

FIRST ALBANY COMPANIES INC
Form 10-K/A
May 01, 2007

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

**Form 10-K/A
(Amendment No. 1)**

- b ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended December 31, 2006**
- or -**
- o TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from to**

**Commission file number 014140
FIRST ALBANY COMPANIES INC.**
(Exact name of registrant as specified in its charter)

New York
*(State or other jurisdiction of
incorporation or organization)*

22-2655804
*(I.R.S. Employer
Identification No.)*

677 Broadway, Albany, New York
(Address of principal executive offices)

12207
(Zip Code)

Registrant's telephone number, including area code: (518) 447-8500

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Name of Each Exchange on Which Registered
Common stock par value \$.01 per share	Nasdaq Global Market

Securities registered pursuant to Section 12(g) of the Act:

None

(Title of class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.
Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Exchange Act. Yes No

Indicate by check mark whether the Registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of “accelerated filer and large accelerated filer” in Rule 12b-2 of the Exchange Act.

Large Accelerated Filer Accelerated Filer Non-accelerated Filer

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

The aggregate market value of the shares of common stock of the Registrant held by non-affiliates based upon the closing price of Registrant’s shares as reported on the NASDAQ system on June 30, 2006 which was \$4.50 was \$59,017,536.

As of February 22, 2007, 16,337,054 shares, par value \$0.01 per share, were outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

None

EXPLANATORY NOTE

This Amendment No. 1 on Form 10-K/A amends our Annual Report on Form 10-K for the year ended December 31, 2006 originally filed March 14, 2007 (“Original Annual Report”). We are filing this amendment, in part, to amend Part III of the Original Annual Report to include the information required by and not included in Part III of the Original Annual Report because we now do not intend to file our definitive proxy statement within 120 days of the end of our fiscal year ended December 31, 2006. Item 9b of Part II of the Original Annual Report is also amended by this Amendment No. 1 to inform shareholders of the new deadline for submission of shareholder proposals. In connection with the filing of this Amendment and pursuant to the rules of the Securities and Exchange Commission, we are including with this Amendment new certifications by our principal executive and principal financial officers. Accordingly, Item 15 of Part IV has also been amended to reflect the filing of these new certifications.

Except as described above, no other changes have been made to the Original Annual Report. The Original Annual Report continues to speak as of the date of the Original Annual Report, and we have not updated the disclosures contained therein to reflect any events which occurred at a date subsequent to the filing of the Original Annual Report other than as expressly indicated in this Amendment No.1. In this Amendment No. 1, unless the context indicates otherwise, the terms “Company,” “we,” “us,” and “our” refer to First Albany Companies Inc. and its subsidiaries. Other defined terms used in this Amendment No. 1 but not defined herein shall have the meaning specified for such terms in the Original Annual Report.

All statements in this Amendment No. 1 that are not historical are forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended. These forward-looking statements can generally be identified as such because the context of the statement will include words such as “may,” “will,” “intend,” “plans,” “believe,” “anticipates,” “expects,” “estimates,” “predicts,” “potential,” “continue,” “opportunity,” “goals,” or “should,” the negative of or words of similar import. Similarly, statements that describe our future plans, strategies, intentions, expectations, objectives, goals or prospects are also forward-looking statements. These forward-looking statements are or will be, as applicable, based largely on our expectations and projections about future events and future trends affecting our

business, and so are or will be, as applicable, subject to risks and uncertainties including but not limited to the risk factors discussed in the Original Annual Report, that could cause actual results to differ materially from those anticipated in the forward-looking statements. We caution investors that there can be no assurance that actual results or business conditions will not differ materially from those projected or suggested in such forward-looking statements. Our views and the events, conditions and circumstances on which these future forward-looking statements are based, may change.

PART II

Item 9b *Other Information*

On March 6, 2007, the Company and First Albany Capital entered into an Asset Purchase Agreement (the “Agreement”) with DEPFA. Pursuant to the Agreement, DEPFA will purchase the Municipal Capital Markets Group, which consists primarily of the Company’s Municipal Capital Markets segment (see “Segment Analysis” note to the Consolidated Financial Statements), and certain assets of the Company and First Albany Capital related thereto as described in the Agreement for a purchase price of \$12,000,000 in cash, subject to certain upward and downward adjustments, including a downward adjustment in the event certain employees of the Municipal Capital Markets Group do not have effective employment arrangements in place with DEPFA on the closing date or are not otherwise able to perform the essential functions of their jobs with DEPFA following the closing. Further, pursuant to the Agreement, DEPFA will purchase First Albany Capital’s municipal bond inventory used in the business of the Municipal Capital Markets Group, which is expected to range in value at closing from between \$150,000,000 to \$200,000,000.

The purchase price for the municipal bond inventory will be based on First Albany Capital’s estimate of the fair market value of each bond in inventory at the close of business on the business day prior to the closing (the “Municipal Bond Purchase Price”). The Municipal Bond Purchase Price will be subject to adjustment, upward or downward, dollar-for-dollar, by the amount, if any, by which the Municipal Bond Purchase Price differs from the valuation price for the municipal bond inventory at the close of business on the business day prior to the closing as determined by a third party municipal bond valuation service. Pursuant to the Agreement, 5% of the Municipal Bond Purchase Price will be deposited into escrow at the closing to be held by a third party escrow agent to secure the purchase price adjustment with respect to the municipal bond inventory.

In connection with the transaction, DEPFA shall assume certain contractual obligations of the Company and First Albany Capital and acquire the right to use the name “First Albany” and any derivative thereof except for certain exceptions.

The Agreement contains customary representations, warranties and covenants, as well as covenants (i) in the case of First Albany Capital, to conduct its business in the ordinary course substantially as presently conducted during the interim period between the execution of the Agreement and the closing, as well as to maintain certain capital levels in respect to both First Albany Capital and the municipal bond inventory of the Municipal Capital Markets Group and (ii) in the case of both the Company and First Albany Capital, to (a) seek any necessary consents in order to allow DEPFA to sublet or otherwise use certain leased real property currently used by the Company or First Albany Capital, (b) provide certain transitional services to DEPFA and (c) not compete with the Municipal Capital Markets Group for 10 years following the closing, subject to certain carve-outs, including First Albany Capital’s ability to continue to operate its Fixed Income Middle Market Group.

Pursuant to the Agreement, the non-competition covenant of the Company and First Albany Capital discussed above will not be binding on the successors and assigns of either party in the event of the sale, merger or other disposition of either the Company or First Albany Capital following the closing date except that if such disposition occurs prior to the third anniversary of the closing date and the successor or acquiring person is not engaged in the business of underwriting, advisory services, sales and trading of U.S. municipal bonds or other similar securities, such successor or acquiror will be bound by the non-competition covenant until the third anniversary of the closing date.

The consummation of the transactions contemplated by the Agreement is subject to customary conditions, as well as conditions regarding (i) the accuracy of representations and warranties, (ii) the performance of covenants, (iii) the receipt of required regulatory approvals, including DEPFA obtaining a U.S. broker-dealer license, (iv) the approval of the shareholders of the Company of the Company's name change from "First Albany", (v) the Company and each of its subsidiaries changing its name to not include "First Albany" or any derivative thereof except for certain exceptions, (vi) the effectiveness of employment arrangements executed by certain employees of the Municipal Capital Markets Group with DEPFA and the ability of such employees to perform the essential functions of their jobs with DEPFA following the closing (the "Employee Condition") and (vii) the availability to DEPFA of reasonably sufficient office space in the Company's New York offices or otherwise in the Borough of Manhattan in order to operate the Municipal Capital Markets Group.

Pending satisfaction of the closing conditions discussed above, the closing is currently expected to occur in the third quarter of 2007. Pursuant to the Agreement, in the event the closing has not taken place on or before September 30, 2007, either First Albany Capital or DEPFA may terminate the Agreement. In the event all of the closing conditions as discussed above have been satisfied or waived, or are capable of being satisfied by September 30, 2007, except for the Employee Condition, and the Agreement is terminated by DEPFA because of the failure to satisfy the Employee Condition or by First Albany Capital because the closing shall not have occurred by September 30, 2007, then DEPFA shall pay to First Albany Capital a termination fee of \$2,400,000.

The Agreement provides that the Company and First Albany Capital will be obligated to indemnify DEPFA and certain related parties for losses incurred in connection with (i) breaches of representations, warranties and covenants, (ii) excluded liabilities and (iii) non-compliance with applicable bulk sale transfer laws. The indemnification obligations of the Company and First Albany Capital are limited, with certain exceptions, to losses that, in the aggregate, exceed \$500,000, subject to a cap of \$3,000,000. Pursuant to the Agreement, losses incurred in connection with excluded liabilities and breaches of representations and warranties relating to First Albany Capital having good and marketable title to, and the power to transfer free and clear, the municipal bond inventory of First Albany Capital to be transferred to DEPFA at closing are not subject to the cap of \$3,000,000.

The Agreement provides that DEPFA will be obligated to indemnify the Company and First Albany Capital and certain related parties for losses incurred in connection with (i) breaches of representations, warranties and covenants, (ii) employment-related obligations incurred following the closing with respect to employees of the Municipal Capital Markets Group who accept employment with DEPFA and (iii) assumed liabilities. The indemnification obligations of DEPFA are limited, with certain exceptions, to losses that, in the aggregate, exceed \$500,000, subject to a cap of \$3,000,000. Pursuant to the Agreement, losses incurred in connection with assumed liabilities are not subject to the cap of \$3,000,000.

Assuming completion of the transactions contemplated by the Agreement, the Company anticipates that it would seek to consolidate and reduce its fixed expenses associated with its overhead, back office and real estate consistent with its continuing businesses. The Company has not yet committed itself to any specific plan in this regard, however, and costs associated with any such actions are not currently estimable.

The Company expects to file the Agreement as an exhibit to its Quarterly Report on Form 10-Q for the period ended March 31, 2007. We encourage you to read the Agreement for a more complete understanding of the transactions.

Shareholder Proposals

Due to the fact that the Annual Meeting of Shareholders for 2007 has been delayed by more than thirty days from the date of last year's annual meeting, the deadline for submission of shareholder proposals has been amended as follows: If a shareholder intends to present a proposal at the Company's Annual Meeting of Shareholders to be held on June 26, 2007 and seeks to have the proposal included in the Company's proxy statement relating to that meeting, pursuant to Rule 14a-8 of the Securities Exchange Act of 1934, as amended, the proposal must be received by the Company no later than the close of business on May 14, 2007.

If a shareholder wishes to present a matter at the Company's Annual Meeting of Shareholders to be held on June 26, 2007 that is outside of the processes of Rule 14a-8, the deadline for receipt of proposals remains unchanged: any proposal must have been received by the Company no earlier than February 15, 2007 and no later than the close of business on March 7, 2007. After that date, the proposal will be considered untimely and the Company's proxies will have discretionary voting authority with respect to such matter.

PART III

Item 10 Directors and Executive Officers of the Registrant

Directors and Executive Officers of the Company

The following directors' terms shall expire at the Annual Meeting of Shareholders in 2007:

PETER MCNIERNEY, age 41, joined First Albany in 2002 as the Director of Investment Banking, and was appointed as President and Chief Executive Officer in June 2006. Prior to joining First Albany, Mr. McNierney was a Managing Director and the head of the Healthcare and Communications Services groups at Robertson Stephens. Prior to that, Mr. McNierney was a Vice President in the Healthcare Group at Smith Barney. Mr. McNierney received a BA and a JD/MBA from the University of Texas at Austin. Mr. McNierney has been a director of the Company since June 2006.

ALAN P. GOLDBERG, age 61, joined First Albany in 1980. Mr. Goldberg became Vice Chairman of the Company in June 2006. Mr. Goldberg served as the Company's President from 1989 to June 2006, as Chief Executive Officer from 2003 to June 2006 and as Co-Chief Executive Officer from 1993 until 2002. Mr. Goldberg is a Director of MVP Health Care (a private company that provides health benefit plans). He is active in industry and civic organizations and serves on the board of several nonprofit institutions. Mr. Goldberg has been a director of the Company since its incorporation in 1985.

CARL P. CARLUCCI, Ph.D., age 58, has been Executive Vice President and Chief Financial Officer of the University of South Florida since 2001. Prior to joining the University of South Florida he was appointed First Deputy Comptroller, Office of the State Comptroller, State of New York from 1999 to 2001. From 1993 to 1999, Dr. Carlucci was Executive Vice President of the University at Albany, State University of New York. Dr. Carlucci's public service has included the positions of Secretary to the New York State Assembly Ways & Means Committee and Director of the New York Assembly Higher Education Committee. His prior experience in higher education has also included the position of Vice President for Administration at Brooklyn College and serving on the faculty of the Public Administration Departments of Baruch College of City University of New York and the University at Albany's Rockefeller College. Until the expiration of his term, Dr. Carlucci is Chair of the Audit Committee and is a member of the Executive Compensation Committee; he has served as a director of the Company since 2003.

The following directors' terms shall expire at the Annual Meeting of Shareholders in 2008:

GEORGE C. McNAMEE, age 60, joined First Albany in 1969. Mr. McNamee has been Chairman of the Company since its inception and also serves as Managing Partner and Managing Director of FA Technology Ventures. Mr. McNamee was Co-Chief Executive Officer of the Company from 1993 to 2002. In addition, Mr. McNamee is Chairman of Plug Power Inc. (a leading fuel cell developer) and a director of iRobot Corporation (a designer and manufacturer of robots). Additionally, he is a director of several private companies including Autotask Corporation, CORESense Inc., MetaCarta Inc., and StreetEasy. He also serves on the Board of Directors of the New York Conservation Education Fund and is a Trustee of the Albany Academy for Girls. He received his Bachelor of Arts degree from Yale University. Mr. McNamee has been a director of the Company since its incorporation in 1985.

SHANNON P. O'BRIEN, age 48, is Chief Executive Officer of the Girl Scouts, Patriot's Trail Council, Inc. since February 2005. Ms. O'Brien was the State Treasurer and Receiver General for the Commonwealth of Massachusetts from 1999 to January 2003. The 2002 Democratic Nominee for Governor of Massachusetts, Ms. O'Brien also served previously for eight years in the Massachusetts Legislature. She was Vice President for External Affairs for Community Care Systems, a behavioral healthcare network and taught at Boston University School of

Communications. A graduate of Yale University and Boston University School of Law, she practiced law with the firm of Morrison Mahoney and Miller before entering the legislature. Ms. O'Brien is Chair of the Committee on Directors and Corporate Governance, a member of the Audit Committee and has been a director of the Company since 2003.

The following directors' terms shall expire at the Annual Meeting of Shareholders in 2009:

NICHOLAS A. GRAVANTE, JR., age 46, has been a partner at the law firm of Boies Schiller & Flexner LLP since July 1, 2000. Prior to that time he was a partner at Barrett, Gravante, Carpinello & Stern, LLP in New York City since 1992. Mr. Gravante practices law in the areas of corporate litigation and white-collar criminal defense. He is also a Trustee of the Community Service Society of New York, the Brooklyn Public Library, the Columbia Law School Association, a member of the Board of Governors at the Lords Valley Country Club in Lords Valley, Pennsylvania and a member of the Alumni Board of Governors at Poly Prep Country Day School. Mr. Gravante is Chair of the Executive Compensation Committee, a member of the Committee on Directors and Corporate Governance and has been a director of the Company since 2003.

DALE KUTNICK, age 57, is Senior Vice President of Research at Gartner, Inc., and has been there since April 2005 when Gartner acquired his previous employer, Meta Group. He was co-founder, Chairman and a director of Meta Group, Inc., a research and consulting firm focusing on information technology and business transformation. Mr. Kutnick served as Chief Executive Officer and Research Director of Meta Group, Inc. since its inception in January 1989 until 2002. Prior to co-founding Meta Group, Inc., Mr. Kutnick was Executive Vice President of Research at Gartner Group, Inc. and an Executive Vice President at Gartner Securities. Prior to his experience at Gartner Group, Inc., he served as an Executive Director, Research Director and Principal at Yankee Group and as a Principal at Battery Ventures, a venture capital firm. Mr. Kutnick is a graduate of Yale University. Mr. Kutnick is a member of the Committee on Directors and Corporate Governance, a member of the Audit Committee and has been a director of the Company since 2003.

The following executive officer does not serve as a director:

C. BRIAN COAD, age 37, joined First Albany Capital in 2003 as Vice President and Director of Financial Planning and Analysis, and was appointed as Chief Financial Officer of First Albany Companies Inc. in June 2006. Prior to joining First Albany, Mr. Coad was CFO of Frost Securities, Inc., a boutique investment bank and institutional broker dealer specializing in both the energy and technology sectors. Mr. Coad received a B.B.A. degree in Finance from Southern Methodist University and is a Chartered Financial Analyst.

Section 16(a) Beneficial Ownership Reporting Compliance

Based on the Company's review of reports filed by directors, executive officers and 10 percent shareholders of the Company on Forms 3, 4 and 5 pursuant to Section 16(a) of the Exchange Act, the Company believes that all such reports were filed on a timely basis during fiscal year 2006 with the exception of Mr. Goldberg who did not timely file a transaction on Form 5 with respect to transactions in 2006, but subsequently reported such transaction on a Form 5 within two days thereafter.

Code of Business Conduct and Ethics

The Company has a Code of Business Conduct and Ethics applicable to all employees of the Company and members of the Board of Directors. The Code, as well as the current charters of each of the Committees listed below, are available on the Company's website (www.firstalbany.com). The Company intends to post amendments to or waivers from its Code at this location on its website.

The Company has also adopted a procedure by which shareholders may send communications as defined within Item 407(f) of Regulation S-K under the Securities Exchange Act of 1934 (the "Exchange Act") to one or more members of the Board of Directors by writing to such director(s) or to the whole Board of Directors in care of the Company's Corporate Secretary at the following address: First Albany Companies Inc., 677 Broadway, Albany, New

York 12207-2990, Attn: Corporate Secretary. Any such communications will be promptly distributed by the Corporate Secretary to such individual director(s) or to all directors if addressed to the whole Board of Directors.

The Audit Committee.

Until September 28, 2006, the Audit Committee was comprised of Mr. Arthur J. Roth, who served as chair, Ms. O'Brien and Mr. Walter M. Fiederowicz. Messrs. Roth and Fiederowicz ceased to be directors on September 28, 2006. Currently, this committee is comprised of Carl P. Carlucci, who serves as Chair, Ms. O'Brien and Dale Kutnick. Each member of the Audit Committee is an "independent director" as defined in the NASDAQ Stock Market listing standards, and is independent within the meaning of Rule 10A-3 under the Exchange Act and the Company's Corporate Governance Guidelines. Each of Mr. Carlucci and Mr. Kutnick are qualified as an audit committee financial expert within the meaning of Item 401(h) of Regulation S-K under the Exchange Act, and the Board has determined that they have accounting and related financial management expertise within the meaning of the NASDAQ Stock Market listing standards.

Item 11 *Executive Compensation*

Compensation Discussion & Analysis

Compensation Philosophy. 2006 was a year of transition for the Company. In June, the Board adopted a new strategic plan for the Company and appointed a new chief executive officer and a new chief financial officer to implement it. It also focused much of its efforts on retaining those key employees necessary for the continued viability of the Company. While the Company's overall compensation philosophy of pay for performance has not changed, the Company's compensation practice continues to evolve.

Compensation Components. In the financial services industry, base salaries tend to be a relatively modest portion of the total compensation of the Company's employees, including its executive officers, as compared to annual cash bonuses and equity-related grants. Base salaries at the Company are typically set at levels that the Executive Compensation Committee believes are generally competitive with those of executive officers in similar positions at comparable financial services companies. A significant portion of the total compensation has been historically paid in the form of annual cash bonuses. This practice is intended to maximize the portion of an individual's compensation that is subject to fluctuation each year based upon corporate and individual performance. Equity-related grants make up the other important component of total compensation and focus on longer-term company objectives. As a result, the predominant portion of our executive officers' compensation is directly related to short and long-term corporate performance.

We continue to believe that the compensation of our executive officers should be structured to link the executives' financial reward directly to the performance of the business unit they lead or, as the case may be, to the performance of the Company as a whole as well as to their individual performance.

In June 2006, the Company entered into employment agreements with Mr. McNierney (our chief executive officer), Mr. Coad (our chief financial officer) and Mr. Goldberg (our former chief executive officer and current vice chairman). The employment agreements were structured both to retain and energize the new management team of Messrs. McNierney and Coad, to ensure a smooth transition from Mr. Goldberg to Mr. McNierney as chief executive officer and to promote Mr. Goldberg's new role as policy adviser to the Board.

Base Salary. Base salaries are typically set by reference to job position within the Company with increases as a reward for superior performance or as a means to attract or retain necessary executive talent. The Executive Compensation Committee considers the chief executive officer's recommendations in determining the salary of each of the other executive officers. The base salaries of Messrs. McNierney, Coad and Goldberg were agreed upon in their employment agreements. Messrs. Goldberg, McNierney and Coad were given increases over their prior salaries. The increase in Messrs. Goldberg and McNierney's base salaries was given in order to restore their salaries to their 2005 levels. The increase in Mr. Coad's base salary was given in recognition of the increase in his responsibilities to the Company. There was no change in the salaries for Messrs. Fox and McNamee.

Annual Cash Bonus. In 2006, in light of the Company's newly adopted business plan and turnover in management, annual cash bonuses were handled differently from past practice. Under their employment agreements, Mr. McNierney and Mr. Coad each were given the opportunity to earn an annual bonus with a target amount set by the Board and with bonus objectives consistent with the Company's strategic plan developed by the Board after consultation with Mr. McNierney. For 2006, the bonus for each of Messrs. McNierney and Coad was based upon the Executive Compensation Committee's qualitative assessment of the overall success in implementation of the Company's strategic plan in the second half of the year and of his individual contribution to such success.

In accordance with his agreement, Mr. Goldberg did not receive a bonus for 2006. Mr. Fox's bonus was also determined by the Executive Compensation Committee in consultation with the chief executive officer and based on a qualitative assessment of his performance in 2006. In setting Mr. Fox's bonus, the Executive Compensation Committee also took into account the cash payment made to Mr. Fox in August of 2006 in recognition of the additional responsibilities added to his position at that time. Mr. McNamee's bonus was set in recognition of his contribution to the Company through the profitability of the Company's investments as well as his contribution to the Company's investment banking activities.

Historically, annual cash bonuses have been paid pursuant to the Senior Management Bonus Plan. The specific bonus an executive received was determined by the Executive Compensation Committee with reference to his level of responsibility, individual performance and the performance of his or her business unit and/or the Company. The Executive Compensation Committee evaluated levels of responsibility annually. The Executive Compensation Committee also made assessments of individual performance annually after receiving the recommendations of the chief executive officer. The approved recommendations were based on a number of factors, including the achievement of pre-established individual and corporate performance targets, but also initiative, business judgment, management skills and potential contribution to the firm. The Executive Compensation Committee intends to reestablish this bonus practice.

Long-Term Equity Incentives. The Company had historically relied upon annual grants of stock options and, then in the last two years, restricted stock to retain its executive officers and to focus them on increasing shareholder value over the long term. These grants were made in mid-February in conjunction with the payment of annual cash bonuses for the prior fiscal year and were based upon job level, Company and individual performance during the prior fiscal year. The Executive Compensation Committee determined at the time of the spring annual grants that no executive officers would receive equity grants with respect to 2005. Mr. Coad did receive a restricted stock grant prior to his promotion to chief financial officer in accordance with the Company's annual award practice. Certain extraordinary grants of restricted stock were made to executive officers in 2006. Each of Messrs. McNierney and Coad received a restricted stock grant in June 2006 upon their promotion to their current positions, and Mr. Fox received a restricted stock grant in May 2006 under a retention bonus plan established by the Company to retain its key employees. None of the other executive officers received any equity grants in 2006.

Because of the decline in the Company's stock price over the last year, management and the Executive Compensation Committee became increasingly concerned that existing equity awards were not sufficient to retain key employees and to appropriately motivate outstanding performance. To address this concern and to properly incentivize employees and executive officers to achieve the Company's 2007 operating plan, the Company decided to overhaul its outstanding equity award program.

On March 27, 2007, the Company launched an offer to exchange each outstanding share of restricted stock for three cash-settled and/or stock-settled stock appreciation rights with an exercise price of fair market value on the date of grant. Employees who choose to participate in the exchange (including the executive officers) would then have a greater interest in increasing stock value from its current price as their gain would be three times what it would have been with the share of restricted stock provided the stock price rises. This offer to exchange is scheduled to expire on May 9, 2007. In addition, the Company will offer employees the opportunity to exchange outstanding currently underwater options for new options at an exercise price of fair market value on the date of grant. This offer is subject to shareholder approval which the Company intends to seek at its next annual meeting of shareholders. Both programs are intended to re-energize employees and to focus them on the future growth of the Company in a difficult environment.

The Company is also contemplating implementing a new equity plan, subject to shareholder approval. If approved, the Company intends to implement new performance-based equity incentive programs under the plan, including a leveraged equity unit program. Targeted at key employees (including the executive officers), it would provide a leveraged equity award with payouts increasing exponentially as a result of improved EPS and stock price. Whatever programs may be adopted, the Company is determined to reward only performance that directly benefits the Company's shareholders.

Deferred Compensation Plans. Historically, the Company has offered its employees, including its executive officers, tax planning opportunities through nonqualified deferred compensation plans. It first adopted the Deferred Compensation Plan for Key Employees and the Deferred Compensation Plans for Professional and Other Highly Compensated Employees (the "Predecessor Plans"). It then froze these plans in 2005 and adopted new plans (the 2005 Deferred Compensation Plan for Key Employees ("Key Plan") and the 2005 Deferred Compensation Plan for Professional and Other Highly Compensated Employees ("Professional Plan") (collectively, the "2005 Plans")) as a result of changes in the tax laws. However, the Company has decided to freeze the 2005 Plans as well. As a result of declining participation, the costs of administering the 2005 Plans were determined to outweigh the benefits of maintaining them.

Equity-Based Awards Policy. The Executive Compensation Committee made specific stock option, restricted stock and other equity-based awards (the "Equity-Based Awards") to employees of the Company. Management of the Company provided recommendations to the Executive Compensation Committee with respect to the Equity-Based Awards and the Executive Compensation Committee met as necessary to consider such awards on a timely basis. All

Equity-Based Awards approved by the Executive Compensation Committee were granted as of the date of approval, and the exercise price of any Equity-Based Awards (as applicable) awarded was fixed as of the closing price on the date of grant.

Termination of Employment; Change in Control. The Company does not have a severance plan or change in control plan in place for its employees or its executive officers generally. Under their employment agreements, Messrs. McNierney and Coad would receive severance payments upon their termination of employment by the Company without cause or for good reason. The Company believed it necessary to provide this protection to Messrs. McNierney and Coad in return for their taking on responsibility for implementing the Company's new strategic plan. For the same reasons, the Company offered tax gross ups to Messrs. McNierney and Coad for any excise taxes they might incur as a result of a change in control of the Company. Under his agreement, Mr. Goldberg will continue to receive his salary until the end of his contract regardless of any termination of employment unless he voluntarily leaves or is terminated by the Company for cause. The Company believed that this would help to promote a smoother organizational transition.

Mr. Paul Kutey resigned as acting Chief Financial Officer in June 2006, and subsequently from the firm in August 2006. In return for a general release of possible claims against the Company, an agreement not to solicit employees of the Company and for an agreement to cooperate with transition matters, the Company paid Mr. Kutey a lump sum amount of \$300,000.

No individual separation agreement was entered into with Mr. Fox upon his departure in February 2007.

Most of the Company's outstanding equity awards vest immediately upon a change in control. However, restricted stock awards granted in May 2006 under the retention bonus plan vest ahead of schedule only upon a termination of employment for good reason or without cause in connection with the change in control. Of the named executive officers, only Mr. Fox received a restricted stock award subject to such provisions (which was forfeited upon his departure). This change in the 2006 awards was designed to help retain people in their jobs in the event of a change in control.

Tax and Accounting. Section 162(m) of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), places a limit on the tax deduction for compensation in excess of \$1 million paid to certain "covered employees" of a publicly held corporation (generally the corporation's chief executive officer and its next four most highly compensated executive officers in the year that the compensation is paid). Compensation that is considered qualified "performance-based compensation" generally does not count toward Section 162(m)'s \$1 million deduction limit. While the Company is mindful of the limitations that Section 162(m) may have on the deductibility of compensation, the Company also determined that other reasons for compensation structure could sometimes take precedence over potential tax deductions. The Senior Management Bonus Plan is designed to assure that all annual bonus compensation paid to our covered employees is considered qualified performance-based compensation within the meaning of Section 162(m). Although based on Company and individual performance, cash bonuses paid to executive officers in 2006 did not technically qualify as performance-based compensation due to the shift in performance objectives in June to correspond with the new Company strategic plan. Also, the restricted stock grants, as they vest based upon service only, also do not technically qualify as performance-based compensation under Section 162(m). Nonetheless, the only executive officer that received compensation for which the Company could not take a deduction by reason of Section 162(m) was Mr. McNierney.

Going forward, most awards under the 2007 Incentive Plan (including its leveraged equity unit program), if it is approved by shareholders, will be able to qualify as performance-based compensation for purpose of Section 162(m) as will any bonuses granted in accordance with the terms of the Senior Management Bonus Plan.

Summary Compensation Table for Fiscal Year 2006

The following table sets forth certain information regarding compensation of (i) each person who served as Chief Executive Officer during fiscal year 2006, (ii) each person who served as Chief Financial Officer during fiscal year 2006, and (iii) the Company's three most highly compensated executive officers other than the Chief Executive Officer and Chief Financial Officer who were serving as executive officers as of December 31, 2006 (collectively referred to as the "Named Executive Officers").

Name and Principal Position	Year	Salary (\$)	Bonus (\$)	Stock Awards (\$) ¹	Options Awards (\$) ¹	Non-Equity Incentive Plan Compensation (\$)	Change in Pension Value and Nonqualified Deferred Compensation Earnings (\$) ²	All Other Compensation (\$) ³	Total (\$)
George C. McNamee-Chairman	2006	240,000	210,000	60,017	-	-	-	6,000	516,017
Alan P. Goldberg-Vice Chairman and Former Chief Executive Officer	2006	306,308	-	100,026	55,867	-	-	-	516,201
Peter McNierney-President and Chief Executive Officer	2006	185,115	1,015,000	830,417	-	-	-	49,880	2,080,412
Brian Coad-Chief Financial Officer	2006	183,676	150,000	75,107	7,870	-	172	-	