

BEVERLY ENTERPRISES INC

Form PRE 14A

February 18, 2005

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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**

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 Rule 14a-12

**BEVERLY ENTERPRISES, INC.**  
(Name of Registrant as Specified In Its Charter)

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(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)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

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(2) Aggregate number of securities to which transaction applies:

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(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):

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- Fee paid previously with preliminary materials.

- o 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:

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(2) Form, Schedule or Registration Statement No.:

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(3) Filing Party:

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(4) Date Filed:

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**PRELIMINARY COPY  
SUBJECT TO COMPLETION**

, 2005

Dear Fellow BEI Stockholder:

It is our pleasure to invite you to attend the 2005 Annual Meeting of stockholders of Beverly Enterprises, Inc., to be held at our corporate headquarters at One Thousand Beverly Way, Fort Smith, Arkansas at 10:00 a.m. local time on April 21, 2005.

We urge you to participate in this Annual Meeting by completing and returning the enclosed white proxy card as promptly as possible. This Annual Meeting is of particular importance to all BEI stockholders because:

A group including Appaloosa Management L.P., a New Jersey based hedge fund, and Formation Capital, LLC, among others, is attempting to take control of your company's Board at the meeting as part of its efforts to acquire BEI.

Your Board's unanimous view is that the transactions proposed by this group are not in the best interests of BEI stockholders and dramatically undervalue BEI.

For the reasons more fully described in the accompanying Proxy Statement, your Board strongly recommends that you protect your investment in BEI by voting:

**FOR** the BEI nominees for director; and

**AGAINST** the Appaloosa/ Formation Capital group proposals under Items 3-5 on the enclosed white proxy card.

Please, sign, date and return the white proxy card in the accompanying postage paid envelope. Whether or not you plan to attend the Annual Meeting, we hope that you will vote as promptly as possible.

Your Board urges you NOT to sign or return any [COLOR] proxy card sent to you by the Appaloosa/ Formation Capital group for any reason, even as a protest against their activities. If you have previously returned a [COLOR] proxy card, you may change any vote you may have cast in favor of the Appaloosa/ Formation Capital proposals and vote in favor of the election of the BEI nominees, by signing and returning the enclosed white proxy card in the accompanying envelope. Any signed [COLOR] proxy card you return even if it reflects votes **AGAINST** Appaloosa/ Formation Capital proposals will cancel any votes reflected on any white proxy card you may have previously returned. The properly executed proxy card you submit with the latest date will be the one honored. We urge you to disregard any [COLOR] proxy card sent to you.

On behalf of everyone at BEI, we thank you for your continued support. We remain committed to acting in your best interests. If you have any questions or need any assistance in voting your shares, please feel free to call our proxy solicitor, Innisfree M&A Incorporated at (800) \_\_\_\_\_ - \_\_\_\_\_ (toll-free) or (212) \_\_\_\_\_ - \_\_\_\_\_ (collect).

Sincerely,

William R. Floyd  
Chairman, President and  
Chief Executive Officer

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If your shares are registered in the name of a broker, only your broker can execute a proxy and vote your shares and only after receiving your specific instructions. Please sign, date and promptly mail the voting instruction card in the envelope provided by your broker. Remember, your shares cannot be voted unless you return a signed and executed voting instruction card to your broker. If you have any questions or need further assistance in voting, please contact the firm assisting us in the solicitation of proxies:

**Innisfree M&A Incorporated**

Call (800) \_\_\_\_\_ (toll-free in the United States)

or (212) \_\_\_\_\_ (collect)

The Proxy Statement is dated March \_\_\_\_\_, 2005 and is first being mailed to stockholders  
on or about March \_\_\_\_\_, 2005.

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**Beverly Enterprises, Inc.  
One Thousand Beverly Way  
Fort Smith, Arkansas 72919  
(479) 201-2000**

**NOTICE OF 2005 ANNUAL MEETING OF STOCKHOLDERS**

TIME AND DATE	10:00 a.m., CDT, on Thursday, April 21, 2005
PLACE	Beverly Enterprises, Inc. One Thousand Beverly Way Fort Smith, Arkansas 72919
ITEMS OF BUSINESS	(1) Election of eight directors. YOUR BOARD UNANIMOUSLY RECOMMENDS THAT YOU VOTE <b>FOR</b> ELECTION OF THE EIGHT BEI DIRECTOR NOMINEES (Item 1 on the enclosed white proxy card).  (2) Ratification of the appointment of Ernst & Young LLP as our independent registered public accounting firm for 2005. YOUR BOARD UNANIMOUSLY RECOMMENDS THAT YOU VOTE <b>FOR</b> THIS PROPOSAL (Item 2 on the enclosed white proxy card); and  (3) Transaction of any other business properly brought before the Annual Meeting, including at any adjournment or postponement of the Annual Meeting.
RECORD DATE	If you were a stockholder as of the close of business on March 7, 2005 (the Record Date ), you are entitled to vote and attend the Annual Meeting.
ANNUAL REPORT	Our 2004 Annual Report, which is not part of the proxy soliciting material, is enclosed.
PROXY VOTING	It is important that your shares of stock be represented and voted at the meeting. Please SIGN, DATE AND PROMPTLY RETURN the enclosed white proxy card in the postage-paid envelope.  Any proxy may be revoked at any time prior to its exercise at the meeting by following the instructions in the Proxy Statement.
March __, 2005	DOUGLAS J. BABB <i>Secretary</i>

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**PROXY STATEMENT FOR  
BEVERLY ENTERPRISES, INC. ( BEI )  
2005 ANNUAL STOCKHOLDERS MEETING  
Answers to Frequently Asked Questions**

**1. Q. Why am I receiving these proxy materials?**

- A. BEI's Board of Directors is asking for the right to vote your shares as your proxy or agent at the Annual Meeting. Acting as your proxy, a member of the Proxy Committee, appointed by the Board, will vote your shares as you instruct on your proxy card. This Proxy Statement discusses the issues to be voted on. Each share you own is entitled to one vote on each matter considered at the Annual Meeting.

**2. Q. On which proposals may I vote?**

- A. You will be voting on:

(1) Election of eight directors;

(2) Ratification of the appointment of Ernst & Young LLP as our independent registered public accounting firm for 2005; and

(3) Approval or disapproval of any other business properly presented for a vote at the Annual Meeting. Please see Question and Answer 5 and Question and Answer 6 below.

**3. Q. Who is being nominated for election as a director?**

- A. Your Board has nominated William R. Floyd, Melanie Creagan Dreher, Ph.D., John D. Fowler, Jr., John P. Howe, III, M.D., James W. McLane, Ivan R. Sabel, Donald L. Seeley and Marilyn R. Seymann, Ph.D., for election as directors at the Annual Meeting. Additional information about each of the BEI nominees is included under the heading "BEI Nominees for the Board of Directors" below.

As you may know, a group including Appaloosa Management L.P., a New Jersey based hedge fund, and Formation Capital, LLC, among others, has acquired over eight percent of our outstanding stock and has sent us two letters proposing an acquisition of BEI. This group, through Arnold M. Whitman, the Chief Executive Officer of Formation Capital, has nominated six individuals for election as directors of BEI at the Annual Meeting in order to take control of the Board and further their attempt to acquire BEI.

Your Board has unanimously determined that the transactions proposed by the Appaloosa/ Formation Capital group dramatically undervalue BEI and are not in the best interests of BEI or its stockholders.

**YOUR BOARD UNANIMOUSLY RECOMMENDS THAT YOU VOTE **FOR** ELECTION OF THE EIGHT BEI DIRECTOR NOMINEES (ITEM 1 ON THE ENCLOSED WHITE PROXY CARD).**

We urge you NOT to sign or return any [COLOR] proxy card sent to you by the Appaloosa/ Formation Capital group for any reason, which would void any earlier-dated proxy. The best way to support your Board is by voting:

**FOR** BEI's nominees for director; and

**AGAINST** Items 3-5 on the enclosed white proxy card (the Appaloosa/ Formation Capital proposals).

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**4. Q. What vote is required to elect directors?**

A. With respect to the election of directors, you may:

Vote for the election of any or all of the eight BEI director nominees; or

Withhold authority to vote for any or all of the eight BEI director nominees.

You may take any of these actions by marking the appropriate spaces on the enclosed white proxy card. If you submit your signed white proxy card without indicating how you wish to vote, your shares will be voted **FOR** the election of the BEI director nominees.

If you receive a proxy statement from the Appaloosa/ Formation Capital group or attend the Annual Meeting, you may also be able to vote on their nominees for election as directors at the Annual Meeting.

BEI's By-Laws provide that directors will be elected by a plurality of votes cast, in person or by proxy, and entitled to vote at the Annual Meeting at which a quorum is present. Stockholders do not have the right to cumulate votes in the election of directors. Accordingly, the eight nominees receiving the highest vote totals will be elected as directors of BEI. Votes that are withheld in the election of directors and broker non-votes will not be taken into account for purposes of determining the outcome of the election.

The only way to vote by proxy **FOR** the BEI nominees is to sign, date and return the enclosed white proxy card. Do NOT sign or return any [COLOR] proxy card sent to you by the Appaloosa/ Formation Capital group for any reason, even as a protest against their activities. The best way to support your Board is by voting:

**FOR** BEI's nominees for director; and

**AGAINST** Items 3-5 on the enclosed white proxy card (the Appaloosa/ Formation Capital proposals).

**YOUR BOARD UNANIMOUSLY RECOMMENDS THAT YOU VOTE FOR ELECTION OF THE EIGHT BEI DIRECTOR NOMINEES (ITEM 1 ON THE ENCLOSED WHITE PROXY CARD).**

**5. Q. What business other than the election of directors will be conducted at the Annual Meeting?**

A. BEI has set forth Proposal No. 2, which asks the stockholders to ratify the appointment of Ernst & Young LLP as BEI's independent registered public accounting firm for 2005.

**YOUR BOARD UNANIMOUSLY RECOMMENDS THAT YOU VOTE FOR THIS PROPOSAL (ITEM 2 ON THE ENCLOSED WHITE PROXY CARD)**

We also have received notice from Arnold M Whitman, the Chief Executive Officer of Formation Capital, that he intends to bring the following proposals before the Annual Meeting for consideration by BEI's stockholders:

A proposal to amend our By-Laws to fix the number of directors constituting the entire Board at eight (Item 3 on the enclosed white proxy card);

A proposal to repeal any amendment to our By-Laws adopted after May 29, 1997; other than the proposed amendment described above (Item 4 on the enclosed white proxy card); and

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A proposal to require that the foregoing proposals be presented prior to the election of directors and before any other business is conducted at the Annual Meeting (Item 5 on the enclosed white proxy card).

**YOUR BOARD UNANIMOUSLY RECOMMENDS THAT YOU VOTE AGAINST EACH OF THESE PROPOSALS SUBMITTED BY THE APPALOOSA/ FORMATION CAPITAL GROUP (ITEMS 3-5 ON THE ENCLOSED WHITE PROXY CARD).** More information

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regarding these proposals, and the reasons for your Board's recommendation, may be found under the heading "Other Matters" below.

**6. Q. What vote is required for the other proposals that may be considered at the Annual Meeting?**

- A. The affirmative vote of the holders of a majority of the shares present, in person or by proxy, and entitled to vote on this proposal at the Annual Meeting at which a quorum is present is required for stockholder ratification of the appointment of Ernst & Young LLP as our independent registered public accounting firm for 2005.

You may vote for or against this proposal or abstain from voting. Abstentions will have the same effect as if you voted against this proposal. If this proposal is contested, broker non-votes will not affect the outcome of the vote on this matter.

If you submit your signed white proxy card and either vote for this proposal or do not indicate a vote, you will be voting for the proposal. If you submit your signed white proxy card and either vote against this proposal or abstain from voting, then you will be voting against the proposal.

**YOUR BOARD UNANIMOUSLY RECOMMENDS THAT YOU VOTE FOR THE PROPOSAL TO RATIFY THE APPOINTMENT OF ERNST & YOUNG LLP (ITEM 2 ON THE ENCLOSED WHITE PROXY CARD).**

Under BEI's By-Laws, the affirmative vote of the holders of a majority of the outstanding shares of BEI common stock is required to amend or repeal the By-Laws. As a result, the affirmative vote of the holders of a majority of the outstanding shares of BEI common stock is required to amend our By-Laws to fix the number of directors constituting the entire Board at eight or to repeal any amendment to our By-Laws adopted after May 29, 1997. In addition, the affirmative vote of the holders of a majority of the shares present, in person or by proxy, and entitled to vote on the matter at the Annual Meeting at which a quorum is present is required to approve the proposal to conduct business in the order proposed by the Appaloosa/ Formation Capital group.

You may vote for or against each of these matters or abstain from voting with respect to each of these matters. Abstentions with respect to any of these proposals will have the same effect as a vote against such proposals. Broker non-votes will have the same effect as a vote against the proposals to amend our By-Laws. Broker non-votes will not affect the outcome of the vote with respect to the proposal to conduct business in the order proposed by the Appaloosa/ Formation Capital group.

If you submit your signed white proxy card and vote for any of the Appaloosa/ Formation Capital proposals, you will be voting for such proposal. If you submit your signed white proxy card and either vote against any of the Appaloosa/ Formation Capital proposals, abstain from voting or do not indicate a vote, then you will be voting against such proposals.

**YOUR BOARD UNANIMOUSLY RECOMMENDS THAT YOU VOTE AGAINST EACH OF ITEMS 3-5 ON THE ENCLOSED WHITE PROXY CARD.**

**7. Q. How does our Board recommend I vote on the enclosed white proxy card?**

- A. Your Board unanimously recommends you vote:

**FOR** each BEI director nominee (Item 1 on the enclosed white proxy card); and

**FOR** ratification of the appointment of Ernst & Young LLP as BEI's independent registered public accounting firm for 2005 (Item 2 on the enclosed white proxy card).

We have not made any changes to our By-Laws since May 19, 1997. Your Board unanimously recommends you vote **AGAINST** the proposals to amend our By-Laws to fix the number of directors constituting the entire Board at eight, to repeal any amendment to our By-Laws adopted after May 29, 1997 and to conduct business in the order proposed by the Appaloosa/ Formation Capital group (Items 3-5 on the enclosed white proxy card).

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**8. Q. Who is entitled to vote?**

- A. Stockholders as of the close of business on March 7, 2005 (the Record Date ) are entitled to vote at the Annual Meeting. As required by Delaware law, a list of stockholders entitled to vote at the Annual Meeting will be available at the Annual Meeting on April 21, 2005 and for 10 days prior to the meeting, during normal business hours, at BEI s corporate office located at One Thousand Beverly Way, Fort Smith, Arkansas 72919.

**9. Q. Does holding my stock in a brokerage account affect my entitlement to vote?**

- A. If your shares are held in the name of a broker, only your broker can execute a proxy and vote your shares. Please sign, date and promptly mail the white voting instruction card in the envelope provided by your broker. Remember, your shares cannot be voted (except with respect to the ratification of the appointment of Ernst & Young LLP as our independent registered public accounting firm, so long as such proposal is not contested at the time of the Annual Meeting) unless you return a signed and dated voting instruction card to your broker or attend the Annual Meeting to vote your shares in person. If your shares are held in the name of a broker, and you intend to attend the Annual Meeting and vote your shares in person, you must obtain a legal proxy, executed in your favor, from your broker to be able to vote at the Annual Meeting. However, you should still sign, date and promptly mail the white voting instruction card in the envelope provided by your broker to preserve your right to vote. If you attend the Annual Meeting and vote, your proxy will be revoked.

**10. What happens if I don t instruct my broker how to vote?**

**Q.**

- A. If you don t return a voting instruction card, your broker will not be able to vote on Items 1, 3, 4 and 5. Your broker will be able to vote with respect to Item 2 only if that proposal is not contested at the time of the Annual Meeting. Therefore, if you do not return a voting instruction card:

your vote will not be taken into account for purposes of determining the outcome of the election of directors;

your broker will have discretion to vote with respect to the ratification of the appointment of Ernst & Young LLP, assuming the ratification is uncontested;

your vote will not be taken into account with respect to the proposals to amend our By-Laws, which will have the same effect as a vote against the proposals; and

your vote will not be taken into account for purposes of determining the outcome of the proposal to conduct business in the order proposed by the Appaloosa/ Formation Capital group.

**11. What happens if I do not vote the shares registered in my name?**

**Q.**

- A. If your shares are held in a registered account maintained by the transfer agent, The Bank of New York, your shares will not be voted or considered in the determination of a quorum unless you submit a proxy card or vote at the Annual Meeting.

**12. What is a quorum ?**

**Q.**

- A.

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A quorum is a majority of BEI's issued and outstanding shares of common stock and is required to hold the Annual Meeting. As of the Record Date, there were \_\_\_\_\_ shares of BEI common stock issued and outstanding, all of one class and each having one vote. There must be at least \_\_\_\_\_ shares present or represented by proxy at the Annual Meeting for business to be transacted. If you send the enclosed white proxy card to BEI, your shares will be considered part of the quorum, regardless of how you vote.

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**13. How do I vote?**

**Q.**

- A. **Your vote is important.** You may vote by mail or by attending the Annual Meeting and voting by ballot, all as described below.

***Vote by Mail***

If you choose to vote by mail, simply date and sign your white proxy card or voting instruction card and return it in the postage-paid envelope provided. If the envelope is missing, please mail your completed white proxy card to Innisfree M&A Incorporated, P.O. Box 5154, FDR Station, New York, NY 10150-5154, or your completed voting instruction card to your broker, bank or nominee.

If you return your signed white proxy card, but do not mark the boxes showing how you wish to vote, your shares will be voted by a member of BEI's Proxy Committee in accordance with your Board's recommendations described in this Proxy Statement. The members of the Proxy Committee are: Douglas J. Babb, William R. Floyd and Jeffrey P. Freimark.

***Voting at the Annual Meeting***

The method or timing of your vote will not limit your right to vote at the Annual Meeting if you attend the meeting and vote in person. However, if your shares are held in the name of a broker, you must obtain a legal proxy, executed in your favor, from your broker to be able to vote at the Annual Meeting. You should allow yourself enough time prior to the Annual Meeting to obtain this proxy from the holder of record.

The shares represented by the proxy cards received, properly marked, dated, signed and not revoked will be voted at the Annual Meeting.

**14. Can I revoke or change my vote after I return a proxy card?**

**Q.**

- A. You can revoke any proxy you give at any time before your shares are voted. You can revoke a proxy in any one of three ways:

submit a valid, later-dated proxy card;

notify BEI's Corporate Secretary, in writing at One Thousand Beverly Way, Fort Smith, Arkansas 72919, before the Annual Meeting that you have revoked your proxy; or

vote in person at the Annual Meeting.

Attendance at the meeting in itself will not constitute revocation of a proxy.

If you have returned a [COLOR] proxy card to the Appaloosa/ Formation Capital group, we urge you to revoke your proxy by signing, dating and returning the enclosed white proxy card to BEI.

**15. What does it mean if I get more than one white proxy card?**

**Q.**

- A. If your shares are registered differently and are in more than one account, you will receive more than one white proxy card. **PLEASE SIGN AND RETURN ALL WHITE PROXY CARDS TO ENSURE THAT ALL OF YOUR SHARES ARE VOTED.**

16. **Who will count the votes?**

**Q.**

- A. Representatives of IVS Associates, Inc., an independent tabulator appointed by the Board of Directors, will count the votes and act as inspectors of election. The inspectors of election shall have the authority to receive, inspect, electronically tally and determine the validity of proxies received.

17. **How will voting on any other business be conducted?**

**Q.**

- A. Other than those items described in this Proxy Statement, we do not know of any business to be conducted at the Annual Meeting. However, if any other business is properly presented, your signed white proxy card gives authority to each member of the Proxy Committee to vote or refrain from voting on such matters at his discretion.

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**18. How do I vote if I participate in the Employee Stock Purchase Plan or the BEI 401(k) Plan?**

**Q.**

- A. Computershare, as administrator of the Employee Stock Purchase Plan, is the record holder of the shares held in BEI's Employee Stock Purchase Plan. If you are a participant in the Employee Stock Purchase Plan, your shares are held in a nominee position with Computershare's broker dealer, Merrill Lynch. Computershare will seek instructions from you on how to vote and convey those instructions to Merrill Lynch, who in turn will vote your shares.

Similarly, Diversified Investment Advisors, as the administrator of the BEI 401(k) Plan, is the record hold of the shares held in the BEI 401(k) Plan. If you are a participant in the BEI 401(k) Plan, your shares are held in a nominee position with Investors Bank and Trust, the 401(k) Plan trustee. Diversified Investment Advisors will seek instructions from you on how to vote and convey those instructions to Investors Bank and Trust, who in turn will vote your shares.

**19. Who can attend the Annual Meeting?**

**Q.**

- A. Admission to the Annual Meeting is limited to stockholders of BEI, persons holding validly executed proxies from stockholders who held BEI common stock at the close of business on March 7, 2005, and invited guests of BEI.

If you are a stockholder of BEI, you must bring certain documents with you in order to be admitted to the Annual Meeting. The purpose of this requirement is to help us verify that you are actually a stockholder of BEI. Please read the following rules carefully, because they specify the documents that you must bring with you to the Annual Meeting in order to be admitted. The items that you must bring with you differ depending upon whether you are a record holder or hold your stock in street name .

Proof of ownership of BEI common stock must be shown at the door. Failure to provide adequate proof that you were a stockholder on the record date may prevent you from being admitted to the Annual Meeting.

**If you were a record holder of BEI common stock on March 7, 2005, then you must bring a valid government-issued personal identification (such as a driver's license or passport).**

**If a broker was the record holder of your shares of BEI common stock on March 7, 2005, then you must bring:**

Valid government-issued personal identification (such as a driver's license or passport); and

Proof that you beneficially owned shares of BEI common stock at the close of business on March 7, 2005.

Examples of proof of beneficial ownership include the following (1) a letter from your bank or broker stating that you owned BEI common stock on March 7, 2005; (2) a brokerage statement indicating that you owned BEI common stock on March 7, 2005; or (3) a copy of the voting instruction card provided by your broker indicating that you owned BEI common stock on March 7, 2005.

**If you are a proxy holder for a stockholder of BEI, then you must bring:**

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The validly executed proxy naming you as the proxy holder, signed by a stockholder of BEI who owned shares of BEI common stock on March 7, 2005;

Valid government-issued personal identification (such as a driver's license or passport); and

If the stockholder whose proxy you hold was not a record holder of BEI common stock on March 7, 2005, proof of the stockholder's beneficial ownership of shares of BEI common stock on March 7, 2005, in the form of a letter or statement from a broker or the voting instruction card provided by the broker, in each case indicating that the stockholder owned BEI common stock on March 7, 2005.

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You may not use cameras, recording equipment or other electronic devices during the Annual Meeting.

**20. When are the stockholder proposals for the 2006 Annual Meeting due?**

**Q.**

- A. All stockholder proposals to be considered for inclusion in next year's proxy statement must be submitted in writing for receipt by November 1, 2005. They should be sent to the **Corporate Secretary, Beverly Enterprises, Inc., One Thousand Beverly Way, Fort Smith, AR 72919.**

Additionally, BEI's advance notice by-law provision requires that any stockholder proposal to be presented from the floor of the 2006 Annual Meeting be received by the Corporate Secretary at least seventy-five (75) days before the meeting. It is currently expected that the 2006 Annual Meeting will be held on April 20, 2006. If this is the date set by the Board, stockholder proposals to be presented from the floor will be due by February 4, 2006. Proposals may be presented from the floor only after a determination has been made that it is a proper matter for consideration.

**21. Can a stockholder recommend someone to be a nominee for election as a director at the 2006 Annual Meeting?**

**Q.**

- A. As a stockholder, you may recommend any person to be a nominee for director by writing to the Chairman of the Nominating and Compensation Committee of the Board, c/o the Corporate Secretary at BEI's address above. The recommendations must be received by BEI no later than the date by which stockholder proposals must be received to be considered for inclusion in the proxy statement, which is the first date set forth in Question and Answer 20 above. Each recommendation must be accompanied in writing by the following information:

name and address of the stockholder recommending the nomination;

a representation that the stockholder recommending the nomination is a record holder;

a representation that the stockholder recommending the nomination intends to appear in person or by proxy at the Annual Meeting to nominate the person or persons specified;

information regarding each recommended potential director nominee that would be required to be included in a proxy statement;

a description of any arrangements or understandings between the stockholder recommending the nomination and the recommended potential director nominee; and

the consent of each recommended potential director nominee to serve as a director, if elected.

**22. Are there any specific, minimum qualifications for director nominees?**

**Q.**

- A. The Nominating and Compensation Committee of the Board has established certain criteria it considers as a guideline in considering nominations to BEI's Board of Directors. The criteria include: character, knowledge, experience, education, business judgment, diligence, stock ownership, independence, loyalty, reputation and ability to contribute to board balance and diversity. These criteria are not exhaustive, and the Nominating and Compensation Committee and the Board of Directors may consider other qualifications and attributes which

they believe are appropriate in evaluating the ability of an individual to serve as a member of the Board of Directors.

**23. What is the Nominating and Compensation Committee's process of identifying and evaluating nominees?  
Q.**

- A. Prior to each Annual Meeting of stockholders at which directors are to be elected, and whenever there is otherwise a vacancy on the Board of Directors, the Nominating and Compensation Committee will consider incumbent Board members and other well-qualified individuals as potential director nominees. The Nominating and Compensation Committee will determine whether to retain an executive search firm to identify Board candidates. If an executive search firm is retained, the Nominating and Compensation Committee will select the search firm, approve the search firm's fees

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and other retention terms and specify for the search firm the criteria to use in identifying potential candidates consistent with the director qualification criteria described above. The Nominating and Compensation Committee will review each potential candidate. Management may assist the Nominating and Compensation Committee in the review process at the Committee's direction. The Nominating and Compensation Committee will select the candidate or candidates it believes are the most qualified to recommend to the Board for selection as a director nominee. Candidates recommended by a security holder will be evaluated in the same manner as candidates identified by the Nominating and Compensation Committee.

With the exception of Melanie Creagan Dreher, Ph.D., each of the nominees for election as a director at the 2005 Annual Meeting was elected at the Annual Meeting of stockholders held in 2004. Dr. Dreher was initially identified as a potential candidate by a professional search firm. The qualifications of Dr. Dreher were then reviewed by the members of the Nominating and Compensation Committee. All of the BEI nominees are recommended by the Nominating and Compensation Committee to stand for election by the stockholders.

**24. Who is soliciting my proxy?**

**Q.**

- A. Under applicable regulations of the SEC, each of our directors, certain officers of BEI and certain other persons may be deemed to be participants in BEI's solicitations of proxies in connection with the Annual Meeting. For information with respect to each participant in the BEI's solicitation of proxies in connection with the Annual Meeting please refer to (i) the table of security ownership of directors and executive officers under the heading "Security Ownership of Certain Beneficial Owners and Management", (ii) the discussion under the headings "Executive Compensation" and "Employment Contracts, Termination of Employment and Change in Control Agreements", and (iii) Schedules I and II to this Proxy Statement.

For additional information regarding BEI's solicitation of proxies please see "Solicitation of Proxies" below.

**25. How can I obtain copies of BEI's periodic and current reports filed with the SEC?**

**Q.**

- A. Our periodic and current reports are available, free of charge, on BEI's website at <http://www.beverlycorp.com> as soon as reasonably practicable after such material is electronically filed with, or furnished to, the SEC.

**26. How can I obtain copies of BEI's Corporate Governance Guidelines, Audit and Compliance Committee Charter and Nominating and Compensation Committee Charter?**

**Q.**

- A. Our Corporate Governance Guidelines, Audit and Compliance Committee Charter and Nominating and Compensation Committee Charter are available, free of charge, on BEI's website at <http://www.beverlycorp.com>. We will also provide copies of these documents in printed form at the request of any stockholder.

**27. Has BEI adopted a Code of Business Conduct and Ethics, and if so, how can I obtain a copy?**

**Q.**

- A. In early 2004, we adopted an amended and restated Code of Business Conduct and Ethics that applies to all of our employees, officers and directors, and a Code of Ethics for Senior Financial Officers that applies to our principal executive officer, principal financial officer, controller and other persons serving similar functions. Each of these codes is available, free of charge, on BEI's website at <http://www.beverlycorp.com>. We will also provide a copy in printed form at the request of any stockholder.

<sup>1</sup> The references to BEI's website address in this Proxy Statement are not intended to function as a hyperlink, and the information contained on BEI's website is not a part of this Proxy Statement.

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**28. Does BEI's Board of Directors provide a process for stockholders to send communications to the Board?  
Q.**

- A. Stockholders may send correspondence to the Board of Directors c/o the Corporate Secretary at One Thousand Beverly Way, Fort Smith, Arkansas 72919. The Corporate Secretary will review all correspondence addressed to the Board or to any individual Board member. The Corporate Secretary will determine whether correspondence should be forwarded to the Board or would be more appropriately answered by management. The Corporate Secretary will summarize all correspondence not forwarded to the Board and make the summaries of the correspondence periodically available to the Board for its review. At the Board's request, the Corporate Secretary will provide the Board with the actual correspondence underlying the summaries.

**29. Do I have dissenters' rights?  
Q.**

- A. No dissenters' rights apply to any matter to be acted upon at this meeting.

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**Background**

On December 16, 2004, Arnold M. Whitman, the Chief Executive Officer of Formation Capital, called William R. Floyd, our Chairman, President and Chief Executive Officer, and expressed an interest in a possible transaction involving BEI.

On December 27, 2004, Mr. Floyd received a letter, dated December 22, 2004, from Formation Capital expressing an interest by Formation Capital, Appaloosa Management L.P. and Franklin Mutual Advisers, LLC in acquiring BEI for \$11.50 per share. The letter also suggested that this group would be prepared to discuss a transaction involving the purchase of our real estate assets and nursing facilities operations, leaving BEI with its ancillary service businesses. In its letter, Formation Capital indicated that this group owned approximately 4.5% of our outstanding common stock.

Mr. Floyd promptly forwarded this letter to the entire Board and convened a Board meeting on December 30, 2004 to discuss the letter. Following that meeting, we retained Latham & Watkins LLP and Lehman Brothers Inc. as our legal and financial advisors, respectively, to assist your Board in fully evaluating the December 22 letter. Subsequently, we also retained J.P. Morgan Securities Inc. as a financial advisor.

On January 5, 2005, and in subsequent telephone conversations, Mr. Floyd advised Mr. Whitman that consistent with its fiduciary obligations and acting in good faith the BEI Board would meet to carefully consider the Appaloosa/ Formation Capital group's expression of interest in an acquisition of BEI at a special meeting in late January.

Mr. Whitman called Mr. Floyd during the week of January 10, 2005. During this conversation, Mr. Floyd informed Mr. Whitman that the BEI Board would be meeting the following week and Mr. Whitman told Mr. Floyd that he might like to provide further information for the BEI Board to consider with respect to the transactions described in Formation Capital's December 22 letter. Mr. Floyd urged Mr. Whitman to provide that information quickly so the Board would have sufficient time to carefully review the information in connection with its evaluation of the December 22 letter.

Our Board met again on January 21, 2005 to consider the Appaloosa/ Formation Capital group's December 22 letter. Mr. Floyd did not receive any additional information from the Appaloosa/ Formation Capital group prior to his departure for the meeting.

When Mr. Floyd returned from the Board meeting on the afternoon of January 21, 2005, he received a second letter from Mr. Whitman dated January 19, 2005. This second letter proposed a different, more complex structure for the acquisition of BEI in which BEI would spin-off its ancillary service businesses to its stockholders after which the Appaloosa/ Formation Capital group would acquire the remainder of BEI for \$9.00 per share.

This second letter necessitated an entirely new round of reviews by your Board and its outside legal and financial advisors to evaluate the changed nature of the Appaloosa/ Formation Capital group's expression of interest. On January 24, 2004, Mr. Floyd sent Mr. Whitman a letter informing him that your Board would meet again to consider this second letter and that he expected to respond by February 4, 2005.

Both of Mr. Whitman's letters professed a desire for a friendly transaction and specifically requested that we treat their indications of interest confidentially, a request that BEI honored. However, on January 24, 2005, Appaloosa, Formation Capital, Franklin and Northbrook NBV, LLC filed a Schedule 13D with the SEC explaining that they had acquired over 8% of our common stock and disclosing their December 22 and January 19 letters and their intent to gain control of BEI.

Importantly, their filing was triggered by the Appaloosa/ Formation Capital group's accumulation of more than 5% of our shares in the open market. In fact, based upon the buying history described in their Schedule 13D, they knew on January 14 that they would be forced to make public disclosure of their proposals no later than January 24. Mr. Whitman's January 19 letter, nonetheless, continued to express a desire to keep the Appaloosa/ Formation Capital group's indications of interest confidential.

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On January 25, 2005, in light of the rapid accumulation of our shares by the Appaloosa/ Formation Capital group, our Board adopted a Share Purchase Rights Plan to protect our stockholders from the obvious threat of additional stock accumulations.

On January 27, 2005, we received a letter from a lawyer for the Appaloosa/ Formation Capital group indicating that they might propose a slate of directors for election at the Annual Meeting.

Our Board met again on the evening of February 2, 2005 to consider the transactions described in Mr. Whitman's January 19 letter. On February 3, 2005, Mr. Floyd faxed Mr. Whitman a letter informing him that the BEI Board had after consultation with its independent financial and legal advisors unanimously concluded that the transactions described in his December 22 and January 19 letters are not in the best interests of BEI or our stockholders.

In making this decision, your Board took into account, among other things:

Its belief that both indications of interest dramatically undervalue BEI, based upon its current performance levels and significant growth opportunities;

Its confidence in BEI's strategic plan and business segment growth initiatives, the operating and financial progress BEI has achieved in recent years, the proven ability of management to deliver on its commitments and BEI's prospects for future value creation;

Its belief that neither of the alternative transaction structures, as presented, could be successfully financed within the terms of the indications of interest; and

Its serious concerns regarding the highly contingent nature of the proposals.

Formation Capital's nomination of an opposition slate of directors, as well as its proposal of a number of additional matters for approval by the BEI stockholders at the Annual Meeting, is designed solely to further the Appaloosa/ Formation Capital group's attempt to take over BEI.

Your Board has unanimously concluded that the transactions proposed by the Appaloosa/ Formation Capital group are not in the best interests of BEI or our stockholders. Accordingly, your Board unanimously recommends you vote:

**FOR** the BEI director nominees; and

**AGAINST** items 3-5 on the enclosed white proxy card.

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**Proposals on Which You May Vote**

**1. Election of Directors**

All of the eight current directors of BEI have been nominated for re-election. Detailed information on each BEI nominee is provided beginning on page 14. Each director is elected annually and serves a one-year term until the next Annual Meeting or until his or her successor is elected and qualified. Except as otherwise specified on your white proxy card, proxies will be voted for the election of all BEI nominees.

If for any reason any of the BEI director nominees should become unavailable for election (an event that the Board does not anticipate), the proxy will be voted for the election of such substitute nominee as may be designated by the Board.

**Your Board unanimously recommends a vote FOR the election of each BEI nominee as a director.**

**2. Ratification of the Appointment of Ernst & Young LLP as our Independent Registered Public Accounting Firm for 2005**

The Audit and Compliance Committee has appointed, and the Board has ratified the appointment of, Ernst & Young LLP as our independent registered public accounting firm for 2005. Ernst & Young LLP has unrestricted access to the Audit and Compliance Committee to discuss audit findings and other financial matters. Representatives of Ernst & Young LLP will attend the Annual Meeting and will be available to answer appropriate questions. They may also make a statement if they desire to do so.

***Audit Fees***

Ernst & Young LLP fees for the 2004 annual audit and the 2003 annual audit were \$1,684,000 and \$1,292,000, respectively, including fees associated with Sarbanes-Oxley 404 attestation procedures, reviews of BEI's quarterly reports on Form 10-Q and consents on registration statements filed with the SEC in 2003 and 2004.

***Audit-Related Fees***

Ernst & Young LLP fees for audit-related services in 2004 and 2003 were \$1,158,000 and \$668,000, respectively. Audit-related services generally include employee benefit plan audits, statutory and affiliate audits, agreed-upon compliance attestation procedures under BEI's Corporate Integrity Agreement with the Office of Inspector General, due diligence procedures performed in connection with acquisitions or potential acquisitions, and consultations on accounting and financial reporting matters.

***Tax Fees***

Ernst & Young LLP fees for tax services in 2004 and 2003 were \$290,000 and \$30,000, respectively. Tax services rendered to BEI primarily include tax return compilation reviews, state tax planning assistance and consultations on tax matters.

***All Other Fees***

There were no other Ernst & Young LLP fees incurred in 2004 and 2003.

The Audit and Compliance Committee has determined that the provision of these services is compatible with maintaining Ernst & Young LLP's independence.

***Pre-Approval Policy for Audit and Non-Audit Services Performed by Independent Registered Public Accounting Firm***

The Audit and Compliance Committee's policy is to pre-approve all audit and permissible non-audit services provided by the independent registered public accounting firm. These services may include audit services, audit-related services, tax services and other services. The Audit and Compliance Committee is

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provided sufficient detail regarding each service to be pre-approved to enable it to determine whether providing such service might impair the independence of the independent registered public accounting firm. Pre-approval is provided periodically as determined necessary and any pre-approval is detailed as to the particular service or category of services and generally subject to a budget or fee range, but only for purposes of authorizing payment. Interpretations as to whether a particular service to be provided falls within the definition of a service that has already been pre-approved shall be made by the Audit and Compliance Committee or its delegate. Management and the independent registered public accounting firm are required to report periodically to the Audit and Compliance Committee regarding the extent of services provided by the independent registered public accounting firm in accordance with this pre-approval. The Audit and Compliance Committee may also pre-approve particular services on a case-by-case basis. The Audit and Compliance Committee has delegated pre-approval authority to the Chairperson of the Committee, and the Chairperson must report, for informational purposes only, any pre-approval decisions to the Audit and Compliance Committee at its next scheduled meeting.

The Audit and Compliance Committee has the sole responsibility for selecting BEI's independent registered public accounting firm, and stockholder ratification is not required. However, the selection is being submitted for ratification by the stockholders solely for the purpose of soliciting the stockholders' opinion of the Audit and Compliance Committee's selection of the independent registered public accounting firm. While it is the Audit and Compliance Committee's present intention to take the opinion of the stockholders into consideration in its future deliberations with respect to the selection of an independent registered public accounting firm, it may decide not to do so. In any event, the Audit and Compliance Committee may engage or terminate the engagement of Ernst & Young LLP or any other accounting firm as BEI's independent registered public accounting firm as it determines is necessary or appropriate in its sole discretion, regardless of the outcome of the stockholders' vote on Item 2 or any other vote of the stockholders taken at any time or in any other manner.

**Your Board unanimously recommends a vote FOR the ratification of Ernst & Young LLP's appointment as our independent registered public accounting firm for 2005.**

**Table of Contents****BEI Nominees for the Board of Directors**

The following table sets forth, as of the Record Date, certain information regarding the BEI directors, each of whom has been nominated for re-election by the Nominating and Compensation Committee:

<b>Name of Director/Nominee</b>	<b>Position</b>	<b>Age</b>	<b>Director Since</b>
William R. Floyd	Chairman of the Board, President, Chief Executive Officer and Director	60	July 2000
Melanie Creagan Dreher, Ph.D.	Director	61	August 2004
John D. Fowler, Jr.	Director	47	February 2002
John P. Howe, III, M.D.	Director	61	July 2001
James W. McLane	Director	66	October 2000
Ivan R. Sabel	Director	59	March 2004
Donald L. Seeley	Director	60	April 2002
Marilyn R. Seymann, Ph.D.	Director	62	March 1995

*Mr. Floyd* joined us in April 2000 as President and Chief Operating Officer. Mr. Floyd was appointed Chief Executive Officer in February 2001 and Chairman of the Board in December 2001. From 1996 to 1998, Mr. Floyd was Chief Executive Officer of Choice Hotels International, Inc., and from 1995 to 1996, he was Chief Operating Officer of Taco Bell Corporation.

*Dr. Dreher* has been the Kelting Dean and a professor at The University of Iowa College of Nursing since 1997. Dr. Dreher also serves as Academic Director for Clinical Practice in the Department of Nursing and Patient Services at The University of Iowa Hospital and Clinics and is a member of the board of Wellmark Health Plan of Iowa. From 2000 to 2001, Dr. Dreher was an advisory board member for the Pfizer Fellowship Program in Nursing Research.

*Mr. Fowler* has been the Vice Chairman of Deutsche Bank Securities, Inc. since November 2004 and a Visiting Professor at the University of South Dakota School of Business since January 2004. During 2004, Mr. Fowler was Managing Director of Baycrest Capital, LLC, a private equity investment and advisory firm, and Managing Director of Bio-Strategic Directors, LLC. From 2001 to 2003, Mr. Fowler was President and a director of Large Scale Biology Corporation. From 1998 to 2001, Mr. Fowler was a Managing Director in JPMorgan & Co.'s Healthcare Group and from 1992 to 1998, he was Managing Director and Head of Salomon Brothers Inc.'s Healthcare Group. Mr. Fowler is also a director of Project Reach Youth.

*Dr. Howe, III* has been the President and Chief Executive Officer of Project Hope since 2001. From 1985 to 2001, Dr. Howe, III was President of The University of Texas Health Center at San Antonio. Dr. Howe, III is also a director of Southwest Foundation for Biomedical Research and BB&T Corporation.

*Mr. McLane* has been a Director of Healthaxis Inc. since August 2000, its Chief Executive Officer since February 2001, and its Chairman since August 2001. From 1997 until early 2000, Mr. McLane was President, Chief Operating Officer and Director of NovaCare, Inc. Mr. McLane previously served as Executive Vice President of Aetna, Inc. and as Chief Executive Officer of Aetna Health Plans. Mr. McLane is also a director of Outward Bound USA and the Philadelphia Outward Bound Center.

*Mr. Sabel* has been the Chairman of the Board and Chief Executive Officer of Hanger Orthopedic Group, Inc. since August 1995. Mr. Sabel has held various positions with Hanger Orthopedic Group, Inc. since 1987, including President, Chief Operating Officer and Vice President, Corporate Development. Mr. Sabel has previously served as a director of American Orthotic and Prosthetic Association, Nursefinders, Inc. and Mid Atlantic Medical Services, Inc.

*Mr. Seeley* has been a Director of the Applied Investment Management Program at the University of Arizona Department of Finance since June 2000. From 1997 to 2000, Mr. Seeley was Vice Chairman and Chief Financial Officer of True North Communications. Mr. Seeley currently serves on the Board of Trustees of William Blair Funds.



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*Dr. Seymann* has been the President and Chief Executive Officer of M One, Inc., a management, risk and governance consulting firm for financial institutions, since January 1991. Dr. Seymann has been a director of Provide Commerce, Inc., Maximus, Inc. and Eos International, Inc. Dr. Seymann is also the founder and a director of The Arizona Foundation for Women, Inc., a not-for-profit corporation.

**Independent Directors**