

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

FORM 8-K

Current Report

**Pursuant To Section 13 or 15 (d) of the
Securities Exchange Act of 1934**

August 24, 2017

Date of Report (Date of earliest event reported)

Commission file number: 1-33026

COMMVault SYSTEMS, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction
of incorporation or organization)

22-3447504

(I.R.S. Employer
Identification No.)

**1 Commvault Way, Tinton Falls, New Jersey
07724**

(Address of principal executive offices)
(Zip Code)

(732) 870-4000

(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

(e) At the Commvault Systems, Inc. (the “Company”) fiscal 2017 Annual Meeting of Stockholders, the Company’s stockholders approved the Commvault Systems, Inc. Omnibus Incentive Plan as amended by the First Amendment (the “Incentive Plan”), pursuant to which the Company may grant awards to its officers, employees, directors, consultants, independent contractors and agents and those of its affiliates. The Incentive Plan includes provisions that are currently common in the market and enables the Company to grant a broader spectrum of awards that are performance-based for purposes of section 162(m) of the Internal Revenue Code of 1986, as amended. Awards that may be granted under the Incentive Plan include stock options, stock appreciation rights, full value awards (including restricted stock, restricted stock units, performance shares or units and other stock-based awards) and cash-based awards. The Incentive Plan originally reserved a total of 2,800,000 shares of Common Stock. The First Amendment increased the number of shares available for issuance under the Incentive Plan by 750,000 for a total of 3,550,000 shares of Common Stock.

A more complete description of the Incentive Plan is contained in the Company’s proxy statement, dated July 3, 2017, as filed with the Securities and Exchange Commission (“Proxy Statement”), under the heading “Proposal 3 – Approval of Commvault Systems, Inc. Omnibus Incentive Plan, as amended by the First Amendment” which is incorporated herein by reference. The descriptions of the Incentive Plan set forth herein and in the Proxy Statement are qualified in their entirety by reference to the complete text of the Incentive Plan which is set forth in Exhibit 10.1 hereto.

Item 5.07 Submission of Matters to a vote of Security Holders

On August 24, 2017, the Company held its fiscal 2017 Annual Meeting of Stockholders, at which the Company’s stockholders voted (1) on the election of three Class II Directors for a term to expire at the 2020 Annual Meeting of Stockholders, (2) on the ratification of the appointment of Ernst & Young LLP as the Company’s independent public accountants for the fiscal year ending March 31, 2018, (3) approval of the Incentive Plan, (4) on a non-binding, advisory basis, on executive compensation, and (5) on a non-binding, advisory basis, on an advisory basis, whether executive compensation should be submitted to stockholders for an advisory vote every one, two or three years. The vote on such matters was as follows

1. Election of directors

Election of Alan G. Bunte:

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Vote</u>
35,900,407	1,873,411	30,396	3,892,806

Election of Frank J. Fanzilli, Jr.:

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Vote</u>
36,922,798	846,802	34,614	3,892,806

Election of Daniel Pulver:

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Vote</u>
35,661,210	2,108,290	34,714	3,892,806

2. Ratify appointment of Ernst & Young LLP as independent public accountants for the fiscal year ending March 31, 2018

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Vote</u>
41,011,395	655,262	30,363	0

3. Approval of the Company's Omnibus Incentive Plan, as amended by the First Amendment

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Vote</u>
34,404,638	3,366,011	35,565	3,892,806

4. Non-binding, advisory vote, on the Company's executive compensation

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Broker Non-Vote</u>
37,380,651	376,521	47,042	3,892,806

5. Non-binding, advisory vote, on the frequency of the advisory vote on the Company's executive compensation

<u>One-Year</u>	<u>Two Years</u>	<u>Three Years</u>	<u>Abstain</u>	<u>Broker Non-Vote</u>
33,298,562	20,536	4,442,697	42,416	3,892,806

Consistent with the recommendation of the Board of Directors of the Company as set forth in the Company's proxy statement for its 2017 annual meeting of stockholders, and after taking into the account the results

of the stockholder advisory vote on the frequency of the advisory vote on executive compensation conducted at the annual meeting, it shall be Company's policy to submit the compensation of its named executive officers to stockholders for a non-binding advisory vote every year, at least until the next required vote on the frequency of stockholder votes on the compensation of executives.

Item 9.01. Financial Statements and Exhibits

(d) Exhibits

Exhibit No. Description

10.1 Commvault Systems, Inc. Omnibus Incentive Plan (as amended by the First Amendment Thereof)

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

COMMVault SYSTEMS, INC.

By: /s/ Warren H. Mondschein
Name: Warren H. Mondschein
Title: VP, General Counsel and Secretary

DATE: August 25, 2017

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
10.1	Commvault Systems, Inc. Omnibus Incentive Plan (as amended by the First Amendment Thereof)

**COMMVAULT SYSTEMS, INC.
OMNIBUS INCENTIVE PLAN**

(As Amended Through the First Amendment Thereof)

1. PURPOSE. Commvault Systems, Inc. (the “Company”) has established the Commvault Systems, Inc. Omnibus Incentive Plan (the “Plan”) to (a) attract and retain employees, directors and other persons providing services to the Company and its Related Companies (as defined herein); (b) advance the interests of the Company and its stockholders by providing employees, directors and other persons providing services to the Company and its Related Companies, upon whose judgment, initiative and efforts the Company largely depend, with appropriate incentives to perform in a superior manner and achieve long-range goals, (c) to provide incentive compensation opportunities that are competitive with other similar companies, and (d) to further align the interests of Participants’ (as defined herein) with those of the Company’s stockholders, and to thereby promote the long-term financial interests of the Company and the Related Companies, including the growth in value of the Company’s equity and long-term stockholder return.

2. DEFINITIONS. As used in the Plan, the following defined terms have the meanings indicated below:

2.1 “Agreement” has the meaning set forth in subsection 9.8.

2.2 “Award” means any award permitted to be granted pursuant to the provisions of the Plan.

2.3 “Board” means the Board of Directors of the Company.

2.4 “Cash Incentive Award” has the meaning set forth in subsection 7.1(b).

2.5 “Cause” means, unless otherwise provided by the Committee or as set forth in a separate agreement between the Company and the Participant, a Participant’s termination of employment or other services for gross negligence, personal dishonesty, incompetence, willful misconduct, any breach of fiduciary duty involving personal profit, intentional failure to perform stated duties, or the willful violation of any law, rule or regulation (other than traffic violations or similar offenses).

2.6 “Code” means the Internal Revenue Code of 1986, as amended. Any reference to a specific provision of the Code includes the successor provision(s) and the regulations promulgated.

2.7 “Committee” has the meaning specified in subsection 3.1.

2.8 “Common Stock” means the common stock of the Company.

2.9 “Company” has the meaning set forth in Section 1.

2.10 “Disability” shall mean, unless otherwise provided by the Committee, that an individual is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months. Whether an individual has a “Disability” shall be determined in a manner that is consistent with Code Section 22(e)(3). Notwithstanding the foregoing, if a Participant has an employment agreement with the Company or Related Company and such employment agreement defines “disability”, then “Disability used herein shall have the meaning as set forth in such employment agreement.

2.11 “Effective Date” has the meaning set forth in subsection 9.1.

2.12 “Eligible Individual” means any officer, director or other employee of the Company or a Related Company, consultants, independent contractors or agents of the Company or a Related Company, and persons who are expected to become officers, employees, directors, consultants, independent contractors or agents of the Company or a Related Company (but effective no earlier than the date on which such Person begins to provide services to the Company or a Related Company), including, in each case, Outside Directors.

2.13 “Exchange Act” means the Securities Exchange Act of 1934, as amended. Any reference to a specific provision of the Exchange Act includes the successor provision(s) and the regulations promulgated thereunder.

2.14 “Expiration Date” has the meaning set forth in subsection 6.10 of the Plan.

2.15 “Fair Market Value” of a share of Common Stock means, as of any date, the value determined in accordance with the following rules:

- (a) If the Common Stock is at the time listed or admitted to trading on any stock exchange, then the Fair Market Value shall be the closing price per share of Common Stock on such date on the principal exchange on which the Common Stock is then listed or admitted to trading or, if no such sale is reported on that date, on the last preceding date on which a sale was so reported.
- (b) If the Common Stock is not at the time listed or admitted to trading on a stock exchange, the Fair Market Value shall be the closing average of the closing bid and asked price of a share of Common Stock on the date in question in the over-the-counter market, as such price is reported in a publication of general circulation selected by the Committee and regularly reporting the market price of Common Stock in such market.
- (c) If the Common Stock is not listed or admitted to trading on any stock exchange or traded in the over-the-counter market, the Fair Market Value shall be as determined by the Committee in good faith.

2.16 “Full Value Award” has the meaning set forth in subsection 7.1(a).

2.17 “Incentive Stock Option” means an Option that is intended to satisfy the requirements applicable to an “incentive stock option” described in Code Section 422.

2.18 “Non-Qualified Stock Option” means an Option that is not intended to be an Incentive Stock Option.

2.19 “Option” has the meaning set forth in subsection 6.1(a) of the Plan.

2.20 “Outside Director” means a director of the Company who is not an officer or employee of the Company or the Related Companies.

2.21 “Participant” means an Eligible Individual who receives an Award under the Plan as described in Section 5.

2.22 “Performance-Based Compensation” has the meaning set forth in subsection 7.3.

2.23 “Performance Criteria” means one or more of the following criteria (i) earnings including operating income, net operating income, earnings before or after taxes, earnings before or after interest, depreciation, amortization, or extraordinary or special items or book value per share (which may exclude nonrecurring items) or net earnings; (ii) pre-tax income or after-tax income; (iii) earnings per share (basic or diluted); (iv) operating profit; (v) revenue, revenue growth or rate of revenue growth; (vi) return on assets (gross or net), return on investment (including cash flow return on investment), return on capital (including return on total capital or return on invested capital), or return on equity; (vii) returns on sales or revenues; (viii) operating expenses; (ix) stock price appreciation; (x) cash flow (before or after dividends), free cash flow, cash flow return on investment (discounted or otherwise), net cash provided by operations, cash flow in excess of cost of capital or cash flow per share (before or after dividends); (xi) implementation or completion of critical projects or processes; (xii) economic value created; (xiii) cumulative earnings per share growth; (xiv) operating margin or profit margin; (xv) stock price or total stockholder return; (xvi) cost targets, reductions and savings, productivity and efficiencies; (xvii) strategic business criteria, consisting of one or more objectives based on meeting specified market penetration, geographic business expansion, customer satisfaction, employee satisfaction, human resources management, supervision of litigation and other legal matters, information technology, and goals relating to contributions, dispositions, acquisitions, development and development related activity, capital markets activity and credit ratings, joint ventures and other private capital activity including generating incentive and other fees and raising equity commitments, and other transactions, and budget comparisons; (xviii) personal professional objectives, including any of the foregoing performance targets, the implementation of policies and plans, the negotiation of transactions, the development of long term business goals, formation and reorganization of joint ventures and other private capital activity including generating incentive and other fees and raising equity commitments, research or development collaborations, and the completion of other corporate transactions; (xix) economic value added (or an equivalent metric); (xx) stock price performance; (xxi) improvement in or attainment of expense levels or working capital levels; (xxii) operating metrics including projects added, construction value added, active projects and number of organizations, (xxiii) contract value or bookings, or (xxiv) any combination of, or a specified increase in, any of the foregoing.

Where

applicable, the performance targets may be expressed in terms of attaining a specified level of the particular criteria or the attainment of a percentage increase or decrease in the particular criteria, and may be applied to one or more of the Company, a Related Company, or a division or strategic business unit of the Company, or may be applied to the performance of the Company relative to a market index, a group of other companies or a combination thereof, all as determined by the Committee. The performance targets may include a threshold level of performance below which no payment will be made (or no vesting will occur), levels of performance at which specified payments will be made (or specified vesting will occur), and a maximum level of performance above which no additional payment will be made (or at which full vesting will occur).

2.24 “Plan” has the meaning set forth in Section 1.

2.25 “Prior Plan” means the Commvault Systems, Inc. Long-Term Stock Incentive Plan.

2.26 “Related Company” shall mean any corporation, partnership, joint venture or other entity during any period in which (i) the Company, directly or indirectly, owns at least 50% of the combined voting power of all classes of stock of such entity or at least 50% of the ownership interests in such entity or (ii) such entity, directly or indirectly, owns at least 50% of the combined voting power of all classes of stock of the Company.

2.27 “SAR” or “Stock Appreciation Right” means the grant of an Award under the Plan that entitles the Participant to receive, in cash or shares of Common Stock (as determined in accordance with the terms of the Plan) value equal to the excess of: (i) the Fair Market Value of a specified number of shares of Common Stock at the time of exercise; over (ii) an Exercise Price established by the Committee at the time of grant.

2.28 “SEC” means the United States Securities and Exchange Commission.

2.29 “Stockholders’ Meeting” means the first regular annual meeting of the Company’s stockholders that occurs after the Effective Date.

2.30 “Subsidiary” shall mean a corporation that is a subsidiary of the Company within the meaning of Code Section 424(f).

2.31 “Substitute Award” means an Award granted or shares of Common Stock issued by the Company in assumption of, or in substitution or exchange for, an award previously granted, or the right or obligation to make a future award, in all cases by a company acquired by the Company or any Related Company or with which the Company or any Related Company combines. In no event shall the issuance of Substitute Awards change the terms of such previously granted awards such that the change, if applied to a current Award, would be prohibited under subsection 6.8.

2.32 “Termination Date” means the date on which a Participant both ceases to be an employee of the Company and the Related Companies and ceases to perform material services for the Company and the Related Companies (whether as a director or otherwise), regardless of the reason for the cessation; provided that a “Termination Date” shall not be considered to have occurred during the period in which the reason for the cessation of services is a leave of absence approved by the Company or the Related Company which was the recipient of the Participant’s services; and provided further that, with respect to an Outside Director, “Termination Date” means date on which the Outside Director’s service as an Outside Director terminates for any reason.

3. ADMINISTRATION.

3.1 General. The authority to control and manage the operation and administration of the Plan shall be vested in the committee described in subsection 3.2 (the “Committee”) in accordance with this Section 3. If the Committee does not exist, or for any other reason determined by the Board, the Board may take any action under the Plan that would otherwise be the responsibility of the Committee.

3.2 Selection of Committee. So long as the Company is subject to Section 16 of the Exchange Act, the Committee shall be selected by the Board and shall consist of not fewer than two members of the Board or such greater number as may be required for compliance with Rule 16b-3 issued under the Exchange Act and shall be comprised of persons who are independent for purposes of applicable stock exchange listing requirements. Any Award granted under the Plan which is intended to constitute Performance-Based Compensation (including Options and SARs) shall be granted by a Committee consisting solely of two or more “outside directors” within the meaning of Code Section 162(m) and applicable regulations. Notwithstanding any other provision of the Plan to the contrary, with respect to any Awards to Outside Directors, the Committee shall be the Board.

3.3 Powers of Committee. The authority to manage and control the operation and administration of the Plan shall be vested in the Committee, subject to the following:

- (a) Subject to the provisions of the Plan, the Committee will have the authority and discretion to (i) select Eligible Individuals who will receive Awards under the Plan, (ii) determine the time or times of receipt of Awards, (iii) determine the types of Awards and the number of shares of Common Stock covered by the Awards, (iv) establish the terms, conditions, performance targets, restrictions, and other provisions of Awards, (v) modify the terms of, cancel or suspend Awards, (vi) reissue or repurchase Awards, and (vii) accelerate the exercisability or vesting of any Award. In making such Award determinations, the Committee may take into account the nature of services rendered by the respective employee, the individual’s present and potential contribution to the Company’s or a Related Company’s success and such other factors as the Committee deems relevant.

- (b) Subject to the provisions of the Plan, the Committee will have the authority and discretion to determine the extent to which Awards under the Plan will be structured to conform to the requirements applicable to Performance-Based Compensation, and to take such action, establish such procedures, and impose such restrictions at the time such Awards are granted as the Committee determines to be necessary or appropriate to conform to such requirements.
- (c) Subject to the provisions of the Plan, the Committee will have the authority and discretion to conclusively interpret the Plan, to establish, amend and rescind any rules and regulations relating to the Plan, to determine the terms and provisions of any agreements made pursuant to the Plan and to make all other determinations that may be necessary or advisable for the administration of the Plan.
- (d) Any interpretation of the Plan by the Committee and any decision made by it under the Plan is final and binding on all persons.
- (e) Except as otherwise expressly provided in the Plan, where the Committee is authorized to make a determination with respect to any Award, such determination shall be made at the time the Award is made, except that the Committee may reserve the authority to have such determination made by the Committee in the future.

3.4 Delegation by Committee. Except to the extent prohibited by applicable law or the rules of any stock exchange on which the Common Stock is listed, the Committee may allocate all or any portion of its responsibilities and powers to any one or more of its members and may delegate all or any part of its responsibilities and powers to any person or persons selected by it. Any such allocation or delegation may be revoked by the Committee at any time.

3.5 Information to be Furnished to Committee. The Company and the Related Companies shall furnish the Committee such data and information as may be required for it to discharge its duties. The records of the Company and the Related Companies as to an employee's or Participant's employment or provision of services, termination of employment or cessation of the provision of services, leave of absence, reemployment and compensation shall be conclusive on all persons unless determined to be incorrect. Participants and other persons entitled to benefits under the Plan must furnish the Committee such evidence, data or information as the Committee consider desirable to carry out the terms of the Plan.

3.6 Limitation on Liability and Indemnification of Committee. No member or authorized delegate of the Committee shall be liable to any person for any action taken or omitted in connection with the administration of the Plan unless attributable to his own fraud or willful misconduct; nor shall the Company or any Related Company be liable to any person for any such action unless attributable to fraud or willful misconduct on the part of a director or employee of the Company or Related Company. The Committee, the individual members thereof, and persons acting as the authorized delegates of the Committee under the Plan, shall be indemnified by the Company against any and all liabilities, losses, costs and expenses (including legal fees and expenses) of whatsoever kind and nature which may be imposed on, incurred by or

asserted against the Committee or its members or authorized delegates by reason of the performance of a Committee function if the Committee or its members or authorized delegates did not act dishonestly or in willful violation of the law or regulation under which such liability, loss, cost or expense arises. This indemnification shall not duplicate but may supplement any coverage available under any applicable insurance.

4. STOCK RESERVED AND LIMITATIONS.

4.1 Shares and Other Amounts Subject to the Plan. The shares of Common Stock for which Awards may be granted under the Plan shall be subject to the following:

- (a) The shares of Common Stock with respect to which Awards may be made under the Plan shall be shares currently authorized but unissued or currently held or subsequently acquired by the Company as treasury shares, including shares purchased in the open market or in private transactions.
- (b) Subject to the provisions of subsection 4.2, the number of shares of Common Stock which may be issued with respect to Awards under the Plan shall be equal to 3,550,000. Except as otherwise provided herein, any shares of Common Stock subject to an Award under the Plan which for any reason is forfeited, expires or is terminated without issuance of shares of Common Stock (including shares that are attributable to Awards that are settled in cash) and shares of Stock that are withheld in payment of taxes payable with respect to the vesting or settlement of a Full Value Award shall thereafter be available for further grants under the Plan. Shares of Stock that are tendered or withheld in payment of the Exercise Price of an Option or shares of Stock that are withheld in payment of taxes payable with respect to the exercise of an Option or SAR shall not be available for further grants under the Plan.
- (c) Substitute Awards shall not reduce the number of shares of Common Stock that may be issued under the Plan or that may be covered by Awards granted to any one Participant during any period pursuant to subsections 4.1(g) and 4.1(h).
- (d) Except as expressly provided by the terms of this Plan, the issue by the Company of stock of any class, or securities convertible into shares of stock of any class, for cash or property or for labor or services, either upon direct sale, upon the exercise of rights or warrants to subscribe therefor or upon conversion of stock or obligations of the Company convertible into such stock or other securities, shall not affect, and no adjustment by reason thereof, shall be made with respect to Awards then outstanding hereunder.
- (e) To the extent provided by the Committee, any Award may be settled in cash rather than in Common Stock.

- (f) Subject to the terms and conditions of the Plan, the maximum number of shares of Common Stock that may be delivered to Participants and their beneficiaries with respect to Incentive Stock Options under the Plan shall be 2,800,000; provided, however, that to the extent that shares not delivered must be counted against this limit as a condition of satisfying the rules applicable to Incentive Stock Options, such rules shall apply to the limit on Incentive Stock Options granted under the Plan.
- (g) The maximum number of shares of Common Stock that may be covered by Awards granted to any one Participant during any one calendar-year period pursuant to Section 6 (relating to Options and SARs) shall be 500,000 shares if such awards are intended to constitute Performance-Based Compensation. For purposes of this subsection 4.1(g), if an Option is in tandem with an SAR, such that the exercise of the Option or SAR with respect to a share of Common Stock cancels the tandem SAR or Option right, respectively, with respect to such share, the tandem Option and SAR rights with respect to each share of Common Stock shall be counted as covering only one share of Common Stock for purposes of applying the limitations of this subsection 4.1(g). For purposes of the Plan, it will be assumed that the grant of any Option or SAR is intended to constitute Performance-Based Compensation unless the Committee specified otherwise.
- (h) For Full Value Awards that are intended to be Performance-Based Compensation, no more than 250,000 shares of Common Stock may be delivered pursuant to such Awards granted to any one Participant during any one calendar year period (regardless of whether settlement of the Award is to occur prior to, at the time of, or after the time of vesting); provided that Awards described in this 4.1(h) shall be subject to the following:
 - (i) If the Awards are denominated in Common Stock but an equivalent amount of cash is delivered in lieu of delivery of shares of Common Stock, the foregoing limit shall be applied based on the methodology used by the Committee to convert the number of shares of Common Stock into cash.
 - (ii) If delivery of Common Stock or cash is deferred until after the Common Stock has been earned, any adjustment in the amount delivered to reflect actual or deemed investment experience after the date the Common Stock is earned shall be disregarded.
- (i) For Cash Incentive Awards that are intended to be Performance-Based Compensation, the maximum amount payable to any Participant with respect to any twelve (12) month performance period shall equal \$2,500,000 (pro rated for performance periods that are greater or lesser than twelve (12) months); provided that Awards described in this subsection 4.1(i), shall be subject to the following:

- (i) If the Awards are denominated in cash but an equivalent amount of Common Stock is delivered in lieu of delivery of cash, the foregoing limit shall be applied to the cash based on the methodology used by the Committee to convert the cash into Common Stock.
 - (ii) If delivery of Common Stock or cash is deferred until after cash has been earned, any adjustment in the amount delivered to reflect actual or deemed investment experience after the date the cash is earned shall be disregarded.
- (j) In the case of any Award to an Outside Director, in no event shall the dollar value of the Award granted to any Outside Director for any calendar year (determined as of the date of grant) exceed \$500,000, except for the initial year of directorship in which the dollar value shall not exceed \$1,000,000.

4.2 Adjustments to Shares of Common Stock. In the event of a stock dividend, stock split, reverse stock split, extraordinary cash dividend, recapitalization, reorganization, merger, consolidation, split-up, spin-off, exchange of shares, sale of assets or subsidiaries, combination, or other corporate transaction that affects the Common Stock such that the Committee determines, in its sole discretion, that an adjustment is warranted in order to preserve the benefits or prevent the enlargement of benefits of Awards under the Plan, the Committee shall, in the manner it determines equitable in its sole discretion, (a) adjust the number and kind of shares which may be delivered under the Plan (including adjustments to the number and kind of shares that may be granted to an individual during any specified time as described in subsection 4.1); (b) adjust the number and kind of shares subject to outstanding Awards; (c) adjust the Exercise Price of outstanding Options and SARs; and (d) make any other adjustments that the Committee determines to be equitable (which may include, without limitation, (i) replacement of Awards with other awards which the Committee determines have comparable value and which are based on stock of a company resulting from the transaction, and (ii) cancellation of the Award in return for cash payment of the current value of the Award, determined as though the Award is fully vested at the time of payment, provided that in the case of an Option or SAR, the amount of such payment may be the excess of value of the shares of Common Stock subject to the Option or SAR at the time of the transaction over the exercise price).

5. **PARTICIPATION.** For purposes of the Plan, a “Participant” is any person to whom an Award is granted under the Plan. Subject to the terms and conditions of the Plan, the Committee shall determine and designate, from time to time, from among the Eligible Individuals those persons who will be granted one or more Awards under the Plan and, subject to the terms and conditions of the Plan, a Participant may be granted any Award permitted under the provisions of the Plan and more than one Award may be granted to a Participant. Except as otherwise agreed by the Company and the Participant, or except as otherwise provided in the Plan, an Award under the Plan shall not affect any previous Award under the Plan or an award under any other plan maintained by the Company or the Related Companies.

6. STOCK OPTIONS AND STOCK APPRECIATION RIGHTS

6.1 Definitions.

- (a) The grant of an “Option” under the Plan entitles the Participant to purchase shares of Common Stock at an Exercise Price established by the Committee at the time the Option is granted. Options granted under this Section 6 may be either Incentive Stock Options or Non-Qualified Stock Options, as determined in the discretion of the Committee; provided, however, that Incentive Stock Options may only be granted to employees of the Company or a Subsidiary. An Option will be deemed to be a Non-Qualified Stock Option unless it is specifically designated by the Committee as an Incentive Stock Option.
- (b) A grant of a “Stock Appreciation Right” or “SAR” entitles the Participant to receive, in cash or shares of Common Stock (as determined in accordance with the terms of the Plan) value equal to the excess of: (i) the Fair Market Value of a specified number of shares of Common Stock at the time of exercise; over (ii) an Exercise Price established by the Committee at the time of grant.

6.2 Eligibility. The Committee shall designate the Participants to whom Options or SARs are to be granted under this Section 6 and shall determine the number of shares of Common Stock subject to each such Option or SAR and the other terms and conditions thereof, not inconsistent with the Plan. Without limiting the generality of the foregoing, the Committee may not grant dividend equivalents (current or deferred) with respect to any Option or SAR granted under the Plan.

6.3 Limits on Incentive Stock Options. If the Committee grants Incentive Stock Options, then to the extent that the aggregate fair market value of shares of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by any individual during any calendar year (under all plans of the Company and all Subsidiaries) exceeds \$100,000, such Options shall be treated as Non-Qualified Stock Options to the extent required by Code Section 422. Any Option that is intended to constitute an Incentive Stock Option shall satisfy any other requirements of Code Section 422 and, to the extent such Option does not satisfy such requirements, the Option shall be treated as a Non-Qualified Stock Option.

6.4 Exercise Price. The “Exercise Price” of an Option or SAR shall be established by the Committee at the time the Option or SAR is granted; provided, however, that in no event shall such price be less than 100% of the Fair Market Value of a share of Common Stock on such date (or, if greater, the par value of a share of Common Stock on such date).

6.5 Exercise/Vesting. Except as otherwise expressly provided in the Plan, an Option or SAR granted under the Plan shall be exercisable in accordance with the following:

- (a) The terms and conditions relating to exercise and vesting of an Option or SAR shall be established by the Committee to the extent not inconsistent with the Plan, and may include, without limitation, conditions relating to completion of a specified period of service, achievement of performance standards prior to exercise or the achievement of stock ownership guidelines by the Participant.
- (b) No Option or SAR may be exercised by a Participant prior to the date on which it is exercisable (or vested) or after the Expiration Date applicable thereto.

6.6 Payment of Exercise Price. The payment of the Exercise Price of an Option granted under this Section 6 shall be subject to the following:

- (a) Subject to the following provisions of this subsection 6.6, the full Exercise Price of each share of Common Stock purchased upon the exercise of any Option shall be paid at the time of such exercise (except that, in the case of an exercise through the use of cash equivalents, payment may be made as soon as practicable after the exercise) and, as soon as practicable thereafter, a certificate representing the shares of Common Stock so purchased shall be delivered to the person entitled thereto or shares of Common Stock so purchased shall otherwise be registered in the name of the Participant on the records of the Company's transfer agent and credited to the Participant's account.
- (b) Subject to applicable law, the Exercise Price shall be payable in cash or cash equivalents, by tendering, by actual delivery or by attestation, shares of Common Stock valued at Fair Market Value as of the day of exercise or by a combination thereof; provided, however, that shares of Common Stock may not be used to pay any portion of the Exercise Price unless the holder thereof has good title, free and clear of all liens and encumbrances.

6.7 Post-Exercise Limitations. The Committee, in its discretion, may impose such restrictions on shares of Common Stock acquired pursuant to the exercise of an Option as it determines to be desirable, including, without limitation, restrictions relating to disposition of the shares and forfeiture restrictions based on service, performance, Common Stock ownership by the Participant, conformity with the Company's recoupment or clawback policies and such other factors as the Committee determines to be appropriate.

6.8 No Repricing. Except for either adjustments pursuant to subsection 4.2 (relating to the adjustment of shares), or reductions of the Exercise Price approved by the Company's stockholders, the Exercise Price for any outstanding Option or SAR may not be decreased after the date of grant nor may an outstanding Option or SAR granted under the Plan be surrendered to the Company as consideration for the grant of a replacement Option or SAR with a lower exercise price or a Full Value Award. Except as approved by the Company's stockholders, in no event shall any Option or SAR granted under the Plan be surrendered to the Company in consideration for a cash payment if, at the time of such surrender, the Exercise Price of the Option or SAR is greater than the then current Fair Market Value of a share of Common Stock.

6.9 Tandem Grants of Options and SARs. An Option may but need not be in tandem with an SAR, and an SAR may but need not be in tandem with an Option (in either case, regardless of whether the original award was granted under this Plan or another plan or arrangement). If an Option is in tandem with an SAR, the exercise price of both the Option and SAR shall be the same, and the exercise of the corresponding tandem SAR or Option shall cancel the corresponding tandem SAR or Option with respect to such share. If an SAR is in tandem with an Option but is granted after the grant of the Option, or if an Option is in tandem with an SAR but is granted after the grant of the SAR, the later granted tandem Award shall have the same exercise price as the earlier granted Award, but in no event less than the Fair Market Value of a share of Common Stock at the time of such grant.

6.10 Expiration Date. The “Expiration Date” with respect to an Option or SAR means the date established as the Expiration Date by the Committee at the time of the grant (as the same may be modified in accordance with the terms of the Plan); provided, however, that the Expiration Date with respect to any Option or SAR shall not be later than the earliest to occur of the ten-year anniversary of the date on which the Option or SAR is granted or the following dates, unless the following dates are determined otherwise by the Committee:

- (a) if the Participant’s Termination Date occurs by any reason other than termination for Cause, the thirtieth (30th) day after the Termination Date; or
- (b) if the Participant’s Termination Date occurs for reasons of Cause, the Termination Date.

In no event shall the Expiration Date of an Option or SAR be later than the ten-year anniversary of the date on which the Option or SAR is granted (or such shorter period required by law or the rules of any stock exchange on which the Common Stock is listed).

7. FULL VALUE AWARDS AND CASH INCENTIVE AWARDS.

7.1 Definitions.

- (a) A “Full Value Award” is a grant of one or more shares of Common Stock or a right to receive one or more shares of Common Stock in the future (including restricted stock, restricted stock units, deferred stock units, performance stock and performance stock units). Such grants may be subject to such conditions, restrictions and contingencies, as determined by the Committee, including provisions relating to dividend or dividend equivalent rights and deferred payment or settlement. Notwithstanding the foregoing, no dividends or dividend equivalent rights will be paid or settled on performance-based awards that have not been earned based on the performance criteria established.

- (b) A “Cash Incentive Award” is the grant of a right to receive a payment of cash (or in the discretion of the Committee, shares of Common Stock having value equivalent to the cash otherwise payable) that is contingent on achievement of performance objectives over a specified period established by the Committee. The grant of Cash Incentive Awards may also be subject to such other conditions, restrictions and contingencies, as determined by the Committee, including provisions relating to deferred payment.

7.2 Special Vesting Rules. Except for awards granted under the Plan with respect to, shares of Stock which do not exceed, in the aggregate, five percent of the total number of shares of Stock reserved for issuance pursuant to subsection 4.1(b), a Participant’s right to become vested in a Full Value Award, an Option or SAR is conditioned on the completion of a specified period of service with the Company or the Related Companies of at least one year, except if accelerated in the event of the Participant’s death or Disability.

7.3 Performance-Based Compensation. The Committee may designate a Full Value Award or Cash Incentive Award granted to any Participant as “Performance-Based Compensation” within the meaning of Code Section 162(m) and regulations thereunder. To the extent required by Code Section 162(m), any Full Value Award or Cash Incentive Award so designated shall be conditioned on the achievement of one or more performance targets as determined by the Committee and the following additional requirements shall apply:

- (a) The performance targets established for the performance period established by the Committee shall be objective (as that term is described in regulations under Code Section 162(m)), and shall be established in writing by the Committee not later than ninety (90) days after the beginning of the performance period (but in no event after 25% of the performance period has elapsed), and while the outcome as to the performance targets is substantially uncertain. The performance targets established by the Committee may be with respect to corporate performance, operating group or sub-group performance, individual company performance, other group or individual performance, or division performance, and shall be based on one or more of the Performance Criteria.
- (b) A Participant otherwise entitled to receive a Full Value Award or Cash Incentive Award for any performance period shall not receive a settlement or payment of the Award until the Committee has determined that the applicable performance target(s) have been attained. To the extent that the Committee exercises discretion in making the determination required by this subsection 7.3(b), such exercise of discretion may not result in an increase in the amount of the payment.
- (c) If a Participant’s employment terminates because of death or Disability, or if a change in control occurs prior to the Participant’s Termination Date, the Participant’s Cash Incentive Award may, to the extent provided by the Committee, become vested without regard to whether the Cash Incentive Award would be Performance-Based Compensation.

- (d) A Full Value Award designated as Performance-Based Compensation shall not vest prior to the first anniversary of the date on which it is granted (subject to acceleration of vesting, to the extent provided by the Committee, in the event of the Participant's death, Disability or change in control).

Nothing in this Section 7 shall preclude the Committee from granting Full Value Awards or Cash Incentive Awards under the Plan or the Committee, the Company or any Related Company from granting any Cash Incentive Awards outside of the Plan that are not intended to be Performance-Based Compensation; provided, however, that, at the time of grant of Full Value Awards or Cash Incentive Awards by the Committee, the Committee shall designate whether such Awards are intended to constitute Performance-Based Compensation. To the extent that the provisions of this Section 7 reflect the requirements applicable to Performance-Based Compensation, such provisions shall not apply to the portion of the Award, if any, that is not intended to constitute Performance-Based Compensation. Without limiting the generality of the foregoing, Options and SARs granted under the Plan shall be assumed to constitute Performance-Based Compensation provided that the requirements of section 162(m) of the Code are met with respect thereto and provided that the Committee does not make a determination to the contrary.

8. CHANGE IN CONTROL.

8.1 Definitions. For purposes of this Section 8, the term "Change in Control" means (a) the acquisition by any person, entity or group of persons or entities, directly or indirectly, acting in concert of securities representing fifty percent (50%) or more of the combined voting power of the Company's then outstanding securities, whether acquired in one transaction or a series of transactions, (b) a merger, consolidation or similar transaction which results in the Company's shareholders immediately prior to such transaction not holding securities representing fifty percent (50%) or more of the total voting power of the outstanding securities of the surviving corporation, or (c) a sale of all or substantially all of the Company's assets (other than to an entity owned by the Company or under common ownership with the Company).

8.2 Vesting of Awards Upon Change in Control. Subject to the provisions of subsection 4.2 (relating to the adjustment of shares), if a Change in Control occurs prior to the date on which an Award is vested and prior to the Participant's separation from service, if such Award remains outstanding following the Change in Control (whether by substitution with another award or otherwise), and if the Participant's service is involuntarily terminated by the Company or a Related Company (or any successor thereto), other than for cause, on or within two years following the Change in Control, then:

- (a) All outstanding Options (regardless of whether in tandem with SARs) shall become fully exercisable.
- (b) All outstanding SARs (regardless of whether in tandem with Options) shall become fully exercisable.

(c) All Full Value Awards shall become fully vested and the Committee shall determine the extent to which performance conditions are met taking into account actual performance and/or the passage of time, in accordance with the terms of the Plan and the applicable Award Agreement.

Notwithstanding anything in this Plan or any Award Agreement to the contrary, to the extent any provision of this Plan or an Award Agreement would cause a payment of deferred compensation that is subject to Code Section 409A to be made upon the occurrence of a Change in Control, then such payment shall not be made unless such Change in Control also constitutes a “change in ownership”, “change in effective control” or “change in ownership of a substantial portion of the Company’s assets” within the meaning of Code Section 409A. In addition, if an Award does not remain outstanding following a Change in Control, the Committee shall determine the vesting and other terms and conditions of the Award in connection with the Change in Control in accordance with the terms of the Plan.

9. MISCELLANEOUS.

9.1 Effective Date and Effect on Prior Plan. This Plan shall be effective as of the date that it is approved by the Board (the date on which such approval is completed being referred to herein as the “Effective Date”); provided, however, that no Awards granted under the Plan after the Effective Date prior to the Stockholders’ Meeting will vest or become exercisable prior to the date of the Stockholders’ Meeting (and only if the Plan is approved by the stockholders at the Stockholders’ Meeting) and all such Awards shall be forfeited as of the date of the Stockholders’ Meeting if the Plan is not approved by the Company’s stockholders at the Stockholders Meeting. The Plan shall be unlimited in duration and, in the event of Plan termination, shall remain in effect as long as any shares of Common Stock awarded under it are outstanding and not fully vested; provided, however, that no new Awards will be made under the Plan on or after the tenth anniversary of the Effective Date. Any awards made under the Prior Plan prior to the Effective Date shall continue to be subject to the terms and conditions of the Prior Plan. Following the Effective Date and if the Plan is approved at the Stockholders’ Meeting, no further awards will be made under the Prior Plan.

9.2 Limit on Distribution. Distribution of Common Stock or other amounts under the Plan shall be subject to the following:

- (a) Notwithstanding any other provision of the Plan, the Company shall have no liability to deliver any Common Stock under the Plan or make any other distribution of benefits under the Plan unless such delivery or distribution would comply with all applicable laws and the applicable requirements of any securities exchange or similar entity.

- (b) In the case of a Participant who is subject to Section 16(a) and 16(b) of the Exchange Act, the Committee may, at any time, add such conditions and limitations to any Award to such Participant, or any feature of any such Award, as the Committee, in its sole discretion, deems necessary or desirable to comply with Section 16(a) or 16(b) and the rules and regulations thereunder or to obtain any exemption therefrom.
- (c) To the extent that the Plan provides for issuance of certificates to reflect the transfer of Common Stock, the transfer of such Common Stock may be effected on a non-certificated basis, to the extent not prohibited by applicable law or the rules of any stock exchange on which the Common Stock is listed.

9.3 Liability for Cash Payments. Subject to the provisions of this Section 8, each Related Company shall be liable for payment of cash due under the Plan with respect to any Participant to the extent that such payment is attributable to the services rendered for that Related Company by the Participant. Any disputes relating to liability of a Related Company for cash payments shall be resolved by the Committee.

9.4 Withholding. All Awards and other payments under the Plan are subject to withholding of all applicable taxes, which withholding obligations may be satisfied, with the consent of the Committee, through the surrender of Common Stock which the Participant already owns or to which a Participant is otherwise entitled under the Plan; provided, however, previously-owned Common Stock that has been held by the Participant or Common Stock to which the Participant is entitled under the Plan may only be used to satisfy the minimum tax withholding required by applicable law (or other rates that will not have a negative accounting impact).

9.5 Transferability. Awards under the Plan are not transferable except as designated by the Participant by will or by the laws of descent and distribution or, if provided by the Committee, pursuant to a qualified domestic relations order (within the meaning of the Code and applicable rules thereunder). To the extent that Participant who receives an Award under the Plan has the right to exercise such Award, the Award may be exercised during the lifetime of the Participant only by the Participant. Notwithstanding the foregoing provisions of this subsection 9.5, if provided by the Committee, Awards may be transferred to or for the benefit of the Participant's family (including, without limitation, to a trust or partnership for the benefit of a Participant's family), subject to such procedures as the Committee may establish. In no event shall an Incentive Stock Option be transferable to the extent that such transferability would violate the requirements applicable to such option under Code Section 422.

9.6 Notices. Any notice or document required to be filed with the Committee under the Plan will be properly filed if delivered or mailed by registered mail, postage prepaid, to the Committee, in care of the Company or the Related Company, as applicable, at its principal executive offices. The Committee may, by advance written notice to affected persons, revise such notice procedure from time to time. Any notice required under the Plan (other than a notice of election) may be waived by the person entitled to notice.

9.7 Form and Time of Elections. Unless otherwise specified herein, each election required or permitted to be made by any Participant or other person entitled to benefits under the Plan, and any permitted modification or revocation thereof, shall be in writing filed with the applicable Committee at such times, in such form, and subject to such restrictions and limitations, not inconsistent with the terms of the Plan, as the Committee shall require.

9.8 Agreement With the Company. At the time of an Award to a Participant under the Plan, the Committee may require a Participant to enter into an agreement with the Company (the "Agreement"), in a form specified by the Committee, agreeing to the terms and conditions of the Plan and to such additional terms and conditions, not inconsistent with the Plan, as the Committee may, in its sole discretion, prescribe.

9.9 Limitation of Implied Rights.

- (a) Neither a Participant nor any other person shall, by reason of the Plan, acquire any right in or title to any assets, funds or property of the Company or any Related Company whatsoever, including, without limitation, any specific funds, assets, or other property which the Company or any Related Company, in its sole discretion, may set aside in anticipation of a liability under the Plan. A Participant shall have only a contractual right to the amounts, if any, payable under the Plan, unsecured by any assets of the Company and any Related Company. Nothing contained in the Plan shall constitute a guarantee by the Company or any Related Company that the assets of such companies shall be sufficient to pay any benefits to any person.
- (b) The Plan does not constitute a contract of employment or continued service, and selection as a Participant will not give any employee the right to be retained in the employ or service of the Company or any Related Company, nor any right or claim to any benefit under the Plan, unless such right or claim has specifically accrued under the terms of the Plan. Except as otherwise provided in the Plan, no Award under the Plan shall confer upon the holder thereof any right as a stockholder of the Company prior to the date on which he fulfills all service requirements and other conditions for receipt of such rights and shares of Common Stock are registered in his name.

9.10 Evidence. Evidence required of anyone under the Plan may be by certificate, affidavit, document or other information which the person acting on it considers pertinent and reliable, and signed, made or presented by the proper party or parties.

9.11 Action by the Company or Related Company. Any action required or permitted to be taken by the Company or any Related Company shall be by resolution of its board of directors or governing body or by action of one or more members of the board or governing body (including a committee of the board or governing body) who are duly authorized to act for the board or, in the case of any Related Company which is a partnership, by action of its general partner or a person or persons authorized by the general partner, or (except to the extent prohibited by applicable law or the rules of any stock exchange on which the Common Stock is listed) by a duly authorized officer of the Company.

9.12 Gender and Number. Where the context admits, words in any gender shall include any other gender, words in the singular shall include the plural and the plural shall include the singular.

9.13 Applicable Law. The provisions of the Plan shall be construed in accordance with the laws of the State of Delaware, without giving effect to choice of law principles.

9.14 Foreign Employees. Notwithstanding any other provision of the Plan to the contrary, the Committee may grant Awards to eligible persons who are foreign nationals on such terms and conditions different from those specified in the Plan as may, in the judgment of the Committee, be necessary or desirable to foster and promote achievement of the purposes of the Plan. In furtherance of such purposes, the Committee may make such modifications, amendments, procedures and subplans as may be necessary or advisable to comply with provisions of laws in other countries or jurisdictions in which the Company or a Related Company operates or has employees. The foregoing provisions of this subsection 9.14 shall not be applied to increase the share limitations of Section 4 or to otherwise change any provision of the Plan that would otherwise require the approval of the Company's stockholders.

10. TERMINATION AND AMENDMENT OF THE PLAN

The Board may, at any time, amend or terminate the Plan, and the Board or the Committee may amend any Agreement, provided that no amendment or termination may, in the absence of written consent to the change by the affected Participant (or, if the Participant is not then living, the affected beneficiary), adversely affect the rights of any Participant or beneficiary under any Award granted under the Plan prior to the date such amendment is adopted by the Board (or the Committee, if applicable); and further provided that adjustments pursuant to subsection 4.2 shall not be subject to the foregoing limitations of this Section 9; and further provided that the provisions of subsection 6.8 (relating to Option and SAR repricing) cannot be amended unless the amendment is approved by the Company's stockholders; and provided further that, no other amendment shall be made to the Plan without the approval of the Company's stockholders if such approval is required by law or the rules of any stock exchange on which the Common Stock is listed. It is the intention of the Company that, to the extent that any provisions of this Plan or any Awards granted hereunder are subject to Code Section 409A, the Plan and the Awards comply with the requirements of Code Section 409A and that the Board shall have the authority to amend the Plan or any Award as it deems necessary or desirable to conform to Code Section 409A without regard to the foregoing provisions (other than the provisions requiring stockholder approval). Notwithstanding the foregoing, the Company does not guarantee that Awards under the Plan will comply with Code Section 409A and the Committee is under no obligation to make any changes to any Award to cause such compliance.