

AMCON DISTRIBUTING CO

Form DEF 14A

December 29, 2008

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

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

Exchange Act of 1934 (Amendment No.)

Filed by the Registrant X

Filed by a Party other than the Registrant o

Check the appropriate box:

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

AMCON Distributing Company

(Name of Registrant as Specified In Its Charter)

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3) Filing Party:

4) Date Filed:

AMCON Distributing Company

7405 Irvington Road

Omaha, Nebraska 68122

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

TO BE HELD ON JANUARY 26, 2009

The annual meeting of stockholders of AMCON Distributing Company, a Delaware corporation, will be held on Monday, January 26, 2009, at 1:00 p.m., local time, in the Wyndham Orange County Hotel located at 3350 Avenue of the Arts, Costa Mesa, California, for the following purposes:

1. To elect three Class III directors to hold office for a term expiring at the 2012 annual meeting of stockholders, and until their respective successors are duly elected and qualified or until their respective earlier resignation or removal;
2. To consider and act upon ratification and approval of the selection of McGladrey and Pullen, LLP as our independent registered public accounting firm for our 2009 fiscal year; and
3. To consider and act upon any other matters which may properly come before the meeting.

The proposals referred to above are more fully described in the accompanying proxy statement. An annual report to stockholders outlining our company's operations during our 2008 fiscal year accompanies this notice of annual meeting and proxy statement.

You are entitled to vote only if you were a stockholder of our company at the close of business on December 5, 2008, the record date for the annual meeting. Our board of directors solicits you to give your proxy to vote at the annual meeting by following the specific voting instructions appearing on the enclosed proxy card or voting instruction card, regardless of whether you intend to attend the meeting.

BY ORDER OF THE BOARD OF DIRECTORS,

Andrew C. Plummer

Secretary

December 29, 2008

Omaha, Nebraska

YOUR VOTE IS IMPORTANT. WHETHER OR NOT YOU PLAN TO ATTEND THE MEETING, PLEASE FOLLOW THE SPECIFIC VOTING INSTRUCTIONS APPEARING ON THE ENCLOSED PROXY CARD OR VOTING INSTRUCTION CARD AS PROMPTLY AS POSSIBLE IN ORDER TO ENSURE YOUR REPRESENTATION AT THE MEETING.

AMCON Distributing Company

7405 Irvington Road

Omaha, Nebraska 68122

PROXY STATEMENT

QUESTIONS AND ANSWERS ABOUT THE PROXY MATERIALS AND THE ANNUAL MEETING

Although we encourage you to read this proxy statement in its entirety, we include this question and answer section to provide some background information and brief answers to several questions you might have about the annual meeting.

Why am I receiving these materials?

The board of directors of AMCON Distributing Company is providing these materials to you in connection with our annual meeting of stockholders on January 26, 2009. The information included in this proxy statement relates to the proposals to be voted on at the annual meeting, the voting process, and certain other required information. This proxy statement, the notice of annual meeting of stockholders and the accompanying proxy card or voting instruction card were first sent or given to our stockholders on or about December 29, 2008. As a stockholder of our company, you are entitled and encouraged to vote on the items of business described in these proxy materials. Your vote is very important. For this reason, our board is requesting that you allow your shares to be represented at the annual meeting by the persons named as proxies on the enclosed proxy card or voting instruction card.

When and where will the annual meeting be held?

The annual meeting of stockholders will be held on Monday, January 26, 2009, at 1:00 p.m., local time, in the Wyndham Orange County Hotel located at 3350 Avenue of the Arts, Costa Mesa, California. You may obtain directions to the location of the annual meeting by calling our corporate secretary, Andrew C. Plummer, at (402) 331-3727. You do not have to attend the annual meeting to be able to vote.

What matters will be voted on at the annual meeting?

Stockholders will consider and vote upon the following business items at the annual meeting:

The election of three Class III directors to hold office for a term expiring at the 2012 annual meeting of stockholders, and until their respective successors are duly elected and qualified or until their respective earlier resignation or removal;
The ratification and approval of the selection of the accounting firm of McGladrey and Pullen, LLP as our independent registered public accounting firm for our 2009 fiscal year; and
Any other matters that may properly come before the annual meeting.

How does our board of directors recommend that I vote?

Our board of directors recommends that you vote:

FOR the election of each nominee for director named in this proxy statement who is to be voted on by the holders of our common stock; and

FOR the ratification and approval of McGladrey and Pullen, LLP as our independent registered public accounting firm.

What shares can I vote?

The outstanding voting securities of our company are the shares of our common stock, \$0.01 par value. In addition, our Series B Convertible Preferred Stock, \$0.01 par value, and our Series C Convertible Preferred Stock, \$0.01 par value, provide certain limited voting rights in the election of directors. In particular, (i) the holders of our Series B Convertible Preferred Stock, voting separately as a single class, are entitled to elect one member of our board of directors, and (ii) the holder of our Series C Convertible Preferred Stock, voting separately as a single class, also is entitled to elect one member of our board of directors. The holder of our Series B Convertible Preferred Stock will not be entitled to vote at this annual meeting since the term of office of Christopher H. Atayan, the person designated for service on the board by the holder of our Series B Convertible Preferred Stock, will continue after the annual meeting. The holders of our Series C Convertible Preferred Stock will not be entitled to vote at this annual meeting since the term of office of Jeremy W. Hobbs, the person designated for service on the board by the holders of our Series C Convertible Preferred Stock, will continue after the annual meeting.

Each share of our common stock issued and outstanding as of the close of business on the December 5, 2008 record date for the annual meeting is entitled to one vote on each matter submitted to a vote at the annual meeting. As of the record date, we had 570,397 shares of common stock, 80,000 shares of Series B Convertible Preferred Stock and 80,000 shares of Series C Convertible Preferred Stock issued and outstanding. You may vote all shares of our common stock that you held as of the record date. This includes (i) shares held directly in your name as the stockholder of record, and (ii) shares held for you as the beneficial owner through a broker, trustee or other nominee, sometimes referred to as shares held in street name.

How do I submit my vote?

Generally, you may vote your shares by completing, signing and returning the proxy card or voting instruction card provided to you, or by attending the annual meeting and voting in person. Specific voting instructions are found on the proxy card or voting instruction card provided to you.

Shares held by the stockholder of record. If your shares are registered directly in your name with our transfer agent, Registrar and Transfer Company, you are considered the stockholder of record, and these proxy materials were sent to you directly. As the stockholder of record, you have the right to grant your proxy vote directly or to vote in person at the annual meeting. We have enclosed a proxy card for you to use.

Shares held in street name. If you hold shares in a brokerage account or through some other nominee, you are considered the beneficial owner of shares held in street name, and these proxy materials are being forwarded to you by your broker, trustee or other nominee, together with a voting instruction card. As the beneficial owner, you have the right to direct your broker, trustee or nominee how to vote your shares by following the instructions on the voting instruction card. Although you may attend the annual meeting, you may not vote these shares in person at the meeting unless you obtain a legal proxy from your broker, trustee or nominee. You may vote your shares by any of the options listed on the voting instruction card.

Can I change my proxy vote?

If you are a stockholder of record, you may change your vote or revoke your proxy any time before your vote is used at the annual meeting by:

- submitting a valid, later-dated proxy;
- notifying our corporate secretary in writing that you have revoked your proxy; or
- completing a written ballot at the annual meeting.

Attendance at the annual meeting will not in and of itself constitute a revocation of your proxy.

If you hold shares as the beneficial owner in street name, you may change your vote by submitting new voting instructions to your broker, trustee or other nominee or, if you have obtained a legal proxy from your broker, trustee or nominee, by voting in person at the annual meeting.

How many votes are needed to conduct business at the annual meeting?

A majority of all outstanding shares of our common stock entitled to vote at the annual meeting must be present or represented by proxy in order to satisfy the quorum requirement for the transaction of business at the annual meeting. Both abstentions and broker non-votes (described below under "What is the effect of a broker non-vote?") are counted as present and entitled to vote for purposes of determining a quorum. If a quorum should not be present, the annual meeting may be adjourned from time to time until a quorum is obtained.

How are votes counted?

If you are a stockholder of record and you give your proxy, the shares represented by the proxy will be voted in accordance with your instructions. However, if you are a stockholder of record and you give your proxy without providing voting instructions on one or more proposals, your proxy will be voted for those proposals in accordance with the recommendation of our board of directors (which recommendation is identified above under "How does our board of directors recommend that I vote?").

If your shares are held in street name through a broker or other nominee, they will be voted in accordance with the voting instructions that you provide. If you do not provide voting instructions, your broker or other nominee is permitted to vote your shares on proposals that are considered routine, including the election of directors and ratification of the appointment of our independent registered public accounting firm.

What vote is required to approve the proposals at the annual meeting?

Election of Directors. Directors are elected by a plurality of the votes cast, in person or by proxy, by stockholders entitled to vote at the annual meeting for that purpose. This means that the three nominees receiving the highest number of votes at the annual meeting will be elected. Stockholders can withhold authority to vote for one or more nominees for director. Shares not voted, whether by specifically withholding authority to vote on your proxy card or voting instruction card or otherwise, will have no impact on the election of directors except to the extent the failure to vote for an individual results in another individual receiving a larger proportion of the total votes. No shares may be voted for more than three nominees at the annual meeting. Stockholders do not have cumulative voting rights in the election of directors.

Selection of Accounting Firm and Other Matters. Approval of the proposal to ratify and approve the selection of McGladrey and Pullen, LLP as our independent registered public accounting firm and all other proposals that properly may come before the annual meeting require the affirmative vote of a majority of the shares represented at the meeting and entitled to vote on the particular proposal. Stockholders may abstain from voting on any proposal at the meeting. If you abstain from voting on any proposal, it has the same effect as a vote against the proposal.

What is the effect of a broker non-vote?

A broker non-vote occurs when a broker or other nominee holding shares for a beneficial owner does not vote on a particular proposal because the broker or other nominee does not have discretionary voting power with respect to that item and has not received instructions from the beneficial owner. Broker non-votes are counted as present or represented for purposes of determining the presence or absence of a quorum for the annual meeting, if such shares are otherwise properly represented at the meeting in person or by proxy. Broker non-votes are not counted for purposes of determining the number of shares entitled to vote on any proposal for which the broker or other nominee lacks discretionary authority, and therefore would reduce the number of affirmative votes that are necessary to approve that proposal.

Are there any other matters that will be considered at the annual meeting?

The only items of business that may be properly brought before the annual meeting are the matters set forth in this proxy statement or those brought before the meeting by or at the direction of our board of directors. We are not aware of any business to be acted upon at the annual meeting other than the items described in this proxy statement. Your signed proxy, however, will entitle the persons named as proxy holders to vote in their discretion for any other matter that is properly presented at the meeting.

Who pays the cost of soliciting votes at the annual meeting?

This proxy solicitation is being made by our board of directors. All costs of this solicitation will be borne by our company. In addition to the use of the mails, proxies may be solicited personally or by telephone by some of the regular employees of our company, at no additional compensation. Our company may reimburse brokers, banks and other persons holding stock in their names, or in the names of nominees, for their expenses incurred in sending proxy materials to their principals and obtaining their proxies. Our company requests that brokerage houses and other custodians, nominees and fiduciaries forward the soliciting materials to the beneficial owners of the shares of common stock held of record by such persons.

Where can I find the voting results of the annual meeting?

We will announce preliminary voting results at the annual meeting and publish the final results in our quarterly report on Form 10-Q for the quarter ending March 31, 2009.

What should I do if I receive more than one set of proxy materials?

Each stockholder at a given address will receive a separate proxy card or voting instruction card. You may receive multiple sets of proxy materials if you hold shares in more than one brokerage account or if you are a stockholder of record and have shares registered in more than one name. Please vote the shares on each proxy card or voting instruction card you receive.

The Securities and Exchange Commission or SEC has adopted rules that permit companies and intermediaries (including brokers) to satisfy the delivery requirements for proxy statements, annual reports and notices of internet availability of proxy materials with respect to two or more stockholders sharing the same address by delivering a single package of these materials addressed to those stockholders. This process, which is commonly referred to as "householding," potentially means extra convenience for stockholders and cost savings for companies.

We have adopted a "householding" procedure that you may wish to follow. If you are receiving multiple sets of proxy materials and wish to have your accounts "household," call our corporate secretary, Andrew C. Plummer, at (402) 331-3727, or send written instructions to our corporate secretary at AMCON Distributing Company, 7405 Irvington Road, Omaha, NE 68122. If you no longer wish to participate in "householding" (and instead wish that each stockholder sharing the same address with you receives a complete set of proxy materials), you must provide written notification to our corporate secretary to withhold your consent for "householding." We will act in accordance with your wishes within 30 days after receiving such notification.

Many brokerage firms participate in "householding" as well. If you have a "householding" request for your brokerage account, please contact your broker.

Where may I obtain financial and other information about AMCON?

We filed our annual report on Form 10-K for our 2008 fiscal year with the SEC on November 7, 2008. Our annual report to stockholders, including our Form 10-K and containing our audited financial statements for our 2008 fiscal year, accompanies this proxy statement. This proxy statement, our annual report to stockholders (including Form 10-K), and other proxy materials also are available from the SEC's internet website (www.sec.gov). Information on any website that we refer to does not constitute part of this proxy statement.

MATTERS TO BE CONSIDERED AT THE ANNUAL MEETING**ITEM 1: ELECTION OF DIRECTORS****What am I voting on?**

One of the purposes of this annual meeting is to elect three directors. You will be asked to elect three directors in Class III to serve for a three-year term expiring at the 2012 annual meeting of stockholders and until their respective successors are duly elected and qualified or until their respective earlier resignation or removal.

What is the structure of our board and how often are directors elected?

Our board of directors currently consists of eight persons. Our articles of incorporation divides the board into three classes of directors, with directors serving staggered terms of three years and until their respective successors are duly elected and qualified or until their respective earlier resignation or removal. The present terms of Kathleen M. Evans, John R. Loyack and Timothy R. Pestotnik, the three directors in Class III, expire at this annual meeting. Directors in Class I (Jeremy W. Hobbs, Stanley Mayer and William F. Wright) and in Class II (Christopher H. Atayan and Raymond F. Bentele) have terms expiring at the time of the annual meeting of stockholders in 2010 and 2011, respectively. Our board of directors has determined that Messrs. Bentele, Hobbs, Loyack, Mayer and Pestotnik each satisfies the independence requirements of the American Stock Exchange or AMEX .

Who are this year's nominees?

The nominating and corporate governance committee of our board of directors has designated Kathleen M. Evans, John R. Loyack and Timothy R. Pestotnik as the nominees proposed for election at the annual meeting. Each of these nominees currently serves on our board. Unless authority to vote for the nominees or a particular nominee is withheld, it is intended that the shares represented by properly executed proxies in the form enclosed will be voted for the election as directors of these three nominees. The following table sets forth certain information with respect to each person nominated for election as a Class III director at the annual meeting and each director whose term of office will continue after the annual meeting.

<u>Name</u>	<u>Age</u>	<u>Position With our Company</u>	<u>Director Since</u>
NOMINEES			
Class III: New term to expire in 2012			
Kathleen M. Evans	61	President, Director	1986
John R. Loyack	45	Director	2003
Timothy R. Pestotnik	48	Director	1998
DIRECTORS CONTINUING IN OFFICE			
Class I: Term to expire in 2010			
Jeremy W. Hobbs	48	Director	2006
Stanley Mayer	63	Director	2002
William F. Wright	66	Director	1986
Class II: Term to expire in 2011			
Christopher H. Atayan	48	Chief Executive Officer, Chairman, Director	2004
Raymond F. Bentele	72	Director	2002

There is no arrangement or understanding between any director and any other person pursuant to which such director was selected as a director except that the respective holders of our Series B Convertible Preferred Stock and Series C Convertible Preferred Stock each are entitled to vote separately as a single class in electing one member of our board of directors. Spencer Street Investments, Inc., the holder of our Series B Convertible Preferred Stock, has designated Christopher H. Atayan as the person elected by the holders of our Series B Convertible Preferred Stock to

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serve on our board of directors. Draupnir Capital, LLC, the holder of our Series C Convertible Preferred Stock, has designated Jeremy W. Hobbs as the person elected by the holders of our Series C Convertible Preferred Stock to serve on our board of directors.

What is the business experience of the nominees and of our continuing board members?

The business experience during the last five years of each person nominated for election as a director at the annual meeting and each director whose term of office will continue after the annual meeting is as follows:

Christopher H. Atayan has served as our company's Chief Executive Officer since October 2006 and as its Chairman since January 2008. Mr. Atayan served as our company's Vice Chairman from March 2006 through January 2008, as our company's Chief Corporate Officer from March 2006 through September 2006 and has been a director of our company since 2004. He also is a consultant to Draupnir, LLC, the parent of Draupnir Capital, LLC. Mr. Atayan has served as the Senior Managing Director of Slusser Associates, a New York investment banking firm since 1988 and is a director of AMCON Corporation and Hotlink, Incorporated.

Raymond F. Bentele served as President and Chief Executive Officer of Mallincredit, Inc. from 1981 until his retirement in 1992. He currently serves as a director of The Mosaic Company and Leggett & Platt, Incorporated.

Kathleen M. Evans became President of our company in February 1991. Prior to that time she served as Vice President of AMCON Corporation from 1985 to 1991. From 1978 until 1985, Ms. Evans acted in various capacities with AMCON Corporation and its operating subsidiaries.

Jeremy W. Hobbs is the President and Chief Executive Officer of Draupnir, LLC, and has served as a founding member and executive officer of Draupnir, LLC from 2002 through December 2005. From 1987 to 2002, Mr. Hobbs was an attorney in the law firm of Krasnow, Cornbath and Hobbs in Chicago, Illinois where he served as managing partner from 1997 to 2002.

John R. Loyack currently is President and Chief Executive Officer of EnergyCo, LLC. Prior to serving in his current position, Mr. Loyack served as President and Chief Executive Officer of CPG International, Inc., as Senior Vice President and Chief Financial Officer and Vice President and Chief Accounting Officer at PNM Resources.

Stanley Mayer currently is the General Manager of CMC Rebar - Albuquerque. Prior to serving in his current position, Mr. Mayer served as Vice President of CMC Capitol City Steel, as a consultant to various companies regarding financial and strategic planning matters since 2002, as Chief Financial Officer for Donruss Playoff, Inc. from 2001 to 2002 and as Vice President of Southern Union Company from 1998 through 2001.

Timothy R. Pestotnik is an attorney and a partner in the law firm of Pestotnik + Gold, LLP. Prior to this, he was a partner and chair of the business litigation department at the law firm of Luce, Forward, Hamilton & Scripps, LLP. Mr. Pestotnik also serves as a director of AMCON Corporation.

William F. Wright has served as the Chairman and Chief Executive Officer of AMCON Corporation since 1976, as Chief Executive Officer of our company from 1986 until October 2006, and as Chairman of our company from 1986 until January 2008. From 1968 to 1984, Mr. Wright practiced corporate and securities law in Lincoln, Nebraska.

What if a nominee is unwilling or unable to serve?

Each of the nominees listed in this proxy statement has indicated his or her willingness to serve as a director if elected, and the board of directors has no reason to believe that any nominee will be unavailable for election. If, for some unforeseen reason, a nominee who is to be voted on by the holders of our common stock becomes unwilling or unable to serve, it is intended that shares represented by the proxies will be voted for the election of such substitute nominee as may be designated by our nominating and corporate governance committee, unless the authority to vote for all nominees or for the particular nominee who has ceased to be a candidate has been withheld.

How does our board of directors recommend that I vote?

Our board of directors recommends that you vote **FOR** the election of Kathleen M. Evans, John R. Loyack and Timothy R. Pestotnik as Class III directors.

ITEM 2: SELECTION OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

What am I voting on?

Stockholders are being asked to ratify and approve the selection of McGladrey and Pullen, LLP as our independent registered public accounting firm for our 2009 fiscal year. The selection of McGladrey and Pullen, LLP was made by the audit committee of our board of directors. McGladrey and Pullen, LLP has served as our independent auditors since August 30, 2006. In connection with the audit of our 2009 fiscal year financial statements, our company entered into an engagement agreement with McGladrey and Pullen, LLP which sets forth the terms by which McGladrey and Pullen, LLP will perform audit services for our company. That agreement may be subject to alternative dispute resolution procedures. The ratification and approval by stockholders of the selection of McGladrey and Pullen, LLP effectively would also be a ratification of that agreement.

What services do the independent registered public accountants provide?

Audit services provided by McGladrey and Pullen, LLP for our 2008 fiscal year included the examination of the consolidated financial statements of our company and services related to our periodic filings with the SEC. These services are more fully described in this proxy statement under the captions **Audit Committee Report** and **Independent Auditor Fees and Services**.

Will a representative of McGladrey and Pullen, LLP be present at the meeting?

One or more representatives of McGladrey and Pullen, LLP are expected to be present at the annual meeting. Any such representative will have an opportunity to make a statement if he or she desires to do so and is expected to be available to respond to appropriate questions from stockholders.

What if this proposal is not approved?

Stockholder ratification and approval of the audit committee's selection of McGladrey and Pullen, LLP as our independent registered public accounting firm is not required by any statute or regulation or by our bylaws. Nevertheless, if the stockholders do not ratify and approve the selection of McGladrey and Pullen, LLP at the annual meeting, the audit committee will reconsider the appointment. Submission of our selection of McGladrey and Pullen, LLP to the stockholders for ratification and approval will not limit the authority of the audit committee to appoint another independent certified public accounting firm to serve as independent auditors if the present auditors resign or their engagement otherwise is terminated.

How does our board of directors recommend that I vote?

Our board of directors recommends that you vote **FOR** approval of the selection of McGladrey and Pullen, LLP.

CORPORATE GOVERNANCE AND BOARD MATTERS

Communication with the Board

Our board of directors has established a process for stockholders to follow in sending communications to our board or its members. Stockholders who wish to communicate with our board or any of our directors, including the Chairman of the Board and the chairman of any committee of the board, may do so. Such communications must be addressed to our board or any such director in care of our corporate secretary at Amcon Distributing Company, 7405

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Irvington Road, Omaha, NE 68122. All such communications will be compiled by our corporate secretary and submitted to our board or the individual director, as applicable, on a periodic basis.

Neither our board of directors nor a specific director is required to respond to a stockholder communication. To avoid selective disclosure, our board or the individual director may respond to a stockholder's communication only if the communication involves information which is not material or which is already public. In such case, our board of directors, as a whole, or the individual director may respond, if at all:

Directly, following consultation with our corporate secretary or other advisors or without additional consultation, as our board determines appropriate;

Indirectly through our corporate secretary or other designated officer, following consultation with our corporate secretary or other advisors or without additional consultation, as our board determines appropriate; or

Pursuant to such other means as our board determines appropriate from time to time.

If the communication involves material non-public information, our board of directors or the individual director will not provide a response to the stockholder concerning such information. Our company may, however, publicly provide information responsive to such communication if (following consultation with our advisors, as our board determines appropriate) our board determines disclosure is appropriate. In that case, the responsive information will be provided in compliance with SEC Regulation FD and other applicable laws and regulations.

Consideration of Director Nominees

In identifying and evaluating director nominees, the nominating and corporate governance committee of our board of directors may receive recommendations from management, from other directors and from stockholders, including the holders of our Series B Convertible Preferred Stock and Series C Convertible Preferred Stock. The committee reviews and considers information on each candidate and evaluates it in light of the needs and requirements of our company. The committee believes that our board and its committees should be comprised of persons who are of high character and integrity, who have a personal and professional reputation that is consistent with the image and reputation of our company, and who have expertise that may be useful to our company. The committee also considers various factors, including the independence of the candidate, as well as his or her education or special skills, areas of expertise, experience, age, business associations, reputation and other characteristics and qualities that the committee believes are likely to enhance the effectiveness of our board and its committees. In determining whether a director should be retained and stand for re-election, the committee also considers the director's past attendance at meetings and participation in and contributions to the activities of our board and each committee on which such director serves.

Stockholders who wish the nominating and corporate governance committee to consider their recommendations for nominees for the position of director should submit their recommendations in writing to the nominating and corporate governance committee in care of our corporate secretary at AMCON Distributing Company, 7405 Irvington Road, Omaha, NE 68122. All nominees, including those submitted by stockholders in accordance with these procedures, will be evaluated using generally the same methods and criteria described above, although those methods and criteria are not standardized and may vary from time to time. Stockholders also may submit director nominations to our company in accordance with the procedures described below under "Advance Notice of Stockholder Proposals."

Committees of the Board

Our board of directors has established an audit committee, a compensation committee and a nominating and corporate governance committee. There currently are no other standing committees of our board of directors. Members of the audit committee, compensation committee and nominating and corporate governance committee serve at the pleasure of our board of directors.

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Audit Committee. The audit committee of our board of directors currently is comprised of John R. Loyack, its chairman, Timothy R. Pestotnik and Stanley Mayer. Our board of directors has determined that all members of the audit committee are independent directors under the listing standards adopted by the AMEX. In addition, our board of directors has determined that Mr. Loyack and Mr. Mayer each meets the SEC's definition of an audit committee financial expert. The audit committee is responsible for reviewing our financial statements, audit reports, internal financial controls and the services performed by the independent registered public accounting firm, and for making recommendations with respect to those matters to our board of directors. A more complete description of the audit committee's functions is provided in its charter, a copy of which is available on our internet website (www.amcon.com) by clicking on the Corporate Governance tab under Investor Relations. The audit committee met seven times during our 2008 fiscal year.

Compensation Committee. The compensation committee of our board of directors currently is comprised of John R. Loyack, its chairman, Raymond F. Bentele and Stanley Mayer. Our board of directors has determined that all members of our compensation committee are independent under the AMEX listing standards. The committee is responsible for reviewing and making recommendations to our board of directors with respect to compensation of executive officers and other compensation matters and awards. Our chief executive officer assists the committee from time to time on a variety of compensation matters, including making recommendations for the appropriate salaries and bonuses of our executive officers (other than our chief executive officer). The committee has the authority to consult with management and to engage the services of outside advisors, experts and others to assist it in its efforts. A more complete description of the committee's functions is provided in its charter, a copy of which is available on our internet website (www.amcon.com) by clicking on the Corporate Governance tab under Investor Relations. Our compensation committee met nine times during our 2008 fiscal year.

Nominating and Corporate Governance Committee. The members of our nominating and corporate governance committee are Raymond F. Bentele, its chairman, John R. Loyack and Timothy R. Pestotnik, each of whom our board of directors has determined to be independent under the AMEX listing standards. The committee is responsible for the director nomination process, including evaluating and recommending director nominees and committee and chair appointments. It also is responsible for various corporate governance matters, including the development of ethical conduct standards for our directors, officers and employees and an annual board assessment. A more complete description of the committee's functions is provided in its charter, a copy of which is available on our internet website (www.amcon.com) by clicking on the Corporate Governance tab under Investor Relations. The nominating and corporate governance committee met four times during our 2008 fiscal year.

Meetings of the Board

During our 2008 fiscal year, our board of directors held four meetings. Each director attended at least 75% of the total meetings of the board of directors and of the committees of the board on which he or she served during the fiscal year. Our company's directors discharge their responsibilities throughout the year, not only at such board of directors and committee meetings, but through personal meetings and other communications with members of management and others regarding matters of interest and concern to our company.

The independent non-management members of our board of directors regularly hold executive sessions without management present. At least one executive session per year is attended by only independent non-management directors. Our board of directors has chosen Timothy R. Pestotnik as the lead director for meetings of the independent non-management directors.

Directors are encouraged by our company to attend our annual meeting of stockholders if their schedules permit, but our company does not otherwise have a policy regarding such attendance. With the exception of John R. Loyack, all directors were present at the annual meeting of the stockholders held on January 29, 2008.

Code of Ethics

Our board of directors has adopted a code of ethical conduct that applies to our executive officers, including our principal executive officer and our principal financial officer. This code of ethical conduct is available without charge to any person who requests it by writing to our corporate secretary at AMCON Distributing Company, 7405 Irvington Road, Omaha, NE 68122. It also is available on our internet website (www.amcon.com) by clicking on the Corporate

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Governance tab under Investor Relations. Any substantive amendment to, or waiver from, a provision of this code that applies to our principal executive officer or principal financial officer will be disclosed on our internet website.

Director Compensation

Only outside (non-employee) members of our board of directors receive compensation for their service to our company as a director. Effective April 2008, directors who are not employees of our company are paid according to the following annual scale:

Audit Committee Chairman Fee	\$ 55,000
Audit Committee Membership Fee (1)	\$ 50,000
Compensation Committee Chairman Fee	\$ 50,000
Nominating and Corporate Governance Committee Chairman Fee	\$ 50,000
Director Fee (2)	\$ 45,000
Lead Director Fee	\$ 50,000

(1) Not provided to the chairman of the audit committee.

(2) Not provided to directors serving as chairman of the audit committee, the compensation committee or the nominating and corporate governance committee.

There is no payment of any meeting fees; however, all directors are reimbursed for their reasonable out of pocket expenses incurred in connection with their attendance at board and committee meetings.

Non-employee directors are eligible to receive equity-based awards under our 2007 omnibus incentive plan described below under Executive Compensation and Related Matters 2007 Omnibus Incentive Plan . Non-employee directors also are eligible to receive awards of nonqualified stock options which entitle them to purchase shares of our common stock at an exercise price equal to the fair market value of the stock on the date of grant. Option grants may be recommended from time to time by our compensation committee, subject to approval by our board of directors. These stock options have vesting schedules of up to five years and expire ten years after the date of grant.

Compensation earned in our 2008 fiscal year by each person serving as a director during such fiscal year (other than those who are named executive officers in the summary compensation table under Executive Compensation and Related Matters below) for service on our board and its committees is presented in the table below.

Name	Fees Earned or		Option Awards	Non-Equity Incentive Plan Compensation	Change in Pension Value and Nonqualified Deferred Compensation		Total
	Paid in Cash	Stock Awards			Earnings	All Other Compensation	
	(\$) (1)	(\$) (2)	(\$) (3)	(\$)	(\$)	(\$)	(\$)
Raymond F. Bentele	46,250	10,240	--	--	--	--	56,490
Jeremy W. Hobbs	41,250	10,240	--	--	--	--	51,490
John R. Loyack	51,250	10,240	--	--	--	--	61,490
Stanley Mayer	46,250	10,240	--	--	--	--	56,490
Timothy R. Pestotnik	79,583	10,240	--	--	--	--	89,823

(1) The amounts in this column include director fees, committee chairman fees, audit committee membership fees, and lead director fees received for service as a director, committee chairman, audit committee member or lead director, as follows:

Name

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	Director Fee	Committee	Audit Committee	Lead Director Fee	Total Fees Paid
	\$	Chairman Fee	Membership Fee	\$	in Cash
		\$	\$		\$
Mr. Bentele	--	46,250	--	--	46,250
Mr. Hobbs	41,250	--	--	--	41,250
Mr. Loyack	--	51,250	--	--	51,250
Mr. Mayer	--	46,250	--	--	46,250
Mr. Pestotnik	--	--	46,250	33,333	79,583

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- (2) The amounts in this column reflect the dollar amount recognized for financial statement reporting purposes, in accordance with SFAS No. 123R, for shares of restricted stock awarded to each named director. Assumptions used in the calculation of these amounts are contained in footnote 14 to our consolidated financial statements included in our Annual Report on Form 10-K for our 2008 fiscal year. The grant date fair value, computed in accordance with SFAS No. 123R, of the shares of restricted stock awarded to each named director in our 2008 fiscal year was \$228,690. As of September 30, 2008, each named director held 1,500 unvested shares of restricted stock.
- (3) The amounts in this column reflect the dollar amount recognized for financial statement reporting purposes, in accordance with SFAS No. 123R, for option awards granted to each named director. Assumptions used in the calculation of these amounts are included in footnote 14 to our consolidated financial statements included in our Annual Report on Form 10-K for our 2008 fiscal year. During fiscal year 2008, no stock options were granted to any of the name