

SHAKER RICHARD J
Form DEFC14A
August 04, 2004

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

SCHEDULE 14A INFORMATION

**PROXY STATEMENT PURSUANT TO SECTION 14(a) OF
THE SECURITIES EXCHANGE ACT OF 1934
(AMENDMENT NO. __)**

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for use of the Commission Only as permitted by Rule 14a-6(e)(2)
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to (ss.) 240.14a-11(c) or (ss.) 240.14a-12

Foxby Corp.

(Name of Registrant as Specified In Its Charter)

Richard J. Shaker

(for further information contact Phillip Goldstein, 914-747-5262)
(Name of Person(s) Filing Proxy Statement if other than the Registrant)

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**PROXY STATEMENT IN OPPOSITION TO THE SOLICITATION BY THE BOARD OF DIRECTORS OF
FOXBY CORP.**

ANNUAL MEETING OF SHAREHOLDERS (To be held on September 7, 2004)

I, Richard J. Shaker, a beneficial shareholder of Foxby Corp. (the "Fund"), am sending this proxy statement and the enclosed GREEN proxy card to shareholders of record on June 30, 2004 (the "Record Date") of the Fund. I am soliciting a proxy to vote your shares at the 2004 Annual Meeting of Shareholders of the Fund (the "Meeting"). Please refer to the Fund's proxy soliciting material for additional information concerning the Meeting and the matters to be considered by shareholders including the election of directors.

This proxy statement and the enclosed GREEN proxy card are first being sent to shareholders of the Fund on or about August 16, 2004.

INTRODUCTION

There is one matter that the Fund has scheduled to be voted upon at the Meeting, the election of three persons to serve as directors of the Fund. In addition, I intend to introduce a proposal to recommend that shareholders be afforded an opportunity to realize net asset value ("NAV") via liquidation of the Fund or a merger into an open-end fund. With respect to these matters, I am soliciting a proxy to vote your shares FOR the election of my nominees and FOR my proposal to realize NAV.

How Proxies Will Be Voted

If you wish to vote FOR the election of my nominees and/or on my proposal to realize NAV, you may do so by completing and returning a GREEN proxy card.

In 2002, the board of directors adopted a bylaw that requires the Fund to receive advance notice of all nominations for the board. However, courts have ordered similar advance notice bylaws to be waived when a material event occurs after the deadline specified in the bylaw. See Hubbard v. Hollywood Park Realty Enterprises, 1991 WL 3151, (Del. Ch. 1991). I believe the board's unilateral decision increase to increase the number of classes of directors from four classes to five after the deadline is a material event that requires the board to waive the advance notice requirement.

In addition, after shareholders presumably rejected the board's recommendation to amend the Fund's articles of incorporation to include certain provisions whose primary purpose appears to be to interfere with the shareholders ability to vote, the board unilaterally adopted them as well as certain other provisions with the same primary purpose. (I say "presumably" because the Fund, despite an SEC rule that requires it to report the results of every shareholder vote, failed to do so.) These provisions include preclusive and inequitable qualifications for nominees of shareholders and a preclusive and discriminatory standard for electing directors. I believe that, barring a compelling justification, any

bylaw whose primary purpose is to interfere with the shareholders ability to vote constitutes a breach of fiduciary duty and is invalid. However, there is no assurance that the board will not attempt to enforce the advance notice bylaw or any other bylaw to prevent me from making nominations or presenting any proposals.

If you return a GREEN proxy card to me or to my agent and if the board does not prevent me from nominating my candidates or presenting my proposal at the Meeting, your shares will be voted on each matter as you indicate. If the board does not permit me to vote our proxies as indicated, I may file a lawsuit.

If you do not indicate how your shares are to be voted on a matter, they will be voted FOR the election of our nominees to the board and FOR Proposal 2. If you return a GREEN proxy card, you will be granting the proxy holder(s) discretionary authority to vote on any other matters that may come before the Meeting including matters relating to the conduct of the Meeting.

Voting Requirements

The presence in person or by proxy of at least one-third of the Fund's outstanding shares shall constitute a quorum. The Fund's bylaws provide that a candidate nominated by a stockholder requires a vote of 80% of the outstanding shares to be elected while a nominee endorsed by the board of directors needs only a plurality of the votes cast for election. I believe such a discriminatory standard is illegal and that all nominees have the same standard for election, i.e., a plurality. For the same reason, I believe Proposal 2 requires the affirmative vote of a majority of the votes cast at the Meeting for approval.

Revocation of Proxies

You may revoke any proxy prior to its exercise by (i) delivering a written revocation of your proxy at the Meeting; (ii) executing and delivering a later dated proxy; or (iii) voting in person at the Meeting. (Attendance at the Meeting will not in and of itself revoke a proxy.) There is no limit on the number of times you may revoke your proxy prior to the Meeting. Only your latest dated proxy will be counted.

Information Concerning the Soliciting Shareholder

I, Richard J. Shaker, the soliciting shareholder, am a registered investment advisor specializing in closed end funds. I trade actively, taking advantage of larger-than-expected discounts which temporarily occur in the funds, but I expect that officers and managers of funds which I hold in inventory will work diligently for the shareholders to obtain fair returns. As of August 4, 2004, my retirement fund owned 14,400 shares of the Fund. In addition, I am deemed to be the beneficial owner of 388,300 shares of the Fund owned by my clients. The majority of these shares (all but 25,600) have been purchased during the past twelve months. In addition, I have purchased and sold an additional 112,800 shares during the past twelve months. All transactions were executed in the open market by T. D. Waterhouse and shares are held in street name in cash accounts.

REASONS FOR THE SOLICITATION

I am concerned about the Fund's poor long and short term performance (NAV per share down from \$2.82 on February 9, 2004 to 2.55 recently), its persistent discount to net asset value, its extraordinarily high 4.4% expense ratio and the poor liquidity of its shares. I am also concerned that the current board unilaterally adopted numerous measures whose primary purpose appears to be to interfere with the shareholders' franchise rights. These measures include preclusive and inequitable "qualifications" for nominees by shareholders, a preclusive and inequitable standard for electing directors (80% of the Fund's outstanding shares is required for a challenger's election but just a plurality for an incumbent), a provision that appears to violate the "one share, one vote" standard required by Section 30(1) of the Investment Company Act and a bylaw that purports to bar a shareholder from challenging the results of an election in

court without approval by the board. We believe that each of these measures and any others whose primary purpose is to interfere with the shareholders' franchise rights is a breach of fiduciary duty.

On July 23, 2004, the Fund filed a definitive proxy statement for the annual meeting with the SEC in which it indicated that the board recently adopted another powerful entrenchment measure—a staggered board of directors consisting of five classes.

In light of these concerns and the Fund's very small size (NAV of less than \$7 million), I believe that the shareholders would be best served if the Fund liquidated or merged into an open-end fund. I wish to afford shareholders an opportunity to vote on a proposal recommending this course of action and to elect directors who will abide by their wishes.

PROPOSAL 1: ELECTION OF FUNDEES

At the Meeting, I intend to nominate the following persons for election as Class I, II, and V directors with terms expiring in 2008, 2009 and 2007 respectively. Each nominee has consented to being named in this proxy statement and to serve as a director if elected. None of our nominees owns any shares of the Fund or has any arrangement or understanding with any person with respect to any future employment by the Fund or by any affiliate of the Fund. I do not know of any material conflicts of interest that would adversely affect any of my nominees from acting in the best interest of the Fund and I believe that all of my nominees would be considered independent directors if elected. Please refer to the Fund's proxy soliciting material for additional information concerning the election of directors. (According to the Fund's proxy statement, shareholders will only be permitted to "elect" the board's nominee as a Class II director because the incumbent Class II director intends to remain in office if the board's nominee is not elected. I do not believe an "election" in which shareholders will not have a choice of candidates is legal.)

Phillip Goldstein (Age 59), 60 Heritage Drive, Pleasantville, NY 10570 (Class I)

Mr. Goldstein has been an investment advisor since 1992; He has been a director of Brantley Capital Corporation since 2002 and of The Mexico Equity and Income Fund since 1999.

Rajeev Das, CFA (Age 35), 68 Lafayette Ave., Dumont, NJ 07628 (Class II)

Senior Securities Analyst with Kimball & Winthrop, Inc. since 1997; He has been a director of The Mexico Equity and Income Fund since 2001.

Andrew Dakos (Age 38), 43 Waterford Drive, Montville, NJ 07045 (Class V)

Mr. Dakos is President and portfolio manager of Elmhurst Capital, Inc., an investment advisory firm and a Managing Member of the general partner of Full Value Partners, L.P., a private investment partnership. Mr. Dakos is also President and CEO of UVitec Printing Ink, Inc. a privately held manufacturing firm. He has been a director of The Mexico Equity and Income Fund since 2001.

PROPOSAL 2: A RECOMMENDATION THAT SHAREHOLDERS BE PERMITTED TO REALIZE NET ASSET VALUE VIA LIQUIDATION OR A MERGER INTO AN OPEN-END FUND

For the reasons discussed above, in the absence of contrary instructions, the proxy holder(s) will vote your shares FOR this proposal.

THE SOLICITATION

I, Richard Shaker, the soliciting shareholder, am making this solicitation. Persons affiliated with or employed by me or my affiliates may assist me in the solicitation of proxies. In addition, I have hired Phillip Goldstein, one of my

