

PHOENIX TECHNOLOGIES LTD
Form DEF 14A
December 19, 2002

SCHEDULE 14A
(Rule 14a-101)
INFORMATION REQUIRED IN PROXY STATEMENT
SCHEDULE 14A INFORMATION
Proxy Statement Pursuant to Section 14(a) of the Securities
Exchange Act of 1934 (Amendment No. _____)

Filed by the Registrant Filed by a party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, For Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Under Rule 14a-12

PHOENIX TECHNOLOGIES LTD.

(Name of Registrant as Specified in Its Charter)

(Name of Person(s) Filing Proxy Statement, if Other Than the Registrant)

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- No fee required.
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(4)

Date Filed:

PHOENIX TECHNOLOGIES LTD.
411 East Plumeria Drive
San Jose, California 95134
(408) 570-1000

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

TO BE HELD ON FEBRUARY 6, 2003

Notice is hereby given that the Annual Meeting of Stockholders of Phoenix Technologies Ltd. (the Company or Phoenix), will be held at the Company s offices located at 411 East Plumeria Drive, San Jose, California 95134, on February 6, 2003, at 10:00 a.m., California time, to consider and act upon the following matters:

1. To elect two Class 1 Directors to the Board of Directors of the Company;
2. To approve an amendment to the Company s 1999 Director Option Plan to increase the number of shares of Common Stock reserved for issuance thereunder by 150,000 shares;
3. To approve an amendment to the Company s 2001 Employee Stock Purchase Plan to increase the number of shares of Common Stock reserved for issuance thereunder by 300,000 shares;
4. To ratify the selection by the Board of Directors of Ernst & Young LLP as the Company s independent auditors for the 2003 fiscal year; and
5. To transact such other business as may properly come before the meeting or any adjournments thereof.

Only stockholders of record at the close of business on December 13, 2002 will be entitled to notice of and to vote at the Annual Meeting or any adjournments thereof. The stock transfer books will not be closed between the record date and the date of the Annual Meeting. A list of stockholders entitled to vote at the Annual Meeting will be available for inspection at the Company s offices for a period of ten days before the Annual Meeting.

All stockholders are cordially invited to attend the meeting. Whether or not you plan to attend, please sign and return the enclosed proxy as promptly as possible in the envelope provided. You may revoke your proxy at any time prior to the Annual Meeting. If you attend and vote at the Annual Meeting, your proxy will be automatically revoked and only your vote at the Annual Meeting will be counted.

By Order of the Board of Directors

Linda V. Moore
Secretary

December 19, 2002

PROXY STATEMENT

PHOENIX TECHNOLOGIES LTD.

**411 East Plumeria Drive
San Jose, California 95134**

PROXY STATEMENT FOR THE ANNUAL MEETING OF STOCKHOLDERS

To Be Held February 6, 2003

This Proxy Statement is furnished in connection with the solicitation by the Board of Directors of Phoenix Technologies Ltd. (the "Company" or "Phoenix") of proxies for use at the Annual Meeting of Stockholders of the Company (the "Meeting") to be held on February 6, 2003, at the Company's offices located at 411 East Plumeria Drive, San Jose, California, commencing at 10:00 a.m., California time, and at any adjournments thereof. All proxies are solicited for the purposes set forth herein and in the Notice of Annual Meeting of Stockholders that accompanies this Proxy Statement. The date of this Proxy Statement is December 19, 2002, the approximate date on which this Proxy Statement and the accompanying form of proxy were first sent or given to stockholders.

We do not expect any matters not listed in the Proxy Statement to come before this Meeting. If any other matter is presented, your signed proxy card gives the individuals named as proxyholders the authority to vote your shares to the extent authorized by Rule 14a-4(c) under the Securities Exchange Act of 1934, which would include matters that the proxyholders did not know were to be presented 45 days before the anniversary of last year's proxy statement.

General Information

Certain Financial Information. The Company's Annual Report on Form 10-K for the fiscal year ended September 30, 2002 is enclosed with this Proxy Statement.

Voting Securities. Only stockholders of record as of the close of business on December 13, 2002 (the "Record Date") will be entitled to vote at the meeting and any adjournment thereof. As of the Record Date, there were 26,404,945 shares of the Company issued and outstanding. Stockholders may vote in person or by proxy. Each holder of shares of Common Stock is entitled to one (1) vote on the proposals presented in this Proxy Statement for each share of the stock held and one vote for each director to be elected. There is no cumulative voting in connection with the election of directors.

Quorum. The required quorum for transacting business at the Annual Meeting is a majority of the votes eligible to be cast by holders of shares of Common Stock issued and outstanding on the Record Date. Shares that are voted FOR, AGAINST or WITHHELD from a matter are treated as being present at the Annual Meeting for purposes of establishing a quorum and are also treated as shares entitled to vote at the Annual Meeting (the "Votes Cast") with respect to such matter.

Abstentions. While there is no definitive statutory or case law authority in Delaware as to the proper treatment of abstentions, the Company believes that abstentions should be counted for purposes of determining both (i) the presence or absence of a quorum for the transaction of business and (ii) the total number of Votes Cast with respect to a proposal (other than the election of directors). In the absence of controlling precedent to the contrary, the Company intends to treat abstentions in this manner. Accordingly, abstentions will have the same effect as a vote against the proposal.

Broker Non-Votes. Broker non-votes will be counted for purposes of determining the presence or absence of a quorum for transacting business, but will not be counted for purposes of determining the number of Votes Cast with respect to the particular proposal on which the broker has expressly not voted. Accordingly, broker non-votes will not affect the outcome of the voting on a proposal that requires a majority of the Votes Cast (such as the approval of a plan).

Solicitation of Proxies. The cost of soliciting proxies will be borne by the Company. In addition to soliciting stockholders by mail and through its regular employees, the Company will request brokers, custodians, nominees and other record holders to forward copies of the proxy and other soliciting material to persons for whom they hold shares of Common Stock of the Company, and to request authority for the exercise of proxies; in such cases, the Company, upon request of the record holders, will reimburse such holders for their reasonable expenses. The Company may use the services of its officers, directors and others to solicit proxies personally or by telephone, facsimile or electronic mail, without additional compensation. The Company has also retained Morrow & Co., Inc. to assist in obtaining proxies for the Annual Meeting from brokers, nominees of stockholders and institutional investors. The estimated fee for such services, which is not contingent upon the outcome of the voting, is \$6,500 plus out-of-pocket expenses.

Voting of Proxies. All valid proxies received prior to the meeting will be voted. All shares represented by a proxy will be voted, and where a stockholder specifies by means of the proxy a choice with respect to any matter to be acted upon, the shares will be voted in accordance with the specification so made. If no choice is indicated on the proxy, the shares will be voted FOR all nominees, FOR all other proposals described herein and as the proxy holders may determine in their discretion with respect to any other matters that properly come before the meeting. *See*

Transaction of Other Business. A stockholder giving a proxy has the power to revoke his or her proxy, at any time prior to the time it is voted, by delivering to the Secretary of the Company a written instrument revoking the proxy or a duly executed proxy with a later date, or by attending the meeting and voting in person.

PROPOSAL NO. 1**ELECTION OF DIRECTORS**

The Company's nominees for election at the Annual Meeting of Stockholders to Class 1 of the Board of Directors are George C. Huang and Anthony P. Morris (the Nominees). Messrs. Huang and Morris presently are Class 1 Directors of the Company. The Company expects each of the Nominees to be available to serve as a Director. If, however, either of the Nominees is unable or declines to serve for any reason, proxies may be voted for such substitute nominee as the Board of Directors may designate.

The Company's Certificate of Incorporation and Bylaws provide for a classified Board of Directors consisting of two Class 1 Directors (Messrs. Huang and Morris), three Class 2 Directors (Messrs. Dury, Elgamal and Sun) and two Class 3 Directors (Messrs. Sisto and Jensen). The Class 1, 2 and 3 Directors serve staggered three-year terms. A stockholder may not cast votes for more than two nominees. The two Class 1 Directors to be elected at the 2003 Annual Meeting of Stockholders will be elected to hold office until the Annual Meeting of Stockholders in 2006 and until their successors have been elected and qualified.

Nominees and Other Directors. The following table sets forth the name and age of each nominee and each director of the Company whose term of office continues after the Annual Meeting, the principal occupation of each during the past five years and the period during which each has served as a director of the Company. Each nominee is currently serving as a director of the Company. The Directors whose names are followed by an asterisk (*) are members of the Audit Committee or the Compensation Committee, or both. The Directors whose names are followed by a plus sign (+) are members of the Nominating Committee.

Director Name	Age	Director Since	Position and Current Offices with the Company
David S. Dury*	54	2002	Director
Taher Elgamal*+	47	2000	Director
George C. Huang	61	1998	Director; Vice Chairman
Edmund P. Jensen*+	65	2000	Director
Anthony P. Morris*	56	1993	Director
Albert E. Sisto	53	1999	Director; Chairman; President and Chief Executive Officer
Anthony Sun*	50	1998	Director

Mr. Dury was appointed to the Board in October 2002. He is a co-founder and co-owner of Mentor Capital Group, LLC, which provides venture capital and services to start-up companies. Prior to founding Mentor Capital Group in 2000, Mr. Dury served as Senior Vice President and Chief Financial Officer of Aspect Development, Inc. from 1996 to 2000. From 1992 to 1996, Mr. Dury was Senior Vice President and Chief Financial Officer at NetFrame Systems, Inc. From 1989 to 1992, Mr. Dury was Executive Vice President, Chief Operating Officer and Chief Financial Officer at Boole & Babbage, Inc., and from 1983 to 1989 Mr. Dury served as President, Chief Operating Officer and Chief Financial Officer of Priam Corporation. Mr. Dury also serves on the Board of Directors of Intevac, Inc.

Dr. Elgamal was appointed to the Board in January 2000. He is the founder, Chairman of the Board of Directors and Chief Technology Officer of Securify, Inc. Prior to founding Securify in 1998, Dr. Elgamal held the position of Chief Scientist of Netscape Communications Corp. from 1995 to 1998, where he pioneered Internet security technologies. From 1993 to 1995, Dr. Elgamal was Vice President of Advanced Technologies at UKI Electric. From 1991 to 1993, Dr. Elgamal was the Director of Engineering at RSA Security, Inc. where he produced the RSA cryptographic toolkits. Dr. Elgamal also serves on the Boards of Directors of RSA Security, Inc., hi/fn, Inc., ValiCert, Inc. and Register.com.

Dr. Huang was appointed to the Board in November 1998 and was elected to serve as Vice Chairman. From October 1998 to September 2000, Dr. Huang served as the Company's Senior Vice President for Strategic

Planning. He served as Chairman of the Board of Directors, President, Chief Executive Officer and Director of Award Software International, Inc. (Award) from July 1993 until Award merged with the Company in September 1998. Dr. Huang is Chairman of the Board of Directors of GCH Systems, Inc. (GCH), and from January 1984 until November 1994, he also served as Chief Executive Officer of GCH. Dr. Huang is also Chairman of the Board of Directors and Chief Executive Officer of Future Dial, Inc. From February 1987 to the present, Dr. Huang has served as a Director of GCH-SunSystems Company Ltd., a subsidiary of GCH. From January 1990 to May 1996, Dr. Huang served as a Director of Fidelity Venture Capital Corporation, a shareholder of GCH and Award.

Mr. Jensen was appointed to the Board in January 2000. From 1994 to 1999 he served as President and CEO of Visa International. From 1974 to 1994, Mr. Jensen held a variety of positions with US Bancorp, most recently as Vice Chairman of the Board of Directors and Chief Operating Officer. Previously, Mr. Jensen served as Group Vice President of National Industries and was Director of Financial Planning and Analysis at Technicolor, Inc. Mr. Jensen also served in the U.S. Army, where his last rank was Captain.

Mr. Morris was appointed to the Board in 1993. Mr. Morris is a principal with Morris & Associates, a management consulting and financial advisory firm he founded in 1988. Mr. Morris is also a principal in Morris Ventures LLC, a venture capital firm investing in information technology companies, and is a director of several privately held companies.

Mr. Sisto joined the Company as President and Chief Executive Officer and was appointed to the Board in June 1999. He was formerly Chief Operating Officer of RSA Security, Inc. from 1997 to 1999. He served as President, Chairman and Chief Executive Officer of DocuMagix from 1994 to 1997. From 1989 to 1994, Mr. Sisto was the President and Chief Executive Officer of PixelCraft, Inc. Mr. Sisto currently serves as a director of hi/fn, Inc. and Centiv, Inc.

Mr. Sun was appointed to the Board in 1998. From 1979 to the present, Mr. Sun has been a general partner at Venrock Associates, a venture capital firm. Previously, Mr. Sun was employed by Hewlett Packard, TRW and Caere Corporation. Mr. Sun served as director of Award from October 1995 until Award merged with the Company in September 1998. Mr. Sun is a director of Cognex Corporation.

Meetings and Committees of the Board of Directors

During the fiscal year ended September 30, 2002 (the Last Fiscal Year), the Board of Directors held a total of four regularly scheduled meetings, no special meetings and took additional actions by written consent. During fiscal year 2002, Messrs. Elgamal, Huang, Jensen, Morris, Sisto and Sun each attended at least 75% of the aggregate number of meetings of the Board of Directors held during the year and of the total number of meetings held by all committees of the Board of Directors on which he served during the Last Fiscal Year. Mr. Dury was not a member of the Board of Directors during the Last Fiscal Year.

The Board of Directors has an Audit Committee, a Compensation Committee and a Nominating Committee.

During the Last Fiscal Year, the Audit Committee, which consisted of Messrs. Jensen, Morris and Huang, met eight times, and took additional actions by written consent. Mr. Dury replaced Dr. Huang as a member of the Audit Committee in October 2002. The Audit Committee makes recommendations to the Board regarding appointment of the Company's independent auditors, confers with the Company's independent auditors regarding the scope and the results of the audit of the Company's consolidated financial statements and reports the same to the Board of Directors, and establishes and monitors policy relative to non-audit services provided by the independent auditors, approves services rendered by such auditors, reviews the activities and recommendations of the Company's internal audit staff, and reviews and evaluates the Company's accounting systems, financial controls and financial personnel. For additional information concerning the Audit Committee, see REPORT OF THE AUDIT COMMITTEE OF THE BOARD OF DIRECTORS .

During the Last Fiscal Year, the Compensation Committee, which consists of Messrs. Sun, Elgamal and Morris, met twice, and took additional actions by written consent. The Compensation Committee reviews salaries and other compensation arrangements for officers and other key employees of the Company, administers or reviews the administration of the Company's stock option and stock purchase plans, and advises the Board on general aspects of the Company's compensation and benefit policies. For additional information concerning the Compensation Committee, see Compensation Committee Interlocks and Insider Participation and REPORT OF THE COMPENSATION COMMITTEE OF THE BOARD OF DIRECTORS ON EXECUTIVE COMPENSATION .

During the Last Fiscal Year, the Nominating Committee, which consists of Messrs. Jensen and Elgamal, met once. The Nominating Committee identifies individuals qualified to become Board members, including nominees suggested by stockholders, recommends nominees for appointment or election to the Board and ensures that the Board is appropriately constituted to meet its fiduciary obligations to the stockholders and the Company.

Compensation of Directors

Members of the Board who are not employees of the Company (Outside Directors) were entitled to receive an annual retainer of \$10,000, a fee of \$1,000 for each meeting of the Board of Directors they attended in person, a fee of \$500 for each telephonic meeting of the Board of Directors that they attended, a fee of \$500 for each Committee meeting they attended in person and a fee of \$375 for each telephonic Committee meeting that they attended. In addition, non-employee Directors who reside outside of the local area are entitled to receive reimbursement of travel expenses.

Outside Directors have received options to purchase Common Stock pursuant to the Company's 1994, 1996, 1997, 1998 and 1999 Stock Plans and currently receive options under the 1999 Stock Plan and the 1999 Director Option Plan. The actual number of shares to be subject to the options granted for Board and committee service is established by the 1999 Director Option Plan. In September 1999, the Board changed its stock grants to non-employee Directors to include an initial grant of 40,000 shares for new non-employee Directors and to grant options of 15,000 shares on each subsequent anniversary of each non-employee Director's tenure on the Board. Board member options vest and become exercisable for 100% of the shares on the date of grant and have a term of ten years. During the Last Fiscal Year, the Company granted stock options for 15,000 shares to each of Messrs. Elgamal, Huang, Jensen, Morris and Sun, in each case having an exercise price equal to the fair market value of the Company's Common Stock on the date of grant. Mr. Dury did not receive a stock option grant during the Last Fiscal Year.

Required Vote

If a quorum is present, Directors shall be elected by the affirmative vote of the holders of a plurality of the shares of Common Stock present or represented at the Meeting.

***The Board Of Directors Recommends A Vote FOR
The Election of Messrs. Huang And Morris***

PROPOSAL NO. 2**APPROVAL OF THE AMENDMENT TO THE 1999 DIRECTOR OPTION PLAN**

On November 10, 1999, the Board of Directors adopted the 1999 Director Option Plan (the Director Plan) and reserved 150,000 shares of Common Stock for issuance thereunder, subject to stockholder approval. In February 2000, the stockholders approved the Director Plan. In November 2000, the Board of Directors amended the Director Plan to increase the shares reserved by 90,000 shares (the Amendment). In February 2001, the stockholders approved the Amendment. In November 2001, the Board of Directors amended the Director Plan to increase the shares reserved by 90,000 shares (the Second Amendment). In February 2002, the stockholders approved the Second Amendment.

Proposal

In October 2002, the Board of Directors amended the Director Plan to increase the shares reserved by 150,000 shares. At the Meeting, the stockholders are being asked to approve the amendment to increase the number of shares reserved under the Director Plan by 150,000 shares. As of November 30, 2002, the fair market value of a share of Common Stock was \$6.34.

Director Plan Grants

The following table sets forth information with respect to the stock options granted to the non-employee directors of the Company (6 persons) under the Director Plan as of November 30, 2002. As discussed below, the executive officers of the Company and the employees of the Company are not eligible for grants under the Director Plan.

Director	Number of Shares Subject to Options Granted under the Director Option Plan	Weighted Average Exercise Price Per Share
David S. Dury	0	
Taher Elgamal	70,000	\$ 15.8061
George C. Huang	45,000	\$ 10.2575
Edmund P. Jensen	70,000	\$ 15.8061
Anthony P. Morris	59,000	\$ 12.9237
Anthony Sun	75,000	\$ 10.7545

Summary of the 1999 Director Option Plan

General. The purpose of the Director Plan is to attract and retain the best available personnel, to provide additional incentive to the directors of the Company and to promote the success of the Company's business. Stock options will be automatically granted under the Plan. The Director Plan provides for an initial grant of 40,000 shares to new non-employee directors and subsequent grants of 15,000 shares on each subsequent anniversary of each non-employee Director's tenure on the Board.

Eligibility; Limitations. Stock options may be granted under the Director Plan to non-employee directors of the Company and any parent or subsidiary of the Company.

Terms and Conditions of Options. Each option is evidenced by a stock option agreement between the Company and the optionee, and is subject to the following additional terms and conditions:

(a) *Exercise Price.* The exercise price of a stock option may not be less than 100% of the fair market value of the Common Stock on the date such option is granted. The fair market value of the Common Stock is generally determined with reference to the closing sale price for the Common Stock (or the closing bid if no sales were reported) on the last market trading day prior to the date the option is granted.

(b) *Exercise of Option; Form of Consideration.* Options granted under the Director Plan vest and become exercisable for 100% of the shares on the day of grant. The means of payment for shares issued upon exercise of an option is specified in each option agreement. The Director Plan permits payment of the option exercise price to be made by cash, check, other shares of Common Stock of the Company (having a fair market value on the date of exercise equal to the aggregate exercise price of the options being exercised, and, in the case of shares acquired upon the exercise of an option, having been owned by the optionee for more than six months), consideration received under a cashless exercise plan implemented under the Director Plan, any other form of consideration permitted by applicable law, or any combination thereof.

(c) *Term of Option.* The term of an Option may be no more than ten (10) years from the date of grant. No option may be exercised after the expiration of its term.

(d) *Termination of Service.* If an optionee's service as an Outside Director terminates for any reason other than death or disability, then all options held by the optionee under the Director Plan expire on the earlier of (i) the date set forth in his or her notice of grant (normally ninety days past termination) or (ii) the expiration date of such option.

(e) *Death or Disability.* If an optionee's service as an Outside Director terminates as a result of death or disability, then all options held by such optionee under the Director Plan expire within 12 months following termination of the Outside Director's service. The optionee (or the optionee's estate or the person who acquires the right to exercise the option by bequest or inheritance), may exercise all or part of the option at any time before such expiration to the extent that the option was exercisable at the time of such termination.

(f) *Nontransferability of Options.* Options granted under the Director Plan are generally not transferable other than by will or the laws of descent and distribution, and may be exercised during the optionee's lifetime only by the optionee.

(g) *Other Provisions.* The stock option agreement may contain other terms, provisions and conditions not inconsistent with the Director Plan as may be determined by the Administrator.

Adjustments Upon Changes in Capitalization. In the event that the stock of the Company changes by reason of any stock split, reverse stock split, stock dividend, combination, reclassification or other similar change in the capital structure of the Company effected without the receipt of consideration, appropriate adjustments shall be made in the number and class of shares of stock subject to the Director Plan, the number and class of shares of stock subject to any option or stock purchase right outstanding under the Director Plan, and the exercise price of any such outstanding option or stock purchase right.

In the event of a liquidation or dissolution, any unexercised options will terminate.

In connection with any merger, consolidation, acquisition of assets or like occurrence involving the Company, each outstanding option may be assumed by an equivalent option substituted by the successor corporation. If the successor corporation refuses to assume the options or to substitute substantially equivalent options, the optionee shall have the right to exercise the option as to all the optioned stock, including shares not otherwise exercisable. In such event, the option is fully exercisable for thirty (30) days from the date of such notice and the option terminates upon expiration of such period.

Amendment and Termination of the Plan. The Board may amend, alter, suspend or terminate the Director Plan, or any part thereof, at any time and for any reason. However, the Company shall obtain stockholder approval for any amendment to the Director Plan to the extent necessary to comply with Section 162(m) of the Internal Revenue Code of 1986, as amended (the Code), or any similar rule or statute. No such action by the Board or stockholders may alter or impair any option or stock purchase right previously granted under the Director Plan without the written consent of the optionee. Unless terminated earlier, the Director Plan shall terminate ten years from the date of its approval by the stockholders or the Board of the Company, whichever is earlier.

Federal Income Tax Consequences

Nonstatutory Stock Options. An optionee does not recognize any taxable income at the time he or she is granted a nonstatutory stock option. Upon exercise, the optionee recognizes taxable income generally measured by the excess of the then fair market value of the shares over the exercise price. Any taxable income recognized in connection with an option exercise by an employee of the Company is subject to tax withholding by the Company. The Company is entitled to a deduction in the same amount as the ordinary income recognized by the optionee. Upon a disposition of such shares by the optionee, any difference between the sale price and the optionee's exercise price, to the extent not recognized as taxable income as provided above, is treated as long-term or short-term capital gain or loss, depending on the holding period.

The foregoing is only a summary of the effect of federal income taxation upon optionees and the Company with respect to the grant and exercise of options under the Director Plan. It does not purport to be complete, and does not discuss the tax consequences of the optionee's death or the provisions of the income tax laws of any municipality, state or foreign country in which the optionee may reside.

Required Vote

If a quorum is present, the affirmative vote of the holders of a majority of the shares of Common Stock present or represented at the Meeting and voting on the matter is required for approval of Proposal No. 2.

*The Board Of Directors Recommends A Vote FOR
The Approval Of The Amendment To The 1999 Director Option Plan*

PROPOSAL NO. 3

APPROVAL OF THE AMENDMENT TO THE 2001 EMPLOYEE STOCK PURCHASE PLAN

In November 2001, the Board of Directors adopted the 2001 Employee Stock Purchase Plan (the 2001 ESPP) and reserved 200,000 shares of Common Stock for issuance thereunder, subject to stockholder approval. In February 2002, the stockholders approved the adoption of the 2001 ESPP.

Proposal

In October 2002, the Board of Directors amended the 2001 ESPP to increase the shares reserved under the 2001 ESPP by 300,000 shares. At the Meeting, the stockholders are being asked to approve the amendment to increase the number of shares reserved under the 2001 ESPP by 300,000 shares.

Summary of the 2001 ESPP

The 2001 ESPP is implemented by two six-month offering periods each year commencing on June 1 and December 1, or at such other time or times as may be determined by the Board of Directors. The first offering period began on March 1, 2002 and ended on May 31, 2002. The 2001 ESPP is intended to qualify under Section 423 of the Code.

Purpose

The purpose of the 2001 ESPP is to provide employees (including officers and employee directors) of the Company with an opportunity to purchase Common Stock of the Company through payroll deductions.

Administration

The 2001 ESPP is administered by the Board of Directors of the Company or a committee appointed by the Board (the Administrator). At the present time, the 2001 ESPP is administered by the Compensation Committee. All questions of interpretation or application of the 2001 ESPP are determined by the Administrator.

Eligibility and Participation

Employees (including officers and employee directors) who are employed for at least 20 hours per week and more than five months in any calendar year and who are employed by the Company as of the first business day of each offering period of the plan (the Offering Date) are eligible to participate in an offering under the 2001 ESPP, subject to certain limitations imposed by Section 423(b) of the Code and limitations on stock ownership as set forth in the 2001 ESPP. No employee shall be granted an option under the 2001 ESPP if (i) immediately after the grant such employee would own stock and/or hold outstanding options to purchase stock possessing five percent (5%) or more of the total voting power or value of all classes of stock of the Company or its subsidiaries, or (ii) such option would permit such employee to purchase stock under all employee stock purchase plans of the Company and its subsidiaries to accrue at a rate which exceeds \$25,000 of fair market value of such stock for each calendar year in which such option is outstanding at any time.

Eligible employees become participants in the 2001 ESPP by filing with the Company a subscription agreement authorizing payroll deductions prior to the applicable Offering Date, unless a later time for filing the subscription agreement has been set by the Administrator. Payroll deductions shall commence on the first payroll following the Offering Date and shall end on the last payroll paid on or prior to the last day (the Purchase Date) of the offering period to which the subscription agreement is applicable, unless sooner terminated by the participant.

Grant and Exercise of Option

At the beginning of an offering period, each participant is granted an option to purchase up to that number of shares determined by dividing such employee's payroll deductions accumulated prior to the end of the offering period and retained in the participant's account as of the end of the offering period by the lower of (i) eighty-five percent (85%) of the fair market value of a share of the Company's Common Stock at the beginning of the offering period or (ii) eighty-five percent (85%) of the fair market value of a share of the Company's Common Stock on the last day of the offering period; provided that in no event shall a participant be permitted to purchase on any purchase date more than twice the number of shares the participant could have purchased if the price were 85% of the price at the beginning of the offering period, and provided further that such purchases shall be subject to the limitations set forth below. The Company may make a pro rata reduction in the number of shares subject to options if the total number of shares which would otherwise be subject to options granted at the beginning of an offering period exceeds the number of remaining available shares in the 2001 ESPP. Unless an employee withdraws his or her participation in the 2001 ESPP by giving written notice to the Company of his or her election to withdraw all accumulated payroll deductions prior to the end of an offering period, the employee's option for the purchase of shares will be exercised automatically at the end of the offering period, and the maximum number of full shares subject to option which are purchasable with the accumulated payroll deductions in his or her account will be purchased at the applicable purchase price determined as provided below.

During his or her lifetime, a participant's option to purchase shares under the 2001 ESPP is exercisable only by him or her. However, a participant may file a written designation of a beneficiary who is (i) to receive any shares and cash, if any, from the participant's account under the 2001 ESPP in the event of such participant's death subsequent to the end of an offering period but prior to delivery to him or her of such shares and cash, and (ii) to receive any cash from the participant's account under the 2001 ESPP in the event of such participant's death prior to the Purchase Date of the offering period.

Purchase Price

The purchase price per share at which shares are sold to participating employees under the 2001 ESPP is the lower of (i) 85% of the fair market value per share of the Common Stock at the time the option is granted at the commencement of the offering period, and (ii) 85% of the fair market value per share of the Common Stock at the time the option is exercised on the applicable Purchase Date. The fair market value of the Common Stock on a given date shall be determined by the Board of Directors and will generally be based upon the last reported sales price of the Common Stock on the Nasdaq National Market.

Payroll Deductions

The purchase price of the shares to be acquired under the 2001 ESPP is accumulated by payroll deductions during the offering period. The deductions may not be less than 2% or more than 10% of a participant's aggregate compensation during the offering period (or may be based on a dollar amount not less than \$5 per pay period). A participant may discontinue his or her participation in the 2001 ESPP or, on one occasion only during an offering period, may decrease his or her rate of payroll deductions. Payroll deductions for a participant shall commence on the first payroll following the Offering Date and shall continue until his or her participation is terminated as provided in the 2001 ESPP.

Termination of Employment

Termination of a participant's employment for any reason, including retirement or death, or the failure of the participant to remain in the continuous employ of the Company for at least 20 hours per week during the applicable offering period, cancels his or her option and his or her participation in the 2001 ESPP immediately. In such event, the payroll deductions credited to the participant's account will be returned to him or her or, in the case of death, to the person or persons entitled thereto as provided in the 2001 ESPP.

Adjustments Upon Changes in Capitalization

In the event any change is made in the Company's capitalization in the middle of an offering period, such as a stock split, stock dividend, combination or reclassification, that results in an increase or decrease in the number of shares of Common Stock outstanding without receipt of consideration by the Company, appropriate adjustment shall be made in the purchase price and in the number of shares subject to options under the 2001 ESPP.

In the event of a proposed dissolution or liquidation of the Company, the offering period will terminate immediately prior to the consummation of such proposed action, unless otherwise provided by the Administrator. In the event of a proposed sale of all or substantially all of the assets of the Company, or the merger of the Company with or into another corporation, each option under the 2001 ESPP shall be assumed or an equivalent substitute option shall be substituted by such successor corporation or a parent or subsidiary of such successor corporation, unless the Administrator elects to shorten the offering period then in progress by setting a new Purchase Date and notifying the optionees of the change in their Purchase Date.

Amendment and Termination of the Plan

The Board of Directors may at any time amend or terminate the 2001 ESPP without the approval of the stockholders, except that such termination cannot affect options previously granted nor may an amendment make any change in an option granted prior thereto which adversely affects the rights of any participant. No amendment may be made to the 2001 ESPP without approval of the stockholders of the Company if such amendment would increase the number of shares reserved under the 2001 ESPP or change the class of employees eligible to participate in the 2001 ESPP.

The 2001 ESPP shall expire in 2011 unless sooner terminated by the Administrator, provided that any options then outstanding under the 2001 ESPP shall remain outstanding until they expire by their terms.

Tax Information

The 2001 ESPP, and the right of participants to make purchases thereunder, is intended to qualify under the provisions of Sections 421 and 423 of the Code. Under these provisions, no income will be taxable to a participant until the shares purchased under the 2001 ESPP are sold or otherwise disposed of. Upon sale or other disposition of the shares, the participant will generally be subject to tax and the amount of the tax will depend upon how long the shares have been held by the participant. If the shares are sold or otherwise disposed of more than two years from the first day of the offering period or more than one year after the Purchase Date, the participant will recognize ordinary income measured as the lesser of (a) the excess of the fair market value of the shares at the time of such sale or disposition over the purchase price, or (b) an amount equal to 15% of the fair market value of the shares as of the first day of the offering period. Any additional gain will be treated as long-term capital gain if the shares are held for more than one year after the Purchase Date. If the shares are sold or otherwise disposed of before the expiration of these holding periods, the participant will recognize ordinary income generally measured as the excess of the fair market value of the shares on the date the shares are purchased over the purchase price. Any additional gain or loss on such sale or disposition will be long-term or short-term capital gain or loss, depending on the holding period. The Company is not entitled to a deduction except to the extent of ordinary income recognized by the participants upon a sale or disposition of shares prior to the expiration of the holding period(s) described above.

The foregoing is only a summary of the effect of federal income taxation upon the participant and the Company with respect to the shares purchased under the 2001 ESPP. Reference should be made to the applicable provisions of the Code. In addition, the summary does not discuss the tax consequences of a participant's death or the income tax laws of any state or foreign country in which the participant may reside.

Required Vote

If a quorum is present, the affirmative vote of the holders of a majority of the shares of Common Stock present or represented at the Meeting and voting on the matter is required for approval of Proposal No. 3.

*The Board Of Directors Recommends A Vote FOR
The Amendment to The 2001 Employee Stock Purchase Plan*

PROPOSAL NO. 4

RATIFICATION OF APPOINTMENT OF INDEPENDENT AUDITORS

The Board of Directors, on the recommendation of its Audit Committee, has selected the firm of Ernst & Young LLP to continue to serve as the Company's independent auditors for the fiscal year ending September 30, 2003 and is asking stockholders to ratify this appointment. In the event the ratification of the stockholders of the appointment of Ernst & Young LLP as the Company's independent auditors is not obtained, the Board will reconsider such appointment.

Representatives of Ernst & Young LLP are expected to be present at the Meeting. They will have the opportunity to make a statement if they desire to do so and are also expected to be available to respond to appropriate questions from stockholders.

Required Vote

If a quorum is present, the affirmative vote of the holders of a majority of the shares of Common Stock present or represented at the Meeting and voting on the matter is required for approval of Proposal No. 4.

*The Board Of Directors Recommends A Vote FOR Ratification Of Appointment Of Ernst & Young LLP
As The Company's Independent Auditors For The Fiscal Year Ending September 30, 2003*

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth certain information as of November 30, 2002 with respect to the Common Stock owned beneficially by (i) any person who is known to the Company to be the beneficial owner of more than five percent of its Common Stock, (ii) each director and director-nominee of the Company, (iii) the Chief Executive Officer and each executive officer included in the Summary Compensation Table in the EXECUTIVE COMPENSATION section (collectively, the Named Executive Officers), and (iv) all current directors and executive officers of the Company as a group. Except as otherwise indicated in the footnotes to the table, to the Company's knowledge, the persons named in the table have sole voting and investment power with respect to all shares of Common Stock shown as beneficially owned by them, subject to community property laws where applicable.

Name of Beneficial Owner	Amount and Nature of Beneficial Ownership	Percent of Common Stock Outstanding(1)
FMR Corp.(2) 82 Devonshire Street Boston, MA 02109	2,623,000	9.93%
U.S. Trust Corporation/United States Trust Company of New York(3) 114 West 47th Street New York, NY 10036	1,671,999	6.33%
George C. Huang(4),(8)	856,757	3.24%
Taher Elgamal(8)	70,000	*
Anthony Sun(5),(8)	187,929	*
Edmund P. Jensen(8)	70,000	*
Albert E. Sisto(8)	558,750	2.12%
Anthony P. Morris(6),(8)	107,000	*
David S. Dury(8)	40,000	*
John M. Greeley(8)	148,312	*
David Gibbs(8)	85,938	*
Linda V. Moore(7),(8)	77,462	*
W. Curtis Francis(8)	68,750	*
All current directors and executive officers as a group (13 persons)(8)	2,320,311	8.79%

* Ownership is less than 1%

- (1) In computing the number of shares beneficially owned by a person and the percentage ownership of that person, shares of Common Stock subject to options or warrants held by that person that are currently exercisable or exercisable within 60 days after November 30, 2002 are deemed outstanding. Such shares, however, are not deemed outstanding for the purpose of computing the percentage ownership of any other person.
- (2) Based on information contained in Schedule 13G/A filed on April 10, 2002 with the Securities and Exchange Commission.
- (3) Based on information contained in Schedule 13G filed on February 14, 2002 with the Securities and Exchange Commission.
- (4) Includes (i) 11,846 shares owned by Dr. Huang; (ii) 18,040 shares held by Dwight S. Huang, Dr. Huang's son, (iii) 54,884 shares held by the George C. Huang and Margaret J. Huang Charitable Foundation, (iv) 435,000 shares held by the Huang Living Trust, and (v) 17,862 shares held by Margaret J. Huang, Dr. Huang's wife.
- (5) Includes 32,975 shares owned by Mr. Sun.
- (6) Includes 5,000 shares owned by Mr. Morris and 5,000 shares held in a custodial account by his spouse for his minor daughters.
- (7) Includes 587 shares held by Ms. Moore in the Company's 1991 Employee Stock Purchase Plan.
- (8) Includes an aggregate of 1,689,704 shares as to which the named persons could acquire beneficial ownership at or within 60 days after November 30, 2002. As to each named person, such amounts are as follows: Mr. Dury 40,000; Mr. Sisto 558,750; Mr. Huang 319,125; Mr. Elgamal 70,000; Mr. Jensen 70,000; Mr. Morris 97,000; Mr. Sun 154,954; Mr. Gibbs 85,938; Mr. Greeley 148,312; Ms. Moore 76,875; and Mr. Francis 68,750.

EXECUTIVE COMPENSATION

The following table sets forth information concerning the compensation of (i) the Chief Executive Officer of the Company, and (ii) the four other most highly compensated executive officers of the Company (based on salary plus bonus for the Last Fiscal Year) who were serving as such at the end of the Last Fiscal Year:

Summary Compensation Table

Name and Principal Position	Fiscal Year	Annual Compensation			Long Term Compensation	Awards All Other Compensation (\$)
		Salary (\$)	Bonus (\$)	Other Annual Compensation (\$)	Securities Underlying Options (#)	
Albert E. Sisto President and Chief Executive Officer	2002	400,000			50,000	
	2001	400,000	193,348		150,000	
	2000	350,000	43,750		7,500(1) 15,000 20,000(1)	
John M. Greeley Sr. Vice President, Finance and Chief Financial Officer	2002	271,875	62,500		100,000	3,000(2)
	2001	237,500	62,363		4,000	3,525(2)
	2000	96,532			178,000	
W. Curtis Francis Sr. Vice President & General Manager, Corporate Engineering and Planning Division	2002	260,000			229,000	300(3)
	2001					
	2000					
David Gibbs						