

OFFICEMAX INC  
Form DEF 14A  
March 04, 2009

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

**SCHEDULE 14A**

Proxy Statement Pursuant to Section 14(a) of  
the Securities Exchange Act of 1934 (Amendment No. )

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to §240.14a-12

**OfficeMax Incorporated**

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(Name of Registrant as Specified In Its Charter)

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(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

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(1) Amount Previously Paid:

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(3) Filing Party:

(4) Date Filed:

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# **Notice and Proxy Statement**

## **OfficeMax Incorporated Annual Meeting of Stockholders**

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Naperville, Illinois  
Wednesday, April 15, 2009

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**OFFICEMAX INCORPORATED**

**NOTICE OF ANNUAL MEETING**

Wednesday, April 15, 2009  
2:00 p.m., Central Daylight Time

Holiday Inn Select  
1801 N. Naper Blvd.  
Naperville, Illinois 60563

March 4, 2009

Dear Stockholder:

On behalf of the board of directors, it is my pleasure to invite you to our 2009 annual meeting of stockholders to:

elect eight directors;

approve the appointment of KPMG LLP as our independent registered public accounting firm for 2009; and

conduct other business properly brought before the meeting.

Stockholders who owned stock at the close of business on February 17, 2009 can vote at the meeting.

Your vote is important regardless of the number of shares of stock you own. Whether you plan to attend or not, please review our proxy materials and request a proxy card to sign, date, and return or submit your voting instructions by telephone or through the Internet. Instructions for each type of voting are included in the Notice of Internet Availability of Proxy Materials that you received and in this proxy statement. If you attend the meeting and prefer to vote at that time, you may do so.

Thank you for your ongoing support of and continued interest in OfficeMax.

Sincerely yours,

Sam K. Duncan  
Chairman of the Board and  
Chief Executive Officer

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## OfficeMax Incorporated

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OfficeMax Incorporated ("OfficeMax," the "company," or "we") is a leader in both business-to-business and retail office products distribution. We provide office supplies and paper, print and document services, technology products and solutions and furniture to large, medium and small businesses, government offices and consumers. Our customers are served by approximately 33,000 associates through direct sales, catalogs, the Internet and a network of retail stores located throughout the United States, Canada, Australia, New Zealand and Mexico. Our common stock is traded on the New York Stock Exchange ("NYSE") under the ticker symbol 'OMX'. Our corporate headquarters is located at 263 Shuman Boulevard, Naperville, Illinois 60563, and our website address is [www.officemax.com](http://www.officemax.com).

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## Annual Meeting Information

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### *Proxy Statement*

This proxy statement summarizes information we must provide to you under the rules of the Securities and Exchange Commission ("SEC"). It is designed to assist you in voting your shares of our stock. We have provided this proxy statement in connection with the solicitation of proxies by our board of directors for the 2009 annual meeting of stockholders. We will begin mailing notice of the availability of these proxy materials on or about March 4, 2009.

### *Voting*

You can vote your shares of stock in advance of our annual meeting by requesting a proxy card to sign, date, and return or by submitting your voting instructions by telephone or through the Internet. Please see the Notice of Internet Availability of Proxy Materials we sent to you or this proxy statement for specific instructions on how to cast your vote by any of these methods.

If your shares of stock are registered directly in your name, you are considered a stockholder of record and will receive your Notice of Internet Availability of Proxy Materials directly from us. If you hold your shares of stock through a broker, bank, or other financial institution, you are considered the beneficial owner of stock held in street name and will receive your notice from your broker, bank or other institution.

For stockholders of record, voting instructions submitted via mail, telephone or the Internet must be received by Broadridge, our independent tabulator, by 11:59 p.m. Eastern Time on April 14, 2009. Submitting your voting instructions prior to the annual meeting will not affect your right to vote in person should you decide to attend the meeting.

The Internet and telephone voting procedures available to you are designed to authenticate stockholders' identities, to allow stockholders to submit voting instructions and to confirm that stockholders' voting instructions have been recorded properly. We have been advised that the Internet and telephone voting procedures that have been made available to you are consistent with the requirements of applicable law. Stockholders voting via the Internet or telephone should understand that there may be costs associated with voting in this manner, such as usage charges from Internet access providers and telephone companies, which must be borne by the stockholder.

Stockholders of record can vote by:

requesting and returning a completed proxy card by mail to our independent tabulator, Broadridge, by 11:59 p.m. Eastern Time on April 14, 2009;

submitting voting instructions via the Internet or telephone by 11:59 p.m. Eastern Time on April 14, 2009; or

completing a ballot and returning it to the inspector of election during the annual meeting.

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If you hold your stock in street name, you can vote by submitting a voting instruction card to your broker or other institution that sent your Notice of Internet Availability of Proxy Materials to you in accordance with their procedures.

Please see the next section "Employees Who Are Stockholders" for information regarding voting shares of stock held in our Employee Stock Ownership Plan fund or the OfficeMax common stock fund in the OfficeMax Savings Plan.

If you submit a valid proxy card or validly submit voting instructions via the telephone or Internet, and you do not subsequently revoke your proxy or vote, the individuals named on the card, as your proxies, will vote your shares of stock in accordance with your instructions. If you do not indicate instructions, your shares of stock will be voted *for* the:

election of the eight nominees to serve on our board of directors; and

appointment of KPMG LLP as our independent registered public accounting firm for 2009.

You also give the proxies discretionary authority to vote on any other matters that may properly be presented at the meeting.

If you are a stockholder of record, you may revoke or change your proxy and voting instructions at any time prior to the vote at the annual meeting. To do so:

subsequently submit a new proxy card or voting instructions to the independent tabulator by mail, telephone or through the Internet prior to 11:59 p.m. Eastern Time on April 14, 2009; or

attend the annual meeting and vote in person by ballot.

If you hold your stock in street name, you may revoke or change your proxy instructions at any time prior to the vote at the annual meeting by submitting new voting instructions to your broker or other institution in accordance with their procedures.

Each share of OfficeMax stock is entitled to one vote. As of February 17, 2009 (the record date for determining stockholders entitled to vote at the meeting), we had the following shares of stock outstanding and entitled to vote:

<b>Type/Series of Stock</b>	<b>Number of Shares Outstanding</b>
Common stock	76,287,724
Convertible preferred stock, Series D (ESOP)	921,013

### ***Employees Who Are Stockholders; Voting Shares in Certain Benefit Plans***

If you are a current or former employee of OfficeMax or one of its subsidiaries and you own shares of OfficeMax's Series D Convertible Preferred stock in the Employee Stock Ownership Plan ("ESOP") fund or allocate funds to the OfficeMax common stock fund in the OfficeMax Savings Plan ("Savings Plan"), you may instruct Vanguard Fiduciary Trust Company, the plans' trustee, how to vote the shares of stock allocated to you under these plans. You can instruct the voting of your stock by requesting a proxy card to sign, date, and return or by submitting your voting instructions by telephone or through the Internet. Please see the Notice of Internet Availability of Proxy Materials we sent to you or this proxy statement for specific instructions on how to provide voting instructions by any of these methods. Please note that your voting instructions for stock you hold in the ESOP fund or the Savings Plan must be returned by 11:59 p.m. Eastern Time on April 9, 2009.

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The plans' trustee will vote any shares in the plans for which instructions are not received or that are not allocated to an account in the same proportion as shares of stock voted by the plan participants generally, subject to the Trustee's fiduciary obligations under applicable law.

### ***Proxies***

When you vote in advance of the annual meeting, you appoint Ms. Susan Wagner-Fleming, our Corporate Secretary, Mr. Matthew R. Broad, our General Counsel and Mr. Tony Giuliano, our Treasurer and Vice President, Investor Relations as proxies, each with the power to appoint a substitute. They are directed to vote all of the shares of stock you held on the record date at the annual meeting and at any adjournment or postponement of that meeting. The proxies are also given discretionary authority to vote on any other matters that may properly be presented at the meeting.

### ***Confidential Voting Policy***

We have a confidential voting policy. Stockholders' votes will not be disclosed to us other than in limited situations. The tabulator will collect, tabulate, and retain all proxies and will forward any comments written on the proxy cards or otherwise received by the tabulator to management. Our confidential voting policy will not apply in the event of a contested solicitation.

### ***Votes Necessary for Action to be Taken***

A quorum is necessary to hold a valid meeting. A quorum will exist if stockholders holding a majority of the shares of stock issued and outstanding and entitled to vote at the meeting are present in person or by proxy. The election inspector will treat abstentions, withholds and "broker non-votes" as shares of stock that are present and entitled to vote for purposes of determining the presence of a quorum. A "broker non-vote" occurs when a broker holding stock for a beneficial owner does not vote on a particular proposal because the broker does not have discretionary voting power for that particular item and has not received instructions from the beneficial owner. Brokers will have discretionary voting power with respect to each of the proposals. Abstentions and broker non-votes, do not count as votes cast either for or against any of the proposals. A "withhold" vote with respect to any director nominee will have the effect of a vote against such nominee.

A nominee will be elected to the board if the number of votes cast "for" his or her election exceed the number of votes "withheld" from or cast "against" his or her election.

The proposal for appointing KPMG LLP as our independent registered public accounting firm for 2009 will be approved if holders of a majority of the stock present in person at the meeting or represented by proxy (excluding any shares where the holder has expressly indicated that the holder is abstaining from voting) vote in favor of the appointment.

### ***Proxy Solicitation***

We pay the expenses of soliciting proxies. OfficeMax has retained D.F. King & Company ("D.F. King") to assist in the solicitation of proxies. D.F. King will receive an aggregate fee of \$20,000, plus out-of-pocket expenses. OfficeMax has agreed to indemnify D.F. King against certain liabilities arising out of or in connection with this engagement. In addition to the solicitation of proxies by use of the mail, employees of D.F. King, and our directors, officers and regular employees, may solicit the return of proxies by personal interview, mail, electronic mail, facsimile, telecopy, telegram, telephone, and Internet. Our directors, officers and employees will not receive additional

compensation for these activities. Brokerage houses and other custodians, nominees and fiduciaries will be requested to forward solicitation material to the beneficial owners of stock.

### ***Householding of Annual Meeting Materials***

Some banks, brokers and other record holders may be participating in the practice of "householding" proxy statements, annual reports and Notices of Internet Availability of Proxy Materials. If you have requested paper copies of the proxy materials, this means that only one copy of our proxy statement, annual report or Notice of Internet Availability of Proxy Materials may have been sent to multiple stockholders in your household. We will promptly deliver a separate copy of these documents to you if you write to the Broadridge Householding Department, 51 Mercedes Way, Edgewood, New York 11717 or call Broadridge toll free: 1-800-542-1061. If you have requested paper copies of the proxy materials and want to receive separate copies of the proxy statement, annual report or notice of Internet availability of proxy materials in the future, or if you are receiving multiple copies and would like to receive only one copy for your household, you should contact your bank, broker, or other record holder, or you may contact Broadridge at the address and phone number above.

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## **Items You May Vote On**

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### ***1. Election of Directors***

The members of our board of directors are elected for a term of office to expire at the next annual meeting (subject to the election and qualification of their successors or the earlier of their death, resignation or removal). If you submit valid voting instructions, the proxies will vote your shares of stock for the election of each of the eight nominees, unless you indicate that you wish to vote against a nominee or withhold your vote on a nominee.

Our board of directors has proposed eight nominees for election as directors: Dorrit J. Bern, Warren F. Bryant, Joseph M. DePinto, Sam K. Duncan, Rakesh Gangwal, Francesca Ruiz de Luzuriaga, William J. Montgoris and David M. Szymanski. Detailed information on all the nominees is provided beginning on page 7. We expect that all nominees will be able to serve if elected. If any nominee is not able to serve, either we will vote the proxies for another nominee recommended by our Governance and Nominating Committee and nominated by the board of directors or the board may reduce the number of directors to be elected at the meeting.

Under our by-laws, in uncontested elections, our directors are elected if the votes withheld from or cast "for" the director's election exceed the votes cast "against" the director's election. The company has a director resignation policy which states that the board will only nominate candidates who agree to tender, promptly following the annual meeting at which they are elected, a resignation that will be effective upon (i) the failure of the director to receive the required vote at any annual meeting at which they are nominated for re-election and (ii) acceptance by the board of such resignation. If a director fails to receive a majority vote in favor of his or her election, the Governance and Nominating Committee of our board, excluding the director whose resignation is under consideration, will promptly consider the resignation and make a recommendation to the board as to whether to accept or reject the tendered resignation or whether other action should be taken. The board, excluding the director whose resignation is under consideration, will act on the Governance and Nominating Committee's recommendation within ninety days from the date of the certification of the election results. The board will publicly disclose its decision regarding the tendered resignation. If an incumbent director's resignation is not accepted by the board, the director will continue to serve until the next annual meeting and until his or her successor is duly elected, or his or her earlier resignation or removal. If a director's resignation is accepted by the

board of directors, the board, in its sole discretion, may decide whether to fill such vacancy or reduce the size of the board.

*Our board of directors unanimously recommends a vote "FOR" each of these nominees.*

## 2. Appointment of Independent Registered Public Accounting Firm

Our Audit Committee appointed KPMG LLP to serve as our independent registered public accounting firm for 2009, subject to stockholder approval. Representatives of KPMG LLP will be present at the annual meeting to answer questions. They will also have the opportunity to make a statement if they desire to do so.

The following table sets out the various fees for services provided by KPMG LLP in 2007 and 2008. The Audit Committee pre-approved all of these services.

### Annual Fees for 2007 and 2008

Description	Amounts	
	2008	2007
Audit Fees (1)	\$3,581,000	\$3,757,365
Audit-Related Fees (2)	\$ 212,590	\$ 250,339
Tax Fees (3)	\$ 122,560	\$ 9,168

- (1) Audit fees relate to professional services rendered in conjunction with the audit of our annual financial statements, the review of our quarterly financial statements, and the audit of our internal controls over financial reporting, statutory filings and other services pertaining to SEC matters.
- (2) Audit-related fees relate to attestation and other services traditionally performed by companies' independent accountants, such as audits of our employee benefit plans, special procedures required to meet certain regulatory requirements and other miscellaneous assurance services.
- (3) Tax fees relate to tax compliance services surrounding transactions that have already occurred. We use these services to document, compute, and obtain government approval for amounts to be included in tax filings.

KPMG LLP's full-time, permanent employees conducted the services described in the chart above. Leased personnel were not employed with respect to the domestic audit engagement.

The Audit Committee is responsible for recommending, for stockholder approval, our independent registered public accounting firm. Should stockholders fail to approve the appointment of KPMG LLP, the Audit Committee would undertake the task of reviewing the appointment. Nevertheless, given the difficulty and expense of changing independent accountants mid-way through the year, there is no assurance that a firm other than KPMG LLP could be secured to deliver any or all of the company's independent auditing services required in 2009. The Audit Committee, however, would take the lack of stockholder approval into account when recommending an independent registered public accounting firm for 2010.

***Our board of directors unanimously recommends a vote "FOR" the approval of KPMG LLP as our independent registered public accounting firm for 2009.***

***3. Other Matters to be Presented at the Meeting***

We do not know of any other matters to be voted on at the meeting. If, however, other matters are presented for a vote at the meeting, the persons named as proxies will vote your properly submitted proxy according to their judgment on those matters.

## Board of Directors

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### *Structure*

Upon the Governance and Nominating Committee's recommendation, the board nominates eight directors for election in 2009, each to hold office until the annual meeting of stockholders in 2010 (subject to the election and qualification of their successors or the earlier of their death, resignation or removal). Stockholders have previously elected all of these nominees to the board.

We prepared the following director summaries using information furnished to us by the nominees:

**Dorrit J. Bern**, 58, joined our board of directors in 2006. From 1997 through 2008, Ms. Bern served as chairman, president and chief executive officer of Charming Shoppes, Inc., a multichannel specialty women's apparel retailer.

**Warren F. Bryant**, 63, joined our board of directors in 2004. From 2002 to 2008, Mr. Bryant served as a director and the president and chief executive officer of Longs Drug Stores Corporation, a retail drug store chain on the West Coast and in Hawaii. From 2003 to 2008 he served as the chairman of the board of Longs Drug Stores. Mr. Bryant served as senior vice president of The Kroger Co., a retail grocery chain, from 1999 to 2002. From 1996 to 1999, he served as president and chief executive officer of Dillon Companies, Inc., a retail grocery chain and subsidiary of The Kroger Co. Mr. Bryant also served as a director of The National Association of Chain Drug Stores from 2003 to 2008 and as Chairman of the Association during 2008.

**Joseph M. DePinto**, 46, joined our board of directors in 2006. Mr. DePinto has been the president and chief executive officer of 7-Eleven, Inc., a convenience retailer, since December 2005. Prior to joining 7-Eleven, Inc., Mr. DePinto served as the president of GameStop Corp., a video game and entertainment software retailer, beginning in March 2005. Mr. DePinto was the vice president of operations of 7-Eleven from March 2002 until he joined GameStop Corp. in March 2005. Prior to March 2002, Mr. DePinto was senior vice president and chief operating officer of Thornton Quick Café & Market. Mr. DePinto also serves as a director of Jo-Ann Stores.

**Sam K. Duncan**, 57, joined our board of directors in 2005. Mr. Duncan became the chairman and chief executive officer of the company in 2005. Prior to his election as chief executive officer and president of the company, Mr. Duncan was president and chief executive officer of ShopKo Stores, Inc., a multi-department retailer, from October 2002 to April 2005. From 1992 to 2002, Mr. Duncan held various merchandising and executive positions with Fred Meyer, Inc. (a division of The Kroger Co.) a grocery retailer, including: president of Fred Meyer from February 2001 to October 2002 and president of Ralph's Supermarkets from 1998 to 2001. Mr. Duncan began his retail career in the supermarket industry in 1969 with Albertson's, Inc., where he held various merchandising positions until 1992. Mr. Duncan currently serves on the Board of Trustees of North Central College. He is also a director of Nash-Finch Company.

**Rakesh Gangwal**, 55, joined our board of directors in 1998. From June 2003 to August 2007, Mr. Gangwal was the chairman, president, and chief executive officer of Worldspan Technologies, Inc., a provider of travel technology and information services to the travel and transportation industry. From 2002 to 2003, Mr. Gangwal was involved in various personal business endeavors, including private equity projects and consulting projects. He was the president and chief executive officer of US Airways Group, Inc., the parent corporation for US Airways' mainline jet and express divisions as well as several related companies, from 1998 until his resignation in 2001. Mr. Gangwal was also the president and chief executive officer of US Airways, Inc., the main operating arm of US Airways Group, from 1998 until his resignation. He was the president and chief operating officer of US Airways Group, Inc., and US Airways, Inc., from 1996 to 1998. On August 11, 2002, US Airways Group, Inc., and its seven domestic subsidiaries, including its principal operating subsidiary, US Airways, Inc., filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Virginia. US Airways Group, Inc., and its subsidiaries emerged from bankruptcy protection under the First Amended Joint Plan of Reorganization of US Airways Group, Inc., and Affiliated Debtors and Debtors-in-Possession, as Modified, which became effective on March 31, 2003. Mr. Gangwal is also a director of PetSmart, Inc.

**William J. Montgoris**, 62, joined our board of directors in July 2007. Mr. Montgoris was the chief operating officer of The Bear Stearns Companies Inc., a leading global investment banking, securities trading and brokerage firm, from 1993 until his retirement in 1999. Prior to holding this position, he served Bear Stearns as its chief financial officer from 1987 to 1993 and as a senior managing director from 1985 to 1987. Mr. Montgoris currently serves on the Board of Trustees of The Reserve Funds, a family of money market mutual funds, and the Board of Trustees of Covenant House, Hackensack Medical Center, Colby College and St. John's University. He is also a director of Carters, Inc. and Stage Stores, Inc.

**Francesca Ruiz de Luzuriaga**, 54, joined our board of directors in 1998. From 1999 to 2000, Ms. Luzuriaga served as the chief operating officer of Mattel Interactive, a business unit of Mattel, Inc., one of the major toy manufacturers in the world. Prior to holding this position, she served Mattel as its executive vice president, worldwide business planning and resources, from 1997 to 1999 and as its chief financial officer from 1995 to 1997. Since leaving Mattel in 2000, Ms. Luzuriaga has been working as an independent business development consultant. Until October 2005 she was also a



director of Providian Financial Corporation.

**David M. Szymanski**, 52, joined our board of directors in 2004. Dr. Szymanski is the JCPenney Chair of Retailing Studies at Texas A&M University, where he has served since 1987. Dr. Szymanski served as the Director of the Center for Retailing Studies at Texas A&M University from 2000 to 2006. He has held senior positions at the University since 1987. Dr. Szymanski is also a director of Zale Corporation.

None of the companies named in these biographies as current or previous employers of the nominees are affiliated with the company.

### *Director Independence*

The board has determined that, except for Mr. Duncan, the nominees for election as directors are, and all members of the board in 2008 were, independent within the meaning of the rules of the NYSE.

For a director to be considered independent under the NYSE rules, our board must determine that he or she does not have any material relationship with OfficeMax. To assist in making this determination, our board adopted the NYSE's independence standards. For purposes of these standards, an "immediate family member" includes a spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares the director's home.

The board will presume a director is independent if, during the last three years, he or she has **not**:

been an OfficeMax employee or an immediate family member of an executive officer of OfficeMax, other than in the capacity as a former interim chairman, chief executive officer or other executive officer;

been affiliated with or employed by (or is an immediate family member of a person who is affiliated with or employed in a professional capacity by) the present or former internal or external auditor of OfficeMax;

been employed (or had an immediate family member employed) as an executive officer by another company whose compensation committee includes one or more current executives of OfficeMax;

received (or had an immediate family member who has received) more than \$100,000 per year in direct compensation from OfficeMax other than director and committee fees or pension or other deferred compensation for prior services; and

been an executive officer or an employee of, or an immediate family member of a person who is an executive officer of, a company that makes payments to or receives payments from OfficeMax for property or services, which, in any fiscal year, exceeded the greater of \$1 million or 2% of the other company's consolidated gross revenues.

In addition, our board will consider a director independent for purposes of serving on our Audit Committee only if he or she:

has not accepted, directly or indirectly, any consulting, advisory, or other compensatory fees from OfficeMax, other than compensation for service as a director; and

is not an "affiliated person" of OfficeMax or any of its subsidiaries, as that term is defined by the SEC.

Our board will determine the independence of any director who has any other relationship with OfficeMax that is not covered by these standards. In particular, the board has considered the following relationships:

In 2008, a number of companies for which our directors also serve as officers or directors purchased office supplies from OfficeMax in the ordinary course of business. None of these sales accounted individually for more than the greater of \$1 million or 2% of our revenues or the purchasing entity's revenues in 2008, and none of these sales were material to our business.

Additionally in 2008, we purchased a variety of goods and services from companies for which our directors also serve as officers or directors. These purchases were made in the ordinary course of business. None of these purchases accounted for more than the greater of \$1 million or 2% of

our revenues or the selling entity's revenues in 2008 to date, and none of these purchases were mate