ULTRA PETROLEUM CORP
Form 10-Q
November 01, 2013
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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-Q

x **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended September 30, 2013

or

¨ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _________ to _________

Commission file number 001-33614

ULTRA PETROLEUM CORP.

(Exact name of registrant as specified in its charter)

Yukon Territory, Canada	**N/A**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. employer identification number)**
400 North Sam Houston Parkway E., Suite 1200, Houston, Texas	**77060**
(Address of principal executive offices)	**(Zip code)**

(281) 876-0120

(Registrant s telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES x NO ¨

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). YES x NO ¨

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer	x	Accelerated filer	¨
Non-accelerated filer	¨ (Do not check if a smaller reporting company)	Smaller reporting company	¨

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). YES ¨ NO x

The number of common shares, without par value, of Ultra Petroleum Corp., outstanding as of October 22, 2013 was 152,977,633.

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PART I FINANCIAL INFORMATION

ITEM 1 FINANCIAL STATEMENTS

ULTRA PETROLEUM CORP.

CONSOLIDATED STATEMENTS OF OPERATIONS

	For the Three Months Ended September 30, 2013	For the Three Months Ended September 30, 2012	For the Nine Months Ended September 30, 2013	For the Nine Months Ended September 30, 2012
	(Unaudited) (Amounts in thousands, except per share data)			
Revenues:				
Natural gas sales	$ 191,453	$ 169,594	$ 628,438	$ 501,470
Oil sales	29,752	26,781	79,769	91,319
Total operating revenues	221,205	196,375	708,207	592,789
Expenses:				
Lease operating expenses	16,213	16,741	52,544	45,982
Liquids gathering system operating lease expense	5,000		15,000	
Production taxes	18,078	15,047	54,640	46,634
Gathering fees	12,682	10,274	38,400	46,591
Transportation charges	20,955	21,055	61,913	63,477
Depletion, depreciation and amortization	59,401	86,645	180,993	314,115
Ceiling test and other impairments		606,827		2,475,963
General and administrative	4,060	6,741	15,897	19,308
Total operating expenses	136,389	763,330	419,387	3,012,070
Operating income (loss)	84,816	(566,955)	288,820	(2,419,281)
Other income (expense), net:				
Interest expense	(25,174)	(25,369)	(76,176)	(62,414)
Gain (loss) on commodity derivatives	2,074	(9,896)	(20,551)	77,100
Deferred gain on sale of liquids gathering system	2,638		7,914	
Contract cancellation fees		291		(9,220)
Other expense, net	(63)	(42)	(50)	(27)
Total other (expense) income, net	(20,525)	(35,016)	(88,863)	5,439
Income (loss) before income tax provision (benefit)	64,291	(601,971)	199,957	(2,413,842)
Income tax provision (benefit)	381	175	3,240	(708,977)
Net income (loss)	$ 63,910	$ (602,146)	$ 196,717	$ (1,704,865)
Net income (loss) per common share basic	$ 0.42	$ (3.94)	$ 1.29	$ (11.16)
Net income (loss) per common share fully diluted	$ 0.41	$ (3.94)	$ 1.27	$ (11.16)
Weighted average common shares outstanding basic	152,976	152,929	152,957	152,817
Weighted average common shares outstanding fully diluted	154,512	152,929	154,366	152,817

See accompanying notes to consolidated financial statements.

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ULTRA PETROLEUM CORP.

CONSOLIDATED BALANCE SHEETS

	September 30, 2013 (Unaudited)	December 31, 2012
	(Amounts in thousands of U.S. dollars, except share data)	
ASSETS		
Current Assets:		
Cash and cash equivalents	$ 4,532	$ 12,921
Restricted cash	119	121
Oil and gas revenue receivable	74,104	81,143
Joint interest billing and other receivables	12,067	26,712
Derivative assets	1,239	
Prepaid drilling costs and other current assets	3,999	4,951
Total current assets	96,060	125,848
Oil and gas properties, net, using the full cost method of accounting:		
Proven	1,750,694	1,657,500
Property, plant and equipment, net	212,185	212,372
Deferred financing costs and other	10,017	11,625
Total assets	$ 2,068,956	$ 2,007,345
LIABILITIES AND SHAREHOLDERS EQUITY		
Current liabilities:		
Accounts payable	$ 44,198	$ 67,489
Accrued liabilities	77,669	121,124
Production taxes payable	38,224	47,745
Interest payable	8,568	30,093
Derivative liabilities	716	
Capital cost accrual	170,539	247,641
Total current liabilities	339,914	514,092
Long-term debt	1,860,000	1,837,000
Deferred gain on sale of liquids gathering system	150,039	158,082
Other long-term obligations	95,843	76,038
Commitments and contingencies		
Shareholders equity:		
Common stock no par value; authorized unlimited; issued and outstanding 152,977,633 and 152,929,907 at September 30, 2013 and December 31, 2012, respectively	482,949	474,016
Treasury stock	(2,205)	(13)
Retained loss	(857,584)	(1,051,870)
Total shareholders deficit	(376,840)	(577,867)
Total liabilities and shareholders equity	$ 2,068,956	$ 2,007,345

See accompanying notes to consolidated financial statements.

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ULTRA PETROLEUM CORP.

CONSOLIDATED STATEMENTS OF CASH FLOWS

	Nine Months Ended September 30, 2013		Nine Months Ended September 30, 2012				
	(Unaudited) (Amounts in thousands of U.S. dollars)						
Cash provided by (used in):							
Operating activities:							
Net income for the period	$ 196,717		$ (1,704,865)				
Adjustments to reconcile net income to cash provided by operating activities:							
Depletion, depreciation and amortization	180,993		314,115				
Ceiling test and other impairments			2,475,963				
Deferred income tax benefit			(712,363)				
Unrealized (gain)/loss on commodity derivatives	(523)		183,139				
Deferred gain on sale of liquids gathering system	(7,914)						
Reduction in tax benefits from stock based compensation			4,215				
Stock compensation	6,625		7,830				
Other	1,678		1,663				
Net changes in operating assets and liabilities:							
Restricted cash	2						
Accounts receivable	22,314		86,560				
Prepaid expenses and other	510		1,418				
Accounts payable and accrued liabilities	(45,902)		(151,016)				
Production taxes payable	(9,521)		(2,033)				
Interest payable	(21,525)		(21,811)				
Other long-term obligations	12,745		(1,747	267,250	267,250	8,475	542,975

Chief Executive Officer and Chairman of the Board of Directors	2011	254,625	254,625		8,397	517,647
Anthony D. Ishaug	2012	200,000	100,000	197,775	8,700	506,475
Chief Financial Officer and Treasurer	2011	175,000	87,500	200,250	8,588	471,338
Brett D. Heffes	2012	267,250	267,250	243,923	8,700	787,123
President	2011	254,625	254,625	246,975	8,588	764,813
Steven A. Murphy	2012	267,250	267,250	243,923	8,700	787,123
President, Franchising	2011	254,625	254,625	246,975	8,588	764,813
Steven C. Zola	2012	267,250	267,250	243,923	8,700	787,123
President, Winmark Capital Corporation	2011	254,625	254,625	246,975	8,588	764,813

(1) The amounts included under the Option Awards column reflect the aggregate grant date fair value computed in accordance with FASB ASC Topic 718 for awards granted in fiscal 2012 and 2011 under the 2010 Stock Option Plan. A discussion of the assumptions made in the valuation of our stock options is located in footnote 6 Shareholders Equity in the Annual Report on Form 10-K, and is incorporated herein by reference.

(2) All Other Compensation paid by Winmark is comprised of 401(k) matching contributions, an optional annual contribution to each employee s retirement account, and life insurance premium payments. NEOs receive the same 401(k) matching benefits and the same optional annual contribution to employee retirement accounts as all active and eligible employees. The maximum life insurance payout for executive officers ($250,000), including NEOs, is higher than the maximum payout for salaried exempt ($150,000) and non-exempt office employees ($75,000).

Outstanding Equity Awards at Fiscal Year-End 2012

Option Awards

Name	Number of Securities Underlying Unexercised Options (#) Exercisable (1)	Number of Securities Underlying Unexercised Options (#) Unexercisable	Option Exercise Price ($)	Option Expiration Date
John L. Morgan				
Anthony D. Ishaug	5,000	0	18.40	09/04/18
	1,250	0	12.75	12/11/18
	2,250	1,750	13.01	06/01/19
	5,250	1.750	22.15	12/10/19
	3,750	3,750	31.19	06/01/20
	3,750	3,750	32.92	12/14/20
	1,875	5,625	37.76	06/01/21
	1,875	5,625	53.34	12/08/21
	0	7,500	51.17	06/01/22
	0	7,500	55.72	12/13/22
Brett D. Heffes	22,500	0	20.96	12/13/17
	11,250	0	16.52	08/13/18
	16,000	0	12.75	12/11/18
	7,500	2,500	13.01	06/01/19
	7,500	2,500	22.15	12/10/19
	5,000	5,000	31.19	06/01/20
	4,625	4,625	32.92	12/14/20
	2,312	6,938	37.76	06/01/21
	2,312	6,938	53.34	12/08/21
	0	9,250	51.17	06/01/22
	0	9,250	55.72	12/13/22
Steven A. Murphy	10,000	0	26.05	12/09/14
	10,000	0	20.46	12/13/15
	19,500	0	20.32	12/14/16
	22,500	0	20.96	12/13/17
	11,250	0	16.52	08/13/18
	16,000	0	12.75	12/11/18
	7,500	2,500	13.01	06/01/19
	7,500	2,500	22.15	12/10/19
	5,000	5,000	31.19	06/01/20
	4,625	4,625	32.92	12/14/20
	2,312	6,938	37.76	06/01/21
	2,312	6,938	53.34	12/08/21
	0	9,250	51.17	06/01/22
	0	9,250	55.72	12/13/22
Steven C. Zola	1,000	0	25.99	01/13/15(2)
	452	0	20.46	12/13/15
	14,625	0	20.32	12/14/16
	17,686	0	20.96	12/13/17
	11,250	0	16.52	08/13/18
	9,786	0	12.75	12/11/18
	7,500	2,500	13.01	06/01/19
	7,500	2,500	22.15	12/10/19

	5,000	5,000	31.19	06/01/20
	4,625	4,625	32.92	12/14/20
	2,312	6,938	37.76	06/01/21
	2,312	6,938	53.34	12/08/21
	0	9,250	51.17	06/01/22
	0	9,250	55.72	12/13/22

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(1) All of the above-listed option awards were granted pursuant to the 2001 Stock Option Plan and the 2010 Stock Option Plan. Unless otherwise indicated, the option awards vest 25% per year for four years, beginning on the first anniversary of the option grant. Each option award was granted on the date 10 years prior to the expiration date, and expires on the indicated date, or earlier in the case of an employee s termination, disability or death.

(2) Vests 20% per year for five years, beginning on the first anniversary date of the option grant. Expires on the tenth anniversary date of the grant, or earlier in the case of the recipient s death or disability.

Potential Payments Upon Termination of Employment or Change-in-Control

All of our NEOs are at-will employees operating without employment contracts, with the exception of John Morgan, our Chief Executive Officer. Although we have in the past, and at our discretion may in the future, negotiate severance agreements with our NEOs, we are under no obligation to do so. We have not entered into contracts or agreements with the NEOs, individually or as a group, guaranteeing lump sum payments to them upon a change of control of Winmark. However, our 2001 Stock Option Plan (2001 Plan) and 2010 Stock Option Plan (2010 Plan), which provide option awards to our NEOs, provide that optionees are eligible for certain benefits when a Transaction occurs, as defined therein. A Transaction includes the acquisition of the Company through the sale of substantially all of our assets or through a merger, consolidation, exchange, reorganization, reclassification, extraordinary dividend, divestiture or liquidation. Generally speaking, all of the outstanding and unvested stock options granted under the 2001 Plan and 2010 Plan become immediately exercisable upon the occurrence of a Transaction unless the Board selects to either: (a) terminate the 2001 Plan and 2010 Plan and cancel outstanding options not exercised prior to reasonable exercise period; (b) pay optionees, either in cash or shares of the surviving corporation s stock, the difference between the Fair Market Value of the stock price and the stock option exercise price; or (c) continue the 2001 Plan and 2010 Plan and allow optionees the right to exercise their respective options for an equivalent number of shares of stock of the succeeding corporation.

As of December 29, 2012, the NEOs had the following outstanding and unvested options to purchase shares of our Common Stock that could accelerate upon a change in control:

Name	Unexercisable Option Shares (#)	Option Exercise Price ($)	Stock Price December 29, 2012	Value Realized Upon Acceleration ($)(1)
John L. Morgan				
Anthony D. Ishaug	1,750	13.01	57.55	77,945
	1,750	22.15		61,950
	3,750	31.19		98,850
	3,750	32.92		92,363
	5,625	37.76		111,319
	5,625	53.34		23,681
	7,500	51.17		47,850
	7,500	55.72		13,725
Brett D. Heffes	2,500	13.01	57.55	111,350
	2,500	22.15		88,500
	5,000	31.19		131,800
	4,625	32.92		113,914
	6,938	37.76		137,303
	6,938	53.34		29,209
	9,250	51.17		59,015
	9,250	55.72		16,928
Steven A. Murphy	2,500	13.01	57.55	111,350
	2,500	22.15		88,500
	5,000	31.19		131,800
	4,625	32.92		113,914
	6,938	37.76		137,303
	6,938	53.34		29,209
	9,250	51.17		59,015
	9,250	55.72		16,928
Steven C. Zola	2,500	13.01	57.55	111,350
	2,500	22.15		88,500

	5,000	31.19	131,800
	4,625	32.92	113,914
	6,938	37.76	137,303
	6,938	53.34	29,209
	9,250	51.17	59,015
	9,250	55.72	16,928

(1) Assuming that a change in control occurred at a stock price of $57.55 per share (the closing price of the Company s stock as of December 29, 2012).

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2012 Director Compensation

Cash Compensation Paid to Board Members

For the fiscal year ended December 29, 2012, nonemployee members of the Board of Directors were entitled to receive an annual cash retainer of $25,000 and an attendance fee of $1,000 for each Board or Committee meeting. The Lead Director received an additional annual retainer of $5,000.

Stock Option Award

Pursuant to the terms of our Stock Option Plan for Nonemployee Directors, nonemployee directors are automatically granted an option to purchase 25,000 common shares upon the initial election as a director. In 2012, Lawrence A. Barbetta was elected as a director and received an option to purchase 25,000 common shares. In addition to an initial award under the Nonemployee Director Stock Option Plan, each nonemployee director is eligible to receive stock option grants as determined by the Compensation Committee. In June and December 2012, each current nonemployee director received a stock option grant of 1,000 shares pursuant to the Nonemployee Director Stock Option Plan. These options vest 25% per year for four years, beginning one year from the date of the grant, and expire at the end of 10 years. All of the outstanding and unvested stock options granted under the Nonemployee Director Stock Option Plan become immediately exercisable upon the occurrence of a change in control of the Company.

The following table sets out the fiscal 2012 compensation for each of our current nonemployee directors.

Name(1)(2)	**Fees Earned or Paid in Cash ($)**	**Option Awards ($)(3)(4)**	**Total ($)**
Lawrence A. Barbetta	18,667	385,620	404,287
Jenele C. Grassle	32,000	26,370	58,370
Kirk A. MacKenzie	30,000	26,370	56,370
Dean B. Phillips	36,000	26,370	62,370
Paul C. Reyelts	41,000	26,370	67,370
Mark L. Wilson	36,000	26,370	62,370

(1) John L. Morgan, our Chief Executive Officer, also serves as the Chairman of the Board of Directors. Mr. Morgan did not receive any compensation for his services as a director. His compensation is outlined in the Summary Compensation Table on page 12.

(2) Steven C. Zola, our President of Winmark Capital Corporation, also serves as a director since February 2011. Mr. Zola did not receive any compensation for his services as a director. His compensation is outlined in the Summary Compensation Table on page 12.

(3) Reflects the aggregate grant date fair value computed in accordance with FASB ASC Topic 718 for awards granted in fiscal 2012. A discussion of the assumptions made in the valuation of our stock options is located in footnote 6 Shareholders Equity in the Annual Report on Form 10-K, and is incorporated herein by reference.

(4) As of December 29, 2012, nonemployee directors hold options to purchase the following shares of our common stock pursuant to the Nonemployee Director Stock Option Plan: Mr. Barbetta, 27,000 shares; Ms. Grassle, 12,000 shares; Mr. MacKenzie, 12,000 shares; Mr. Phillips, 5,000 shares; Mr. Reyelts, 6,650 shares; and Mr. Wilson, 10,400 shares.

Transactions with Related Persons, Promoters and Certain Control Persons

2012 Fiscal Year

On December 20, 2013, in connection with Winmark s existing stock repurchase plan, Winmark repurchased 16,000 shares of common stock from Dean B. Phillips, a member of Winmark s Board of Directors, for aggregate consideration of $889,600, or $55.60 per share.

2011 Fiscal Year

There were no reportable related party transactions in fiscal 2011.

Securities Authorized for Issuance Under Equity Compensation Plans

The following information reflects certain information about our equity compensation plans as of December 29, 2012:

	Equity Compensation Plan Information			
	(a) **Number of securities to be issued upon exercise of outstanding options, warrants and rights**	**(b)** **Weighted average exercise price of outstanding options, warrants and rights**		**(c)** **Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))**
Equity compensation plans approved by security holders	613,727	$	31.46	110,250
Equity compensation plans not approved by security holders	0			
TOTAL	613,727	$	31.46	110,250

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS, DIRECTORS

AND EXECUTIVE OFFICERS

The following table sets forth the number of shares of Common Stock beneficially owned by (i) each person known by us to own more than 5% of the outstanding shares of Common Stock, (ii) each Named Executive Officer in the Summary Compensation Table, (iii) each director, (iv) each director nominee and (v) all directors and executive officers as a group. All persons named in the table have sole voting and investment power with respect to all shares of Common Stock owned, unless otherwise noted. The number of shares listed is as of March 4, 2013, the Record Date, unless otherwise noted.

Name (and Address of 5% Holders) or Identity of Group	Number of Shares Beneficially Owned	Percent of Outstanding Shares
John L. Morgan 605 Highway 169 N, Suite 400 Minneapolis, MN 55441	1,708,210(1)	34.2%
Kirk A. MacKenzie	180,000(2)	3.6%
Steven A. Murphy	166,301(3)	3.2%
Brett D. Heffes	160,737(4)	3.2%
Steven C. Zola	125,304(5)	2.5%
Mark L. Wilson	44,000(6)	*
Paul C. Reyelts	35,000(7)	*
Anthony D. Ishaug	29,000(8)	*
Dean B. Phillips	23,000	*
Jenele C. Grassle	13,500(2)	*
Lawrence A. Barbetta	6,250(9)	*
Bares Capital Management, Inc. 12600 Hill Country Blvd, Suite R-230 Austin, TX 78730	837,022(10)	16.7%
Ronald G. Olson 1630 North Ridge Drive Wayzata, MN 55391	584,857(11)	11.7%
All current directors and executive officers as a group (12 persons)	2,507,923(12)	47.0%

* Less than 1%

(1) Includes 29,032 shares held by Mr. Morgan s wife, for which he disclaims beneficial ownership.

(2) Includes 7,000 shares which are not outstanding, but may be acquired within 60 days of the Record Date through the exercise of stock options.

(3) Includes 118,499 shares which are not outstanding, but may be acquired within 60 days of the Record Date through the exercise of stock options. Includes 700 shares held in two trust accounts on behalf of Mr. Murphy s children.

(4) Includes 78,999 shares which are not outstanding, but may be acquired within 60 days of the Record Date through the exercise of stock options. Includes 1,300 shares held by Mr. Heffes for a minor child.

(5) Includes 77,041 shares which are not outstanding, but may be acquired within 60 days of the Record Date through the exercise of stock options. Includes 1,500 shares held in three trust accounts on behalf of Mr. Zola s children.

(6) Includes 5,400 shares which are not outstanding, but may be acquired within 60 days of the Record Date through the exercise of stock options.

(7) Includes 1,650 shares which are not outstanding, but may be acquired within 60 days of the Record Date through the exercise of stock options.

(8) Includes 25,000 shares which are not outstanding, but may be acquired within 60 days of the Record Date through the exercise of stock options.

(9) Includes 6,250 shares which are not outstanding, but may be acquired within 60 days of the Record Date through the exercise of stock options.

(10) We have relied on information provided by Bares Capital Management, Inc. on Schedule 13G/A filed on February 14, 2013.

(11) We have relied on information provided by Mr. Olson s Schedule 13D/A filed on February 8, 2013. Includes 1,500 shares held by Mr. Olson s wife.

(12) Includes 337,211 shares which are not outstanding, but may be acquired within 60 days by all directors and executive officers as a group through the exercise of stock options.

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the 1934 Act requires directors, executive officers, and persons who own more than ten percent of our Common Stock to file with the Securities and Exchange Commission (Commission) initial reports of beneficial ownership and reports of changes in beneficial ownership of common shares. Directors, officers and greater than ten percent shareholders are required by the regulations of the Commission to furnish us with copies of all Section 16(a) reports they file. To our knowledge, based solely on review of the copies of such reports furnished to us and written representations that no other reports were required, during the fiscal year ended December 29, 2012, all Form 3, Form 4 and Form 5 filing requirements of our directors, executive officers and persons who own more than ten percent of our Common Stock were met.

ADVISORY VOTE TO APPROVE EXECUTIVE COMPENSATION

(Proposal #3)

General

Section 14A of the Securities Exchange Act requires that Winmark seek a non-binding advisory vote from its shareholders to approve executive compensation. The Corporation has designed its executive compensation program to attract, motivate, reward and retain the senior management talent required to achieve our corporate objectives and to increase long-term shareholder value. As previously discussed, there are three primary components to NEO compensation: (1) base pay, (2) annual incentive bonus and (3) equity based compensation (see discussion in EXECUTIVE COMPENSATION TABLES, p. 11.)

Board Recommendation

The Board recommends that the shareholders approve the compensation awarded by the Company to the NEOs, as described in the tabular disclosures and other narrative executive compensation disclosures in this Proxy Statement (pp. 11-13) as required by the rules of the Securities and Exchange Commission. We believe that our compensation policies and practices are centered on a pay-for-performance philosophy and are strongly aligned with the long-term interests of our shareholders. This is particularly true, in light of the ownership of the NEOs as a group. As of December 29, 2012, the NEOs of Winmark owned 38% of the outstanding common stock, including a 34% ownership stake by our Chairman and Chief Executive Officer.

The advisory vote to approve executive compensation is non-binding. The approval or disapproval of this proposal by shareholders will not require the Board or the Committee to take any action regarding the Company s executive compensation practices. The final decision on the compensation and benefits of our NEOs remains with the Board of Directors.

ADVISORY VOTE TO APPROVE THE FREQUENCY OF

ADVISORY VOTES ON EXECUTIVE COMPENSATION

(Proposal #4)

General

Pursuant to Section 14A of the Securities Exchange Act, at least once every six years, the Company is required to submit for shareholder vote a non-binding resolution to determine whether the advisory shareholder vote on executive compensation described in Proposal #3 shall occur every one, two or three years.

Board Recommendation

After careful consideration of the various arguments supporting each frequency level, the Board believes that submitting the advisory vote on executive compensation to shareholders every three years is appropriate for Winmark and its shareholders at this time. The Board believes three years provides sufficient time for shareholders to evaluate the effectiveness of the Company s executive compensation program. The frequency vote is non-binding. Shareholder approval of a one, two, or three-year frequency vote will not require the Company to implement an advisory vote on executive compensation every one, two or three years. The final decision on the frequency of the advisory vote on approval of executive compensation remains with the Board of Directors.

RATIFICATION OF INDEPENDENT AUDITORS

(Proposal #5)

General

The Audit Committee has the authority to appoint and discharge the independent registered public accounting firm and has chosen to retain GRANT THORNTON LLP to serve as independent registered public accounting firm for fiscal year 2013. The Board is submitting such appointment of GRANT THORNTON LLP to the shareholders for ratification. If the appointment of GRANT THORNTON LLP is not ratified, the Board of Directors will require the Audit Committee to reconsider its selection. Representatives from GRANT THORNTON LLP expect to be present at the meeting, will have the opportunity to make a statement if they desire and will be available to respond to appropriate questions.

Principal Accounting Fees and Services

The following is a summary of the fees billed by GRANT THORNTON LLP for professional services rendered as our independent registered public accounting firm during the 2012 and 2011 fiscal years.

	GRANT THORNTON LLP			
Fee Category		**Fiscal 2012 Fees**		**Fiscal 2011 Fees**
Audit Fees	$	298,840	$	190,424
Audit-Related Fees		14,560		14,560
Tax Fees		0		0
All Other Fees		0		0
Total Fees	$	313,400	$	204,984

Audit Fees. Consists of fees billed for professional services rendered for the audit of our annual consolidated financial statements (and, for 2012, the audit of our internal control over financial reporting) and review of the interim consolidated financial statements included in quarterly reports, and services that are normally provided by the principal accountant in connection with statutory and regulatory filings or engagements.

Audit-Related Fees. Consists of fees billed for services that are reasonably related to the performance of the audit or review of our consolidated financial statements and are not reported under Audit Fees. These services primarily consist of employee benefit plan audits and consultations concerning financial accounting and reporting standards for Grant Thornton.

Pursuant to its Audit Committee Charter, the Audit Committee is responsible for pre-approving all audit and permitted non-audit services to be performed for Winmark by its independent auditors or any other auditing or accounting firm.

AUDIT COMMITTEE REPORT

The Board of Directors maintains an Audit Committee comprised of three of Winmark s independent directors. The Board of Directors and the Audit Committee believe that the Audit Committee s current member composition satisfies the rule of the NASDAQ OMX Group, Inc. (NASDAQ) that governs audit committee composition, Rule IM-5605-4, including the requirement that audit committee members all be independent directors as that term is defined by NASDAQ Rule 5605(a)(2).

In accordance with its written charter adopted by the Board of Directors, the Audit Committee assists the Board of Directors with fulfilling its oversight responsibility regarding the quality and integrity of the accounting, auditing and financial reporting practices of Winmark. In discharging its oversight responsibilities regarding the audit process, the Audit Committee:

(1) reviewed and discussed with management Winmark s consolidated audited financial statements as of and for the year ended December 29, 2012; and

(2) discussed with the independent auditors the matters required to be discussed by Statement on Auditing Standards No. 61, as amended, *Professional Standards*, Vol. 1 AU Section 380, as adopted by the Public Company Accounting Oversight Board in Rule 3200T; and

(3) received and reviewed the written disclosures and the letter from the independent auditors required by applicable requirements of the Public Company Accounting Oversight Board regarding the independent accountant s communications with the Audit Committee concerning independence, and discussed with the independent auditors the independent auditor s independence.

Based upon the review and discussions referred to above, the Audit Committee recommended to the Board of Directors that the audited financial statements be included in Winmark s Annual Report on Form 10-K for the fiscal year ended December 29, 2012, as filed with the Securities and Exchange Commission.

Members of the Audit Committee:

Paul C. Reyelts, Chairman

Dean B. Phillips

Mark L. Wilson

Board Recommendation

The Board of Directors recommends that the shareholders vote FOR Proposal #5 to ratify GRANT THORNTON LLP as the independent registered public accounting firm for Winmark. Under applicable Minnesota law, approval of the proposal to be voted on at the meeting requires the affirmative vote of the holders of the greater of (i) a majority of the voting power of the shares represented in person or by proxy at the Annual Meeting with authority to vote on such matter or (ii) a majority of the voting power of the minimum number of shares that would constitute a quorum for the transaction of business at the Annual Meeting.

SHAREHOLDER PROPOSALS FOR THE 2014 ANNUAL MEETING

Rule 14a-8 of the SEC permits shareholders of a company, after timely notice to the company, to present proposals for shareholder action in the company s proxy statement where such proposals are consistent with applicable law, pertain to matters appropriate for shareholder action and are not properly omitted by company action in accordance with the proxy rules.

The Winmark Corporation 2014 Annual Meeting of Shareholders is expected to be held on or about April 30, 2014. Proxy materials for that meeting are expected to be mailed on or about March 26, 2014. Under SEC Rule 14a-8, shareholder proposals to be included in the Winmark Corporation proxy statement for that meeting must be received by Winmark Corporation on or before November 26, 2013. Additionally, if Winmark Corporation receives notice of a shareholder proposal after February 9, 2014, the proposal will be considered untimely pursuant to SEC Rules 14a-4 and 14a-5(e) and the persons named in proxies solicited by the Board of Directors of Winmark Corporation, Inc. for its 2014 Annual Meeting of Shareholders may exercise discretionary voting power with respect to the proposal.

ANNUAL REPORT ON FORM 10-K

A COPY OF OUR FORM 10-K ANNUAL REPORT FOR THE FISCAL YEAR ENDED DECEMBER 29, 2012 (WITHOUT EXHIBITS) ACCOMPANIES THIS NOTICE OF MEETING AND PROXY STATEMENT. THE ANNUAL REPORT IS INCORPORATED HEREIN BY REFERENCE. WE WILL FURNISH TO ANY SHAREHOLDER, UPON WRITTEN REQUEST, ANY EXHIBIT DESCRIBED IN THE LIST ACCOMPANYING THE FORM 10-K, UPON THE PAYMENT, IN ADVANCE, OF REASONABLE FEES RELATED TO THE FURNISHING OF SUCH EXHIBIT(S). ANY REQUEST SHOULD INCLUDE A REPRESENTATION THAT THE SHAREHOLDER WAS THE BENEFICIAL OWNER OF SHARES OF OUR COMMON STOCK ON MARCH 4, 2013, THE RECORD DATE FOR THE 2013 ANNUAL MEETING, AND SHOULD BE DIRECTED TO ANTHONY D. ISHAUG, CHIEF FINANCIAL OFFICER AND TREASURER, AT OUR PRINCIPAL ADDRESS.

OTHER BUSINESS

The Board of Directors knows of no other matters to be presented at the meeting. In the event any other business is presented at the meeting, the persons named in the enclosed proxy will have authority to vote on that business in accordance with their judgment.

By the Order of the Board of Directors

John L. Morgan
Chairman and Chief Executive Officer