GREAT ATLANTIC & PACIFIC TEA CO INC
Form DEF 14A
June 04, 2010

Table of Contents

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
SCHEDULE 14A

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

Filed by the Registrant þ
Filed by a Party other than the Registrant o
Check the appropriate box:

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

The Great Atlantic & Pacific Tea Company

(Name of Registrant as Specified In Its Charter)

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

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(4) Date Filed:

Table of Contents

THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.
2 PARAGON DRIVE
MONTVALE, NEW JERSEY 07645
NOTICE OF ANNUAL MEETING OF STOCKHOLDERS
To Be Held July 15, 2010

To the Stockholders of The Great Atlantic & Pacific Tea Company, Inc.:

We will hold the Annual Meeting of Stockholders (the Annual Meeting) of The Great Atlantic & Pacific Tea Company, Inc. (the Company) at The Woodcliff Lake Hilton, 200 Tice Boulevard, Woodcliff Lake, New Jersey, on Thursday, July 15, 2010, at 9:00 A.M. (E.D.T.) for the following purposes:

1. to consider and vote on a proposal to approve an amendment to the Company s charter in the form attached to the accompanying proxy statement as Appendix A and incorporated herein by reference to increase the total number of shares of common stock which the Company has authority to issue from 160,000,000 to 260,000,000 shares.
2. to consider and vote on a proposal to elect eleven (11) directors of the Company, four (4) of which will be elected by the holders of our Series A-T convertible preferred stock, voting separately as a class; two (2) of which will be elected by the holders of our Series A-Y convertible preferred stock, voting separately as a class; and five (5) of which will be elected by the holders of our common stock and the holders of shares of our preferred stock, voting together as a class.
3. to consider and vote upon a proposal to ratify the appointment of PricewaterhouseCoopers LLP as the Company s independent registered public accounting firm.
4. to transact such other business as may properly come before the meeting and any adjournments thereof.

The Board of Directors has fixed May 20, 2010 as the record date for this meeting. Only stockholders of record at the close of business on that date are entitled to receive notice and to vote at the meeting or at any adjournment thereof. A complete list of stockholders entitled to vote at the Annual Meeting will be open to the examination of any stockholder present at the Annual Meeting and, for any purpose relevant to the Annual Meeting, during ordinary business hours for at least ten (10) days prior to the Annual Meeting, at the corporate offices of the Company at the address indicated above.

Important Notice Regarding Availability of Proxy Materials for the 2010 Annual Meeting of Stockholders to be Held on July 15, 2010

Financial and other information concerning the Company is contained in our Annual Report to Shareholders for the fiscal year ended February 27, 2010, a copy of which accompanies this proxy statement. This proxy statement and our fiscal 2009 Annual Report to Shareholders are available free of charge on our web site at http://aptea.com/investors.asp.

Whether or not you plan to attend the Annual Meeting in person, we urge you to ensure your representation by voting by proxy as promptly as possible. You may vote by completing, signing, dating and returning the enclosed proxy card by mail, or you may vote by telephone or electronically through the Internet, as further described on the proxy card. If you attend the Annual Meeting and inform the Secretary of the Company in writing that you wish to vote your shares in person, your proxy will not be used. If you hold your shares through an account with a brokerage firm, bank or other nominee, please follow the instructions you receive from them to vote your shares.

By Order of the Board of Directors
CHRISTOPHER W. MC GARRY
Senior Vice President, General Counsel & Secretary

THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.
2 PARAGON DRIVE
MONTVALE, NEW JERSEY 07645

PROXY STATEMENT

TABLE OF CONTENTS

Table of Contents

SOLICITATION AND REVOCATION OF PROXIES

This proxy statement is furnished for use at the Annual Meeting. It is expected that the solicitation of proxies will be primarily by mail. Proxies may also be solicited personally by regular employees of the Company, by telephone or by other means of communication at nominal cost. The Company will bear the cost of such solicitation. It will reimburse banks, brokers and trustees, or their nominees, for reasonable expenses incurred by them in forwarding proxy material to beneficial owners of stock in accordance with the New York Stock Exchange (NYSE) schedule of charges. Any stockholder giving a proxy has the power to revoke it at any time prior to its exercise by giving notice in writing to the Secretary of the Company, at the address above, or by casting a ballot at the meeting in person or by signing and timely returning another proxy card bearing a later date. This proxy statement is first being mailed to stockholders on or about June 1, 2010. In this proxy statement, all references to the Company s 2009 fiscal year means the period commencing on March 1, 2009 and ending on February 27, 2010 (Fiscal 2009).

Voting at Meeting

Only stockholders of record at the close of business on May 20, 2010 will be entitled to vote at the Annual Meeting. As of May 20, 2010, there were 55,871,503 shares of common stock, $1 par value (the Common Stock) outstanding. In addition, there were 60,000 shares of the Company s 8% Cumulative Convertible Preferred Stock, Series A-T (the Series A-T Preferred Stock) outstanding and entitled to vote held by Tengelmann Warenhandelsgesellschaft KG (Tengelmann) and 115,000 shares of the Company s 8% Cumulative Convertible Preferred Stock, Series A-Y (the Series A-Y Preferred Stock) outstanding and entitled to vote held by the Yucaipa American Alliance Fund II, LP and the Yucaipa American Alliance (Parallel) Fund II, LP (collectively, the Yucaipa Investor) (together, the Series A-T Preferred Stock and the Series A-Y Preferred Stocks are known as the Preferred Stock).

The Company s by-laws and the Articles Supplementary of the Company s Preferred Stock (the Articles Supplementary) provide that each holder of Series A-T Preferred Stock and Series A-Y Preferred Stock shall vote together with the holders of the Company s Common Stock on all matters on which the holders of Common Stock are entitled to vote. On such matters, each holder of Series A-T Preferred Stock and Series A-Y Preferred Stock is entitled to such number of votes as the number of shares of Common Stock into which their Preferred Stock would be convertible as of the record date (i.e., on an as converted basis). For the holders of the Series A-T Preferred Stock, this amounts to 12,000,000 votes. For the holders of the Series A-Y Preferred Stock, this amounts to 23,000,000 votes. Every holder of Common Stock is entitled to one vote for every share on any matter on which holders of Common Stock are entitled to vote. The Common Stock and Preferred Stock are collectively referred to in this proxy statement as the voting securities.

The Company s by-laws and the Articles Supplementary also provide that, so long as Series A-T Preferred Stock or Series A-Y Preferred Stock remains outstanding, the holders are each entitled to vote separately as a single class, and to the exclusion of other holders of the Company s voting securities, to elect a certain number of directors. As of the record date, holders of Series A-T Preferred Stock are entitled to elect four (4) directors, while holders of Series A-Y Preferred Stock are entitled to elect two (2) directors.

With regard to Proposal 2, the holders of the Series A-T Preferred Stock, voting separately as a class, will be voting on the election of four (4) directors. The holders of the Series A-Y Preferred Stock, voting separately as a class, will be voting on the election of two (2) directors. The holders of the Preferred Stock and the Common Stock, together voting as a class, will be voting on the election of the remaining five (5) directors, with the holders of the Preferred Stock voting such shares on an as converted basis. In connection with their purchase of Preferred Stock, Tengelmann and the Yucaipa Investor have each agreed to cause all voting securities held by such stockholder to be present at our annual meeting and to vote all voting securities beneficially owned by it for all nominees for election as directors by holders of Common Stock in a manner identical, on a proportionate basis, to the manner in which all other stockholders vote their shares, disregarding abstentions and broker non-votes.

There are no appraisal or dissenter s rights with respect to any matter to be voted on at the Annual Meeting. Proxies marked as abstaining (including proxies containing broker non-votes) on any matter to be acted upon by stockholders will be treated as present at the meeting for purposes of determining a quorum but will not be counted as votes cast on such matters. Votes cast at the Annual Meeting will be tabulated by the persons appointed by the Company to act as inspectors of election for the Annual Meeting. A majority of the issued and outstanding voting securities represented in person or by proxy at the Annual Meeting will constitute a quorum for the transaction of business.

Table of Contents

If shares are not voted in person, they cannot be voted on your behalf unless a proxy is given. Subject to the limitations described below, you may vote by proxy:

(i) by completing, signing and dating the enclosed proxy card and mailing it promptly in the enclosed envelope;

(ii) by telephone; or

(iii) electronically through the Internet.

Voting by Proxy Card

Each stockholder may vote by proxy by using the enclosed proxy card. When you return a proxy card that is properly signed and completed, the shares of voting securities represented by your proxy will be voted as you specify on the proxy card. If you own voting securities through a broker, bank or other nominee that holds voting securities for your account in a street name capacity, you should follow the instructions provided by your nominee regarding how to instruct your nominee to vote your shares.

Voting by Telephone or Through the Internet

If you are a registered stockholder (that is, if you own voting securities in your own name and not through a broker, bank or other nominee that holds voting securities for your account in street name), you may vote by proxy by using either the telephone or Internet methods of voting. Proxies submitted by telephone or through the Internet must be received by 11:59 PM on July 14, 2010. Please see the proxy card provided to you for instructions on how to access the telephone and Internet voting systems. If your shares of voting securities are held in street name for your account, your broker, bank or other nominee will advise you whether you may vote by telephone or through the Internet.

PROPOSAL 1 AMENDMENT OF COMPANY CHARTER TO INCREASE AUTHORIZED SHARES FROM 160,000,000 TO 260,000,000

As the Company previously disclosed on August 5, 2009, in connection with the issuance and sale of the Series A-T Preferred Stock and the Series A-Y Preferred Stock the Company entered into amended and restated stockholder agreements with each of Tengelmann and the Yucaipa Investor, respectively, which require the Company to call a meeting of stockholders prior to August 4, 2010 to vote upon the approval of an amendment of the Company s charter to increase the number of shares of the Company s Common Stock authorized for issuance. This is intended to give the Company additional flexibility to pay dividends on the Preferred Stock, if necessary, in additional shares of Preferred Stock.

As of the record date, 55,871,503 shares of the Company s Common Stock were issued and outstanding, 8,213,090 shares were reserved for issuance pursuant to outstanding or future grants under the Company s equity compensation plans, 7,652,135 shares were reserved for issuance upon the exercise of warrants assumed and the rollover warrants issued in connection with the Company s acquisition of Pathmark Stores, Inc. (Pathmark), 1,577,569 shares were reserved for issuance under share lending agreements, 13,534,786 shares were reserved in connection with new warrants issued in connection with the Pathmark acquisition, 11,278,999 shares were reserved for issuance upon the conversion of certain convertible notes issued in connection with the Pathmark acquisition and 35,000,000 shares were reserved for issuance upon the exercise of the conversion feature of the Preferred Stock, for a total of 133,128,082 shares of the Company s Common Stock issued or reserved for issuance pursuant to outstanding obligations as of the record date out of the 160,000,000 shares authorized for issuance under the Company s charter.

In accordance with the terms of the Articles Supplementary, the Company would need to reserve an additional 32,529,400 shares of its Common Stock if the Company were to pay the dividends payable on the Preferred Stock in additional Preferred Stock through the maturity date of the Preferred Stock.

Table of Contents

Therefore, in order to provide the Company with the flexibility to pay dividends on the Preferred Stock in additional Preferred Stock if necessary or desirable, as well as to provide the Company flexibility to issue shares of Common Stock for other purposes, the Company s stockholders are being asked to consider and vote on a proposal to approve an amendment to the Company s charter in the form attached to this proxy statement as Appendix A and incorporated herein by reference to increase the total number of shares of Common Stock which the Company has authority to issue from 160,000,000 to 260,000,000.

The Company s board of directors deems it advisable and in the best interests of the Company to increase the number of authorized shares of Common Stock in order to meet its current reserve share obligations, to ensure that there is a sufficient number of authorized shares available to permit the Company to pay dividends on the Preferred Stock in additional Preferred Stock, if necessary or desirable, and to provide the Company with flexibility to issue Common Stock for other general corporate purposes in the future.

These general corporate purposes could include acquisitions, equity financings, other stock distributions, and grants of options and other stock rights, all as deemed necessary or advisable by the Board of Directors. The Company has no present plans, understandings, agreements or arrangements for the issuance of these shares of Common Stock for any of these general corporate purposes. If the stockholders approve the proposal, the Company will have additional authorized but unissued shares of Common Stock that may be issued by the Board of Directors of the Company, without the necessity of any further stockholder action, except to the extent otherwise required by applicable law, regulations or the rules of any stock exchange or other market system on which the Company s securities may then be listed.

The proposed increase in the authorized number of shares of Common Stock could, in some situations, also have the effect of discouraging unsolicited takeover attempts and may limit the opportunity for stockholders to dispose of their shares at the higher price generally available in takeover attempts or that may be available under a merger proposal. However, the Board is not aware of any attempts to take control of the Company and has not presented this proposal with the intent that it be utilized as an anti-takeover device.

The proposal to amend the Company s charter requires the affirmative vote of two-thirds of the outstanding voting securities. Therefore, a stockholder s failure to vote, a broker nonvote or an abstention will have the same effect as a vote AGAINST approval of the amendment to the Company s charter.

The Company s board of directors unanimously recommends that the Company s stockholders vote FOR the proposal to approve the amendment to the Company s charter.

PROPOSAL 2 ELECTION OF DIRECTORS

Eleven (11) directors are to be elected to hold office until the next annual meeting and until their successors are elected and shall qualify. The persons named as proxies in the accompanying proxy intend to vote, unless otherwise instructed, for the election to the Board of Directors of the persons named below, each of whom has consented to nomination and to serve if elected. All nominees are presently members of the Board of Directors.

We believe our directors should possess the highest personal and professional integrity and values, and be committed to representing the long-term interests of our stockholders. While the Company has not prescribed specific standards for considering diversity among director nominees, we have determined it is desirable for the Board to have a variety of differences in viewpoint, educational background, skills, gender, age, ethnic background, geographic origin and professional experience. We expect our directors to possess practical wisdom, mature judgment, an inquisitive perspective and business acumen. We also endeavor to have a Board that reflects a range of experiences at policy making levels, as well as executive-level experience in areas that are important to the Company s business. Below are the key experience, qualifications and skills our directors bring to the Board that are most important to our business:

Leadership Experience. We believe that directors with experience in significant leadership positions over an extended period, especially CEO and other executive-level positions, provide the Company with special insights. These people generally possess extraordinary leadership qualities and the ability to identify and develop those qualities in others. They demonstrate a practical understanding of organizations, processes, strategy, risk management and methods to drive change and growth. Through their service as leaders at other organizations, they have access to important sources of market intelligence, analysis and relationships that benefit the Company.

Industry Experience. We seek to have directors possessing experience as executives, directors or in other leadership positions in the grocery and food retailing industries. We believe that industry-specific knowledge and insight acquired through senior executive experience in the grocery and food retailing industry is critical to the development of strategy and the effective oversight of management s execution against goals.

Finance Experience. We believe that an understanding of finance and financial reporting processes is important for our directors. The Company measures its operating and strategic performance by reference to financial targets. In addition, accurate financial reporting and robust auditing are important to our success; we seek to have a number of directors who qualify as audit committee financial experts, and we expect all of our directors to be able to understand complex financial matters and concepts as they relate to our business.

Table of Contents

Individual Characteristics. We believe it important for our directors to possess the aptitude or experience to understand fully the legal responsibilities of a director and the governance processes of a public company, as well as the personal qualities to be able to make a substantial active contribution to Board deliberations, including intelligence and wisdom, self-assuredness and interpersonal skills, courage, commitment and the willingness to ask a difficult question.

Under the rules of the NYSE and the Company s Standards of Independence, a majority of the Board of Directors must be comprised of directors who are independent according to the rules of the NYSE. The Board has adopted categorical standards to assist it in making determinations of independence for directors; a copy of the Company s Standards of Independence is available as Appendix A to the Corporate Governance Guidelines on the Company s website, www.aptea.com, under the Corporate Governance menu/tab. The Board has determined that seven (7) of the eleven (11) nominees, namely Frederic Brace, Bobbie Gaunt, Dan Kourkoumelis, Edward Lewis, Gregory Mays, Maureen Tart-Bezer and Terrence Wallock, are independent directors under the Company s Standards of Independence and the independence requirements in the NYSE listing rules, and that the remaining nominees are not independent under those standards.

The Directors to be elected by the holders of the Series A-Y Preferred Stock were nominated by the Yucaipa Investor pursuant to its rights under the Amended and Restated Yucaipa Shareholder Agreement, which was entered into in connection with the issuance by the Company of the A-Y Preferred Stock. The Yucaipa Investor holds and is entitled to vote all shares of the Series A-Y Preferred Stock. Similarly, the Directors to be elected by the holder of the Series A-T Preferred Stock were nominated by Tengelmann pursuant to its rights under the Amended and Restated Tengelemann Shareholder Agreement, which was entered into in connection with the issuance by the Company of the A-T Preferred Stock. Tengelmann holds and is entitled to vote all shares of the A-T Preferred Stock.

The proposal to elect directors by holders of Common Stock requires the affirmative vote of a plurality of all the voting securities cast. The proposals to elect directors by holders of shares of the Series A-T Preferred Stock and Series A-Y Preferred Stock, respectively, require the affirmative vote of a majority of the shares of Series A-T Preferred Stock and Series A-Y Preferred Stock, respectively, present at the meeting.

The Company s board of directors unanimously recommends that the Company s stockholders vote FOR the proposal to elect the following director nominees for a one year term ending in 2011.

Nominees for Election by Holders of Shares of Common Stock

Bobbie Andrea Gaunt

Ms. Gaunt, age 63, is and has been an independent member of the Board since May 15, 2001. Ms. Gaunt was elected an officer and vice president of the Ford Motor Company in June 1999, and served as President and Chief Executive Officer (CEO) of the Ford Motor Company of Canada, Ltd., from 1997 until her retirement from the company in December of 2000. Ms. Gaunt began her automotive career with Ford in 1972 and for over 28 years served in various managerial positions in the areas of sales, marketing, research and building customer relationships. Ms. Gaunt served as a member of the Board of Directors of ADVO, Inc. in Windsor, Connecticut from 2002 until the Company was sold in 2006, and between the months of June and October 2004 Ms. Gaunt served as ADVO s Interim CEO. Ms. Gaunt served as a member of the Board of Directors, and of the audit and human resources committees, of Metro Inc., a Canadian grocery retailer, from 2005 to 2007. Ms. Gaunt is a member of the Board of Advisors of the Katz Business School, and the Board of Trustees at the University of Pittsburgh; and served as a member and chair of the Advisory Board of the Saugatuck Center for the Arts, in Saugatuck, Michigan from 2003 through 2007. Ms. Gaunt s senior executive background and extensive managerial experience, including at Ford Canada, exemplify the qualifications and skills that we expect our directors to bring to the Board, and the Board therefore recommends her election as director.

Table of Contents

Dan Plato Kourkoumelis

Mr. Kourkoumelis, age 59, is and has been an independent member of the Board since March 21, 2000.
Mr. Kourkoumelis was president and chief operating officer of Quality Food Centers, Inc. from May 1989 until September 1996, and thereafter president and chief executive officer of Quality Food Centers, Inc. until September 25, 1998, when he retired after Quality Food Centers, Inc. was acquired. He also served as a director of Quality Food Centers, Inc. from April 1991 until March 1998. Mr. Kourkoumelis is a member of the board of directors of Expeditors International of Washington, Inc. and also serves as a member of that company s compensation and audit committees. Mr. Kourkoumelis is a also director and past president of the Western Association of Food Chains, Inc.
Mr. Kourkoumelis senior executive experience in, and extensive knowledge of, the food retailing industry exemplify the qualifications and skills that we expect our directors to bring to the Board, and the Board therefore recommends his election as director.

Edward Lewis

Mr. Lewis, age 70, is and has been an independent member of the Board since May 16, 2000. Mr. Lewis is chairman and founder of Essence Communications Partners, which was formed in 1969. He is member of the board of directors of the Economic Club of New York, The American Academy of Medicine, The Boys and Girls Club, Latina Media Ventures, LLC and the Board of Jazz at Lincoln Center for the Performing Arts. He also served as chairman of the Magazine Publishers of America from 1997 to 1999, becoming the first African-American to hold this position in the 75-year history of the organization. Mr. Lewis experience as founder and chairman of Essence Communications, and his active board service to a number of diverse organizations exemplify the qualifications and skills that we expect our directors to bring to the Board, and the Board therefore recommends his election as director.

Gregory Mays

Mr. Mays, age 63, is and has been an independent member of the Board since December 3, 2007. Mr. Mays has over thirty-five years of experience in the supermarket retailing industry in various managerial and executive positions. Currently, Mr. Mays is Chairman and a member of the compensation committee of Source Interlink Companies, Inc. Source Interlink Companies, Inc. filed for Chapter 11 bankruptcy protection in May of 2009 and emerged from bankruptcy in June of that year as a privately-held company. Mr. Mays also served as CEO of Source Interlink Companies, Inc. from October 2008 through April 2010. Mr. Mays also currently serves as CEO and a member of the board of directors of Simon Worldwide Inc., which holds an investment in Yucaipa AEC Associates, LLC, a limited liability company that is controlled by The Yucaipa Companies, LLC. Mr. Mays served as Chairman of Wild Oats Markets (Wild Oats) from July 2006 to October 2007. Mr. Mays also served as CEO of Wild Oats from September 2006 through October 2007. Mr. Mays was a member of the board of directors of Pathmark from June 2005 until the Company s acquisition of Pathmark in December of 2007, at which time Mr. Mays was appointed to the Company s Board. From January 2002 to September 2006 Mr. Mays maintained a consultancy practice providing supermarket industry expertise and related services to private equity organizations. Mr. Mays senior executive experience in, and extensive knowledge of, the food retailing industry exemplify the qualifications and skills that we expect our directors to bring to the Board, and the Board therefore recommends his election as director.

Maureen B. Tart-Bezer

Ms. Tart-Bezer, age 54, is and has been an independent member of the Board since May 15, 2001. Ms. Tart-Bezer was executive vice president and chief financial officer of Virgin Mobile USA, a wireless MVNO (mobile virtual network operator) venture in the United States from January 2002 through June 2006. Prior to this position, Ms. Tart-Bezer was executive vice president and general manager of the American Express Company, U.S. Consumer Charge Group through December 2001. From 1977 to January 2000, Ms. Tart-Bezer was with AT&T Corporation, serving as a senior financial officer of the company, including positions as senior vice president and corporate controller and senior vice president and chief financial officer for the Consumer Services Group. During 2007, Ms. Tart-Bezer served on the Board of Directors of Playtex Products, Inc. International until the company was sold in October of that year. In May of 2008, Ms. Tart-Bezer became a member of the board of directors of Foster Wheeler A.G. In February 2010 Ms. Tart-Bezer became a member of the Board of Directors of Sun Products Corp., a private corporation where she also serves as chair of their audit committee. Ms. Tart-Bezer s senior executive experience with such organizations as Virgin Mobile and AT&T, together with her financial expertise, exemplify the qualifications and skills that we expect our directors to bring to the Board, and the Board therefore recommends her election as director.

Table of Contents

Nominees for Election by Holders of Shares of Series A-T Preferred Stock

John D. Barline

Mr. Barline, age 63, is and has been a member of the Board since July 9, 1996. Mr. Barline, an attorney in private practice since 1973, is currently of counsel at the law firm of Williams, Kastner & Gibbs LLP in Tacoma, Washington. His areas of practice include corporate tax law, mergers and acquisitions, general business law, estate planning and real estate. He provides personal legal services to the Haub family including Christian W. E. Haub, the Executive Chairman of the Board of the Company (the Executive Chairman). Mr. Barline is a member of the board of directors and corporate secretary of Sun Mountain Resorts, Inc. and a member of the board of directors of Wissoll Trading Company, Inc. and Sun Mountain Lodge, Inc., each a closely held corporation owned primarily by the Haub family. He is also a member of the board of directors of the Le May Automobile Museum. Mr. Barline s skills and significant experience as a seasoned corporate attorney, together with his service on the board of directors for a number of diverse organizations exemplify the qualifications and skills that we expect our directors to bring to the Board, and the Board therefore recommends his election as director.

Dr. Jens-Jürgen Böckel

Dr. Böckel, age 67, is and has been a member of the Board since April 29, 2004. Dr. Böckel has served as the chief financial officer of Tengelmann Warenhandelsgesellschaft KG (Tengelmann) since January 1, 2000. From January 1995 through December 1999, Dr. Böckel served as chief financial officer and as a member of the executive board of Schickedanz Holding-Stiftung & Co. KG, in Fürth, Germany. Dr. Böckel is a member of the supervisory board of Kaiser s Tengelmann AG, in Viersen, Germany, OBI AG, in Wermelskirchen, Germany and Messe Düsseldorf GmbH in Düsseldorf and is a member of the supervisory board of Hauck & Aufhäuser Investment Banking in Frankfurt. He is also chairman of the advisory boards of Fiege Holding Stiftung & Co. KG in Greven and Mountain Partners AG, Wädenswil/Zurich in Switzerland and is a member of the advisory board of Keiper Recaro Group in Kaiserslautern. Dr. Boeckel s senior executive experience within the European retailing industry, together with his financial expertise and participation on advisory boards within the financial industry exemplify the qualifications and skills that we expect our directors to bring to the Board, and the Board therefore recommends his election as director.

Dr. Andreas Guldin

Dr. Guldin, age 48, became a member of the Board on May 1, 2007. Dr. Guldin was appointed Vice Chairman and Chief Strategy Officer for the Company effective October 15, 2009. He previously served as Executive Managing Director, Strategy and Corporate Development for the Company from May 1, 2007 to October 15, 2009.

Dr. Guldin was a Senior Executive Vice President (Corporate Finance) and Co-CFO of Tengelmann, a role which he held from July 2005 until April 2007. During that time he also served as an advisor to the Company s Executive Chairman and Board of Directors, and was lead negotiator in the acquisition of Pathmark Stores, Inc. (Pathmark). Prior to joining Tengelmann, Dr. Guldin served from May 1995 to March 2005 as a member of the Executive Management Team and Chief Financial Officer at E. Breuninger GmbH & Co. (Germany), the most prestigious department store and fashion retailer in Germany. Since 2008, Dr. Guldin has served as CEO of Emil Capital Partners, LLC (ECP), an investment, management and consulting entity focused on business activities in North America. ECP is a wholly-owned subsidiary of Tengelmann and is a Company stockholder. Since April 2010, Dr. Guldin serves as the Chairman of the Board of XPact Consulting AG, a software consulting company in Germany. Dr. Guldin is a Visiting Faculty Member at the European Business School (Germany). He holds a doctorate degree in Economics and Business Administration, an MBA in Business Administration and a Masters Degree in Psychology. Dr. Guldin s executive experience with prominent retailers in Germany, combined with his strategic advisory experience with the Company since 2005 exemplify the qualifications and skills that we expect our directors to bring to the Board, and the Board therefore recommends his election as director.

Table of Contents

Christian W. E. Haub

Mr. Haub, age 45, is and has been a member of the Board since December 3, 1991. He currently serves as the Company s Executive Chairman. Mr. Haub has served as Executive Chairman since August 15, 2005 and from October 20, 2009 to February 8, 2010 also served as Interim President and CEO. Prior thereto Mr. Haub served as CEO of the Company since May 1, 1998 and Chairman of the Board since May 1, 2001. In addition, Mr. Haub also served as President of the Company from December 7, 1993 through February 24, 2002, and from November 4, 2002 through November 15, 2004.

Mr. Haub is a partner and Co-CEO of Tengelmann. Mr. Haub is a member of the Board of Directors of Metro, Inc., Montreal, Quebec, Canada, and is on the board of trustees of St. Joseph s University in Philadelphia, Pennsylvania. During his nearly 20 years of service to the Company, Mr. Haub has occupied the Company s senior-most executive and Board leadership roles. This experience, combined with Mr. Haub s extensive knowledge of the Company s operations and the markets in which the Company competes, has equipped Mr. Haub with the qualifications and skills that we expect our directors to bring to the Board, and the Board therefore recommends his election as director.

Nominees for Election by Holders of Shares of Series A-Y Preferred Stock

Frederic F. Brace

Mr. Brace, age 52, is and has been an independent member of the Board since August 4, 2009. Mr. Brace served as Executive Vice President and the Chief Financial Officer of UAL Corp., an air transportation company, from August 2002 until his retirement in October 2008. UAL Corporation filed for Chapter 11 bankruptcy protection in December of 2002, and emerged from bankruptcy on February 1, 2006. Mr. Brace also served as a member of the board of directors, chair of the audit and finance committees, and member of the executive committee of SIRVA, Inc. a relocation logistics services provider, from 2004 through 2008. Mr. Brace also served as a member of the board of directors and of the audit committee of BearingPoint, Inc. a leading global management and technology consulting services firm during 2009. Mr. Brace is also a member of the board of directors of Anixter International, a communications, electrical wire and cable products distribution company. Mr. Brace s senior executive experience at United Airlines and his financial and strategic planning expertise exemplify the qualifications and skills that we expect our directors to bring to the Board, and the Board therefore recommends his election as director.

Terrence J. Wallock

Mr. Wallock, age 65, is and has been an independent member of the Board since August 4, 2009. Mr. Wallock is an attorney, consultant, and private investor and since 2002 has served as the secretary and acting general counsel, as well as a director, of Simon Worldwide Inc., which holds an investment in Yucaipa AEC Associates, LLC, a limited liability company that is controlled by The Yucaipa Companies, LLC. Prior to engaging in a consulting and private legal practice in 2000, he served as senior executive and/or general counsel for a number of public companies, including Denny s Inc., The Vons Companies, Inc. and Ralphs Grocery Company. Mr. Wallock is a seasoned general counsel possessing extensive executive experience within the grocery industry as well as significant experience working with boards of directors and corporate governance issues. This exemplifies the qualifications and skills that we expect our directors to bring to the Board, and the Board therefore recommends his election as director.

PROPOSAL 3 RATIFICATION OF THE INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

PricewaterhouseCoopers LLP has been our independent registered public accounting firm since fiscal 2004. Our audit committee selected PricewaterhouseCoopers LLP to serve as our independent registered public accounting firm for our fiscal year ending February 26, 2011, subject to ratification by our shareholders. While it is not required to do so, our Board of Directors is submitting the selection of this firm for ratification in order to ascertain the view of our shareholders. If the selection is not ratified, our audit committee will reconsider its selection. Proxies solicited by our Board of Directors will, unless otherwise directed, be voted to ratify the appointment of PricewaterhouseCoopers LLP as our independent registered public accounting firm for our fiscal year ending February 26, 2011. The proposal to ratify the selection of PricewaterhouseCoopers LLP as the Company s independent registered public accounting firm requires the affirmative vote of a majority of all the voting securities present in person or by proxy and entitled to vote.

The Company s board of directors unanimously recommends that the Company s stockholders vote FOR the proposal to ratify the appointment of PricewaterhouseCoopers LLP as the Company s independent registered

public accounting firm.

Table of Contents

BENEFICIAL OWNERSHIP OF SECURITIES

Beneficial Ownership of More Than 5% of the Company s Common Stock

Except as set forth below, as of May 20, 2010, no person beneficially owned, to the knowledge of the Company, more than 5% of the outstanding shares of the Company s Common Stock.

		Amount and Nature of Beneficial Ownership[1]			
Name and Address of Beneficial Owner	Title of Class	Total Beneficial Ownership	Sole Voting/Investment Power	Shared Voting/Investment Power	% of Class
Christian W. E. Haub [2]	Common Stock	24,390,777	604,513(3)	23,786,264	43
2 Paragon Drive	Series A-T	60,000		60,000	100
Montvale, NJ 07645	Preferred Stock				
Erivan Karl Haub [2]	Common Stock	24,110,864	325,100	23,785,764	43
Wissollstrasse 5-43	Series A-T	60,000		60,000	100
45478 Mülheim an der Ruhr, Germany	Preferred Stock				
Karl-Erivan Warder Haub [2]	Common Stock	23,798,764	13,000	23,785,764	42
Wissollstrasse 5-43	Series A-T	60,000		60,000	100
45478 Mülheim an der Ruhr, Germany	Preferred Stock				
Tengelmann	Common Stock				42
Warenhandelsgesellschaft KG [2]		23,785,764	0	23,785,764	
Wissollstrasse 5-43	Series A-T	60,000		60,000	100
45478 Mülheim an der Ruhr, Germany	Preferred Stock				
Aletheia Research & Management [4]	Common Stock				27
		15,548,797	0	15,548,797	
100 Wilshire Blvd., Suite 1960					
Santa Monica, CA 90401					
Bank of America Corporation [5]	Common Stock	4,925,404	0	4,925,404	8
100 North Tryon Street, Floor 25					
Charlotte, NC 28255					
GAMCO Investors, Inc. [6]	Common Stock	5,088,781	0	5,088,781	9
One Corporate Center					
Rye, NY 10580					
DBD Cayman, Limited [7]	Common Stock	2,852,548	0	2,852,548	5
c/o Walkers Corp. Services Limited					
Walker House, 87 Mary St. Georgetown,					
Grand Cayman, Cayman Islands					
The Yucaipa Companies LLC[8]	Common Stock	2,592,610		2,592,610	4
9130 W. Sunset Boulevard	Series A-Y	115,000		115,000	100
Los Angeles, CA 90069	Preferred Stock				

(1) For purposes of this table, a person or a

group of persons is deemed to have beneficial ownership of any shares which such person has the right to acquire as of July 19, 2010 (60 days after May 20, 2010). For purposes of computing the percentage of outstanding shares held by each person or group of persons named above on a given date, any shares which such person or persons has the right to acquire within 60 days after such date are deemed to be outstanding, but are not deemed to be outstanding for the purpose of computing the percentage ownership of any other person.

Table of Contents

(2) The Company obtained the information regarding Tengelmann Warenhandelsgesellschaft KG (Tengelmann), Tengelmann Verwaltungsund Beteiligungs GmbH (TVB), Emil Capital Partners, LLC (ECP), Erivan Karl Haub (Erivan), Karl-Erivan Warder Haub (Karl-Erivan) and Christian W. E. Haub (Christian) from such persons, and from a Schedule 13D/A filed with the SEC on August 14, 2009. Tengelmann is engaged in general retail marketing. It owns, operates and has investments in, through affiliated companies and subsidiaries, several chains of stores, which principally sell grocery and department store items throughout the Federal Republic of Germany, other European countries and the United States. The general partners of Tengelmann are TVB and two of Erivan s sons, Karl-Erivan and Christian. Georg Haub is Erivan s third son and is a Managing Director of a company affiliated with Tengelmann and a citizen of the United States and the Federal Republic of Germany whose business address is Wissollstrasse 5-43, 45478 Muelheim an der Ruhr, Federal

Republic of Germany. TVB is the sole managing partner of Tengelmann. By virtue of the articles of association of Tengelmann, TVB has the exclusive right to direct Tengelmann and is solely responsible for its conduct. TVB, whose only stockholders are Erivan Karl Haub and his three sons, is not an operating company. Karl-Erivan and Christian are the only Managing Directors of TVB and by virtue of this office are co-CEOs of Tengelmann. Beneficial ownership of 60,000 shares of Series A-T Preferred Stock is convertible into Common Stock beginning on August 5, 2010, and entitles Tengelmann to vote with the holders of Common Stock on an as converted basis.

(3) Includes options to purchase 283,868 shares of Common Stock, all of which are exercisable by July 15, 2010 (or within 60 days following May 20, 2010).

(4) This information has been obtained from a Schedule 13D/A filed with the SEC on April 22, 2010 by Aletheia Research & Management, Inc. (Aletheia). As reported therein, Aletheia holds sole voting and dispositive power with respect to 15,548,797 shares of the Issuer s Common Stock held by managed accounts

over which Aletheia has discretionary authority and through partnerships with respect to which Aletheia serves as general partner.

(5) The Company obtained the information regarding Bank of America Corporation from a Schedule 13G filed with the SEC on February 2, 2010 by Bank of American Corporation (Bank of America) as a parent holding company or control person in accordance with Rule 13d-1(b)(1)(ii)(G) and filed for Bank of America Corporation, Bank of America, N.A., Columbia Management Advisors, LLC, IQ Investment Advisors LLC, and Merrill Lynch, Pierce, Fenner & Smith, Inc. Bank of America has shared voting power over 4,925,404 shares and shared dispositive power over 4,910,574 shares.

(6) The Company obtained this information from a Schedule 13D/A filed with the SEC on December 30, 2009 by Mario J. Gabelli (Mario Gabelli) and/or one or more of the following entities which he directly or indirectly controls, or for which he acts as chief investment officer: GGCP, Inc. (GGCP), GAMCO Investors, Inc. (GBL), Gabelli Funds, LLC (Gabelli Funds), GAMCO Asset Management Inc. (GAMCO), Teton

Advisors, Inc. (Teton Advisors), Gabelli Securities, Inc. (GSI), Gabelli & Company, Inc. (Gabelli & Company), MJG Associates, Inc. (MJG Associates), Gabelli Foundation, Inc. (Foundation), and Mario Gabelli. Those of the foregoing persons are hereafter referred to as the Reporting Persons .

GGCP makes investments for its own account and is the controlling stockholder of GBL. GBL, a public company listed on the New York Stock Exchange, is the parent company for a variety of companies engaged in the securities business, including those named below. GAMCO, a wholly-owned subsidiary of GBL, is an investment adviser registered under the Investment Advisers Act of 1940, as amended (Advisers Act). GAMCO is an investment manager providing discretionary managed account services for employee benefit plans, private investors, endowments, foundations and others. GSI, a majority-owned subsidiary of GBL, is an investment adviser registered under the Advisers Act and serves as a general partner or investment manager to limited partnerships and offshore investment companies. Gabelli & Company, a wholly-owned subsidiary of GSI, is a broker-dealer registered under the Securities Exchange Act of 1934, as amended, which as a part of its business regularly purchases and sells securities for its own account. Gabelli Funds, a wholly owned subsidiary of GBL, is a limited liability company. Gabelli Funds is an investment adviser registered under the Advisers Act which presently provides discretionary managed account services for a number of registered investment companies. Teton Advisors, an investment adviser registered under the Advisers Act, provides discretionary advisory services to several funds. The Reporting Persons do not admit that they constitute a group.

Table of Contents

The aggregate number of securities to which this Schedule 13D relates is 5,088,781 shares, representing 8.65% of the approximately 58,802,461 shares outstanding. This latter number of shares is arrived at by adding the number of shares reported as being outstanding in the issuer s most recently filed Form 10-Q for the quarterly period ended September 12, 2009 (58,344,210 shares) to the number of shares (458,251 shares) which would be receivable by the Reporting Persons if they were to convert all of the Issuer s convertible preferred shares held by them into common shares. The Reporting Persons beneficially own those Securities as follows:

Name	Shares of Common Stock	% of Class of Common	Shares of Common Plus Convertible Preferred Converted	% of Common Plus Convertible Preferred Converted
GAMCO	3,894,230	5.82%	3,399,176	5.78%
Gabelli Funds	1,176,000	2.02%	1,629,305	2.77%
Teton Advisors	60,300	0.10%	60,300	0.10%

Mario Gabelli is deemed to have beneficial ownership of the Securities owned beneficially by each of the foregoing persons. GSI is deemed to have beneficial ownership of the Securities owned beneficially by Gabelli & Company. GBL and GGCP are deemed to have beneficial ownership of the Securities owned beneficially by each of the foregoing persons other than Mario Gabelli and the Foundation.

Each of the Reporting Persons and covered persons has the sole power to vote or direct the vote and sole power to dispose or to direct the disposition of the securities reported for it, either for its own benefit or for the benefit of its investment clients or its partners, as the case may be, except that (i) GAMCO does not have the authority to vote 173,000 of its reported shares, (ii) Gabelli Funds has sole dispositive and voting power with respect to the shares of the Issuer held by the Funds so long as the aggregate voting interest of all joint filers does not exceed 25% of their total voting interest in the Issuer and, in that event, the Proxy Voting Committee of each Fund shall respectively vote that Fund s shares, (iii) at any time, the Proxy Voting Committee of each such Fund may take and exercise in its sole discretion the entire voting power with respect to the shares held by such fund under special circumstances such as regulatory considerations, and (iv) the power of Mario Gabelli, GBL, and GGCP is indirect with respect to Securities beneficially owned directly by other Reporting Persons.

(7) This information has been obtained from a Schedule 13G/A filed with the SEC on February 12, 2010, filed by DBD Cayman

Limited, TCG Holdings Cayman II, L.P., TC Group Cayman Investment Holdings, L.P., TC Group CSP II, L.L.C., CSP II General Partner, L.P., Carlyle Strategic Partners II, L.P., each hereinafter individually referred to as a Reporting Person.

Carlyle Strategic Partners II, L.P. (CSP II) and CSP II Coinvestment, L.P. (Coinvestment) are the record owners of 2,756,726 Shares and 95,822 Shares, respectively. CSP II General Partner, L.P. is the general partner of both CSP II and Coinvestment. The sole general partner of CSP II General Partner, L.P. is TC Group CSP II, L.L.C., a limited liability company that is wholly owned by TC Group Cayman Investment Holdings, L.P. The sole general partner of TC Group Cayman Investment Holdings, L.P. is TCG Holdings Cayman II, L.P. The sole general partner of TCG Holdings Cayman II, L.P. is DBD Cayman Limited. Accordingly, each of CSP II General Partner, L.P., TC Group CSP II, L.L.C., TC Group Cayman Investment Holdings, L.P., TCG Holdings

Cayman II, L.P., and DBD Cayman Limited may be deemed to be beneficial owners of the Shares held by CSP II and Coinvestment.

DBD Cayman Limited has investment discretion and dispositive power over the Shares. DBD Cayman Limited is controlled by its Class A members, William E. Conway, Jr., Daniel A. D Aniello and David M. Rubenstein, and all action relating to the investment and disposition of the Shares held by CSP II and Coinvestment requires their approval, based on a majority vote. William E. Conway, Jr., Daniel A. D Aniello and David M. Rubenstein each disclaim beneficial ownership of the Shares held by CSP II and Coinvestment.

Table of Contents

(8) This information has been obtained from a Schedule 13D/A filed with the SEC on January 21, 2010, filed jointly by (i) Ronald W. Burkle, (ii) Yucaipa Corporate Initiatives Fund I, LLC, a Delaware limited liability company (YCI LLC), (iii) Yucaipa Corporate Initiatives Fund I, LP, a Delaware limited partnership (YCI and, together with YCI LLC, the YCI Parties), (iv) Yucaipa American Management, LLC, a Delaware limited liability company (Yucaipa American), (v) Yucaipa American Funds, LLC, a Delaware limited liability company (Yucaipa American Funds), (vi) Yucaipa American Alliance Fund I, LLC, a Delaware

limited liability company (YAAF LLC), (vii) Yucaipa American Alliance Fund I, LP, a Delaware limited partnership (YAAF), (viii) Yucaipa American Alliance (Parallel) Fund I, LP, a Delaware limited partnership (YAAF Parallel and, together with Yucaipa American, Yucaipa American Funds, YAAF LLC and YAAF, the YAAF Parties), (ix) Yucaipa American Alliance Fund II, LLC, a Delaware limited liability company (YAAF II LLC), (x) Yucaipa American Alliance Fund II, LP, a Delaware limited partnership (YAAF II), (xi) Yucaipa American Alliance (Parallel) Fund II, LP, a Delaware limited partnership (YAAF II Parallel and, together with YAAF II LLC and YAAF II, the YAAF II Parties and, together with Mr. Burkle, the YCI Parties, the YAAF Parties, and each of the other YAAF II Parties, the Yucaipa Companies). Mr. Burkle is the managing member of YCI LLC, which is the general partner of YCI. Mr. Burkle is the managing member of Yucaipa American, which is the managing member of Yucaipa American Funds, which is the managing member of YAAF LLC, which, in turn, is the general partner of YAAF. Yucaipa American Funds is also the managing member YAAF II LLC, which, in turn, is the general partner of YAAF II and YAAF II Parallel. The principal business of each of the Yucaipa Companies is acquiring, investing in and/or managing large retail, logistics and manufacturing companies. YCI is the direct beneficial owner of 892,372 shares of Common Stock, (ii) YAAF is the direct beneficial owner of 850,125 shares of Common Stock, (iii) YAAF Parallel is the direct beneficial owner of 850,113 shares of Common Stock, (iv) YAAF II is the direct beneficial owner of 69,327 shares of A-Y Preferred Stock, and (v) YAAF II Parallel is the direct beneficial owner of 45,673 shares of A-Y Preferred Stock. The shares of Series A-Y Preferred Stock are convertible into Common Stock beginning on August 5, 2010, and entitle the holders to vote with the holders of Common Stock on an as converted basis. The following Yucaipa

Companies entities pursuant to a warrant agreement have the right to purchase an aggregate of 6,965,858 shares of Common Stock (subject to adjustment) at an exercise price of $32.40 per share (the Series B Warrants): Yucaipa Corporate Initiatives Fund I, L.P. (2,397,648 shares); Yucaipa American Alliance Fund 1, L.P. (2,284,105 shares) and Yucaipa American Alliance (Parallel) Fund 1, L.P. (2,284,105 shares). The Series B Warrants are exercisable solely on a cashless basis, but the Company, in its sole discretion, is entitled to settle all or any portion of the Series B Warrants in cash. Since the Yucaipa Companies do not have any discretion or control over the cash settlement of the Series B Warrants, the securities underlying the Series B Warrants are not deemed beneficially owned by any of the Yucaipa Companies. The Series B Warrants expire on June 9, 2015.

SECURITY OWNERSHIP OF DIRECTORS AND MANAGEMENT

The following table sets forth the number of shares of Common Stock of the Company beneficially owned as of May 20, 2010 by each director and each Named Executive Officer (NEO), individually and by all directors and executive officers of the Company as a group:

	Title of Class	Shares Beneficially Owned(1)	Stock Option Shares(2)	Deferred Plan(3)	Total	% of Class
John D. Barline	Common	30,629	212	35,205	66,046	*
Jens-Jürgen Böckel	Common	29,945	2,529	9,169	41,643	*
Frederic Brace	Common	0	0	0	0	*
Christian W.E. Haub(4)	Common	24,106,909	283,868	0	24,390,777	43
	Series A-T Preferred	60,000	0	0	60,000	100
Brenda Galgano	Common	25,850	66,304	0		