# American Tower's Related-Party Transactions

May 14th, 2012
AMT $67.75

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**Who is the unnamed "Independent Tower Operator" to whom AMT has paid $636.3 million dollars?**

American Tower has been an acquisitive company throughout its history, and it is notable that every transaction EXCEPT the last few in Brazil, the name of the entity which AMT is buying the assets from has been disclosed. ***Since 2009 AMT has paid $636.3 million to an unnamed entity for towers located in Brazil.***

AMT has been extremely selective when choosing what to tell investors about where their money is going in Latin America and especially Brazil. AMT has a history of "Backdoor" enrichment of its executives, ($14.1 million worth in 2006 to former CEO and current board member Raymond Hess) which was perfectly legal and disclosed in their filings. My concern is that they have chosen to no longer disclose any specific transactions which may benefit executives and directors.

**Which Independent Tower Company??**

"we acquired approximately 565 towers from an independent tower company in Brazil in March 2011. The addition of these assets increased our sites in Brazil by over 30%, to approximately 2,300 towers, in advance of planned 3G deployments by NII Holdings and others in that country."

-2010 Annual Report

Until 2010 AMT laid out the various conflicts of interest in a specific section of their proxy statements titled: "Certain Relationships and Related Party Transactions." It seems that in 2010, as the company was at the height of it's international expansion, they adopted a new position relative to disclosure of related-party transactions by simply choosing not to disclose them at all. Instead AMT's lawyers felt it was sufficient simply to discuss the policies in place for "ratification" of related party transactions, but made no specific disclosures as to whether any of these types of transactions took place during the year or during the past three years as required by SEC Rule 404(a).

**The radical shift in disclosure indicates that either:**

A. American Tower did not enter into any related-party transactions since the Gearon separation in February 2007.
B. American Tower did enter into related party transactions since 2007 and they just don't want to disclose them.

American Tower has engaged in some pretty egregious related-party transactions before. Until December 2006 AMT was engaging in options back-dating for key executives and lending executives money to purchase shares in subsidiaries which would ultimately be re-sold back to the parent company at substantially higher prices. These transactions and subsequent disclosures likely made for a few uncomfortable conversations with investors who may have taken note.

*But now we have a committee for that…..*

**Since 2010, AMT's proxy statements have contained the following language as their only reference to related-party transactions:**

> **Approval of Related Party Transactions**
> Our Corporate Governance Guidelines include a policy for the review and approval of all transactions involving the Company and related parties by the Nominating and Corporate Governance Committee….The policy covers any transaction that is not available to employees or Directors generally and any transaction exceeding $120,000 in which related parties have a direct or indirect material interest. **Under the policy, management will recommend to the Nominating and Corporate Governance Committee any related party transaction to be entered into by the Company, including the proposed aggregate value of the transaction. After review, the Committee will approve or disapprove the transaction and management will continue to update the Committee as to any material change to that proposed transaction. In the event a related party transaction is entered into by management prior to approval by the Committee, the transaction will be subject to ratification by the Committee.** If ratification is not forthcoming, management will make all reasonable efforts to cancel or annul the transaction.

It is notable that since 2010 AMT has made no disclosure of any related-party transactions, I do not believe this is because they stopped doing them, instead they have a committee which can "ratify" (aka "whitewash") them. If I were a shareholder I would make an information request to see the minutes of the Corporate Governance Committee, I'm sure it would be an interesting read.

**So an enquiring mind might be interested in who the people are that sit on this committee.**

| NII Holdings (aka Nextel International) |
|---|
| NII Holdings is the holding company for Nextel Communications in Latin America. Sprint Nextel owns 18% of NII Holdings. Sprint Nextel was 14% of AMT's revenue in 2011, and 18% in 2009. |

*Nominating and Corporate Governance Committee*. Our Nominating and Corporate Governance Committee consists of **Mr. Dolan (Chairperson), Ms. Reeve and Mr. Sharbutt**. During the year ended December 31, 2011, the Nominating and Corporate Governance Committee held four meetings. This Committee establishes performance criteria for the annual evaluation of the Board and its committees and oversees the annual self−evaluation by Board members. In addition, this Committee develops and makes recommendations with respect to our Corporate Governance Guidelines (including the appropriate size, composition and responsibilities of the Board and its committees), **approves or ratifies all related party transactions**

**So who are Dolan, Sharbutt and Reeve?**

**Raymond P. Dolan** sold his company (Flarion) to Qualcomm, which does substantial business both with AMT and its customers, additionally he has *served as director of NII Holdings,(from whom AMT bought its initial towers in Brazil, the balance have been purchased from an undisclosed seller which I strongly suspect is NII) Inc.* Currently Mr. Dolan is the CEO of Sonus Networks,

**Mr. David E. Sharbutt** serves as a director of Flat Wireless, LLC (later bought by Sprint, which provides 14% of AMT's revenue),

**Ms. Pamela D. Reeve** serves as a director of Frontier Communications Company. She is a former investment banker for Goldman Sachs and was a defendant in several shareholder lawsuits alleging that she played a central role in the options backdating scheme which AMT stopped in 2006.

So these are the people who are in charge of making sure that related party transactions are ratified? AMT takes the position that these directors are in fact independent because they do not own more than 5% of the company which AMT does business with.

AMT asserts that these directors are "independent" because either they own less than 5% of the companies they are associated with:

| Less than 5% ownership, so it's OK…… |
|---|
| Mr. Sharbutt of Sprint = $7.5 Billion Mkt Cap.<br>Ray Dolan of NII Holdings = $2.2 Billion Mkt Cap.<br>Pam Reeve of Frontier Communications = $3.2 Billion Mkt Cap |

Furthermore, AMT used the very questionable assertion that Mr. Dolan was independent because Qualcomm paid AMT less than 2% of its gross revenue in 2007. I believe that the premise for judging their independence is flawed. AMT has found a definition by which to base a very questionable position in my opinion.

> In each of the last three years, payments to American Tower from QUALCOMM were less than 2% of QUALCOMM's gross revenues. Under the NYSE listing standards and the Company's guidelines, a Director who is a former employee of a company that makes or made payments to the Company may be considered independent, even if the relationship between the two companies continues.
>
> -AMT 2008 Proxy Statement

# So the Billion Dollar Question is: From whom did AMT buy towers in Brazil?

**The most recent 10-K shows further acquisition activity from an undisclosed seller in Brazil**. This is real money we are talking about here. A total of $636.3 million has been spent on towers and AMT does not want you to know from whom they were purchased. This is highly unusual, especially in light of the fact that AMT's practice has been to name from whom they are buying towers in all other transactions AMT has made in recent years.

| $636.3 million to Someone…..that is a lot of money and not a lot of detail. |
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| *Brazil Acquisition*—On July 22, 2009, the Company completed its acquisition of 230 towers and related third party leases located in Brazil for an aggregate purchase price of approximately $51.3 million, which consisted of $50.5 million in cash and the assumption of $0.8 million in liabilities. This acquisition is consistent with the Company's strategy to expand in selected geographic areas.<br><br>*Brazil Acquisition*—On March 1, 2011, the Company acquired 100% of the outstanding shares of a company that owned 627 communications sites in Brazil for $553.2 million, which was subsequently increased to $585.4 million as a result of acquiring 39 additional communications sites and certain post−closing adjustments. The acquisition is consistent with the Company's strategy to expand in selected international markets. |

**My Opinion**

In my opinion what is likely going on here is that some of the executives and or board members may have a personal interest in the towers which AMT eventually buys. By knowing what AMT will pay for any tower, it would be possible for enterprising executives to enrich themselves by buying or building towers for less and then sell them along to AMT for a price which they know AMT will pay.

While certainly unethical, the legality of such a scheme depends upon the extent it is disclosed, which in turn is subject to management's objective estimation of its "materiality."

A cynic might look at AMT and ask why they are pursuing such an aggressive and expensive international acquisition strategy? The answer could be because it is easier for managers and directors to buy or build towers there using anonymous companies which can then be sold on to AMT.

Is it a coincidence that AMT adopted a radical change in their disclosure practices in the same year as the highly regarded CFO Brad Singer was fired? Which immediately preceded a vast ramp-up in AMT's offshore purchase activity? In my opinion it could be that Brad Singer knew what was going on and refused to be part of it. In his absence Jim Taiclet was able to hire a puppet CFO by hiring a VP out of his largest customer Verizon, and here we are today.

You be the judge.

Mr. Bartlett joined the company in April 2009 as Executive Vice President and Chief Financial Officer, and assumed the role of Treasurer in February 2012. Prior to joining the company, Mr. Bartlett served as Senior Vice President and Corporate Controller with Verizon Communications Inc.

## 2010 Expansion Effort Goes Into Overdrive

During 2010, we increased our footprint in Latin America primarily through the acquisition and construction of approximately 1,700 towers in Brazil, Chile, Colombia, Mexico and Peru. During 2010, we also expanded our presence in India through the acquisition of Essar Telecom Infrastructure Private Limited ("ETIPL"), adding over 4,600 towers to our communications site portfolio. We also constructed approximately 500 towers in India. As previously disclosed, in 2010 we entered into definitive agreements to acquire communications sites in Brazil, Chile, Colombia, Ghana and South Africa, subject to customary closing conditions.

**Words to Live By….**

*"Consistently meeting the highest ethical standards throughout our organ-ization requires the active participation and commitment of all employees, starting with me and my team, and extending throughout every office and every department in our global organization."* – Jim Taiclet, CEO

**Below is Background Information Included for Reference:**

**Background on NII Relationship**

During 2007, NII Holdings paid the Company an aggregate of approximately $55.5 million, representing approximately 3.8% of the Company's 2007 total revenues and approximately 1.7% of NII Holdings' 2007 total revenues. In addition, during the year ended December 31, 2007, the Company acquired an aggregate of 254 towers in Mexico and Brazil from NII Holdings for a total purchase price of approximately $29.8 million.

- AMT 2007 Proxy Statement

An "Ongoing Agreement"

NII Holdings, Inc. In December 2002, we agreed to acquire over 500 communications sites, predominantly in Mexico, from NII Holdings, Inc. (NII) for an aggregate purchase price of $100.0 million in cash. Although we have satisfied our minimum purchase obligation under the agreement, we have continued to purchase additional towers from NII. During the year ended December 31, 2006, we acquired 83 towers from NII in Mexico and Brazil for approximately $8.8 million, and as of December 31, 2006, had acquired an aggregate of 811 towers for a total purchase price of approximately $131.0 million. We have the option to purchase additional tower sites from NII in Mexico and Brazil through 2007.

**Details on Governance Committee Members:**

With respect to Messrs. Dolan, Sharbutt and Thompson and Ms. Katz, the Board determined that only immaterial relationships existed with the Company. Specifically, the Board considered that Messrs. Dolan, Sharbutt and Thompson and Ms. Katz currently serve as directors of companies that do business with American Tower, as follows: Mr. Dolan and Ms. Katz serve as directors of NII Holdings, Inc., Mr. Sharbutt serves as a director of Flat Wireless, LLC, and Mr. Thompson serves as a director of USA Mobility, Inc. In each case, the Board determined that such service was in accordance with the NYSE listing standards and our Corporate Governance Guidelines, in that none of these Directors beneficially own five percent or more of the outstanding capital stock of such companies and each recuses himself or herself from deliberations of the Board with respect to such companies.

Mr. Sharbutt is a former employee and former director of a company that does business with American Tower. Mr. Sharbutt served as Chairman and Chief Executive Officer of Alamosa Holdings, Inc., until it was acquired in February 2006 by Sprint Nextel Corporation. In 2005, payments to the Company from Alamosa Holdings were less than 2% of Alamosa Holdings' gross revenues. Alamosa Holdings ceased to exist as a stand-alone entity in February 2006 when it was acquired by Sprint Nextel.

**Background on SEC Changes in Disclosure Requirements**

In 2006 the SEC adopted changes to Item 404 of Regulation S. These changes were intended to adopt a more principles based disclosure requirement for related-party transactions, amending the more technical rules-based requirements. It is critical to note however that the SEC went to some length to emphasize that the adoption of the principles-based requirements was intended to make disclosure simpler and easier, it was certainly not intended to be reason to cease disclosure entirely.

**Analysis of Ownership Changes of AMT's Subsidiary Companies**
This is taken from forms 10-K in the various years, many of the less than 100% ownerships reflect crossholdings.

| | 2009 | 2010 | 2011 |
|---|---|---|---|
| Total Subsidiaries | 61 | 80 | 113 |
| Subsidiaries with <100% Ownership | 15 | 17 | 9 |

**NII Holdings and American Tower Corporation Sign $100 Million Sale/ Lease Back Transaction**

At least 535 NII Holdings wireless communication towers to be sold for $100 million

Reston, VA - December 10, 2002 - NII Holdings, Inc. (OTC BB: NIHD) today announced the signing of a definitive agreement with American Tower Corporation (NYSE: AMT) for certain of NII's subsidiaries to sell at least 535 communication towers for an aggregate of $100 million to ATC and lease them back. The transaction is expected to close in stages, with the first closing of approximately $30 million scheduled to close by the end of 2002, subject to customary closing conditions. American Tower has also agreed to provide up to 250 additional cell sites to NII Holding's incremental network build-out, of which at least 100 cell sites must be co-locations on American Tower's existing towers. The remaining 150 cell sites, if not co-located on the American Tower's existing towers, will be part of a build-to-suit program, which is expected to be completed over the next three years.

Could it be Jim Eisenstein is the seller? He was an AMT co-founder and now a tower aggregator in Brazil?

Jim was Chief Development Officer of American Tower Corporation (NYSE: AMT), the largest owner and operator of wireless and broadcast towers in North America. Jim's primary responsibilities were to seek out and oversee all acquisition and development opportunities for the company. He co-founded American Tower in 1995 and previously held the position of Chief Operating Officer of the company.
Jim Eisenstein is currently Chairman and Chief Executive Officer of Grupo TorreSur, a Latin American focused wireless tower company. Formed in October 2010, the Company recently completed its first series of transactions in Brazil, acquiring over 1,550 towers from Telefonica.

**Evolution of Proxy Disclosure**

**2004 Proxy**

**Certain Relationships and Related Party Transactions**

In October 2001, we consummated the sale of an 8.7% interest in ATC Mexico Holding Corp. (ATC Mexico) to J. Michael Gearon, Jr., President of American Tower International, for $8.4 million. Giving effect to the January 2004 exercise of options described below, we currently own an 88% interest in ATC Mexico, which is the subsidiary through which we conduct our Mexico operations. Mr. Gearon paid $1.7 million in cash and paid the remaining portion of the purchase price with a 7% secured note due 2010 in the principal amount of $6.7 million. The note, which accrues interest and is payable quarterly, is secured by certain shares of our Class A Common Stock owned by Mr. Gearon and his interest in ATC Mexico. The purchase price represented the fair market value of an 8.7% interest in ATC Mexico on the date of the sale as determined by an independent appraiser. Pursuant to the terms of our stockholder agreement with Mr. Gearon, he may require us to purchase his interest in ATC Mexico, for its then fair market value, any time after the soonest to occur of July 1, 2004, a change in control (as defined in the stockholder agreement), or Mr. Gearon's death or disability. In January 2003, as a result of the occurrence of a change in control, Mr. Gearon's right to require us to purchase his interest in ATC Mexico was accelerated and became exercisable.

In January 2004, Mr. Gearon exercised his right to require us to purchase his interest in ATC Mexico. As contemplated under the stockholder agreement, in March 2004 our Board of Directors approved the determination of the fair market value of Mr. Gearon's interest, which valuation was reviewed by an independent financial advisor. Based on this valuation, the net consideration (i.e., after repayment of Mr. Gearon's loan from the Company) payable to Mr. Gearon is approximately $36.3 million. At our option, we may pay this amount in cash or shares of our Class A Common Stock. The number of shares will be determined based on a price of $11.30 per share, which was the closing price of our Class A Common Stock on the NYSE on March 18, 2004, and the number of shares issuable to Mr. Gearon will not change if the market price of our Class A Common Stock changes. In early April 2004, we intend to issue to Mr. Gearon approximately 2,204,000 shares of our Class A Common Stock and pay to Mr. Gearon approximately $4.2 million in cash in satisfaction of 80% of the net consideration due to him. Payment of the remaining 20% of the purchase price is contingent upon ATC Mexico satisfying certain performance criteria and will be paid, if at all, in January 2005.

The remaining 3.3% interest in ATC Mexico was reserved for issuance upon exercise of options granted to certain employees under the ATC Mexico Stock Option Plan (ATC Mexico Plan). The ATC Mexico Plan was approved by our Compensation Committee in May 2002, at which time options to acquire the remaining 3.3% interest were granted. These options became exercisable upon the exercise of Mr. Gearon's put right, and were exercised in January 2004 by all optionees, including William H. Hess, our Executive Vice President and General Counsel, who exercised an option to purchase 144 shares of common stock of ATC Mexico for an aggregate exercise price of $1.44 million. The employees who exercised these options may require us to purchase their interests in ATC Mexico six months following the issuance of the ATC Mexico shares, which date will occur in July 2004, subject to our withholding 20% of the purchase price until January 2005 as described above. Any such purchases will be based on the March 2004 valuation and we intend to satisfy our obligation by issuing shares of our Class A Common Stock. The number of shares of our Class A Common Stock that may be issued in exchange for the ATC Mexico shares will be determined based on a price of $11.30 per share, and will not change if the market price of our Class A Common Stock changes. As a result of the exercise of his options, Mr. Hess owns a 1.4% interest in ATC Mexico. At any time after July 14, 2004, Mr. Hess may require us to purchase his interest in exchange for approximately 622,000 shares of our Class A Common Stock, subject to the 20% holdback described above.

As disclosed in our Proxy Statement for the 2001 Annual Meeting of Stockholders, in 2001 we negotiated an arrangement with Mr. Gearon pursuant to which he would purchase an equity interest in certain of our international subsidiaries, including ATC South America Holding Corp. (ATC South America), the subsidiary through which we conduct our Brazilian operations. Consistent with this arrangement, in January 2004 we entered into an agreement to sell Mr. Gearon a 1.68% interest in ATC South America for approximately $1.0 million in cash. The purchase price represented the fair market value of a 1.68% interest in ATC South America on the of the agreement, as determined by an independent appraiser. Mr. Gearon may require us to purchase his interest in ATC South America, for its then fair market value, at any time after the earliest to occur of December 31, 2004 or Mr. Gearon's death or disability, and we have the right to purchase Mr. Gearon's interest in ATC South America, for its then fair market value, at any time after the earliest to occur of December 31, 2005, Mr. Gearon's death or disability, or the occurrence of either a Gearon Termination Event or a Forfeiture Event (each as defined in our stockholder agreement with Mr. Gearon).

As part of Mr. Gearon's investment, ATC South America's Board of Directors also approved the formation of the ATC South America Stock Option Plan, which provides for the issuance of options to purchase up to an aggregate 10.32% interest in ATC South America to officers, employees, directors and consultants of ATC South America, including Mr. Gearon. In the first quarter of 2004, ATC South America granted 6,027 options to purchase shares of ATC South America common stock to officers and employees, including Messrs. Gearon and Hess, who received options to purchase shares representing a 6.72% and 1.6% interest, respectively. The exercise price per share is $1,000, which was the fair market value per share at the time of grant based on the independent appraisal referred to above. Options granted vest upon the earliest to occur of the exercise by Mr. Gearon of his right to require the Company to purchase his interest in ATC South America, or the exercise by the Company of its right to acquire Mr. Gearon's interest in ATC South America, and expire ten years from the date of grant. The employees holding shares of ATC South America also may require the Company to purchase their interests in ATC South America, at its then fair market value, six months following their issuance.

William H. Hess, our Executive Vice President and General Counsel, received a $75,000 demand loan from us in March 2001, which was outstanding as of December 31, 2003. Interest on the loan does not accrue until demand, at which time such accrued interest is at the prime rate.

Bradley E. Singer, our Chief Financial Officer and Treasurer, received a $180,000 demand loan from us in 2001, $90,000 of which was repaid in December 2002 and the remaining $90,000 of which was repaid in June 2003.

During the past several years, we retained several wholly owned subsidiaries of Nordblom Co. Inc. to provide various real estate services in connection with our acquisition, financing, ownership and leasing of several properties. Two brothers and the father of the wife of our former Chief Executive Officer (Mr. Dodge) own the controlling interest of Nordblom Co. Inc. and Nordic Properties, an affiliate of Nordblom. Mr. Dodge's wife has no interest in Nordblom Co. Inc. or Nordic Properties and Mr. Dodge was not involved in the negotiation of any of the arrangements. We paid the Nordblom companies, including Nordic Properties, an aggregate of $151,000 in 2003. We believe that all of the arrangements with the Nordblom companies are on terms and conditions that are customary in the industry and at least as favorable to us as could be obtained from an unrelated real estate management company.

In December 2002, in connection with a potential financing transaction between us and SPO Partners II, LP (SPO), we entered into a letter agreement with SPO, which at the time was a holder of more than 5% of our Class A Common Stock. The agreement provided for a $2.0 million break-up fee (plus expenses) payable to SPO in the event that we consummated an alternative financing transaction. As a result of our 12.25% senior subordinated discount notes and warrants offering in January 2003, we paid the $2.0 million break-up fee to SPO and reimbursed their related expenses during the year ended December 31, 2003.

**Certain Relationships and Related Party Transactions**

*ATC South America Holding Corp*. During the year ended December 31, 2006, we purchased a 9.3% minority interest in ATC South America from certain employees, including Messrs. Gearon and Hess, who initially acquired their interests through investment in ATC South America and pursuant to stock options granted under the ATC South America Stock Option Plan. In connection with these repurchases, we paid Mr. Gearon an aggregate of $20.5 million, resulting in a gain to Mr. Gearon of approximately $14.1 million based on his original investment in ATC South America, and we paid Mr. Hess an aggregate of $3.9 million, resulting in a gain to Mr. Hess's of approximately $2.7 million based on his original investment in ATC South America. Following the repurchase of these interests, no options remained outstanding pursuant to the ATC South America Stock Option Plan, and in February 2007, we terminated the plan.

In March 2004, we entered into an agreement with Mr. Gearon pursuant to which he purchased an approximate 1.6% equity interest in ATC South America for approximately $1.2 million in cash. The purchase price represented the fair market value of the interest on the date of the sale, as determined by the Board of Directors with the assistance of an independent financial advisor. Pursuant to the terms of the agreement, in October 2005, Mr. Gearon exercised his right to require us to repurchase this interest for its then fair market value. In April 2006, we completed the purchase of Mr. Gearon's interest in ATC South America and paid Mr. Gearon $3.8 million in cash, including interest, which was the fair market value of his interest on the date of exercise of his repurchase right, as determined by our Board of Directors with the assistance of an independent financial advisor.

In the first quarter of 2004, in connection with Mr. Gearon's investment, options to purchase 6,024 shares of ATC South America common stock, representing an approximate 10.3% equity interest, were granted under the ATC South America Stock Option Plan to officers and employees, including Messrs. Gearon and Hess, who received options to purchase 3,924 and 911 shares, respectively. The exercise price was $1,349 per share, which was determined to be the fair market value per share on the date of issuance based on an independent appraisal performed at our request. In October 2005, in connection with the exercise by Mr. Gearon of his right to require us to purchase his interest in ATC South America, these options vested in full and were exercised. Upon exercise of these options, the holders received 4,428 shares of ATC South America, net of 1,596 shares retained by us to satisfy employee tax withholding obligations. The holders had the right to require us to purchase their shares of ATC South America at their then fair market value six months and one day following their issuance. In April 2006, this repurchase right was exercised, and we paid these holders (including Messrs. Gearon and Hess as described above) an aggregate of $18.9 million in cash, which was the fair market value of their interests on the date of exercise of their repurchase right, as determined by the Company's Board of Directors with the assistance of an independent financial advisor. For more information about our transactions involving ATC South America, see note 11 to our consolidated financial statements included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2006, as filed with the SEC on February 28, 2007.

*Remediation Plan Related to Review of Stock Option Granting Practices and Related Accounting* On December 19, 2006, our Board approved the remediation plan presented by the Special Committee to address the issues raised by their findings in connection with their review of our historic stock option granting practices. The remediation plan included, among other things, the elimination of any excess benefit received by our current officers and members of the Board from options having been granted to them with exercise prices below the fair market value of our Common Stock on the legal grant date, as determined by the Special Committee. For outstanding options, this was accomplished by amending each option to increase the exercise price to the fair market value on the legal grant date, without any compensation to the optionholder. In December 2006, eight of our senior officers and Directors amended the exercise prices of options to purchase an aggregate of 985,511 shares, thereby eliminating an aggregate excess benefit of approximately $6.5 million. For options that had been exercised, this was accomplished by our executive officers and Directors compensating the Company for the amount of the excess benefit received upon exercise, after reduction for any taxes paid by the individual. In January 2007, five of our senior officers surrendered vested in-the-money options to purchase an aggregate of 23,269 shares, thereby surrendering an aggregate excess benefit of approximately $0.6 million (net of approximately $0.4 million in taxes paid by such individuals).

**2008 Proxy**

**Certain Relationships and Related Party Transactions**

*Gearon Separation.* In February 2007, Mr. Gearon notified us of his intention to leave the Company. On February 27, 2007, we finalized with Mr. Gearon the terms of his separation from the Company, and effective as of such date, Mr. Gearon ceased to be an employee of the Company. In accordance with our letter agreement with Mr. Gearon, we reached a mutually acceptable arrangement with Mr. Gearon with respect to his outstanding stock options, pursuant to which we agreed to accelerate the vesting of Mr. Gearon's unvested stock options to purchase 281,250 shares of our Common Stock so that such options were immediately exercisable. Following Mr. Gearon's separation, we reached an agreement with Mr. Gearon to clarify and resolve the scope of his ongoing obligations under his noncompetition arrangements with the Company, including that Mr. Gearon would not engage in competitive activities with the Company in Mexico or Brazil through October 2, 2008. For more information about Mr. Gearon's separation from the Company, see the caption "Employment and Severance Arrangements" included in this Proxy Statement.

*ATC South America Holding Corp*. During the year ended December 31, 2006, we purchased a 9.3% minority interest in ATC South America from certain employees, including Messrs. Gearon and Hess, who initially acquired their interests through investment in ATC South America and pursuant to stock options granted under the ATC South America Stock Option Plan. In connection with these repurchases, we paid Mr. Gearon an aggregate of $20.5 million, resulting in a gain to Mr. Gearon of approximately $14.1 million based on his original investment in ATC South America, and we paid Mr. Hess an aggregate of $3.9 million, resulting in a gain to Mr. Hess of approximately $2.7 million based on his original investment in ATC South America. Following the repurchase of these interests, no options remained outstanding pursuant to the ATC South America Stock Option Plan, and in February 2007, we terminated the plan.

In March 2004, we entered into an agreement with Mr. Gearon pursuant to which he purchased an approximate 1.6% equity interest in ATC South America for approximately $1.2 million in cash. The purchase price represented the fair market value of the interest on the date of the

sale, as determined by our Board of Directors with the assistance of an independent financial advisor. Pursuant to the terms of the agreement, in October 2005, Mr. Gearon exercised his right to require us to repurchase this interest for its then fair market value. In April 2006, we completed the purchase of Mr. Gearon's interest in ATC South America and paid Mr. Gearon $3.8 million in cash, including interest, which was the fair market value of his interest on the date of exercise of his repurchase right, as determined by our Board of Directors with the assistance of an independent financial advisor.

In the first quarter of 2004, in connection with Mr. Gearon's investment, options to purchase 6,024 shares of ATC South America common stock, representing an approximate 10.3% equity interest, were granted under the ATC South America Stock Option Plan to officers and employees, including Messrs. Gearon and Hess, who received options to purchase 3,924 and 911 shares, respectively. The exercise price was $1,349 per share, which was determined to be the fair market value per share on the date of issuance based on an independent appraisal performed at our request. In October 2005, in connection with the exercise by Mr. Gearon of his right to require us to purchase his interest in ATC South America, these options vested in full and were exercised. Upon exercise of these options, the holders received 4,428 shares of ATC South America, net of 1,596 shares retained by us to satisfy employee tax withholding obligations. The holders had the right to require us to purchase their shares of ATC South America at their then fair market value six months and one day following their issuance. In April 2006, this repurchase right was exercised, and we paid these holders (including Messrs. Gearon and Hess as described above) an aggregate of $18.9 million in cash, which was the fair market value of their interests on the date of exercise of their repurchase right, as determined by our Board of Directors with the assistance of an independent financial advisor. For more information about our transactions involving ATC South America, see note 11 to our consolidated financial statements included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2007, as filed with the SEC on March 14, 2008.

*Remediation Plan Related to Review of Stock Option Granting Practices and Related Accounting.* In May 2006, we announced that our Board had established a special committee of independent directors to conduct a review of our historical stock option granting practices and related accounting. On December 19, 2006, our Board approved the remediation plan recommended by the special committee to address the issues raised by its findings. The remediation plan included, among other things, the elimination of any excess benefit received by our current officers and members of the Board from options having been granted to them with exercise prices below the fair market value of our Common Stock on the legal grant date, as determined by the special committee. For outstanding options, this was accomplished by amending each option to increase the exercise price to the fair market value on the legal grant date, without any compensation to the optionholder. In December 2006, eight of our senior officers and Directors amended the exercise prices of options to purchase an aggregate of 985,511 shares, thereby eliminating an aggregate excess benefit of approximately $6.5 million. For options that had been exercised, this was accomplished by our executive officers and Directors compensating the Company for the amount of the excess benefit received upon exercise, after reduction for any taxes paid by the individual. In January 2007, five of our senior officers surrendered vested in-the-money options to purchase an aggregate of 23,269 shares, thereby surrendering an aggregate excess benefit of approximately $0.6 million (net of approximately $0.4 million in taxes paid by such individuals).

**2009 Proxy**

**Certain Relationships and Related Party Transactions**

*ATC South America Holding Corp*. During the year ended December 31, 2006, we purchased a 9.3% minority interest in ATC South America from certain employees, including Mr. Hess, who initially acquired his interest through investment in ATC South America and pursuant to stock options granted under the ATC South America Stock Option Plan. In connection with these repurchases, we paid Mr. Hess an aggregate of $3.9 million, resulting in a gain to Mr. Hess of approximately $2.7 million based on his original investment in ATC South America. Following the repurchase of these interests, no options remained outstanding pursuant to the ATC South America Stock Option Plan, and in February 2007, we terminated the plan.

In the first quarter of 2004, options to purchase 6,024 shares of ATC South America common stock, representing an approximate 10.3% equity interest, were granted under the ATC South America Stock Option Plan to officers and employees, including Mr. Hess, who received options to purchase 911 shares. The exercise price was $1,349 per share, which was determined to be the fair market value per share on the date of issuance based on an independent appraisal performed at our request. In October 2005, these options vested in full and were exercised. Upon exercise of these options, the holders received 4,428 shares of ATC South America, net of 1,596 shares retained by us to satisfy employee tax withholding obligations. The holders had the right to require us to purchase their shares of ATC South America at their then fair market value six months and one day following their issuance. In April 2006, this repurchase right was exercised, and we paid these holders (including Mr. Hess as described above) an aggregate of $18.9 million in cash, which was the fair market value of their interests on the date of exercise of their repurchase right, as determined by our Board of Directors with the assistance of an independent financial advisor. For more information about our transactions involving ATC South America, see note 19 to our consolidated financial statements included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2008, as filed with the SEC on February 26, 2009.

*Remediation Plan Related to Review of Stock Option Granting Practices and Related Accounting.* In May 2006, we announced that our Board had established a special committee of independent directors to conduct a review of our historical stock option granting practices and related accounting. On December 19, 2006, our Board approved the remediation plan recommended by the special committee to address the issues raised by its findings. The remediation plan included, among other things, the elimination of any excess benefit received by our current officers and members of the Board from options having been granted to them with exercise prices below the fair market value of our Common Stock on the legal grant date, as determined by the special committee. For outstanding options, this was accomplished by amending each option to increase the exercise price to the fair market value on the legal grant date, without any compensation to the optionholder. In December 2006, eight of our senior officers and Directors amended the exercise prices of options to purchase an aggregate of 985,511 shares, thereby eliminating an aggregate excess benefit of approximately $6.5 million. For options that had been exercised, this was accomplished by our executive officers and Directors compensating the Company for the amount of the excess benefit received upon exercise, after reduction for any taxes paid by the individual. In January 2007, five of our senior officers surrendered vested in-the-money options to purchase an aggregate of 23,269 shares,

thereby surrendering an aggregate excess benefit of approximately $0.6 million (net of approximately $0.4 million in taxes paid by such individuals).

**SEC Rules**

**V. Certain Relationships and Related Transactions Disclosure**

As we explained in the Proposing Release, we believe that, in addition to disclosure regarding executive compensation, a materially complete picture of financial relationships with a company involves disclosure regarding related party transactions.

Today we are amending Item 404 of Regulation S-K and S-B to streamline and modernize this disclosure requirement, while making it more principles-based. Although the amendments significantly modify this disclosure requirement, its purpose - to elicit disclosure regarding transactions and relationships, including indebtedness, involving the company and related persons and the independence of directors and nominees for director and the interests of management - remains unchanged.

As discussed in greater detail below, the amendments have four parts:409

- Item 404(a) contains a general disclosure requirement for related person transactions, including those involving indebtedness.
- Item 404(b) requires disclosure regarding the company's policies and procedures for the review, approval or ratification of related person transactions.
- Item 404(c) requires disclosure regarding promoters and certain control persons of a company.410
- Item 407 consolidates corporate governance disclosure requirements.411 Also, Item 407(a) requires disclosure regarding the independence of directors, including relationships that had been set forth in Item 404(b) prior to today's amendments, in favor of the disclosures regarding director independence required by Item 407(a).

**A. Transactions with Related Persons**

We are adopting amendments to Item 404 to make the certain relationships and related transactions disclosure requirements clearer and easier to follow. The revisions retain the principles for disclosure of related person transactions that were previously specified in Item 404(a), but no longer include all of the instructions that served to delineate what transactions are reportable or excludable from disclosure based on bright lines that can depart from a more appropriate materiality analysis. Instead, Item 404(a) as amended consists of a general statement of the principle for disclosure, followed by specific disclosure requirements and instructions. The instructions to Item 404(a) explain the related persons covered by the Item, the scope of transactions covered by the Item, the method for computation of the amount involved in the transaction, special requirements regarding indebtedness, the interaction with Item 402, the materiality of certain interests, and the circumstances in which disclosure need not be provided.

Item 404(a) as adopted extends to disclosure of indebtedness, by consolidating the disclosure formerly required under Item 404(a) regarding transactions involving the company and related persons with the disclosure regarding indebtedness which had been separately required by Item 404(c) prior to these amendments. We have consolidated these two provisions substantially as proposed in order to eliminate confusion regarding the circumstances in which each item applied and to streamline duplicative portions of Item 404.

Item 404.

**1. Broad Principle for Disclosure**

Item 404(a) as proposed and adopted articulates a broad principle for disclosure; it states that a company must provide disclosure regarding:

- any transaction since the beginning of the company's last fiscal year, or any currently proposed transaction;
- in which the company was or is to be a participant;
- in which the amount involved exceeds $120,000; and
- in which any related person had or will have a direct or indirect material interest.

As proposed, amended Item 404(a) no longer includes an instruction that is repetitive of the general materiality standard applicable to the Item. By omitting this instruction, **we do not intend to change the materiality standard applicable to Item 404(a). The materiality standard for disclosure embodied in Item 404(a) prior to these amendments is retained; a company must disclose based on whether the related person had or will have a direct or indirect material interest in the transaction**. The materiality of any interest will continue to be determined on the basis of the significance of the information to investors in light of all the circumstances.413

We are also eliminating as proposed an instruction to Item 404(a) which had indicated that the dollar threshold is not a bright line materiality standard.414 It remains true, however, that when the amount involved in a transaction exceeds the prescribed threshold ($120,000 under the amended rule we adopt today), a company should evaluate whether the related person has a direct or indirect material interest in the transaction to determine if disclosure is required. **We eliminated the instruction because it was repetitive of the general materiality standard applicable to the Item**. We believe that application of the

materiality principles under the Item are more consistent with a principles-based approach and will lead to more appropriate disclosure outcomes than application of the instruction that was eliminated. **By deleting this instruction, we do not intend to change the materiality standard applicable to Item 404(a).** As was the case with Item 404(a) prior to adoption of these amendments, there may be situations where, although the instructions to Item 404(a) do not expressly provide that disclosure is not required, the interest of a related person in a particular transaction is not a direct or indirect material interest. In that case, information regarding such interest and transaction is not required to be disclosed under Item 404(a).

In addition, as proposed the amendments:

- call for disclosure if a company is a "participant" in a transaction, rather than if it is "a party" to the transaction, as "participant" more accurately connotes the company's involvement;
- modify the $60,000 threshold for disclosure to $120,000 to adjust for inflation;
- include a defined term for "transaction" to provide that it includes a series of similar transactions and to make clear its broad scope; and
- include a defined term for "related persons."415

**As was the case before these amendments, disclosure is required for three years in registration statements filed pursuant to the Securities Act or the Exchange Act**.416

Finally, the rule changes include as proposed a technical modification. Prior to today's amendments, Item 404(a) stated that disclosure was required regarding situations involving "the registrant or any of its subsidiaries." Because companies must include subsidiaries in making materiality determinations in all circumstances, the reference to "subsidiaries" is superfluous, and we have therefore eliminated it. **This modification does not change the scope of disclosure required under the Item.425**