APPLIED SIGNAL TECHNOLOGY INC
Form SC 14D9
December 30, 2010
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SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14D-9

(Rule 14d-101)

Solicitation/Recommendation Statement Under Section 14(d)(4)

of the Securities Exchange Act of 1934

APPLIED SIGNAL TECHNOLOGY, INC.

(Name of Subject Company)

APPLIED SIGNAL TECHNOLOGY, INC.

(Name of Person Filing Statement)

Common Stock, without par value

(Title of Class of Securities)

038237103

(CUSIP Number of Class of Securities)

William B. Van Vleet III

President and Chief Executive Officer

460 West California Avenue

Sunnyvale, California 94086

(408) 749-1888

(Name, Address and Telephone Number of Person Authorized to Receive Notices and

Communications on Behalf of Person Filing Statement)

Copy to:

Jason C. Harmon, Esq.

DLA Piper LLP (US)

6225 Smith Avenue

Baltimore, Maryland 21209

(410) 580-4170

¨ **Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.**

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Item 1. ***Subject Company Information.***
Name and Address.

The name of the subject company is Applied Signal Technology, Inc., a California corporation (the Company). The address of the Company s principal executive offices is 460 West California Avenue, Sunnyvale, California 94086, and the Company s telephone number is (408) 749-1888.

Securities.

This Solicitation/Recommendation Statement on Schedule 14D-9 (this Schedule 14D-9) relates to the common stock, without par value, of the Company (the Common Stock).

The shares of Common Stock are hereinafter referred to as the Shares. As of December 28, 2010, there were 14,029,294 Shares issued and outstanding, of which 597,580 Shares were subject to vesting.

Item 2. ***Identity and Background of Filing Person.***
Name and Address.

The Company is the person filing this Schedule 14D-9 and is the subject company. The Company s name, address and telephone number are set forth in Item 1 above. The Company s website is www.appsig.com. The website and the information on or connected to the website are not a part of this Schedule 14D-9, are not incorporated herein by reference and should not be considered a part of this Schedule 14D-9.

Tender Offer.

This Schedule 14D-9 relates to the tender offer by RN Acquisition Company, a California corporation (Purchaser), a wholly owned subsidiary of Raytheon Company, a Delaware corporation (Parent), and pursuant to which Purchaser has offered to purchase all of the outstanding Shares that are not already owned by Parent and its subsidiaries at a price of $38.00 per Share (the Offer Price), net to the selling shareholder in cash, without interest and less any required withholding taxes, upon the terms and conditions set forth in the Offer to Purchase dated December 30, 2010 (the Offer to Purchase) and the related Letter of Transmittal (which, together with any amendments or supplements, collectively constitute the Offer). The Offer is described in a Tender Offer Statement on Schedule TO (together with any exhibits thereto, the Schedule TO) filed by Parent and Purchaser with the Securities and Exchange Commission (the SEC) on December 30, 2010. Copies of the Offer to Purchase and related Letter of Transmittal are filed as Exhibits (a)(1) and (a)(2) hereto, respectively, and are incorporated herein by reference.

This Offer is being made pursuant to an Agreement and Plan of Merger, dated as of December 18, 2010 (as such agreement may be amended or supplemented from time to time, the Merger Agreement), among Parent, Purchaser and the Company. The Merger Agreement provides, among other things, that following the time Purchaser accepts for payment any Shares validly tendered and not validly withdrawn pursuant to the Offer (the Effective Time of the Offer), Purchaser will be merged with and into the Company, with the Company continuing as the surviving corporation and wholly-owned by Parent (the Merger and, together with the Offer and the other transactions contemplated by the Merger Agreement, the Contemplated Transactions), upon the terms and conditions set forth in the Merger Agreement and in accordance with the California General Corporation Law, as amended (the CGCL). In certain circumstances, Parent, Purchaser and the Company have agreed to proceed with a one-step merger if the Offer is not consummated. As a result of the Merger, the Shares that are not acquired in the Offer, other than the Shares owned by Parent and its subsidiaries (including Purchaser), would be converted into the right to receive a per share amount equal to the Offer Price, net to the shareholder in cash, without interest and less any required withholding taxes. Following the effective time of the Merger (the Effective Time of the Merger), the Company will continue as a wholly owned subsidiary of Parent

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(the Company after the Effective Time of the Merger is sometimes referred to herein as the Surviving Corporation). A copy of the Merger Agreement is filed as Exhibit (e)(1) to this Schedule 14D-9.

The initial expiration date of the Offer is 12:00 midnight, New York City time, at the end of the day on January 28, 2011, subject to extension in certain circumstances as required or permitted by the Merger Agreement and applicable law. The foregoing summary of the Offer is qualified in its entirety by the more detailed description and explanation contained in the Offer to Purchase and related Letter of Transmittal, copies of which have been filed as Exhibits (a)(1) and (a)(2) hereto, respectively.

The Schedule TO states that the business address and telephone number for Parent and Purchaser is 870 Winter Street, Waltham, Massachusetts 02451-1149, (781) 522-3000.

Item 3. ***Past Contacts, Transactions, Negotiations and Agreements.***

Except as described in this Schedule 14D-9 or in the excerpts from the Applied Signal Definitive Proxy Statement on Schedule 14A, filed with the SEC on February 11, 2010 (the 2010 Proxy Statement), relating to the 2010 Annual Meeting of Shareholders, which excerpts are filed as Exhibit (e)(9) to this Schedule 14D-9 and incorporated herein by reference, as of the date of this Schedule 14D-9, there are no material agreements, arrangements or understandings, nor any actual or potential conflicts of interest, between Applied Signal or any of its affiliates, on the one hand, and (i) Applied Signal or any of its executive officers, directors or affiliates, or (ii) Raytheon Company, RN Acquisition Company or any of their respective executive officers, directors or affiliates, on the other hand. Exhibit (e)(9) is incorporated herein by reference and includes the following sections from the 2010 Proxy Statement: Compensation of Directors, Compensation Discussion and Analysis, Executive Compensation, Executive Employment Agreements, Related Person Transactions and Principal Shareholders and Stock Ownership by Management.

Any information contained in the excerpts from the 2010 Proxy Statement incorporated by reference herein shall be deemed modified or superseded for purposes of this Schedule 14D-9 to the extent that any information contained herein modifies or supersedes such information.

Arrangements between the Company, Parent and Purchaser

Merger Agreement

The summary of the Merger Agreement and the description of the terms and conditions of the Offer and related procedures and withdrawal rights contained in the Offer to Purchase, which is being filed as Exhibit (a)(1) to the Schedule TO, are incorporated in this Schedule 14D-9 by reference. Such summary and description are qualified in their entirety by reference to the Merger Agreement, which has been included as Exhibit (e)(1) to this Schedule 14D-9 and is incorporated herein by reference.

Tender and Voting Agreements

Parent and Purchaser entered into Tender and Voting Agreements dated as of December 18, 2010 (collectively, the Tender and Voting Agreements) with certain shareholders of the Company who are also members of the Board of Directors of the Company (the Board) and certain of their affiliates. The summary of the Tender and Voting Agreements contained in the Offer to Purchase, which is being filed as Exhibit (a)(1) to the Schedule TO, is incorporated in this Schedule 14D-9 by reference. Such summary does not purport to be complete and is qualified in its entirety by reference to the Tender and Voting Agreements, which are filed as Exhibits (e)(2), (e)(3), (e)(4), (e)(5), (e)(6), (e)(7) and (e)(8) hereto and are incorporated herein by reference.

The Merger Agreement and the Tender and Voting Agreements have been filed as exhibits to this Schedule 14D-9 to provide shareholders with information regarding their terms and are not intended to modify

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or supplement any factual disclosures about the Company or Parent in the Company s or Parent s public reports filed with the SEC. In particular, the Merger Agreement and the Tender and Voting Agreements and the summary of their terms contained in the Current Report on Form 8-K filed by the Company with the SEC on December 20, 2010, and incorporated herein by reference, are not intended to be, and should not be relied upon as, disclosures regarding any facts or circumstances relating to the Company or Parent. Each agreement contains representations and warranties that the parties to each such agreement made to and solely for the benefit of each other. Investors are not third-party beneficiaries under the Merger Agreement or the Tender and Voting Agreements and should not rely on such representations and warranties as characterizations of the actual state of facts or circumstances, since they were only made as of the date of the Merger Agreement and the Tender and Voting Agreements, and in the case of the representations and warranties in the Merger Agreement, are qualified by information contained in the confidential disclosure schedule that the Company delivered in connection with signing the Merger Agreement. Furthermore, the representations and warranties in the Merger Agreement have been negotiated with the principal purpose of (i) establishing the circumstances under which the Purchaser may have the right not to consummate the Offer or Parent or the Company may have the right to terminate the Merger Agreement and (ii) allocating risk between the parties, rather than establishing matters as facts. The representations and warranties also may be subject to a contractual standard of materiality different from that generally applicable under federal securities laws. Moreover, information concerning the subject matter of such representations and warranties may change after the date of the Merger Agreement, which subsequent information may or may not be fully reflected in the Company s public disclosure.

Confidentiality Agreement

On October 19, 2010, the Company and Parent entered into a mutual nondisclosure agreement (the Confidentiality Agreement), in connection with a potential merger, acquisition or other extraordinary business transaction between the parties, under which Parent agreed, among other things, to keep confidential the information furnished to it and its representatives by or on behalf of the Company for two years from the date of the Confidentiality Agreement, and to use such information only for purposes of evaluating a transaction with the Company.

Representation on the Company Board

The Merger Agreement provides that, upon the Effective Time of the Offer, Parent shall be entitled to designate, from time to time, to serve on the Board such number of directors as will give Parent representation equal to at least that number of directors (rounded up to the next whole number) determined by multiplying (i) the total number of directors on the Board (giving effect to the directors elected or appointed pursuant to the right of Parent described in this paragraph) by (ii) the percentage that (A) the number of Shares owned by Parent and its subsidiaries (including Shares accepted for payment pursuant to the Offer) bears to (B) the number of Shares then outstanding. The Company has agreed to take all action requested by Parent necessary to cause Parent s designees to be elected or appointed to the Board, including obtaining resignations of incumbent directors and increasing the size of the Board.

The Merger Agreement provides that, in the event Parent s designees are elected or appointed to the Board, until the Effective Time of the Merger, the Board will have at least two directors who were directors on the date of the Merger Agreement and who are independent directors within the meaning of the applicable Nasdaq Marketplace Rules (Continuing Directors).

The Merger Agreement provides that following the election or appointment of Parent s designees to the Board pursuant to the terms of the Merger Agreement and until the Effective Time of the Merger, the affirmative vote of a majority of the Continuing Directors shall be required for the Company to consent: (i) to amend or terminate the Merger Agreement, (ii) to waive any of the Company s rights or remedies under the Merger Agreement or (iii) to extend the time for the performance of any of the obligations or other acts of Parent or Purchaser.

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Director and Executive Officer Relationships with and Securities Ownership in Parent

The Company agreed in the Merger Agreement, if requested by Parent, to use its reasonable best efforts to obtain, after the date of the Merger Agreement, executed retention and non-competition agreements (the Retention Agreements) from employees of the Company to be identified by Parent. Parent has not identified any employees with which it seeks to enter into any Retention Agreements as of the date of the filing of this Schedule 14D-9 with the SEC.

As of December 29, 2010, to the knowledge of the Company after making reasonable inquiry, none of the Company s directors or executive officers beneficially owns any shares of common stock, par value $.01 per share, of Parent, except that Milton E. Cooper, a director of the Company, is deemed to beneficially own 40 shares of common stock of Parent, which are held in an account managed by a third party.

Commercial Relationships

Parent and the Company have an ongoing business relationship relating to teaming arrangements that are common in the industries in which Parent and the Company operate. None of these teaming arrangements is material to Parent or the Company. In addition, over the past two years the Company has served as a subcontractor to Parent on various projects. Such subcontracts were entered into in the ordinary course of business and on arm s-length terms customary in the industry. Pursuant to these subcontracts, the Company realized revenue of approximately $3.5 million in the Company s 2009 fiscal year and approximately $500,000 in the Company s 2010 fiscal year.

Arrangements between the Company and its Executive Officers, Directors and Affiliates

The Company s executive officers and the members of the Board may be deemed to have certain interests in the Contemplated Transactions, including the Offer and the Merger, that may be different from or in addition to those of the Company s shareholders generally. These interests may create potential conflicts of interest. The Board was aware of those interests and considered them, among other matters, in reaching its decision to adopt the Merger Agreement and approve the Contemplated Transactions.

For further information with respect to the arrangements between the Company and its executive officers, directors and affiliates described in this Item 3, please also see the excerpts from the 2010 Proxy Statement, which excerpts are filed as Exhibit (e)(9) to this Schedule 14D-9 and incorporated herein by reference.

Cash Payable for Outstanding Shares Pursuant to the Offer

If the directors and executive officers of the Company who own Shares tender their Shares for purchase pursuant to the Offer, they will receive the same cash Offer Price on the same terms and conditions as the other shareholders of the Company. As of December 28, 2010, the directors and executive officers of the Company beneficially owned, in the aggregate, 496,920 Shares, excluding Shares subject to exercise of Options and Restricted Stock (as discussed, and such capitalized terms as defined, below). If the directors and executive officers were to tender all 496,920 of these Shares for purchase pursuant to the Offer and those Shares were accepted for purchase and purchased by Purchaser, then the directors and executive officers would receive an aggregate of $18,882,960 in cash pursuant to tenders into the Offer. The beneficial ownership of Shares of each director and executive officer is further described under the heading Principal Shareholders and Stock Ownership by Management in the excerpts to the 2010 Proxy Statement filed as Exhibit (e)(9) hereto.

Company Stock Options

Under the Merger Agreement, upon the earlier of the Effective Time of the Offer or the Effective Time of the Merger, each unexercised Company Stock Option (as defined in the Merger Agreement and referred to herein as an Option), whether vested or unvested, that is outstanding immediately prior to the Effective Time of the Offer or the Effective Time of the Merger, as the case may be, shall be canceled. The holders of each such Option will become entitled to receive an amount in cash equal to the product of (a) the excess of the Offer Price over the exercise price per Share subject to such Option multiplied by (b) the number of Shares subject to such Option immediately prior to the Effective Time of the Offer or the Effective Time of the Merger, as the case may be, without interest and less any required withholding taxes (such amount, the Option Spread Value). The Option Spread Value will be paid to each holder of an Option as soon as practicable after the Effective Time of the Offer or the Effective Time of the Merger, as the case may be.

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The table below sets forth information regarding the Options held by the Company s directors and executive officers as of December 28, 2010 that would be canceled and exchanged immediately prior to the Effective Time of the Offer or the Effective Time of the Merger, as the case may be, into the right to receive the Option Spread Value. All of the Options are vested.

	Options to be Converted to the Option Spread Value	
Name	**Number of Shares**	**Weighted Average Exercise Price per Share**
William B. Van Vleet III	20,000	$ 18.85
James E. Doyle	46,250	$ 23.23
Dr. John Treichler	30,000	$ 29.15
Renato F. Roscher, Jr.	32,000	$ 25.14
Mark Andersson		$
Dr. Joseph Leonelli	12,000	$ 18.85
Roger W. Anderson		$
Dr. John F. Pesaturo	12,000	$ 18.85
Milton E. Cooper	30,000	$ 25.43
John P. Devine	15,000	$ 24.76
David D. Elliman	37,500	$ 17.68
Marie S. Minton		$
Robert J. Richardson	35,000	$ 18.02

The table below sets forth the Option Spread Value of the Options held by the Company s directors and executive officers, as of December 28, 2010, that will be paid following the Effective Time of the Offer or the Effective Time of the Merger, as the case may be. All of such Options are vested.

Name	**Option Spread Value**
William B. Van Vleet III	$ 383,000
James E. Doyle	$ 683,275
Dr. John R. Treichler	$ 265,650
Renato F. Roscher, Jr.	$ 411,520
Mark Andersson	$
Dr. Joseph Leonelli	$ 229,800
Roger W. Anderson	$
Dr. John F. Pesaturo	$ 229,800
Milton E. Cooper	$ 377,175
John P. Devine	$ 198,675
David D. Elliman	$ 761,850
Marie S. Minton	$
Robert J. Richardson	$ 699,275

Simultaneous with the first to occur of the Effective Time of the Offer and the Effective Time of the Merger, Parent and Purchaser shall pay the Company an amount in cash equal to the aggregate amount of consideration to be paid to holders of Options and the Company shall cause such consideration to be paid to such holders pursuant to the terms of the Merger Agreement.

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Restricted Shares

At the earlier of the Effective Time of the Offer or the Effective Time of the Merger, each unvested Company Restricted Share (as defined in the Merger Agreement and referred to herein as Restricted Shares) outstanding immediately prior to the Effective Time of the Offer or the Effective Time of the Merger, as the case may be, will be converted, with the holder of such Restricted Share becoming entitled to receive upon vesting an amount in cash equal to the product of (a) the amount of the Offer Price and (b) the number of Restricted Shares held by such holder, without interest and less any required withholding taxes (such amount, the Restricted Share Value), and Parent shall cause the Surviving Corporation to pay the Restricted Share Value to such holder as soon as practicable following the vesting of such Restricted Share in accordance with its terms. The table below sets forth the gross Restricted Share Value of Restricted Shares held by the Company s directors and executive officers, as of December 28, 2010.

Name	Total Value of Unvested Restricted Shares	
William B. Van Vleet III	$	4,009,000*
James E. Doyle	$	722,000
Dr. John R. Treichler	$	1,216,000
Renato F. Roscher, Jr.	$	665,000
Mark Andersson	$	2,926,000
Dr. Joseph Leonelli	$	608,000
Roger W. Anderson	$	1,941,230
Dr. John F. Pesaturo	$	579,500
Milton E. Cooper	$	
John P. Devine	$	
David D. Elliman	$	
Marie S. Minton	$	
Robert J. Richardson	$	

* 40% of the unvested Restricted Shares held by Mr. Van Vleet will accelerate on the first to occur of the Effective Time of the Offer or the Effective Time of the Merger.

Employee Stock Purchase Plan

Under the Company s 1993 Employee Stock Purchase Plan, as amended (the ESPP), participants are permitted to purchase Shares at a discount on certain dates through payroll deductions within a pre-determined purchase period. Employee directors and executive officers of the Company are eligible to participate in the ESPP. Certain executive officers of the Company currently participate in the ESPP. Pursuant to the Merger Agreement, the Company has agreed that, among other things, (i) participation in the ESPP is limited to those employees who were participants as of the date of the Merger Agreement, (ii) no purchase period will be commenced after the date of the Merger Agreement, (iii) each purchase right under the ESPP outstanding immediately prior to the Effective Time of the Offer or the Effective Time of the Merger, as the case may be, shall be used to purchase from the Company whole shares of Common Stock (subject to the provisions of the ESPP regarding the maximum number and value of shares purchasable per participant) at the applicable price determined under the terms of the ESPP for the then outstanding purchase period, using such date as the final purchase date for such purchase period, and any remaining accumulated but unused payroll deductions shall be distributed to the relevant participants without interest as promptly as practicable following the Effective Time of the Offer or the Effective Time of the Merger, as the case may be, and (iv) the ESPP will terminate, effective upon the earlier of the purchase date for the purchase period in effect on the date of the Merger Agreement and the Effective Time of the Offer or the Effective Time of the Merger, as the case may be.

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Section 16 Matters

Pursuant to the Merger Agreement, the Company has agreed to take all reasonable steps as may be required to cause the treatment of the Options and Restricted Shares in connection with the Merger Agreement by each individual who is a director or executive officer of the Company subject to Section 16 of the Exchange Act to be exempt under Rule 16b-3 under the Exchange Act.

Severance and Change-in-Control Arrangements

On August 18, 2004, the Compensation Committee of the Board (the Compensation Committee) adopted, and has subsequently amended from time to time, most recently on December 13, 2010, the Company s Executive Retention and Severance Plan (the Executive Severance Plan). The Executive Severance Plan provides certain benefits to the Company s executive officers and key employees upon involuntary termination of employment and in connection with a Change in Control of the Company, as defined in the Executive Severance Plan and described below.

A participant in the Executive Severance Plan whose employment is terminated without cause or resigns following certain adverse changes in employment circumstances, including any such termination or resignation that occurs during a period from the first public announcement of a change in control and ending 12 months after a change in control, will be entitled to specified severance benefits. In addition to accrued compensation, including any earned but unpaid prior year bonus, and benefits earned under the Company s employee benefit and equity compensation plans, the terminated participant will receive cash severance payments equal to the aggregate of the participant s base salary for a period of 24 months in the case of the chief executive officer, and 12 months in the case of other executive officers, plus an amount equal to the participant s annual bonus for one year. In addition, participants will be entitled to receive for the same respective periods employer-paid health benefits substantially similar to those provided immediately prior to the termination. Participants will also be entitled to acceleration in full of the vesting of equity awards they hold upon any such termination occurring within 24 months following a change in control. Provision of all such benefits is conditioned upon the participant s execution of a release of claims against us and entry into a covenant not to compete with us set forth in a restrictive covenants agreement. The participant may elect to terminate the restrictive covenants agreement, including the termination of the non-competition agreement, in exchange for forfeiting any additional severance payments payable after such termination. The treatment of any stock based awards held by Executive Severance Plan participants upon a change in control of the Company will be determined under the plans or agreements providing for such options or awards.

Following a participant s termination of employment, the participant will be indemnified by us to the fullest extent permitted under applicable law and will be provided with directors and officers liability insurance (if applicable) for a period of six years, each as set forth in the Executive Severance Plan. If any payment or benefit received or to be received by the participant pursuant to the Executive Severance Plan or otherwise would be subject to the excise tax imposed by Section 4999 of the Internal Revenue Code, then the Company will pay the executive officer only such amounts as will not exceed the amount that produces the greatest after-tax benefit to the participant.

For purposes of the Executive Severance Plan, a Change in Control means the occurrence of any of the following:

Any person or entity becomes the beneficial owner, directly or indirectly, of more than 50% of the Company s outstanding shares of Common Stock;

The Company is a party to a merger, consolidation, or similar corporate transaction, or series of related transactions, which results in the holders of the Company s voting securities outstanding immediately prior to such transaction(s) failing to retain immediately after such transaction(s) direct or indirect beneficial ownership of more than 50% of the Company s outstanding shares of Common Stock;

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The sale or disposition of all or substantially all of our assets or consummation of any transaction, or series of related transactions, having a similar effect; or

A change in the composition of the Board within any consecutive two-year period as a result of which fewer than a majority of the directors are incumbent directors.

For purposes of the Executive Severance Plan, Cause means the occurrence of any of the following, as determined in good faith by a vote of not less than two-thirds of the entire membership of the Board at a meeting of the Board called and held in whole or in part for such purpose:

The participant s commission of any material act of fraud, embezzlement, dishonesty, intentional falsification of any employment or other Company records, or any criminal act which impairs his or her ability to perform his or her duties;

The participant s willful misconduct, breach of fiduciary duty for personal profit or material failure to abide by our code of conduct or other policies;

The participant s unauthorized use or disclosure of the Company s confidential information or trade secrets; or

The participant s conviction for a felony causing material harm to the Company s reputation and standing.

For purposes of the Executive Severance Plan, Good Reason means the occurrence during the two-year period following a change in control of the Company (as described above) of any of the following conditions without the participant s consent:

A material, adverse change in the participant s position, duties, substantive functional responsibilities, or reporting responsibilities, causing the executive s position to be of materially lesser rank or responsibility;

A material, adverse change in the authority, duties, substantive functional responsibilities or reporting responsibilities of the officer to whom the participant is required to report, causing such officer s position to be of materially lesser rank or responsibility within the Company or an equivalent business unit of its parent;

A material decrease in the size of the budget within the Company over which the participant has responsibility;

A material decrease in the participant s base salary rate or target bonus amount;

Any failure to continue to provide the executive with the opportunity to participate in any benefit or compensation plans and programs in which the participant was participating immediately prior to such failure, or to provide the executive with all other fringe benefits from time to time in effect for the benefit of any employee group that customarily includes a person holding the employment position or a comparable position then held by the participant;

The relocation of the participant s work place to a location that increases the regular commute distance by more than thirty (30) miles, or, following the consummation of a Change in Control of the Company, the imposition of business travel requirements substantially

more demanding than such travel requirements existing immediately prior to the Change in Control of the Company; or

Following the consummation of a Change in Control of the Company, any material breach of the Executive Severance Plan.

Summary of Certain Benefits Payable in Connection with the Contemplated Transactions

The table below contains an estimate of the value of certain material payments and benefits payable, in connection with the Contemplated Transactions, to the Company s executive officers, directors and affiliates. The table excludes, among other things, payments that may be made for (i) outstanding Shares that are tendered

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for purchase pursuant to the Offer and (ii) the Option Spread Value for Options that are estimated to be vested on January 28, 2011, an illustrative date of the Offer Closing. Amounts shown in the table are estimates and assume, among other things, that each executive officer or director of the Company will have a qualifying termination of his or her employment on January 28, 2011. These estimates will not be used to determine actual benefits paid, which will be calculated in accordance with terms of the Merger Agreement or the related agreement, plan or arrangement, as applicable, and may materially differ from these estimates.

Name	Severance	Restricted Shares	Restricted Share Acceleration	Health Care Premiums
William B. Van Vleet III	$ 1,767,600	105,500	$ 4,009,000	$ 41,122
James E. Doyle	$ 495,000	19,000	$ 722,000	$ 20,100
Dr. John R. Treichler	$ 513,000	32,000	$ 1,216,000	$ 14,285
Renato F. Roscher, Jr.	$ 434,000	17,500	$ 665,000	$ 21,877
Mark Andersson	$ 571,200	77,000	$ 2,926,000	$ 1,999
Dr. Joseph Leonelli	$ 392,000	16,000	$ 608,000	$ 2,060
Roger W. Anderson	$ 420,000	51,085	$ 1,941,230	$ 2,202
Dr. John F. Pesaturo	$ 359,800	15,250	$ 579,500	$ 14,603
Milton E. Cooper	$		$	$
John P. Devine	$		$	$
David D. Elliman	$		$	$
Marie S. Minton	$		$	$

Directors Compensation

Under the Company s director compensation policy, only directors who are not employees of the Company receive compensation for their services as directors. Directors are compensated entirely by annual cash payments, payable quarterly. Non-employee directors receive an annual retainer of $76,000, plus a fee of $1,000 per meeting for in-person attendance at each of the four regularly scheduled meetings of the Board per annum. The Chairman of the Audit Committee receives an additional $14,000 annual retainer, the Chairman of the Compensation Committee receives an additional $7,500 annual retainer, the Chairman of the Governance and Nominating Committee receives an additional $5,000 annual retainer and the Chairman of the Board receives an additional $10,000 annual retainer. In addition, the Board determined that each individual member of the M&A Committee would receive $10,000 per month, which total amount shall not exceed $50,000, and the Chairman of the M&A Committee would receive $15,000 per month, which total amount shall not exceed $75,000. The Company also reimburses its non-employee directors for their out-of-pocket expenses incurred in connection with attendance at Board, committee and shareholder meetings and other Company business.

Employee Benefit Matters

The Merger Agreement provides that Parent and its subsidiaries, until December 31, 2011, shall provide each person employed by the Company or its subsidiaries immediately prior to the Effective Time of the Merger and who remains employed by the Company or its subsidiaries on or after the Effective Time of the Merger (Continuing Employees) with compensation (including base salary and bonus opportunities, but not equity-based compensation) and benefits that are materially no less favorable in the aggregate than those provided to the Continuing Employees immediately prior to the Effective Time of the Merger. The Merger Agreement also provides that Parent shall, solely to the extent Parent makes its employee benefits plans available to Continuing Employees after the Effective Time of the Merger, give full credit to Continuing Employees for prior service to the Company or its subsidiaries for determining the eligibility, vesting, benefits levels or accruals for such employees in respect of Parent s employee benefits plans (other than benefit levels and accruals under any retirement, pension or savings plan, except for credit for prior service for the purposes of determining eligibility for a matching contribution under Parent s savings and investment plan), except in cases where credit would result in duplication of benefits.

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Director and Officer Exculpation, Indemnification and Insurance

The Company s articles of incorporation and bylaws provide that the Company shall indemnify its directors and officers, and may indemnify its employees and agents, to the fullest extent permitted by California law.

Based on such indemnification provisions, pursuant to Section 204 of the CGCL, the Company s directors will not be personally liable to the Company or to its shareholders for monetary damages for breach or alleged breach of the directors duty of care or for conduct constituting negligence (or gross negligence) in the exercise of their fiduciary duties. The Company s directors will continue to be subject to personal liability to the Company and its shareholders, however, for, among other things:

- any act or omission that involves intentional misconduct or a knowing and culpable violation of law;
- any act or omission that a director believes to be contrary to the best interests of the Company or its shareholders or that involves the absence of good faith on the part of the director;
- any transaction from which a director derives an improper personal benefit;
- any act or omission that shows a reckless disregard for the director s duty to the Company or its shareholders in circumstances in which the director was aware, or should have been aware, in the ordinary course of performing a director s duties, of a risk of serious injury to the Company or its shareholders; and
- any act or omission that constitutes an unexcused pattern of inattention that amounts to an abdication of the director s duty to the Company or its shareholders under Sections 310 or 316 of the CGCL.

These provisions have no effect on claims against any of the Company s directors in his or her capacity as an officer.

Section 317 of the CGCL has been interpreted to provide for the indemnification of directors, officers, employees and agents against liability and the entitlement to reimbursement of expenses incurred, under certain circumstances, for claims arising under the Securities Act of 1933, as amended (the Securities Act). The SEC has adopted the position, however, that such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Under the Merger Agreement, Parent and Purchaser have agreed that all rights to indemnification, advancement of expenses and exculpation from liabilities for acts or omissions occurring at or prior to the Effective Time of the Merger existing as of the date of the Merger Agreement in favor of the current or former directors or officers of the Company and its subsidiaries (each, an Indemnified Party) as provided in their respective certificates of incorporation or bylaws (or comparable organizational documents) and any indemnification or other agreements of the Company (as in effect at the time of the Merger Agreement) shall be assumed by the Surviving Corporation in the Merger, without further action, upon the Effective Time of the Merger, and shall survive the Merger and shall continue in full force and effect in accordance with their terms. From and after the Effective Time of the Merger, Parent and the Surviving Corporation shall be jointly and severally liable to pay and perform in a timely manner such indemnification obligations.

Under the Merger Agreement, from the Effective Time of the Offer through the sixth anniversary of the Effective Time of the Merger, Parent shall, or shall cause the Surviving Corporation to, cause the Company s directors and officers that are insured under the Company s current directors and officers liability insurance policy in effect as of the date of the Merger Agreement (the Existing D&O Policy) to be covered by a directors and officers liability insurance policy for acts or omissions occurring prior to the Effective Time of the Merger on terms with respect to such coverage and amounts no less favorable than those of the Existing D&O Policy. However, in no event shall the aggregate costs of such insurance policies during any one year exceed 300% of the aggregate annual premiums currently paid by the Company for such insurance.

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Item 4. ***The Solicitation or Recommendation.***

On December 18, 2010, the Board unanimously, among other things: (i) approved and declared advisable the Merger Agreement, the Offer, the Merger and the other Contemplated Transactions, (ii) declared that it is in the best interests of the Company and its shareholders (other than Parent and its subsidiaries) that the Company enter into the Merger Agreement and consummate the Merger and the other Contemplated Transactions and that the Company s shareholders tender their Shares pursuant to the Offer, in each case on the terms and subject to the conditions set forth in the Merger Agreement, (iii) declared that the terms of the Offer and the Merger are fair to the Company and its shareholders (other than Parent and its subsidiaries) and (iv) recommended that the Company s shareholders accept the Offer, tender their Shares pursuant to the Offer and, if required by applicable law, adopt the Merger Agreement and approve the Merger.

The Board unanimously recommends that the Company s shareholders accept the Offer, tender their Shares pursuant to the Offer and, if required by applicable law, adopt the Merger Agreement and approve the Merger.

A copy of the letter to the Company s shareholders, dated December 30, 2010 communicating the recommendation of the Board, as well as a press release, dated December 30, 2010, issued by Parent announcing the commencement of the Offer, are included as Exhibits (a)(8) and (a)(7) to this Schedule 14D-9, respectively, and are incorporated her