAL MEETING OF STOCKHOLDERS

To Be Held July 28, 2014

General

The enclosed proxy is solicited on behalf of the Board of Directors (the “Board” or “Board of Directors”) of National Holdings Corporation, a Delaware corporation (“we,” “us,” “our,” “National” and the “Company”), for use at the Annual Meeting of Stockholders (the “Annual Meeting”) to be held on Monday, July 28, 2014, and any adjournment or postponement thereof. The Annual Meeting will be held at 2:00 P.M. (local time) at the offices of Troutman Sanders LLP, The Chrysler Building, 405 Lexington Avenue, New York, New York 10174. This proxy statement, the enclosed proxy card and the Company’s Annual Report on Form 10-K for the fiscal year ended September 30, 2013 are being mailed on or about July 1, 2014, to stockholders entitled to notice of and to vote at the Annual Meeting.

Record Date

The close of business on June 24, 2014 has been fixed as the record date (the “Record Date”) for determining the stockholders of record entitled to notice of and to vote at the Annual Meeting. At the close of business on the Record Date, there were outstanding and entitled to vote 123,246,888 shares of our common stock, \$0.02 par value per share (the “Common Stock”).

Quorum

In order for the Company to conduct the Annual Meeting, a majority of the outstanding shares of Common Stock eligible to vote must be represented in person or by proxy at the Annual Meeting. This is referred to as a quorum.

Abstentions and broker non-votes will be counted for purposes of establishing a quorum. A “broker non-vote” occurs when a brokerage firm returns a signed proxy card but does not vote shares on a particular proposal because the proposal is not a routine matter and the brokerage firm has not received voting instructions from the beneficial owner of the shares.

Who May Vote

Only stockholders of record of Common Stock at the close of business on the Record Date are entitled to vote at the Annual Meeting. The Common Stock is our only authorized class of voting stock.

Stockholder of Record: Shares Registered in Your Name

If on the Record Date your shares were registered directly in your name with the Company’s transfer agent, Computershare Trust Company, Inc., then you are a stockholder of record. As a stockholder of record, you may vote in person at the Annual Meeting or vote by proxy. Whether or not you plan to attend the Annual Meeting, we urge you to complete, sign and date the enclosed proxy card and to return it promptly in the envelope provided or follow the instructions on the proxy card to submit your proxy over the Internet or by telephone.

Beneficial Owner: Shares Registered in the Name of a Broker, Bank or Other Nominee

If on the Record Date your shares were registered in the name of your broker, bank, or other nominee, then you are the beneficial owner of shares held in “street name” and these proxy materials are being forwarded to you by that organization. The organization holding your account is considered the stockholder of record for purposes of voting at the Annual Meeting. As a beneficial owner, you have the right to direct your broker, bank, or other nominee on how to vote the shares in your account. You are also invited to attend the Annual Meeting. However, since you are not the stockholder of record, you may not vote your shares in person at the Annual Meeting unless you request and obtain a valid proxy from your bank, broker or other nominee or you bring a letter from the bank, broker or nominee indicating that you were the beneficial owner of the shares on the Record Date.

How to Vote by Proxy

Stockholder of Record: Shares Registered in Your Name

Whether or not you plan to attend the Annual Meeting, we urge you to complete, sign and date the enclosed proxy card and to return it promptly in the envelope provided or to follow the instructions on the proxy card to submit your proxy or voting instructions electronically over the Internet or by telephone. Returning the proxy card or submitting your proxy or voting instructions electronically over the Internet or by telephone will not affect your right to attend the Annual Meeting and vote. If your shares are registered directly in your name through our stock transfer agent, Computershare Trust Company, Inc., or if you have stock certificates, you may vote by completing, signing and mailing the enclosed proxy card in the envelope provided or submitting your proxy or voting instructions electronically over the Internet or by telephone. Your proxy will be voted in accordance with your instructions. If you sign the proxy card, but do not specify how you want your shares voted, they will be voted as recommended by our Board of Directors. If you attend the Annual Meeting, you may deliver your completed proxy card in person or you may vote by completing a ballot, which will be available at the meeting.

Beneficial Owner: Shares Registered in the Name of Broker or Bank

If you are a beneficial owner of shares registered in the name of your broker, bank, or other nominee, you should have received a proxy card and voting instructions with these proxy materials from that organization rather than from us. Simply complete, sign and date the enclosed proxy card and return it promptly in accordance with the instructions of your broker, bank or other nominee.

Voting Shares

Election of Directors. With regard to the election of directors (Proposal No. 1), votes may be cast for or against, or you may abstain from voting for, each nominee. In order to elect directors, a majority of the votes is not required; instead, the nominees will be elected by a plurality of the votes cast, which means that the nominees receiving the most votes will be elected. Therefore, votes that are against will be excluded entirely from the vote and will have no effect on the outcome of the election of directors. Abstentions and broker non-votes will not be counted and will have no effect on the outcome of the election of directors.

Amendment to Certificate of Incorporation Increasing Number of Authorized Shares of Common Stock. The approval of the amendment to our certificate of incorporation to increase the total number of authorized shares of our Common

Stock from 150,000,000 to 250,000,000 (Proposal 2) requires the affirmative “**FOR**” vote of a majority of the outstanding shares of Common Stock entitled to vote thereon. Abstentions and “broker non-votes” will not be counted as having been voted on the proposals, and therefore will have the same effect as negative votes.

Amendment to Certificate of Incorporation Effecting a Reverse Stock Split of the Common Stock. The approval of the amendment to our certificate of incorporation to effect a reverse stock split of the Common Stock at a split ratio of not less than one-for-eight and not more than one-for-twenty, to be effective, if at all, at such time as the Company’s Board of Directors shall determined in its sole discretion (Proposal 3) requires the affirmative “**FOR**” vote of a majority of the outstanding shares of Common Stock entitled to vote thereon. Abstentions and “broker non-votes” will not be counted as having been voted on the proposals, and therefore will have the same effect as negative votes.

If your shares are registered in your name, your shares will not be voted unless you provide a proxy or vote in person at the Annual Meeting.

If you are a beneficial owner of shares registered in the name of your broker, bank, or other nominee, in order to ensure your shares are voted in the way you would like, you **must** provide voting instructions to your bank, broker or other nominee by the deadline provided in the materials you receive from your bank, broker or other nominee. If you do not provide voting instructions to your bank, broker or other nominee, whether your shares can be voted by such person depends on the type of item being considered for vote.

Each of Proposals 1, 2 and 3 is a non-discretionary item and **may not** be voted on by brokers, banks or other nominees who have not received specific voting instructions from you.

Board Recommendation

If we receive a properly completed proxy card or if you voted electronically over the Internet or by telephone in time to vote your “proxies”, Robert B. Fagenson, our Co-Executive Chairman, and/or Alan Levin, our Chief Financial Officer and Secretary, will vote the shares as you or your bank, broker or other nominee have directed. If we receive a properly completed proxy card but no specific choices are made, your proxies will vote those shares as recommended by the Board of Directors as follows:

“FOR” the election of the five class I director nominees;

“FOR” the approval of an amendment to the Company’s certificate of incorporation to increase the total number of authorized shares of Common Stock from 150,000,000 shares to 250,000,000 shares;

“FOR” the approval of an amendment to the Company’s certificate of incorporation to effect a reverse stock split of the Common Stock at a split ratio of not less than one-for-eight and not more than one-for-twenty, to be effective, if at all, at such time as the Company’s Board of Directors shall determined in its sole discretion.

Revocation of Proxies

You may revoke or change your proxy at any time before the Annual Meeting by filing with the Secretary of the Company, at 1200 North Federal Highway, Suite 400, Boca Raton, FL 33432, a notice of revocation or another signed

proxy with a later date. You may also revoke your proxy by attending the Annual Meeting and voting in person.

If any stockholder is unable to attend the Annual Meeting, such stockholder may vote by proxy. If a proxy is properly executed and returned to the Company in time to be voted at the Annual Meeting, it will be voted as specified in the proxy, unless it is properly revoked prior thereto. Votes cast in person or by proxy at the Annual Meeting will be tabulated by the Inspector of Elections appointed for the meeting and will determine whether or not a quorum is present.

Voting Results

The preliminary voting results will be announced at the Annual Meeting. The final voting results will be published in a Current Report on Form 8-K filed with the Securities and Exchange Commission (the “SEC”) within four business days of the Annual Meeting.

Attending the Annual Meeting

You are invited to attend the Annual Meeting if you are a stockholder of record or a beneficial owner as of the Record Date. If you are a stockholder of record, you must bring proof of identification. If you hold your shares through a broker, bank or other nominee, you will need to provide proof of ownership by bringing either a copy of the voting instruction form provided by your broker, bank, or other nominee or a copy of a brokerage statement showing your share ownership as of the Record Date.

Solicitation

The Company will bear the entire cost of solicitation, including the preparation, assembly, printing and mailing of this Proxy Statement, the proxy and any additional solicitation materials furnished to the stockholders. Copies of solicitation materials will be furnished to brokerage houses, fiduciaries and custodians holding shares in their names that are beneficially owned by others so that they may forward this solicitation material to such beneficial owners. The Company may reimburse such persons for their costs in forwarding the solicitation materials to such beneficial owners. The original solicitation of proxies by mail may be supplemented by a solicitation by personal interview, telephone, mail, facsimile or email by directors, officers or employees of the Company but no additional compensation will be paid to such individuals. In addition, the Company has retained Georgeson, Inc (“Georgeson”) to assist in connection with the solicitation of proxies from stockholders whose shares are held in nominee name by various brokerage firms. Under the agreement between the Company and Georgeson relating to the retention of Georgeson, the Company will be paying Georgeson a retainer of \$15,000 toward a final fee to be mutually agreed upon not to exceed \$45,000, and will reimburse Georgeson for reasonable Out of pocket expenses related to the solicitation. Our agreement with Georgeson contains customary indemnification provisions with respect to the services provided by Georgeson. Georgeson expects that approximately 20 of its employees will assist in the solicitation of proxies. We estimate the total cost of this solicitation to be \$45,000, plus out of pocket costs and expenses of approximately \$30,000. Actual expenditures may vary from this estimate, however, as many of the expenditures cannot be readily predicted.

If you have questions or need assistance in voting your shares, please call:

480 Washington Blvd, 26th Floor

Jersey City, NJ 07310

(Toll Free) (888) 607-9252

E-mail: NHLD@georgeson.com

4

Important Notice Regarding the Availability of Proxy Materials for the Stockholder Meeting to be Held on July 28, 2014

We are providing proxy material access to our stockholders via the Internet. Accordingly, these can be accessed at <http://www.nhldcorp.com/investors/financial-reports/shareholders-meeting.aspx> . The proxy materials include a copy of this proxy statement, a copy of our annual report on Form 10-K for the fiscal year ended September 30, 2013 and a copy of the form of proxy included herein.

Stockholder Proposals for 2015 Annual Meeting

Any stockholder who intends to present a proposal at the Company's 2015 Annual Meeting of Stockholders must ensure that the proposal is received by the Corporate Secretary at 1200 North Federal Highway, Suite 400, Boca Raton, FL 33432:

not later than March 3, 2015, if the proposal is submitted for inclusion in our proxy materials for that meeting pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"); or

on or before June 1, 2015, if the proposal is submitted for the 2015 annual meeting pursuant to the Company's by-laws, in which case the notice of the proposal must meet certain requirements set forth in our by-laws.

Dissenters' Right of Appraisal

Under Delaware General Corporation Law § 262(b) and (c), stockholders are not entitled to dissenters' rights on any proposal referred to herein.

Householding of Proxy Materials

The SEC has adopted rules that permit companies and intermediaries such as brokers to satisfy delivery requirements for proxy statements with respect to two or more stockholders sharing the same address by delivering a single proxy statement addressed to those stockholders. This process, which is commonly referred to as "householding", potentially provides extra convenience for stockholders and cost savings for companies. The Company and some brokers household proxy materials, delivering a single proxy statement to multiple stockholders sharing an address unless

contrary instructions have been received from the affected stockholders. Once you have received notice from your broker or the Company that they or the Company will be householding materials to your address, householding will continue until you are notified otherwise or until you revoke your consent. If, at any time, you no longer wish to participate in householding and would prefer to receive a separate proxy statement, or if you are receiving multiple copies of the proxy statement and wish to receive only one, please notify your broker if your shares are held in a brokerage account or the Company if you hold Common Stock directly. Requests in writing should be addressed to: National Holdings Corporation, 1200 North Federal Highway, Suite 400, Boca Raton, FL 33432, Attention: Secretary. Requests may also be made by calling the Secretary at (561) 981-1007.

Certain Beneficial Owners

The following table sets forth certain information, as of June 24, 2014, concerning the beneficial ownership of our Common Stock by:

each person we know to be the beneficial owner of more than 5% of our Common Stock;

each of our current directors;

each of our named executive officers;

each nominee for director; and

all current directors and executive officers as a group.

Beneficial ownership is determined in accordance with the rules of the SEC. To our knowledge, except indicated by footnote the persons named in the table below have sole voting and investment power with respect to all shares of Common Stock shown as beneficially owned by them. Shares of our Common Stock underlying derivative securities, if any, that currently are exercisable or convertible or are scheduled to become exercisable or convertible for or into shares of Common Stock within 60 days after the date of the table are deemed to be outstanding in calculating the percentage ownership of each listed person or group but are not deemed to be outstanding as to any other person or group. The address of named beneficial owners that are officers and/or directors is: c/o National Holdings Corporation, 410 Park Ave, 14th Floor, New York, NY 10022.

Name and Address of Beneficial Owner	Amount and Nature of Beneficial Ownership	Percentage of Class	
	(1)		
Mark Klein (1)	10,739,855	8.3	%
Robert Fagenson (2)	9,849,179	7.9	%
Richard Abbe (3)	7,453,123	5.9	%
Joshua Silverman (3)	7,453,123	5.9	%
FMR LLC (4)	6,546,490	5.3	%
Mark Goldwasser (5)	3,445,685	2.8	%
Frederic B. Powers III (6)	1,666,667	1.4	%
Leonard Sokolow	1,476,956	1.2	%

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Frank Plimpton	1,511,285	1.2	%
Alan Levin	107,166	*	
Salvatore Giardina	60,000	*	
Peter Zurkow	60,000	*	
William Lerner	60,000	*	
James Ciocia	772,770	*	
Frederick Wasserman	101,842	*	
All executive officers and directors as a group (12 Persons)	29,851,405	22.6	%

6

*Less than 1%

(1) Consists of (i) 617,094 shares of our Common Stock held directly by Mr. Klein, (ii) 5,700,000 shares of our Common Stock issuable upon exercise of vested options, and (iii) 4,422,761 shares of our Common Stock held by a company controlled by Mr. Klein. Mr. Klein has sole voting and investment power over such shares.

(2) Consists of (i) 1,000,000 shares of our Common Stock issuable upon exercise of options, (ii) 166,666 shares of our Common Stock held a Trust for the benefit of Toby Fagenson, of which Mr. Fagenson is the sole Trustee and has sole voting and investment power over such shares, (iii) 8,014,627 shares of our Common Stock held by Fagenson & Co., Inc., of which Mr. Fagenson is the Chairman and Chief Executive Officer and has sole voting and investment power over such shares and (iv) 667,668 shares of our Common Stock held by National Securities Growth Partners LLC, of which Robert B. Fagenson is the President and has sole voting and investment power.

(3) Information is based on Amendment No. 2 to Schedule 13D filed by Iroquois Capital Management, LLC, Iroquois Master Fund Ltd., Joshua Silverman, and Richard Abbe on June 9, 2014. Consists of (i) 7,286,455 shares of our Common Stock over which Iroquois Capital Management, LLC, Iroquois Mast Fund Ltd. and Messrs Silverman and Abbe have shared voting and investment power, and (ii) 166,668 shares of our Common Stock over which Mr. Abbe has sole voting and investment power. The principal business address for Iroquois Capital Management LLC. and Messrs. Silverman and Abbe is 641 Lexington Avenue, 26th Floor, New York, NY 10022.

(4) Information is based on a Schedule 13G filed by FMR LLC and Edward C. Johnson on February 14, 2014. According to the Schedule 13G, Pyramis Global Advisors Trust Company ("PGATC"), 900 Salem Street, Smithfield, Rhode Island, 02917, an indirect wholly-owned subsidiary of FMR LLC and a bank as defined in Section 3(a)(6) of the Securities Exchange Act of 1934, is the beneficial owner of 6,546,490 shares of our Common Stock as a result of its serving as investment manager of institutional accounts owning such shares. Edward C. Johnson 3d and FMR LLC, through its control of Pyramis Global Advisors Trust Company, each has sole dispositive power over 6,546,490 shares and sole power to vote or to direct the voting of 6,546,490 shares of our Common Stock owned by the institutional accounts managed by PGATC. The principal business address of FMR LLC and Edward C. Johnson is 245 Summer Street, Boston, Massachusetts 02210.

(5) Consists of (i) 1,180,938 shares of our Common Stock issued on the conversion of 14,762 shares of Series A preferred stock in December 2011, (ii) 236,944 shares our Common Stock held directly by Mr. Goldwasser, (iii) 7,375 shares of our Common Stock held in a individual retirement account for the benefit of Mr. Goldwasser, (iv) 7,375 shares of our Common Stock held in an individual retirement account for the benefit of Mr. Goldwasser's wife, (v) 13,050, shares of our Common Stock held in trusts for the benefit of Mr. Goldwasser's children, of which Mr. Goldwasser is the sole Trustee and (vi) 2,000,000 shares of our Common Stock issuable upon exercise of vested stock options.

(6) Consists of shares owned by Powers Private Equity LLC, of which Mr. Powers is a Managing Director. Mr. Powers may be deemed to own the shares of our Common Stock owned by Powers Private Equity LLC. Mr. Powers disclaims beneficial ownership of the shares of our Common Stock owned by Powers Private Equity LLC. The principal business address of Powers Private Equity LLC is 100 W. Putnam Avenue, Greenwich CT 06830.

PROPOSAL 1 ELECTION OF DIRECTORS

Our Board of Directors currently consists of eleven (11) members and is divided into three (3) classes, one class of which is elected at each Annual Meeting of Stockholders to hold office for a three-year term and until successors of such class have been elected and qualified. The nominees to serve as class I directors of the Board of Directors are set forth below and each has consented to being named in this proxy statement and has agreed to serve if elected.

If before the election one or more of the nominees are unable to serve or for good cause will not serve, the proxy holders will vote the proxies for the remaining nominees and substitute nominees chosen by the Company's Board unless the Board reduces the number of directors to be elected. If any substitute nominees are designated, we will file an amended Proxy Statement and proxy card that, as applicable, identifies the substitute nominees, discloses that such nominees have consented to being named in the revised proxy statement and to serve if elected, and includes biographical and other information about such nominees required by the rules of the SEC.

On February 7, 2014, we received a notice from Iroquois Master Fund Ltd. expressing Iroquois' intention to nominate a slate of three directors to stand for election as class I directors at the Annual Meeting and solicit proxies in favor of its nominees and on March 24, 2014, Iroquois Master Fund Ltd. filed its preliminary form of proxy statement with the SEC. On May 6, 2014, we entered into an investors settlement agreement (the "Settlement Agreement") with Iroquois Master Fund Ltd. and certain entities and individuals listed on the signature page thereto (collectively "Iroquois") pertaining to the election of class I directors at the Annual Meeting. Pursuant to the Settlement Agreement, among other things,

Peter Zurkow, a current director of the Company, will not stand for re-election as a class I director at the Annual Meeting and Leonard Sokolow, a current director of the Company, will resign from the Board immediately following the Annual Meeting.

Immediately following the Annual Meeting, the Board will appoint Richard Abbe, as a class III director of the Company.

The Board will nominate Robert B. Fagenson, William Lerner, James Ciocia, Frederick Wasserman and Joshua Silverman (collectively the “2014 Nominees”) for election at the Annual Meeting as class I directors, will recommend a vote for the 2014 Nominees and solicit proxies for the election of the 2014 Nominees at the Annual Meeting. Richard Abbe or Josh Silverman are referred to herein individually as an “Investor Director” and collectively as the “Investor Directors”.

Iroquois agreed to irrevocably withdraw its letter to the Company expressing an intention to nominate director candidates and any and all related materials and notices submitted to the Company in connection therewith and in any solicitation materials concerning the foregoing or otherwise related to the Annual Meeting and filed by it on its behalf with the SEC or furnished to stockholders of the Company.

Iroquois agreed to vote all shares of Common Stock beneficially owned by Iroquois and its affiliates and associates (i) in favor of the election of the 2014 Nominees, (ii) FOR Proposal 2 and (iii) FOR Proposal 3.

Subject to certain exceptions, if either Investor Director is unable to serve on the Board or resigns from the Board (for any reason other than following a breach of the Settlement Agreement by Iroquois or its affiliates) during the standstill period, Iroquois is entitled to designate a replacement nominee to be approved by the Nominating Committee and the Board and appointed to the Board.