

AON PLC

FORM 8-K (Current report filing)

Filed 05/24/06 for the Period Ending 05/18/06

Telephone	(44) 20 7623 5500
CIK	0000315293
Symbol	AON
SIC Code	6411 - Insurance Agents, Brokers, and Service
Industry	Insurance (Miscellaneous)
Sector	Financial
Fiscal Year	12/31

AON CORP

FORM 8-K (Unscheduled Material Events)

Filed 5/24/2006 For Period Ending 5/18/2006

Address	200 EAST RANDOLPH STREET CHICAGO, Illinois 60601
Telephone	312-381-1000
CIK	0000315293
Industry	Insurance (Miscellaneous)
Sector	Financial
Fiscal Year	12/31

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

**Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934**

Date of report (Date of earliest event reported): **May 18, 2006**

Aon Corporation

(Exact Name of Registrant as Specified in Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

1-7933
(Commission File Number)

36-3051915
(IRS Employer
Identification No.)

200 East Randolph Street, Chicago, Illinois
(Address of Principal Executive Offices)

60601
(Zip Code)

Registrant's telephone number, including area code: **(312) 381-1000**

Not Applicable

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01. Entry into a Material Definitive Agreement.

(a) Long-Term Incentive Award for Michael D. O'Halleran.

On May 18, 2006, the Organization & Compensation Committee (the "Committee") of the Board of Directors of Aon Corporation (the "Company") approved a performance-based long-term incentive award to Michael D. O'Halleran, Senior Executive Vice President of the Company. Mr. O'Halleran was awarded 83,964 performance share units that will be earned and settled in shares of the Company's common stock based upon the achievement of specified pre-tax net income targets for the Global Reinsurance Segment for the performance period beginning on April 1, 2006 and ending on December 31, 2008 (the "Performance Period"). The total performance score can range from a minimum of 0% to a maximum of 150% of target. The Committee has the discretion to adjust the performance results of the Global Reinsurance Segment, if necessary, to take into account extraordinary or unusual items occurring during the Performance Period. The performance share units were valued at \$3 million as of the date of grant based upon the fair market value of shares of the Company's common stock as of such date. Upon completion of the Performance Period, an award will be determined and settled in shares of the Company's common stock.

As consideration for the award, Mr. O'Halleran entered into Amendment No. 2 to the Employment Agreement between the Company and Mr. O'Halleran, effective May 18, 2006 (the "Amendment"). The Amendment provides that, beginning with calendar year 2007, Mr. O'Halleran shall not be entitled to receive any additional grants of contractual awards described in his amended employment agreement. In addition, among other things, the Amendment: (i) extends the expiration date of Mr. O'Halleran's employment from December 31, 2007 to January 1, 2013; (ii) provides for a base salary of \$1,000,000 per year subject to adjustment but not below \$1,000,000; and (iii) provides for an annual discretionary bonus with a maximum amount not less than 200% of base salary.

(b) Annual Incentive Award for Andrew M. Appel.

On May 18, 2006, the Committee approved a performance-based annual incentive award to Andrew M. Appel, Chief Executive Officer of Aon Consulting Worldwide. Mr. Appel was awarded 27,988 performance share units that will be earned and settled in shares of the Company's common stock based upon the achievement of specified pre-tax net income targets for the Global Consulting Segment (excluding Other Consulting) for the performance period beginning on January 1, 2006 and ending on December 31, 2006 (the "Consulting Performance Period"). The total performance score can range from a minimum of 0% to a maximum of 150% of target. The Committee has the discretion to adjust the performance results of the Global Consulting Segment, if necessary, to take into account extraordinary or unusual items occurring during the Consulting Performance Period. The performance share units were valued at \$1 million as of the date of grant based upon the fair market value of shares of the Company's common stock as of such date. Upon completion of the Consulting Performance Period, an award will be determined and settled in shares of the Company's common stock.

(c) Amendment to Senior Officer Incentive Compensation Plan.

On May 19, 2006, at the Company's 2006 Annual Meeting of Stockholders (the "Annual Meeting"), the Company's stockholders approved an amendment to the Company's Senior Officer Incentive Compensation Plan (the "Senior Officer Plan") increasing the maximum amount payable in any calendar year to any executive officer under the Senior Officer Plan to \$5 million from the current cap of the lesser of \$3 million or 180% of the executive's base salary. The foregoing description of the amendment is qualified in its entirety by reference to the amended Senior Officer Plan that is attached as Exhibit 10.1 to this Form 8-K and incorporated herein by reference.

(d) Amendment to Stock Incentive Plan.

On May 19, 2006, at the Company's Annual Meeting, the Company's stockholders approved an amendment to the Company's Stock Incentive Plan (the "Stock Incentive Plan") increasing the maximum number of shares of the Company's common stock with respect to which awards, including performance awards, may be granted to an individual in any calendar year from 675,000 shares to 1,500,000 shares. The foregoing description of the amendment is qualified in its entirety by reference to the amended Stock Incentive Plan that is attached as Exhibit 10.2 to this Form 8-K and incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(a)—(c) Not applicable.

(d) Exhibits:

Exhibit Number	Description of Exhibit
10.1	Senior Officer Incentive Compensation Plan, as amended.
10.2	Aon Stock Incentive Plan, as amended.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Aon CORPORATION

By: /s/ Richard E. Barry
Richard E. Barry
Vice President

Date: May 24, 2006

EXHIBIT INDEX

Exhibit Number	Description of Exhibit
10.1	Senior Officer Incentive Compensation Plan, as amended.
10.2	Aon Stock Incentive Plan, as amended.

Senior Officer Incentive Compensation Plan
(As Amended and Restated)

1. Purpose . The purpose of the Senior Officer Incentive Compensation Plan (the “Plan”) is to encourage the highest level of performance by key employees of Aon Corporation and its operating subsidiaries and affiliates (which subsidiaries and affiliates are herein referred to as the “Company”) by quantifiable performance goals.
2. Plan Administration . The Plan shall be administered by the Organization and Compensation Committee (the “Committee”) of the Aon Corporation Board of Directors (the “Board”). All questions involving eligibility for awards, interpretations of the provisions of the Plan, or the operation of the Plan shall be decided by the Committee. No member of the Committee shall be eligible to receive an award under the Plan. All determinations of the Committee shall be conclusive. The Committee may obtain such advice or assistance as it deems appropriate from persons not serving on the Committee.
3. Eligibility . Participation in the Plan is limited to key salaried employees of the Company selected by the Committee (a “Participant”). Participation may be revoked at any time by the Committee. An employee whose participation is revoked will be notified, in writing, of such revocation as soon as practicable following such action. An individual who becomes eligible to participate in the Plan during the Plan Year (the one year period beginning January 1 and ending on December 31 of each calendar year) may be approved by the Committee for a partial year of participation. In such case, the Participant’s award shall be prorated based on the number of full months of participation.
4. Terms and Conditions of Awards . Each Participant will be entitled to receive an award (the “Award”) subject to the performance measures described below. The maximum Award payable under the Plan to a Participant, in any given Plan Year is \$5,000,000.

Within the first 90 days of the Plan Year the Committee shall determine the specific Corporate Performance Thresholds that must be met prior to the payment of any Awards determined pursuant to this paragraph. The Corporate Performance Thresholds will be based on one or more of the following business criteria for the Company (on a consolidated basis) and/or specific business units or ventures of the Company: (A) earnings per share; (B) revenues; (C) cash flow; (D) cash flow return on investment; (E) return on assets, return on investment, return on capital, and/or return on equity; (F) identification and/or consummation of investment opportunities or completion of specified projects in accordance with corporate business plans; (G) operating margin; (H) net income, net operating income, pretax earnings, pretax earnings before interest, depreciation and amortization, pretax operating earnings after interest expense and before incentives, service fees, and extraordinary or special items, and/or operating earnings; (I) total stockholder return; (J) economic value created; and (K) any of the above as compared to the performance of a published or special index deemed applicable by the Compensation Committee.

At the end of the Plan Year, Awards will be computed for each participant. Payment of Awards will be made in cash, subject to applicable tax withholding, as soon as practicable after the achievement of Corporate Performance Thresholds and other material terms of the Plan are certified, and individual Awards are approved by the Committee, provided, however, that the Committee may in its sole discretion reduce individual Awards determined pursuant to this paragraph.

5. Employment Termination . In the event a Participant’s employment is terminated due to death or disability during a Plan Year, the Participant’s Award will be reduced to reflect the partial year of participation. This reduction will be determined by multiplying the Award by a fraction, the numerator of which is the Participant’s total months of participation in the current Plan Year through the date of termination rounded up to whole months, and the denominator of which is twelve (12). The Participant’s reduced Award will be paid in accordance with Section 4 hereinabove. In the event a Participant’s employment is

terminated for reasons other than death or disability, all rights to an Award for the Plan Year will be forfeited.

6. No Right to Continued Employment. Nothing in the plan shall confer on a Participant any right to continue in the employ of the Company or in any way affect the Company's right to terminate the Participant's employment at any time without prior notice and for any or no reason.
 7. Beneficiary. Each Participant under the Plan may, from time to time, name any beneficiary or beneficiaries (who may be named contingently or successively) to whom any benefit under the Plan is to be paid in case of his death before he receives any or all of such benefit. Each designation will revoke all prior designations by the same Participant, shall be in a form prescribed by the Committee, and will be effective only when filed by the Participant in writing with the Committee during his lifetime. In the absence of any such designation, or if for any reason such designation is ineffective, in whole or in part, benefits remaining unpaid at the Participant's death shall be paid to his estate.
 8. Tax Withholding. Any and all payments made under the Plan shall be subject to applicable federal, state, or local taxes required by law to be withheld.
 9. Impact on Other Benefits. Amounts paid under this Plan will not be considered compensation for purposes of other benefit plans offered by the Company unless specifically provided for in such plans.
 10. Termination or Amendment of the Plan. The Plan may be modified, amended, or terminated at any time by the Board. The existence of the Plan does not obligate or bind the Company to pay an Award to any Participant (or beneficiary) nor does any Participant (or beneficiary) attain any vested, non-forfeitable right to an Award until the Award has been finalized and approved for payment by the Committee.
 11. Non-Transferability. Except as specifically provided herein or as may otherwise be required by law, no undistributed Award payable to the Participant may be sold, transferred, or assigned or encumbered, in whole or in part, by a Participant, and any attempt to so alienate or subject any such amount shall be void.
 12. Effective Date of the Plan. The Plan originally became effective (the "Effective Date") upon approval by the Company's stockholders at a meeting of stockholders duly held in accordance with the Delaware General Company Law on April 20, 2001. The Plan is hereby amended and restated effective as of January 1, 2006, contingent up the approval by the Company's stockholders at a meeting of stockholders duly held in accordance with the Delaware General Company Law, or any adjournment thereof in accordance with applicable provisions of the Delaware General Company Law.
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Aon Stock Incentive Plan
(As Amended and Restated)

1.01 *Purpose.* The purpose of the Plan is to align the interests of management and key employees of the Company with its stockholders and to attract, motivate and retain valuable and talented personnel to contribute to the long-term success of the Company.

2.01 *Definitions.* For the purpose of the Plan, the following terms shall be defined as set forth below:

- (a) “Award” means any Option, SAR, Restricted Stock, Restricted Stock Unit, Dividend Equivalent, Other Stock-Based Award, or Performance Award granted to a Participant under the Plan.
 - (b) “Award Agreement” means any written agreement, contract, or other instrument or document evidencing an Award.
 - (c) “Beneficiary” means the person, persons, trust or trusts which have been designated by a Participant in his or her most recent written beneficiary designation filed with the Company to receive the benefits specified under this Plan upon the death of the Participant, or, if there is no designated Beneficiary or surviving designated Beneficiary, then the estate of the Participant.
 - (d) “Board” means the Board of Directors of the Company.
 - (e) “Code” means the Internal Revenue Code of 1986, as amended from time to time. References to any provision of the Code shall be deemed to include successor provisions and regulations.
 - (f) “Committee” means the Organization and Compensation Committee of the Board, or such other Board committee as may be designated by the Board to administer the Plan, composed of no fewer than two directors each of whom is a Non-Employee Director and an “outside director” within the meaning of Section 162(m) of the Code.
 - (g) “Company” means Aon Corporation, a corporation organized under the laws of the State of Delaware, and, where appropriate, its subsidiaries or affiliates, or any successor corporation.
 - (h) “Dividend Equivalent” means a right, granted to a Participant under Section 6.01(c), to receive cash, Stock, or other property equal in value to dividends paid with respect to a specified number of shares of Stock, or to receive periodic distributions on other specified equity securities of the Company. Dividend Equivalents may be awarded on a free-standing basis or in connection with another Award and may be paid currently or on a deferred basis.
 - (i) “Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time.
 - (j) “Fair Market Value” means, with respect to Stock, Awards, or other property, the fair market value of such Stock, Awards, or other property determined by such methods or procedures as shall be established from time to time by the Committee. Unless otherwise
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determined by the Committee in good faith, the Fair Market Value of Stock as of any given date shall mean the per share value of Stock as determined by using the average of the high and low selling prices of such Stock on the New York Stock Exchange on such date (or, if the New York Stock Exchange was not open for trading or the Stock was not traded on that day, the next preceding day that the New York Stock Exchange was open for trading and the Stock was traded) as reported for such date by The Wall Street Journal.

- (k) "ISO" means any Option designated as an incentive stock option within the meaning of Section 422 of the Code.
 - (l) "NQSO" means any Option that is not an ISO.
 - (m) "Non-Employee Director" means a person who meets the definition set forth in Rule 16b-3(b)(3) under the Exchange Act, or any successor definition adopted by the Securities and Exchange Commission.
 - (n) "Option" means a right, granted to a Participant under Section 6.01(a), to purchase Stock. An Option may be either an ISO or a NQSO.
 - (o) "Other Stock-Based Award" means a right, granted to a Participant under 6.01(c), that is payable in Stock or based on the amount of dividends paid with respect to or the Fair Market Value of Stock, including, without limitation, rights convertible or exchangeable into Stock purchase rights for Stock, and Awards with value or payment contingent upon the performance of the Company, or upon any other performance condition designated by the Committee.
 - (p) "Participant" means an executive, other key employee, or Non-Employee Director of the Company and other non-employees who have been granted an Award under the Plan.
 - (q) "Performance Award" means an Award that is subject to achievement of performance goals specified under 6.01(d) or 6.01(e).
 - (r) "Plan" means this Aon Stock Incentive Plan, as amended from time to time.
 - (s) "Preexisting Plans" means the Aon Stock Award Plan, as amended and restated through 2000, the Aon Stock Option Plan, as amended and restated through 1997, the Outside Director Stock Award Plan, the plan reflected in the Outside Directors Deferred Compensation Agreement, and any other similar preexisting plans including similar preexisting plans for Qualified Members.
 - (t) "Qualified Member" means a member of the Committee who is a "Non-Employee Director" within the meaning of Rule 16b-3(b)(3) under the Exchange Act and an "outside director" within the meaning of Treasury Regulation 1.162-27(e)(3) under Code Section 162(m).
 - (u) "Restricted Stock" means an award of shares of Stock to a Participant under 6.01(c) that may be subject to certain restrictions and to a risk of forfeiture.
 - (v) "Restricted Stock Unit" means an award, granted to a Participant under 6.01(c), representing the right to receive either Stock or cash or any combination thereof at the end of a specified deferral period.
 - (w) "Stock" means the Common Stock, \$1.00 par value per share, of the Company or such other securities as may be substituted or re-substituted pursuant to Section 5.01.
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- (x) “SAR” or “Stock Appreciation Right” means the right, granted to a Participant under 6.01(b), to be paid an amount measured by the appreciation in the Fair Market Value of Stock from the date of grant to the date of exercise of the right, with payment to be made in cash, Stock, other Awards, or other property as specified in the Award or determined by the Committee.

3.01 *Administration.* The Plan shall be administered by the Committee. Subject to the limitations of the Plan, the Committee shall have the authority to: (a) select from the executives and other key employees, nonemployees, and Non-Employee Directors of the Company, those who shall participate in the Plan; (b) make Awards in such forms and amounts as it shall determine; (c) impose such limitations, restrictions and conditions upon such Awards (including—restrictive covenants) as it shall deem appropriate including form of payment of an exercise price with respect to an Option and the terms and conditions with respect to vesting, cancellation and forfeiture of Awards; (d) interpret the Plan and adopt administrative guidelines relating to the Plan; (e) correct any inconsistency in this Plan or in any Award granted hereunder; and (f) make all other determinations and take all other actions deemed necessary for the administration of the Plan. The Committee may, in its sole discretion, delegate such of its powers under the Plan as it deems appropriate to officers or other employees of the Company except that Awards to “executive officers” (as defined by Section 16 of the Exchange Act) may be made solely by the Committee. The Committee’s determinations on matters within its authority shall be conclusive and binding upon the Company and all other persons.

At any time that a member of the Committee is not a Qualified Member, any action of the Committee relating to an Award to be granted to an executive officer or other individual who is then subject to Section 16 of the Exchange Act in respect of the Company, or relating to Code Section 162(m) and regulations thereunder, may be taken either (i) by a subcommittee composed solely of two or more Qualified Members, or (ii) by the Committee but with each such member who is a not Qualified Member abstaining from such action, provided that the Committee remains composed solely of two or more Qualified Members. Such action, authorized by such a subcommittee or by the Committee upon the abstention of such non-Qualified Member(s), shall be the action of the Committee for purposes of the Plan.

Each member of the Committee shall be entitled to, in good faith, rely or act upon any report or other information furnished to him or her by any officer or other employee of the Company, its independent certified public accountants, or other professional retained to assist in the administration of the Plan. No member of the Committee, nor any officer or employee of the Company acting on behalf of the Committee, shall be personally liable for any action taken or made in good faith with respect to the Plan, and all members of the Committee and any officer or employee of the Company acting on their behalf shall, to the fullest extent permitted by law, be fully indemnified and protected by the Company with respect to any such action. Notwithstanding the foregoing or anything else to the contrary in the Plan, any action or determination by the Committee specifically affecting or relating to an Award to a Non-Employee Director shall be approved and ratified by the Board.

4.01 *Eligibility.* Executives, key employees, Non-Employee Directors of the Company and other non-employees selected by the Committee or any delegate authorized by the Committee are eligible to be granted Awards under the Plan. In addition, any person who has been offered employment as an executive or key employee of the Company is eligible to be granted Awards under the Plan, provided that such prospective employee may not receive any payment or exercise any right relating to an Award until such person has commenced employment with the Company.

5.01 *Stock Subject to the Plan; Capital Structure Adjustments .*

- (a) *Shares Authorized.* The total number of shares of Stock authorized for issuance in connection with Awards under the Plan and the Preexisting Plans shall be eighteen percent (18%) of the total outstanding common shares of the Company. Such limit shall be applied at the time an Award is granted under the Plan; provided, however, that a reduction in the number of outstanding common shares of the Company that occurs after the grant shall not affect the validity or terms of such Award. In this connection, at the inception of the Plan the Board is approving for issuance nineteen million (19,000,000) shares of Stock plus the additional number of shares of Stock specified in the succeeding sentence. There shall be added to the number of shares of Stock so approved for issuance at the inception of the Plan: (a) shares available for grants of awards under the Preexisting Plans immediately prior to the Effective Date and (b) shares subject to outstanding awards under the Preexisting Plans on the Effective Date and as to which an event occurs (including expiration or forfeiture) which results in such shares again being available for Awards under the Plan as determined pursuant to Section 5.01(b). Shares of Stock issued under the Plan shall be counted against this limit in the manner specified in Section 5.01(b).
- (b) *Manner of Counting Shares.* If any shares subject to an Award or Preexisting Plan award are forfeited, canceled, exchanged, or surrendered or such Award or award is settled in cash or otherwise terminates without a distribution of shares to the Participant, including (i) the number of shares withheld in payment of any exercise or purchase price of or tax obligation relating to such an Award or award and (ii) the number of shares surrendered in payment of any exercise or purchase price of or tax obligation relating to any Award or award, such number of shares will again be available for Awards under the Plan. The Committee may make determinations and adopt regulations for the counting of shares relating to any Award to ensure appropriate counting, avoid double counting (in the case of tandem or substitute awards), and provide for adjustments in any case in which the number of shares actually distributed differs from the number of shares previously counted in connection with such Award.
- (c) *Type of Shares Distributable.* Any shares of Stock distributed pursuant to an Award may consist, in whole or in part, of authorized and unissued shares or treasury shares, including shares acquired by purchase in the open market or in private transactions.
- (d) *Capital Structure Change and Adjustments to Awards.* In the event there is a change in the capital structure of the Company as a result of any stock dividend or split, recapitalization, issuance of a new class of common stock, merger, consolidation, spin-off or other similar corporate change, or any distribution to stockholders of Stock other than regular cash dividends, the Committee may make an equitable adjustment in the number of shares of Stock and forms of the Awards authorized to be granted under the Plan, including any limitation imposed on the number of shares of Stock with respect to which an Award may be granted in the aggregate under the Plan or to any Participant, and to make appropriate adjustments (including exercise price) to any outstanding Awards.

6.01 *Types of Awards .*

- (a) *Stock Options.* The Committee may award an Option in the form of an ISO or a NQSO having such terms and conditions as the Committee may specify. Options will expire no more than 10 years after the date they are granted. The exercise price per share of Stock covered by an Option is determined by the Committee, but cannot be less than 100% of the Fair Market Value of a share of Stock on the date of grant. If the grantee of an ISO beneficially owns more than 10% of the voting power of the shares of common stock of the Company, the ISO will be exercisable for no more than five years from the date of grant and its exercise price must be no less than 110% of the Fair Market Value of a share of Stock on the date of grant or such other price required by the Code. Notwithstanding anything to the contrary herein, not more than nineteen million (19,000,000) shares of Stock may be issued pursuant to ISOs. The exercise price is payable in such form and by
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such method as the Committee may specify. ISOs shall not be granted to Non-Employee Directors or other nonemployees.

- (b) *Stock Appreciation Rights (SARs)*. SARs may be granted independently of an Option or in conjunction with all or any part of an Option, upon such terms and conditions as the Committee may determine. Upon exercise, an SAR entitles a Participant to receive an amount equal to the positive difference between the fair market value of one share of Stock on the date the SAR is exercised and the exercise price, times the number of shares of Stock with respect to which the SAR is exercised. An SAR or applicable portion thereof shall terminate and no longer be exercisable upon the termination or exercise of any related Option. The Committee will determine whether an SAR shall be settled in cash, Stock or any combination thereof.
 - (c) *Other Stock-Based Awards*. The Committee may grant other types of Awards of Stock, or Awards based in whole or in part by reference to the fair market value of Stock. Such other Stock-Based Awards may include, without limitation, Restricted Stock, Restricted Stock Units, Dividend Equivalents, performance shares or performance share units. NQSOs or SARs may be awarded in connection with or as a part of Other Stock-Based Awards. The Committee shall determine whether any Other Stock-Based Awards shall be settled in cash, Stock or any combination thereof.
 - (d) *Performance Conditions*. The right of a Participant to exercise or receive a grant or settlement of any Award, and the timing thereof, may be subject to such performance conditions as may be specified by the Committee. The Committee may use such business criteria and other measures of performance as it may deem appropriate in establishing any performance conditions, and may exercise its discretion to reduce or increase the amounts payable under any Award, except as limited herein the case of a Performance Award intended to qualify under Code Section 162(m).
 - (e) *Performance Awards Granted to Designated Participants*. If the Committee determines that a Performance Award should qualify as “performance-based compensation” for purposes of Code Section 162(m), the grant and/or settlement of such Performance Award shall be contingent upon achievement of pre-established performance goals and other terms set forth below:
 - (i) *Performance Goals and Performance Periods*. The performance goals for such Performance Awards and the performance periods over which performance is measured shall be established by the Committee consistent with the requirements of Code Section 162(m) and regulations thereunder.
 - (ii) *Business Criteria*. One or more of the following business criteria for the Company (on a consolidated basis), and/or specified business units or ventures of the Company, shall be used by the Committee in establishing performance goals for such Performance Awards: (A) earnings per share; (B) revenues; (C) cash flow; (D) cash flow return on investment; (E) return on assets, return on investment, return on capital, and/or return on equity; (F) identification and/or consummation of investment opportunities or completion of specified projects in accordance with corporate business plans; (G) operating margin; (H) net income, net operating income, pretax earnings, pretax earnings before interest, depreciation and amortization, pretax operating earnings after interest expense and before incentives, service fees, and extraordinary or special items, and/or operating earnings; (I) total stockholder return; (J) economic value created; and (K) any of the above as compared to the performance of a published or special index deemed applicable by the Committee.
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- (iii) *Settlement of Performance Awards.* Settlement of such Performance Awards shall be in cash, Stock, other Awards, or other property, in the discretion of the Committee. The Committee may, in its discretion, reduce the amount of a settlement otherwise to be made in connection with such Performance Awards, but may not exercise discretion to increase any such amount payable to a Participant in respect of a Performance Award. Performance Awards shall be forfeited in the event of termination of employment by the Participant prior to the end of a performance period, except as specifically approved by the Committee or any delegate authorized by the Committee.
- (iv) *Written Determinations.* All determinations by the Committee as to the establishment of performance goals, the amount of any Performance Award pool or potential individual Performance Awards and as to the achievement of performance goals relating to Performance Awards shall be made in writing in the case of any Award intended to qualify under Code Section 162(m). The Committee may not delegate any responsibility relating to such Performance Awards.
- (v) *Construction.* If any provision of the Plan or any agreement relating to such Performance Awards does not comply or is inconsistent with the requirements of Code Section 162(m), such provision shall be construed or deemed amended to the extent necessary to conform to such requirements.
- (f) *Maximum Limits on Awards to a Participant.* The maximum number of shares of Stock with respect to which Awards in the form of Options, SARs and Other Stock-Based Awards may be granted to an individual in any calendar year is 1,500,000 shares.
- (g) *Deferrals.* The Committee may permit the deferral of payment of any Awards under the Plan or may amend existing award agreements under any Preexisting Plan to provide for a deferral feature. The terms and conditions of any such deferral shall be determined by the Committee in its sole discretion.
- (h) *Repricing.* Except in connection with a change in the Company's capital structure, the Committee may not reduce the exercise price of an outstanding Option or SAR.
- (i) *Reloads.* No reloads will be permitted; i.e. options that provide for the automatic grant of a new Option or SAR upon the exercise of an outstanding Option or SAR.
- (j) *Substitution.* An Option or SAR with a lower exercise or base price may not be substituted for an existing Option or SAR.

7.01 General Provisions .

- (a) *Compliance with Legal and Exchange Requirements.* The Plan, the granting and exercising of Awards thereunder, and the other obligations of the Company under the Plan and any Award Agreement, shall be subject to all applicable federal and state laws, rules and regulations, and to such approvals by any regulatory or governmental agency as may be required. The Company, in its discretion, may postpone the issuance or delivery of Stock under any Award until completion of such stock exchange listing or registration or qualification of such Stock or other required action under any state, federal or foreign law, rule or regulation as the Company may consider appropriate, and may require any Participant to make such representations and furnish such information as it may consider appropriate in connection with the issuance or delivery of Stock in compliance with applicable laws, rules and regulations.
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- (b) *Nontransferability.* Except as otherwise provided in this Section 7.01(b), Awards shall not be transferable by a Participant other than by will or the laws of descent and distribution or pursuant to a designation of a Beneficiary, and Awards shall be exercisable during the lifetime of a Participant only by such Participant or his guardian or legal representative. In addition, except as otherwise provided in this Section 7.01(b), no rights under the Plan may be pledged, mortgaged, hypothecated, or otherwise encumbered, or subject to the claims of creditors. The foregoing notwithstanding, the Committee may, in its sole discretion, provide that Awards (or rights or interests therein) other than ISOs and Awards in tandem with ISOs shall be transferable without consideration, to a Participant's immediate family members (i.e., spouse, children, grandchildren, or siblings, as well as the Participant), to trusts for the benefit of such immediate family members, and to partnerships in which such family members are the only parties, or other transfers deemed by the Committee to be consistent with the purposes of the Plan.
- (c) *No Right to Continued Employment.* Neither the Plan nor any action taken thereunder shall be construed as giving any employee the right to be retained in the employ of the Company, nor shall it interfere in any way with the right of the Company to terminate any employee's employment at any time.
- (d) *Taxes.* The Company is authorized to withhold from any Award granted, any payment relating to an Award under the Plan, including from a distribution of Stock, or any payroll or other payment to a Participant, amounts of withholding and other taxes due in connection with any transaction involving an Award, and to take such other action as the Committee may deem advisable to enable the Company and Participants to satisfy obligations for the payment of withholding taxes and other tax obligations relating to any Award. This authority shall include authority to withhold or receive Stock or other property and to make cash payments in respect thereof in satisfaction of a Participant's tax obligations. Other provisions of the Plan notwithstanding, only the minimum amount of Stock deliverable in connection with an Award necessary to satisfy statutory withholding requirements will be withheld.
- (e) *Amendments and Termination.* The Board of Directors may amend, suspend or terminate the Plan at any time, *provided*, that unless terminated earlier by the Board, the Plan shall terminate on April 20, 2011. Termination of the Plan shall not affect the terms and conditions of any Award that is outstanding on the date that the Plan is terminated. No amendment may impair the rights of a holder of an outstanding Award without the consent of such holder. However, except in the case of an adjustment in connection with a capital structure change (as described above), stockholder approval is required for any amendment to the Plan that requires such approval under the rules of the principal stock exchange on which the stock is then traded or that would (i) increase the number of shares of Stock that may be issued in connection with Awards under the Plan, (ii) increase the maximum number of shares of Stock with respect to which Awards in the form of Options, SARs or Other Stock-Based Awards may be granted to any individual in any calendar year or (iii) eliminate or change the restrictions regarding the surrender and repricing of Options and SARs.
- (f) *No Rights to Awards; No Stockholder Rights.* No Participant or employee shall have any claim to be granted any Award under the Plan, and there is no obligation for uniformity of treatment of Participants and employees. No Award shall confer on any Participant any of the rights of a stockholder of the Company unless and until Stock is duly issued or transferred to the Participant in accordance with the terms of the Award.
- (g) *Unfunded Status of Awards.* The Plan is intended to constitute an "unfunded" plan for incentive and deferred compensation. With respect to any payments not yet made to a Participant pursuant to an Award, nothing contained in the Plan or any Award shall give
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any such Participant any rights that are greater than those of a general creditor of the Company.

- (h) *No effect on other benefits.* The receipt of Awards under the Plan shall have no effect on any benefits to which a Participant may be entitled under another Plan or otherwise, or preclude a Participant from receiving any such benefits.
 - (i) *No Fractional Shares.* No fractional shares of Stock shall be issued or delivered pursuant to the Plan or any Award. The Committee shall determine whether cash, other Awards, or other property shall be issued or paid in lieu of such fractional shares or whether such fractional shares or any rights thereto shall be forfeited or otherwise eliminated.
 - (j) *Governing Law.* The validity, construction, and effect of the Plan, any rules and regulations relating to the Plan, and any Award Agreement shall be determined in accordance with the laws of the state of Delaware, without giving effect to principles of conflicts of laws, and applicable federal law.
 - (k) *Effective Date.* The Plan originally became effective (the “Effective Date”) upon approval by the Company’s stockholders at a meeting of stockholders duly held in accordance with the Delaware General Company Law on April 20, 2001. The Plan is hereby amended and restated effective as of January 1, 2006, contingent up the approval by the Company’s stockholders at a meeting of stockholders duly held in accordance with the Delaware General Company Law, or any adjournment thereof in accordance with applicable provisions of the Delaware General Company Law.
 - (l) *Awards to Participants Outside the United States.* The Committee may modify the terms of any Award under the Plan granted to a Participant who is, at the time of grant or during the term of the Award, resident or primarily employed outside of the United States in any manner deemed by the Committee to be necessary or appropriate in order that such Award shall conform to laws, regulations and customs of the country in which the Participant is then resident or primarily employed, or to preserve the value and other benefits of the Award to the Participant
 - (m) *Titles and Headings; Certain Terms.* The titles and headings of the sections in the Plan are for convenience of reference only. In the event of any conflict, the text of the Plan, rather than such titles of headings, shall control. The term “including”, when used in the Plan, means in each case “including without limitation.”
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