

MERCURY AIR GROUP INC

Form PRER14A

June 23, 2005

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**SCHEDULE 14A INFORMATION**

**Proxy Statement Pursuant to Section 14(a) of the  
Securities Exchange Act of 1934**

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 Section 240.14a-11(c) or Section 240.14a-12

**MERCURY AIR GROUP, INC.**

(Name of Registrant as Specified In Its Charter)

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

Payment of Filing Fee (Check the appropriate box):

No fee required.

Fee computed on table below per Exchange Act Rules 14a-6(i)(4) and 0-11.

1) Title of each class of Securities to which Transaction applies:

2) Aggregate number of securities to which Transaction applies:

3) Per unit price or other underlying value of Transaction computed pursuant to Exchange Act Rule 0-11 (Set forth the amount on which the filing fee is calculated and state how it was determined):

4) Proposed maximum aggregate value of Transaction:

5) Total fee paid:

Fee paid previously with preliminary materials.

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the

Form or Schedule and the date of its filing.

- 1) Amount Previously Paid:
  - 2) Form, Schedule or Registration Statement No.:
  - 3) Filing Party:
  - 4) Date Filed:
-

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MERCURY AIR GROUP. INC.

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

TO BE HELD

[JULY \_\_, 2005]

AND

PROXY STATEMENT

IMPORTANT

PLEASE MARK, SIGN AND DATE YOUR PROXY  
AND PROMPTLY RETURN IT IN THE ENCLOSED ENVELOPE

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MERCURY AIR GROUP, INC.

5456 MCCONNELL AVENUE

LOS ANGELES, CALIFORNIA 90066

(310) 827-2737

[June \_\_, 2005]

Dear Stockholder:

You are cordially invited to attend a Special Meeting of Stockholders of Mercury Air Group, Inc. on [July \_\_, 2005], at 9:00 a.m., at the Company's corporate office at 5456 McConnell Avenue, Los Angeles, California. We look forward to greeting those stockholders who are able to attend.

At this important meeting, you will be asked to vote on a proposed Transaction that, if approved, is expected to result in termination of the registration of Mercury Air Group's common stock under the federal securities laws and thereby eliminate the significant expense required to comply with the reporting and related requirements under those laws. The proposed Transaction will reduce the number of common stockholders of record to fewer than 300, permitting Mercury Air Group to file for termination of registration of its common stock under the federal securities laws. The reduction in the number of common stockholders will be accomplished by amending our Certificate of Incorporation to provide for a 1-for-501 reverse stock split, followed immediately by a 501-for-1 forward stock split of our common stock. The proposed amended and restated certificate of incorporation is attached as Appendix A to this proxy statement.

If approved at the Special Meeting, the Transaction will affect Mercury Air Group's common stockholders as follows:

COMMON STOCKHOLDER BEFORE  
THE TRANSACTION

NET EFFECT AFTER THE  
TRANSACTION

common stockholder holding 501 or more shares:

None.

common stockholder holding fewer than 501 shares:

The common stockholder will receive from Mercury \$4.00 in cash per share, without interest.

Because Mercury Air Group has a large number of common stockholders who own fewer than 501 shares, we expect that the number of common stockholders of record will be reduced from approximately 331 to approximately 33, while the number of outstanding shares will decrease by only approximately 6.3%, a reduction of approximately 192,613 common shares from the 3,056,355 common shares outstanding as of March 1, 2005. No reduction in the number of shares held by preferred stockholders will occur as a result of this Transaction.

After careful consideration, the Board of Directors has concluded that the costs associated with being a Securities and Exchange Commission (SEC) reporting company, especially in light of the additional costs associated with compliance with Section 404 of the Sarbanes-Oxley Act of 2002, are not justified by the benefits in view of our common stock's limited trading activity. Mercury Air Group estimates that it will save up to \$3,000,000 which would have been expended through June 30, 2007 and approximately \$500,000 annually thereafter in Section 404

compliance costs. We believe that these cost-savings will be in the best interest of Mercury Air Group and its stockholders who remain after the Transaction. Although our common stock will no longer be listed on the American Stock Exchange if the Transaction is completed, we believe that our shares would be quoted on the pink sheets and our remaining stockholders would be able to trade their shares in the over-the-counter markets. In addition, the Transaction would allow our common stockholders who hold fewer than 501 shares immediately before the Transaction the opportunity to receive cash for their shares at a premium to the closing price of our common stock on the last trading day before the public announcement of the approval of the Transaction by the Special Committee and the Board of Directors, without having to pay brokerage commissions and other transaction costs.

A special committee comprised of independent directors has reviewed the proposed Transaction and considered its fairness to preferred stockholders and to common stockholders who hold fewer than 501 shares of common stock as well as those common

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stockholders holding 501 or more shares of common stock, and received a fairness opinion from its financial advisor with regard to the per share cash amount to be paid to the unaffiliated common stockholders holding fewer than 501 shares of common stock.

ACCORDINGLY, AFTER CONSIDERING THE RECOMMENDATION OF THE SPECIAL COMMITTEE AND CONDUCTING ITS OWN DELIBERATIONS OF THE ISSUES IT DEEMED PERTINENT, INCLUDING ALTERNATIVES TO THE TRANSACTION, THE COSTS AND BENEFITS OF REMAINING AN SEC REPORTING COMPANY AND THE FAIRNESS OF THE TRANSACTION TO STOCKHOLDERS, YOUR BOARD OF DIRECTORS BELIEVES THIS TRANSACTION IS IN THE BEST INTERESTS OF MERCURY AIR GROUP AND ITS STOCKHOLDERS AND UNANIMOUSLY RECOMMENDS THAT YOU VOTE FOR THE PROPOSAL. The enclosed proxy statement includes a discussion of the alternatives and factors considered by the board in connection with the board's approval of the Transaction. See Special Factors Background of the Transaction and Special Factors Recommendation of the Board of Directors; Fairness of the Proposed Transaction.

Consummation of the Transaction is subject to certain conditions, including the affirmative vote of at least a majority of the shares of Mercury Air Group's common and preferred stock entitled to vote at the Special Meeting, voting as a single class. It is anticipated that the Transaction will become effective at 11:59 p.m. on [July \_\_, 2005], or as soon as reasonably practicable thereafter. Details of the proposed Transaction are set forth in the accompanying proxy statement, which we urge you to read carefully in its entirety.

At the Special Meeting, you will also be asked to grant Mercury's board of directors discretionary authority to adjourn the Special Meeting, if necessary.

The executive officers and director of Mercury have indicated that they intend to vote FOR the approval of the Transaction and FOR the proposal to grant discretionary authority to adjourn the Special Meeting. If Mercury's executive officers and directors exercise presently exercisable options they hold prior to the record date for the Special Meeting, they would own approximately 42.8% of the then outstanding shares of common and preferred stock, voting as a single class entitled to vote at the Special Meeting.

IT IS VERY IMPORTANT THAT YOUR SHARES ARE REPRESENTED AND VOTED AT THE MEETING, WHETHER OR NOT YOU PLAN TO ATTEND. ACCORDINGLY, PLEASE SIGN, DATE AND RETURN YOUR PROXY IN THE ENCLOSED ENVELOPE AT YOUR EARLIEST CONVENIENCE.

Your interest and participation in the affairs of the Company are greatly appreciated. Thank you for your continued support.

Sincerely,

Joseph A. Czyzyk  
Chairman of the Board,  
Chief Executive Officer and President

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MERCURY AIR GROUP, INC.  
5456 MCCONNELL AVENUE  
LOS ANGELES, CALIFORNIA 90066  
(310) 827-2737

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS  
TO BE HELD [JULY 31, 2005]

[June \_\_, 2005]

To the Stockholders of Mercury Air Group, Inc.:

NOTICE IS HEREBY GIVEN that a Special Meeting of Stockholders (the Special Meeting ) of Mercury Air Group, Inc., a Delaware corporation (the Company or Mercury ), will be held at the Company s corporate office at 5456 McConnell Avenue, Los Angeles, California, on the [ \_\_ day of July, 2005], at 9:00 a.m., for the following purposes:

1. To consider and vote upon a proposal to amend the Company s Certificate of Incorporation to effect a 1-for-501 reverse stock split followed immediately by a 501-for-1 forward stock split of the Company s common stock (the Transaction ). As a result of the Transaction, (a) each stockholder owning fewer than 501 shares of common stock immediately before the Transaction will receive from the Company \$4.00 in cash, without interest, for each of such stockholder s shares of the Company s common stock; and (b) each share of common stock held by a stockholder owning 501 or more shares will continue to represent one share of the Company after completion of the Transaction. The proposed Amended and Restated Certificate of Incorporation is attached as Appendix A to this proxy statement.
2. To grant the Company s Board of Directors discretionary authority to adjourn the Special Meeting if necessary to satisfy the conditions to completing the Transaction, including for the purpose of soliciting proxies to vote in favor of the Transaction.

Owners of record of the Company s common and preferred stock at the close of business on [June \_\_, 2005], the record date, will be entitled to vote at the meeting. If your shares are held in the name of a broker, trust or other nominee (often referred to as held in street name ), you must instruct them on how to vote your shares. Whether or not you plan to attend the meeting, please date, sign and mail the enclosed proxy in the envelope provided. Thank you for your cooperation.

The Board of Directors has carefully considered the terms of the Transaction and believes that they are fair to, and in the best interests of, Mercury and its stockholders. The Board of Directors unanimously recommends that you vote FOR the Transaction and FOR granting the Board of Directors discretionary authority to adjourn the Special Meeting.

By Order of the Board of Directors

Joseph A. Czyzyk  
Chairman of the Board, Chief Executive  
Officer and President



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PLEASE SIGN AND MAIL THE ENCLOSED PROXY  
IN THE ACCOMPANYING ENVELOPE  
NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES

NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS: APPROVED OR DISAPPROVED OF THE TRANSACTION; PASSED UPON THE MERITS OR FAIRNESS OF THE TRANSACTION; OR PASSED UPON THE ADEQUACY OR ACCURACY OF THE DISCLOSURE IN THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

MERCURY AIR GROUP, INC.  
5456 MCCONNELL AVENUE  
LOS ANGELES, CALIFORNIA 90066  
(310) 827-2737

[June \_\_, 2005]

PROXY STATEMENT FOR  
2005 SPECIAL MEETING OF STOCKHOLDERS

INTRODUCTION

This Proxy Statement is furnished to the stockholders of Mercury Air Group, Inc., a Delaware corporation (the Company or Mercury ), in connection with the solicitation by the board of directors of the Company of proxies to be used at the Special Meeting of Stockholders (the Special Meeting ) to be held at the Company's corporate offices at 5456 McConnell Avenue, Los Angeles, CA 90066, on [July \_\_, 2005], at 9:00 a.m., local time, and at any adjournment thereof, and is being mailed to the stockholders on or about the date set forth above.

All shares represented by properly executed proxies received by the board of directors pursuant to this solicitation will be voted in accordance with the stockholder's directions specified on the proxy or, in the absence of specific instructions to the contrary, will be voted in accordance with the board of directors' unanimous recommendations, which are:

- FOR the proposal to amend the Company's Certificate of Incorporation to effect a 1-for-501 reverse stock split followed immediately by a 501-for-1 forward stock split of the Company's common stock (the Transaction ). As a result of the Transaction, (a) each stockholder owning fewer than 501 shares of common stock, \$0.01 par value ( common stock ) immediately before the Transaction will receive from the Company \$4.00 in cash, without interest, for each of such stockholder's shares of the Company's common stock; and (b) each share of common stock held by a stockholder owning 501 or more shares will continue to represent one share of the Company after completion of the Transaction.
- FOR granting the Company's Board of Directors discretionary authority to adjourn the Special Meeting if necessary to satisfy the conditions to completing the Transaction, including for the purpose of soliciting proxies in favor of the Transaction.

If the Transaction is approved, as permitted by Delaware law, common stockholders whose shares are converted into less than one whole share in the reverse split (meaning they held fewer than 501 shares at the effective time of the reverse split) will receive a cash payment from Mercury for their fractional shares interests equal to \$4.00 cash, without interest, for each share of common stock they held immediately prior to the reverse split.

Stockholders who own 501 or more shares of common stock at the effective time of the Transaction will not be entitled to receive any cash for their fractional share interests resulting from the reverse stock split. The forward split that will immediately follow the reverse split will reconvert their whole share and fractional share interests back into the same number of shares of common stock they held immediately prior to the effective time of the Transaction. As a result, the total number of shares held by such a stockholder will not change after completion of the Transaction.

After the Transaction, Mercury anticipates that it will have approximately 33 common stockholders of record. In the event that there are fewer than 300 common stockholders of record following the Transaction, Mercury intends to file a Form 15 with the Securities and Exchange Commission to terminate registration of its common stock under the federal securities laws. As a result, Mercury would no longer be subject to the annual and periodic reporting requirements under the federal securities laws that are

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applicable to Securities and Exchange Commission ( SEC ) reporting companies although Mercury currently intends to continue to provide reports as to its financial condition and results of operation which Mercury expects may be accessed at [www.pinksheets.com](http://www.pinksheets.com). In addition, Mercury common stock would cease to be listed on the American Stock Exchange, any trading in Mercury s common stock after the Transaction and deregistration of the common stock will only occur in the over-the-counter market or in privately negotiated sales, and Mercury s common stock will likely only be quoted in the pink sheets.

This Transaction cannot occur unless the holders of more than a majority of the issued and outstanding shares of Mercury s common stock and Series A 8% Cumulative Convertible Preferred Stock, \$0.01 par value ( preferred stock ), voting as a single class, approve the Transaction and the proposed Amended and Restated Certificate of Incorporation, which is attached as Appendix A to this proxy statement.

The executive officers and directors of Mercury have indicated that they intend to vote FOR the approval of the Transaction. If Mercury s executive officers and directors exercise presently exercisable options they hold prior to the record date for the Special Meeting, they would own approximately 42.8% of the then outstanding shares of common and preferred stock, voting as a single class, entitled to vote at the Special Meeting.

A proxy may be revoked, without affecting any vote previously taken, by written notice mailed to the Company (attention Wayne Lovett) or delivered in person at the meeting, by filing a duly executed, later dated proxy, or by attending the meeting and voting in person.

Only stockholders of record at the close of business on [June \_\_\_, 2005], are entitled to notice of and to vote at the Special Meeting and any adjournment thereof. Each share so held entitles the holder thereof to one vote upon each matter to be voted on. As of the record date, the Company had outstanding 3,056,355 shares of common stock and 462,627 shares of preferred stock. The presence of holders of a majority of the issued and outstanding shares of common and preferred stock, represented as a single class, entitled to vote at the Special Meeting, either in person or represented by a properly executed proxy, is necessary to constitute a quorum for the transaction of business at the Special Meeting.

This document provides you with detailed information about the proposed Transaction. Please see Where You Can Find More Information for additional information about Mercury on file with the Securities and Exchange Commission.

This Proxy Statement and the accompanying proxy were first mailed to stockholders on or about [June \_\_\_, 2005].

PRELIMINARY COPIES

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**SUMMARY TERM SHEET**

THIS SUMMARY TERM SHEET, TOGETHER WITH THE QUESTIONS AND ANSWERS SECTION THAT FOLLOWS, PROVIDES AN OVERVIEW OF ALL MATERIAL MATTERS THAT ARE PRESENTED IN THE PROXY STATEMENT, INCLUDING THE MATERIAL TERMS OF THE PROPOSED TRANSACTION. FOR A MORE COMPLETE DESCRIPTION WE URGE YOU TO CAREFULLY READ THIS PROXY STATEMENT AND ALL OF ITS APPENDICES BEFORE YOU VOTE. FOR YOUR CONVENIENCE, WE HAVE CROSS-REFERENCED TO THE LOCATION IN THIS PROXY STATEMENT WHERE YOU CAN FIND A MORE COMPLETE DISCUSSION OF EACH ITEM BELOW.

AS USED IN THIS PROXY STATEMENT, MERCURY, THE COMPANY, WE, OUR, OURS AND US TO MERCURY AIR GROUP, INC., A DELAWARE CORPORATION, AND THE TRANSACTION REFERS TO THE 1-FOR-501 REVERSE STOCK SPLIT AND THE 501-FOR-1 FORWARD STOCK SPLIT, TOGETHER WITH THE RELATED CASH PAYMENTS TO COMMON STOCKHOLDERS HOLDING FEWER THAN 501 SHARES AT THE EFFECTIVE TIME OF THE TRANSACTION.

**THE TRANSACTION**

If the Transaction is approved and completed:

- Mercury's stockholders holding fewer than 501 shares of Mercury's common stock before the Transaction will receive a cash payment from Mercury of \$4.00 per share, without interest, for each share of common stock held immediately prior to the Transaction;
- Mercury's stockholders holding 501 or more shares of Mercury's common stock at the effective time of the Transaction will continue to hold the same number of shares of Mercury's common stock after completion of the Transaction and will not receive any cash payment;
- Mercury's preferred stockholders will continue to hold the same number of shares of Mercury's preferred stock after completion of the Transaction and will not receive any cash payment;
- the officers and directors of Mercury at the effective time will continue to serve as the officers and directors of Mercury immediately after the Transaction;
- Mercury believes it will have fewer than 300 holders of record of common stock and intends to file a Form 15 to terminate registration of its common stock with the SEC, which will terminate its obligation to continue filing periodic reports and proxy statements pursuant to the Securities Exchange Act of 1934 (the Exchange Act), although Mercury currently intends to continue to provide reports as to its financial condition and results of operation which Mercury expects may be accessed at [www.pinksheets.com](http://www.pinksheets.com);
- after a 90 day period following the filing of a Form 15 with the SEC to terminate the registration of its common stock under the federal securities laws (the 90 day waiting period), Mercury's executive officers, directors and 10% stockholders will no longer be required to file reports relating to their transactions in Mercury's common stock with the SEC, and trading in Mercury's securities by such executive officers, directors and 10% stockholders will no longer become subject to the reporting and recovery of profits provision of the Exchange Act;
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after the 90 day waiting period, persons acquiring 5% of Mercury's common stock will no longer be required to report their beneficial ownership under the Exchange Act;

- after the 90 day waiting period, tender offers for the beneficial ownership of more than 5% of Mercury's common stock will no longer be regulated;
- after the 90 day waiting period, tender offer transactions by issuers and affiliates will no longer be regulated;
- Mercury will not be required to comply with Section 404 of the Sarbanes-Oxley Act of 2002 ( Sarbanes-Oxley Act ), the cost of which is estimated to be up to \$3,000,000 through June 30, 2007 and approximately \$500,000 per year thereafter;

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- Mercury's common stock will no longer be listed on the American Stock Exchange, any trading in its common stock will only occur in the over-the-counter markets and in privately negotiated sales, and its common stock will likely only be quoted in the pink sheets ;
- outstanding options held by Mercury's employees, officers, and directors to acquire Mercury's common stock will remain outstanding following the Transaction;
- the number of Mercury's common stockholders of record will be reduced from approximately 331 to approximately 33, and the number of outstanding shares of Mercury's common stock will be reduced by approximately 6.3%, from 3,056,355 shares, to approximately 2,863,742 shares;
- assuming exercise of all options exercisable within sixty days of the date of this proxy statement, the percentage ownership of Mercury's common and preferred stock beneficially owned by the directors and officers of Mercury as a group will increase from 42.8% to 45.1% based on shares outstanding as of March 1, 2005. Because Mercury's common and preferred stockholders vote as a single class on all matters presented to the stockholders (including the Transaction), the Transaction will not affect control of Mercury;
- aggregate stockholders' equity of Mercury as of March 31, 2005, will be reduced from \$13,869,000 on a historical basis to approximately \$12,786,000 on a pro forma basis;
- the book value per share of common stock as of March 31, 2005, will be reduced from \$4.54 per share on a historical basis to approximately \$4.46 per share on a pro forma basis;
- Mercury will pay cash of approximately \$1,092,000 in the aggregate, net of tax benefits, to repurchase fractional shares and pay the costs of the Transaction; and
- Mercury expects its business and operations to continue as they are currently being conducted and, except as disclosed in this proxy statement, the Transaction is not anticipated to have any effect upon the conduct of such business.

For a more detailed discussion on the Transaction, see Special Factors beginning on page 11. For a description of the provisions regarding the treatment of shares held in street name, see Special Factors - Certain Effects of the Transaction beginning on page 37.

**ADJOURNMENT OF THE SPECIAL MEETING**

Mercury's board of directors is seeking discretionary authority to adjourn the Special Meeting if necessary to satisfy the conditions to completion of the Transaction, including for the purpose of soliciting proxies to vote in favor of the Transaction. For more information, see Adjournment of Meeting beginning on page 44.

**VOTE REQUIRED**

The required vote for each of the proposals presented at the Special Meeting are as follows:

- The Transaction requires the affirmative vote of holders of a majority of the outstanding shares of Mercury's common and preferred stock, counted as a single class.
- Approval of granting the board of directors discretionary authority to adjourn the Special Meeting requires the affirmative vote of a majority of Mercury's common and preferred stock, voting as a single class on the

proposal.

As of March 1, 2005, Mercury's current directors and executive officers owned 1,329,280 common shares, and 25,820 preferred shares, or approximately 38.5% of Mercury's 3,056,355 outstanding shares of common stock and 462,627 outstanding shares of preferred stock, voting as a single class, that would be entitled to vote at the Special Meeting. If Mercury's directors and executive officers exercised presently exercisable options they hold prior to the record date for the Special Meeting, they would own approximately 1,595,408 common shares and 25,820 preferred shares or approximately 42.8% of the then outstanding shares of common and preferred stock, voting as a single class, entitled to vote at the Special Meeting. See Security Ownership of Certain

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Beneficial Owners on page 60, and Special Factors Interests of Mercury's Directors and Executive Officers in the Transaction on page 32.

The officers and directors of Mercury have indicated that they intend to vote FOR the approval of the Transaction. Other than such expressed intent of the officers and directors to vote their shares for the Transaction, Mercury has not obtained any assurances or agreements from any of its stockholders as to how they will vote on the Transaction.

## **THE VOTING MATERIALS**

We sent you the enclosed materials because Mercury's Board of Directors is soliciting your vote for use at our Special Meeting of Stockholders, which will take place on [July \_\_, 2005]. As a stockholder, you are invited to attend the Special Meeting and are entitled to and requested to vote on the proposals described in this proxy statement.

This proxy statement provides information that you need to know in order to cast an informed vote at the meeting. You do not need to attend the Special Meeting, however, to vote your shares. Instead, you may simply complete, sign and return the enclosed proxy card.

We began sending this proxy statement, notice of Special Meeting, and enclosed proxy card on or about [June \_\_, 2005] to all stockholders entitled to notice of and to vote at the Special Meeting. The record date for stockholders entitled to vote is [June \_\_, 2005]. On that date, there were [\_\_, \_\_, \_\_] shares of our common stock and \_\_ shares of our preferred stock outstanding. Stockholders are entitled to one vote for each share of common stock and one vote for each share of preferred stock held as of the record date.

## **TIME AND PLACE OF THE SPECIAL MEETING**

The Special Meeting will be held at the principal office of Mercury, located at 5456 McConnell Avenue, Los Angeles, California 90066 at 9:00 a.m., Pacific Time on [July \_\_, 2005].

## **SOLICITATION OF PROXIES**

This proxy is solicited by the Board of Directors of Mercury.

## **SHARES THAT CAN BE VOTED**

You may vote all shares of Mercury's common and preferred stock that you own as of the close of business on the record date, which was [June \_\_, 2005]. These shares include shares held:

- directly in your name as the stockholder of record, and
- for you as the beneficial owner either through a broker, bank or other nominee.

## **OWNERSHIP OF SHARES**

Many of our stockholders hold their shares through a broker, bank or other nominee rather than directly in their own name. Mercury intends to treat stockholders holding common stock in street name through a nominee (such as a bank or broker) in the same manner as stockholders whose shares are registered in their names (shareholder of record).

Nominees may have different procedures, however, and stockholders holding common stock in street name should contact their nominees. As summarized below, there are some distinctions between shares held of record and those owned beneficially.

#### Stockholder of Record

If your shares are registered directly in your name with our transfer agent, American Stock Transfer & Trust Company (the Transfer Agent ), you are considered, with respect to those shares, the stockholder of record , and these proxy materials are being sent to you by Mercury. As the stockholder of record, you have the right to vote by proxy or to vote in person at the Special Meeting. Mercury has enclosed a proxy card for you to use.

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### **Beneficial Owner**

If your shares are held in a stock brokerage account or by a bank or other nominee, you are considered the beneficial owner of shares held in street name with respect to those shares, and the proxy materials are being forwarded to you by your broker or other nominee. Your broker or other nominee is considered, with respect to those shares, the stockholder of record. As the beneficial owner, you have the right to direct your broker or other nominee how to vote and are also invited to attend the Special Meeting. As a beneficial owner, however, you are not the stockholder of record, and you may not vote these shares in person at the Special Meeting unless you obtain a signed proxy appointment form from the stockholder of record giving you the right to vote the shares. Your broker or nominee has enclosed or provided a voting instruction card for you to use in directing the broker or nominee how to vote your shares.

### **ATTENDANCE AT THE SPECIAL MEETING AND ELIGIBILITY TO VOTE**

All holders of our common and preferred stock may attend the Special Meeting in person. Only holders of record of our common and preferred stock as of [June \_\_, 2005] may cast their votes in person at the Special Meeting.

### **VOTING OF SHARES WITHOUT ATTENDING THE SPECIAL MEETING**

Whether you hold your shares directly as stockholder of record or beneficially in street name, you may direct your vote without attending the Special Meeting. You may vote by signing your proxy card or, for shares held in street name, by signing the voting instruction card included by your broker or nominee, and mailing it in the enclosed, pre-addressed envelope. If you provide specific voting instructions, your shares will be voted as you instruct. If you hold your shares of record and sign your proxy card, but do not provide instructions, your shares will be voted as described below in **How are my votes counted?**

### **COUNTING OF VOTES**

You may vote **FOR**, **AGAINST** or **ABSTAIN** on the Transaction and **FOR**, **AGAINST** or **ABSTAIN** on the proposal granting the Company's Board of Directors discretionary authority to adjourn the Special Meeting if necessary to satisfy the condition to completing the Transaction, including for the purpose of soliciting proxies to vote in favor of the Transaction (the **Adjournment Proposal**). If you **ABSTAIN** on the Transaction it has the same effect as a vote **AGAINST** the Transaction. If you vote **ABSTAIN** on the **Adjournment Proposal**, it has no effect on such proposal. If you sign and date your proxy form with no further instructions, your shares will be voted **FOR** the approval of the Transaction and **FOR** the approval of the **Adjournment Proposal**.

### **NO APPRAISAL OR DISSENTERS' RIGHTS; ESCHEAT LAWS**

Stockholders do not have appraisal or dissenters' rights under Delaware state law or Mercury's Certificate of Incorporation or Bylaws in connection with the Transaction.

The unclaimed property and escheat laws of each state provide that under circumstances defined in that state's statutes, holders of unclaimed or abandoned property must surrender that property to the state. Persons whose shares are eliminated and whose addresses are unknown to Mercury, or who do not return their common stock certificate(s) and request payment therefore, generally will have a period of years (depending on applicable state law) from the

effective date of the Transaction in which to claim the cash payment payable to them. Following the expiration of that period, the escheat laws of states of residence of stockholders, as shown by the records of Mercury, generally provide for such state to obtain either (i) custodial possession of property that has been unclaimed until the owner reclaims it or (ii) escheat of such property to the state. If Mercury does not have an address for the holder of record of the shares, then unclaimed cash-out payments, without interest, would be turned over to Mercury's state of incorporation, the state of Delaware, in accordance with its escheat laws.

#### PURPOSE OF AND REASONS FOR THE TRANSACTION

If approved, the Transaction will enable Mercury to terminate its registration as an SEC reporting company and thus terminate its obligation to comply with Section 404 of the Sarbanes-Oxley Act. The Transaction will also terminate Mercury's obligation to file annual and periodic reports and make other filings with the SEC, although Mercury intends to continue to provide reports as to its financial condition and results of operation which Mercury expects may be accessed at [www.pinksheets.com](http://www.pinksheets.com). The reasons for the proposed Transaction and subsequent termination of SEC registration include:

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- eliminating the costs of compliance with Section 404 of the Sarbanes-Oxley Act and related regulations estimated to be up to \$3,000,000 through June 30, 2007 and approximately \$500,000 per year thereafter;
- affording stockholders holding fewer than 501 shares immediately before the Transaction the opportunity to receive cash for their shares at a price that represents a premium of approximately 19% over the closing price of \$3.36 on March 21, 2005, which was the last trading day before the public announcement of the approval of the proposed Transaction by the Special Committee of the Board of Directors ( Special Committee ) and by the Board, without having to pay brokerage commissions and other transaction costs; and
- reducing the substantial time that management and other employees will have to spend to implement the Section 404 internal controls certificate provisions of the Sarbanes-Oxley Act, thus enabling them to devote more of their time and energy to Mercury s strategy and operations.

Joseph A. Czyzyk, President, Chief Executive Officer, Chairman and a principal stockholder of Mercury, Frederick H. Kopko, Jr., a director and a principal stockholder of Mercury and CK Partners, a partnership comprised of Messrs. Czyzyk and Kopko, may be deemed to be engaged in the proposed Transaction as a result of their affiliation with Mercury, and thus are filing persons with Mercury as set forth on the Schedule 13E-3 filed with the Securities and Exchange Commission in connection with the proposed Transaction. For purposes of this proxy statement, Joseph A. Czyzyk, Frederick H. Kopko, Jr. and CK Partners are sometimes referred to as the Transaction Affiliates . Mr. Kopko also serves as outside legal counsel on various corporate legal matters. Mr. Czyzyk and Mr. Kopko fully concur with the purpose, reasons, benefits and disadvantages of the Transaction described herein.

Please read Special Factors Purpose of and Reasons for the Transaction beginning on page 20.

**BENEFITS OF THE TRANSACTION**

Benefits of the Transaction to Mercury are expected to include the following:

- Mercury will benefit from eliminating the costs of compliance with Section 404 of the Sarbanes-Oxley Act and related regulations estimated to be up to \$3,000,000 through June 30, 2007 and approximately \$500,000 per year thereafter;
- Mercury will benefit from reducing the substantial time that management and other employees will have to spend to implement the Section 404 internal controls certificate provisions of the Sarbanes-Oxley Act, thus enabling them to devote more of their time and energy to Mercury s strategy and operations; and
- Mercury will benefit because it will no longer be obligated to continue filing periodic reports and proxy statements pursuant to the Exchange Act, although Mercury currently intends to continue to provide reports as to its financial condition and results of operation which Mercury expects may be accessed at [www.pinksheets.com](http://www.pinksheets.com).

Benefits of the Transaction to affiliates of Mercury are expected to include the following:

- assuming the exercise of all options that are exercisable within sixty days of the date of this proxy statement, Mercury s officers and directors, including the Transaction Affiliates, will increase their percentage ownership in Mercury from 42.8% to 45.1%;
- assuming the exercise of all options that are exercisable within sixty days of the date of this proxy statement, the Transaction Affiliates will increase their percentage ownership in Mercury from 37.7% to 39.8%;



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- affiliated stockholders may benefit from the reduction in total shares outstanding or from the cost savings by Mercury not being public, either or both of which may result in higher earnings per share, which in turn may result in a higher price for their shares than they would have received if Mercury remained public;
- Mercury's officers and employees will benefit from eliminating the time and effort associated with implementation of the Section 404 internal controls certification provisions of the Sarbanes-Oxley Act;
- Mercury's officers and directors will benefit because, after the 90 day waiting period, tender offer transactions by issuers and affiliates will no longer be regulated; and

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- remaining affiliated stockholders may benefit from future operating results of Mercury.

See Special Factors Purpose of and Reasons For the Transaction Benefits of the Transaction beginning on page 20 and Special Factors Interests of Mercury's Directors and Executive Officers in the Transaction beginning on page 32.

Benefits of the Transaction to unaffiliated stockholders of Mercury are expected to include the following:

- Unaffiliated stockholders holding fewer than 501 shares immediately before the Transaction will have the opportunity to receive cash for their shares at a price that represents a premium of approximately 19% over the closing price of \$3.36 on March 21, 2005, which was the last trading day before the public announcement of the approval of the proposed Transaction by the Special Committee and the Board, without having to pay brokerage commissions and other transaction costs;
- Unaffiliated stockholders receiving \$4.00 for their shares are receiving an amount that is within the range of implied equity values in the per share analysis presented by Imperial Capital, LLC (Imperial Capital), financial advisor to the Special Committee and the Board. (See Special Factors Opinion of Imperial Capital, LLC beginning on page 46.)
- remaining unaffiliated stockholders may benefit from the reduction in total shares outstanding or from the cost savings by Mercury not being public, either or both of which may result in higher earnings per share, which in turn may result in a higher price for their shares than they would have received if Mercury remained public;
- and remaining unaffiliated stockholders may benefit from future operating results of Mercury.

See Special Factors Purpose of and Reasons for the Transaction Benefits of the Transaction beginning on page 20.

**DISADVANTAGES OF THE TRANSACTION**

Disadvantages of the Transaction to Mercury are expected to include the following:

- Mercury's working capital and assets will be decreased and/or indebtedness increased to fund the purchase of fractional shares, and to pay the other costs of the Transaction; and
- the limited ability that Mercury has to raise capital in the public securities markets or to use its stock as an acquisition currency will be effectively eliminated.

See Special Factors Disadvantages of the Transaction beginning on page 23.

Disadvantage of the Transaction to affiliates of Mercury are expected to include the following:

- Mercury's officers and directors, including the Transaction Affiliates, are likely to experience reduced liquidity for their shares of common stock, even if the common stock trades on the pink sheets, and this reduced liquidity may adversely affect the market price of the common stock.

See Special Factors Disadvantages of the Transaction beginning on page 23.

Disadvantages of the Transaction to unaffiliated stockholders of Mercury are expected to include the following:

- the cash price offered to stockholders under the proposed Transaction could be less than the market price at the time the Board decides to implement the Transaction and is less than the \$4.54 book value of the Common Stock as of March 31, 2005;

- remaining stockholders are likely to experience reduced liquidity for their shares of common stock, even if the common stock trades on the pink sheets , and this reduced liquidity may adversely affect the market price of the common stock;
- less public information about Mercury will be required or available after the Transaction and officers will no longer be required to certify the accuracy of Mercury s financial statements, although Mercury currently intends to provide reports as to its

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financial condition and results of operations, which Mercury's expects may be accessed at [www.pinksheets.com](http://www.pinksheets.com) (see Special Factors Purpose of and Reasons For the Transaction beginning on page 20);

- after the 90 day waiting period, persons acquiring 5% of Mercury's common stock will no longer be required to report their beneficial ownership under the Exchange Act;
- after the 90 day waiting period, tender offers for the beneficial ownership of more than 5% of Mercury's common stock will no longer be regulated;
- after the 90 day waiting period, tender offer transactions by issuers and affiliates will no longer be regulated;
- stockholders who are cashed out will be unable to participate in any future operating results of Mercury unless they buy stock after the Transaction; and
- stockholders who are cashed out for \$4.00 per share in the Transaction may receive less for their shares than they would if the common stock continued trading on the American Stock Exchange.

See Special Factors Disadvantages the Transaction beginning on page 23.

**DETERMINATION OF THE FAIRNESS OF THE TRANSACTION BY THE SPECIAL COMMITTEE, THE BOARD, AND THE TRANSACTION AFFILIATES**

At a meeting held on March 21, 2005, the Special Committee, consisting of two independent directors, Messrs. Michael Janowiak and Angelo Pusateri, unanimously determined that the Transaction and the \$4.00 cash consideration per pre-split share to be paid to stockholders who hold less than 501 shares of common stock before the Transaction ( cash consideration ) are advisable, fair to and in the best interests of Mercury and its stockholders, including all unaffiliated stockholders of Mercury (both those receiving the cash consideration and those remaining as stockholders following the Transaction), and the Special Committee recommended that the Board approve the Transaction. See Special Factors Recommendation of the Special Committee.

At a meeting held on March 21, 2005, the Board of Directors unanimously determined that the Transaction and the cash consideration to be paid to stockholders who hold less than 501 shares of common stock before the Transaction are advisable, fair to and in the best interests of Mercury and its stockholders, including all unaffiliated stockholders of Mercury (both those receiving the cash consideration and those remaining as stockholders following the Transaction). On March 21, 2005, the Transaction Affiliates also unanimously determined that the Transaction and the cash consideration to be paid to stockholders who hold less than 501 shares of common stock before the Transaction are advisable, fair to and in the best interests of Mercury and its stockholders, including all unaffiliated stockholders of Mercury (both those receiving the cash consideration and those remaining as stockholders following the Transaction). The Board of Directors, with Messrs. Kopko and Czyzyk abstaining, therefore unanimously approved the Transaction and recommends that you vote FOR approval of this matter at the Special Meeting.

The Special Committee, the Board of Directors and the Transaction Affiliates, all considered a number of factors that they believe supports their determination that the Transaction is substantively and procedurally fair to Mercury's unaffiliated stockholders, including each of the following factors:

- current and historical market prices;
- net book value and net tangible book value;

- going concern value;
- earnings of Mercury;
- prices at which Mercury has repurchased shares;
- the opinion and presentation of the Special Committee's financial advisor;
- limited liquidity of Mercury's common stock;

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- future cost savings;
- interests of unaffiliated stockholders who will remain; and
- certain negative considerations.

For a complete discussion of the factors that were considered by the Special Committee, the Board of Directors and the Transaction Affiliates to determine fairness, see Special Factors Recommendation of the Special Committee beginning on page 25, Special Factors Recommendation of the Board; Fairness of the Transaction beginning on page 28, and Determination of the Fairness of the Transaction by the Transaction Affiliates beginning on page 32.

**RECENT MARKET PRICE OF MERCURY'S COMMON STOCK AND MARKET PRICE FOLLOWING ANNOUNCEMENT OF THE PROPOSED TRANSACTION**

The closing price of Mercury's common stock on March 8, 2005 the day before the public announcement that the Special Committee was considering the Transaction, was \$4.49 per share. The closing price of Mercury's common stock on March 21, 2005, the last trading day before the public announcement of the approval of the proposed Transaction by the Special Committee and the Board, was \$3.36 per share.

**FAIRNESS OPINION OF IMPERIAL CAPITAL, LLC**

Imperial Capital, financial advisor to the Special Committee, has delivered to the Special Committee and to the Board its written opinion to the effect that, as of the date of such opinion and based upon and subject to the matters stated in the opinion, the cash consideration to be paid to those stockholders of Mercury receiving such consideration, other than Mercury's current directors and executive officers, including the Transaction Affiliates and their respective affiliates (collectively, affiliates of Mercury), as to whom Imperial Capital expressed no view, is fair, from a financial point of view, to such stockholders. The full text of the written opinion of Imperial Capital, which sets forth the assumptions made, matters considered and limitations on the review undertaken, is attached as Appendix B to this proxy statement. You should read the opinion carefully and in its entirety, along with the discussion under Special Factors Opinion of Imperial Capital, LLC beginning on page 33.

The opinion of Imperial Capital is directed to the Special Committee of Mercury's Board of directors and to Mercury's Board of Directors and addresses only the fairness from a financial point of view of the cash consideration to be paid in the proposed Transaction to stockholders other than affiliates of Mercury, and does not constitute a recommendation to any stockholder as to how such stockholder should vote at the Special Meeting.

**EFFECTS OF THE TRANSACTION**

As a result of the Transaction, Mercury anticipates that:

- Mercury's stockholders holding fewer than 501 shares of Mercury's common stock at the effective time of the Transaction will receive a cash payment from Mercury of \$4.00 per share, without interest, for each share of common stock held immediately prior to the Transaction;
- Mercury's stockholders holding 501 or more shares of Mercury's common stock at the effective time of the Transaction will continue to hold the same number of shares of Mercury's common stock after completion of the Transaction and will not receive any cash payment;

- Mercury's preferred stockholders will continue to hold the same number of shares of Mercury's preferred stock after completion of the Transaction and will not receive any cash payment;
- the officers and directors of Mercury at the effective time will continue to serve as the officers and directors of Mercury immediately after the Transaction;
- Mercury believes it will have fewer than 300 holders of record of common stock and therefore be eligible to terminate registration of its common stock with the SEC, which will terminate its obligation to continue filing periodic reports and proxy

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statements pursuant to the Exchange Act, although Mercury currently intends to continue to provide reports as to its financial condition and results of operation which Mercury expects may be accessed at [www.pinksheets.com](http://www.pinksheets.com);

- after the 90 day waiting period, Mercury's executive officers, directors and 10% stockholders will no longer be required to file reports relating to their transactions in Mercury's common stock with the SEC, and trading in Mercury's securities by such executive officers, directors and 10% stockholders will no longer be subject to the reporting and recovery of profits provision of the Exchange Act;
- after the 90 day waiting period, persons acquiring 5% of Mercury's common stock will no longer be required to report their beneficial ownership under the Exchange Act;
- after the 90 day waiting period, tender offers for the beneficial ownership of more than 5% of Mercury's common stock will no longer be regulated;
- after the 90 day waiting period, tender offer transactions by issuers and affiliates will no longer be regulated;
- Mercury will not be required to comply with Section 404 of the Sarbanes-Oxley Act, the cost of which is estimated to be up to \$3,000,000 through June 30, 2007 and approximately \$500,000 per year thereafter;
- Mercury's common stock will no longer be listed on the American Stock Exchange, any trading in its common stock will only occur in the over-the-counter markets or in privately negotiated sales, and its common stock will likely only be quoted in the pink sheets ;
- outstanding options held by Mercury's employees, officers and directors to acquire Mercury's common stock will remain outstanding following the Transaction;
- the number of Mercury's stockholders of record will be reduced from approximately 331 to approximately 33, and the number of outstanding shares of Mercury's common stock will be reduced by approximately 6.3%, from 3,056,355 shares, to approximately 2,863,742 shares;
- assuming exercise of all options exercisable within sixty days of the date of this proxy statement, the percentage ownership of Mercury's common and preferred stock beneficially owned by the directors and officers of Mercury as a group will increase from 42.8% to 45.1% based on shares outstanding as of March 1, 2005. Because Mercury's common and preferred stockholders vote as a single class on all matters presented to the stockholders (including the Transaction), the Transaction will not affect control of Mercury;
- aggregate stockholders' equity of Mercury as of March 31, 2005, will be reduced from \$13,869,000 on a historical basis to approximately \$12,786,000 on a pro forma basis;
- the book value per share of common stock as of March 31, 2005, will be reduced from \$4.54 per share on a historical basis to approximately \$4.46 per share on a pro forma basis;
- Mercury will pay cash of approximately \$1,092,000 in the aggregate, net of tax benefits, to repurchase fractional shares and pay the costs of the Transaction; and
- Mercury ex