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

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**FORM 20-F**

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(Mark One)

**REGISTRATION STATEMENT PURSUANT TO SECTION 12(b) OR (g) OF THE SECURITIES EXCHANGE ACT OF 1934**

OR

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the fiscal year ended March 31, 2008

OR

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

OR

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

Date of event requiring this shell company report  
For the transition period from to

Commission file number 1-15240

**JAMES HARDIE INDUSTRIES N.V.**

(Exact name of Registrant as specified in its charter)

N/A

(Translation of Registrant's name into English)

The Netherlands

(Jurisdiction of incorporation or organization)

Atrium, 8<sup>th</sup> floor  
Strawinskylaan 3077  
1077 ZX Amsterdam, The Netherlands  
(Address of principal executive offices)

Russell Chenu  
(Contact name)

31 20 301 2980 (Telephone) 31 20 404 2544 (Facsimile)

Securities registered or to be registered pursuant to Section 12(b) of the Act:

Title of each class:	Name of each exchange on which registered:
Common stock, represented by CHESS Units of Foreign Securities	New York Stock Exchange*
CHESS Units of Foreign Securities	New York Stock Exchange*
American Depositary Shares, each representing five units of CHESS Units of Foreign Securities	New York Stock Exchange

\* Listed, not for trading, but only in connection with the registered American Depositary Shares, pursuant to the requirements of the Securities and Exchange Commission

Securities registered or to be registered pursuant to Section 12(g) of the Act.

None.

Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act.

None.

Indicate the number of outstanding shares of each of the issuer's classes of capital or common stock as of the close of the period covered by the annual report 432,214,668 shares of common stock at March 31, 2008.

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.  Yes  No

If this report is an annual or transition report, indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange

Act of 1934.  Yes  No

Note — Checking the box will not relieve any registrant required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 from their obligations under those Sections.

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  No

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

Large accelerated filer  Accelerated filer  Non-accelerated filer

Indicate by check mark which basis of accounting the registrant has used to prepare the financial statements included in this filing:

U.S. GAAP  International Financial Reporting Standards as issued by the International Accounting Standards Board  Other

If “Other” has been checked in response to the previous question, indicate by check mark which financial statement item the registrant has elected to follow:

Item 17  Item 18

If this is an annual report, indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes  No

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**PART I**

**Item 1. Identity of Directors, Senior Management and Advisers**

Not Required.

**Item 2. Offer Statistics and Expected Timetable**

Not Applicable.

**Item 3. Key Information**

*In this annual report, unless the context otherwise indicates, James Hardie Industries N.V., a “naamloze vennootschap,” or a Dutch public limited liability company incorporated and existing under the laws of The Netherlands, is referred to as JHI NV. JHI NV together with its direct and indirect wholly owned subsidiaries as of the time relevant to the applicable reference, are collectively referred to as the James Hardie Group. JHI NV and its current direct and indirect wholly owned subsidiaries are collectively referred to as “we,” “us,” “our,” “JHI NV and its wholly owned subsidiaries” or the “Company.”*

*The term “fiscal year” refers to our fiscal year ended March 31 of such year; the term “dollars,” “US\$” or “\$” refers to U.S. dollars; the term “A\$” refers to Australian dollars; and the term “NZ\$” refers to New Zealand dollars. Unless otherwise stated, all amounts in A\$ have been converted into US\$ at the March 31, 2008 exchange rate of A\$1.0903 to \$1.0000. The term “msf” or “thousand square feet” refers to thousands of square feet, where a square foot is defined as a standard square foot of 5/16” thickness and the term “mmsf” or “million square feet” refers to millions of square feet, where a square foot is defined as a standard square foot of 5/16” thickness.*

*As a company incorporated under the laws of The Netherlands, we have listed our securities for trading on the Australian Securities Exchange, or ASX, through the use of the Clearing House Electronic Subregister System, or CHESS, Units of Foreign Securities, or CUFS. CUFS are a form of depositary security that represents a beneficial ownership interest in the securities of a non-Australian corporation. Each of our CUFS represents the beneficial ownership of one share of common stock of JHI NV, the legal ownership of which is held by CHESS Depositary Nominees Pty Ltd. The CUFS are listed and traded on the ASX under the symbol “JHX.”*

*We have also listed our securities for trading on the New York Stock Exchange, or NYSE. We sponsor a program, whereby beneficial ownership of five CUFS is represented by one American Depositary Share, or ADS, which is issued by The Bank of New York. These ADSs trade on the NYSE in the form of American Depositary Receipts, or ADRs, under the symbol “JHX.” Unless the context indicates otherwise, when we refer to ADRs, we are referring to ADRs or ADSs and when we refer to our common stock we are referring to the shares of our common stock that are represented by CUFS.*

**Selected Financial Data**

We have included in Item 18 of this annual report the audited consolidated financial statements of JHI NV, consisting of our consolidated balance sheets as of March 31, 2008 and March 31, 2007, our consolidated statements of changes in shareholders’ equity as of March 31, 2008, March 31, 2007 and March 31, 2006 and our consolidated statements of operations and cash flows for the years ended March 31, 2008, 2007 and 2006, together with the related notes thereto. The consolidated financial statements included in this annual report have been prepared in accordance with accounting principles generally accepted in the United States of America, or “U.S. GAAP.”

The selected consolidated financial information summarized below for the five most recent fiscal years has been derived in part from JHI NV’s financial statements. You should read the selected consolidated financial information in conjunction with JHI NV’s financial statements and related notes contained in Item 18 and with the information provided in the section of this report entitled “Operating and Financial Review and Prospects” contained in Item 5. Historic financial data is not necessarily indicative of our future results and you should not unduly rely on it.

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	Fiscal Years Ended March 31,				
	2008	2007	2006	2005	2004
	(In millions, except sales price per unit and per share data)				
<b>Consolidated Statements of Operations Data:</b>					
Net Sales					
USA Fiber Cement	\$ 1,144.8	\$ 1,262.3	\$ 1,218.4	\$ 939.2	\$ 738.6
Asia Pacific Fiber Cement (1)	298.3	251.7	241.8	236.1	219.8
Other (2)	25.7	28.9	28.3	35.1	23.5
Total net sales	<u>\$ 1,468.8</u>	<u>\$ 1,542.9</u>	<u>\$ 1,488.5</u>	<u>\$ 1,210.4</u>	<u>\$ 981.9</u>
Operating (loss) income (3)	\$ (36.6)	\$ (86.6)	\$ (434.9)	\$ 196.2	\$ 172.2
Interest expense	(11.1)	(12.0)	(7.2)	(7.3)	(11.2)
Interest income	12.2	5.5	7.0	2.2	1.2
Other (expense) income (4)	—	—	—	(1.3)	3.5
(Loss) income from continuing operations before income taxes	(35.5)	(93.1)	(435.1)	189.8	165.7
Income tax (expense) benefit	(36.1)	243.9	(71.6)	(61.9)	(40.4)
(Loss) income from continuing operations	<u>\$ (71.6)</u>	<u>\$ 150.8</u>	<u>\$ (506.7)</u>	<u>\$ 127.9</u>	<u>\$ 125.3</u>
Net (loss) income	<u>\$ (71.6)</u>	<u>\$ 151.7</u>	<u>\$ (506.7)</u>	<u>\$ 126.9</u>	<u>\$ 129.6</u>
(Loss) Income from continuing operations per common share —					
basic	\$ (0.16)	\$ 0.32	\$ (1.10)	\$ 0.28	\$ 0.27
Net (Loss) income per common share — basic	\$ (0.16)	\$ 0.33	\$ (1.10)	\$ 0.28	\$ 0.28
(Loss) income from continuing operations per common share —					
diluted	\$ (0.16)	\$ 0.32	\$ (1.10)	\$ 0.28	\$ 0.27
Net (Loss) income per common share — diluted	\$ (0.16)	\$ 0.33	\$ (1.10)	\$ 0.28	\$ 0.28
Dividends paid per share	\$ 0.27	\$ 0.09	\$ 0.10	\$ 0.03	\$ 0.05
Return of capital per share	\$ —	\$ —	\$ —	\$ —	\$ 0.15
Weighted average number of common shares outstanding					
Basic	455.0	464.6	461.7	458.9	458.1
Diluted	455.0	466.4	461.7	461.0	461.4
<b>Consolidated Cash Flow Information:</b>					
Cash flows provided by (used in) operating activities	\$ 319.3	\$ (67.1)	\$ 238.4	\$ 219.4	\$ 162.2
Cash flows used in investing activities	\$ (38.5)	\$ (92.6)	\$ (154.0)	\$ (149.8)	\$ (58.9)
Cash flows (used in) provided by financing activities	\$ (254.4)	\$ (136.4)	\$ 118.7	\$ (27.2)	\$ (86.6)
<b>Other Data:</b>					
Depreciation and amortization (5)	\$ 56.5	\$ 50.7	\$ 45.3	\$ 36.3	\$ 36.4
EBITDA (6)	\$ 19.9	\$ (35.9)	\$ (389.6)	\$ 232.5	\$ 208.6
Capital expenditures (7)	\$ 38.5	\$ 92.1	\$ 162.8	\$ 153.0	\$ 74.1
Volume (million square feet) (8)					
USA Fiber Cement	1,916.6	2,148.0	2,182.8	1,855.1	1,519.9
Asia Pacific Fiber Cement (1)	398.2	390.8	368.3	376.9	362.1
Average sales price per unit (per thousand square feet)					
USA Fiber Cement	\$ 597	\$ 588	\$ 558	\$ 506	\$ 486
Asia Pacific Fiber Cement (1)	A\$ 862	A\$ 842	A\$ 872	A\$ 846	A\$ 862
<b>Consolidated Balance Sheet Data:</b>					
Net current assets (9)	\$ 183.7	\$ 259.0	\$ 150.8	\$ 180.2	\$ 195.9
Total assets	\$ 2,179.9	\$ 2,128.1	\$ 1,445.4	\$ 1,088.9	\$ 971.2
Total debt	\$ 264.5	\$ 188.0	\$ 302.7	\$ 159.3	\$ 175.8
Common stock	\$ 219.7	\$ 251.8	\$ 253.2	\$ 245.8	\$ 245.2
Shareholders' (deficit) equity	\$ (202.6)	\$ 258.7	\$ 94.9	\$ 624.7	\$ 504.7

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- (1) Asia Pacific Fiber Cement includes all fiber cement manufactured in Australia, New Zealand and the Philippines and sold in Australia, New Zealand, Asia, the Middle East (Israel, Kuwait, Qatar and United Arab Emirates) and various Pacific Islands.
- (2) Includes fiber cement manufactured and sold in Chile (through July 2005), fiber reinforced concrete pipes manufactured and sold in the United States, fiber cement operations in Europe and a roofing pilot plant in the United States (through fiscal year 2006). Our Chilean business was sold in July 2005. Our roofing pilot plant was closed and the business ceased operations in April 2006. Our Plant City, Florida Hardie Pipe Plant was closed and the business ceased operations in May 2008.
- (3) Operating loss in fiscal year 2008 includes \$240.1 million of asbestos adjustments; \$4.0 million of Asbestos Injuries Compensation Fund (which we refer to as the AICF) SG&A expenses; and \$71.0 million of impairment charges. For fiscal years 2007, 2006 and 2005, operating (loss) income includes Special Commission of Inquiry and other related expenses of \$13.6 million, \$17.4 million and \$28.1 million, respectively. In addition, operating loss in fiscal year 2007 includes \$405.5 million related to asbestos adjustments. Operating loss in fiscal year 2006 includes \$715.6 million related to the establishment of an asbestos provision and \$13.4 million related to the impairment of our former roofing plant. For additional information on the asbestos adjustments and AICF SG&A expenses see Item 5, "Operating and Financial Review and Prospects" and Note 12 to our consolidated financial statements in Item 18. For additional information on the impairment charges for fiscal years 2008 and 2006, see Item 5, "Operating and Financial Review and Prospects" and Note 7 to our consolidated financial statements in Item 18.  
Operating (loss) income also includes restructuring and other operating income/expenses as follows: (i) for fiscal year 2006, an \$0.8 million loss related to the disposal of our Chilean fiber cement business; (ii) for fiscal year 2005, \$6.0 million consisting of a settlement loss of \$5.3 million related to an employee retirement plan and a \$0.7 million loss on the sale of land in Sacramento, California; and (iii) for fiscal year 2004, \$2.1 million expense primarily related to an increase in cost provisions for our Australian and New Zealand business.
- (4) Other (expense) income consists primarily of the following: (i) for fiscal year 2005, the \$1.3 million expense consisted of a \$2.1 million impairment charge that we recorded on an investment in a company that filed a voluntary petition for reorganization under Chapter 11 of the U.S. bankruptcy code, partly offset by a \$0.8 million gain on a separate investment; and (ii) for fiscal year 2004, the net gain achieved after accounting for income items, including a \$4.5 million profit on the sale of our New Zealand property, was partially offset by expense items, including \$3.2 million primarily due to a capital duty fee paid in conjunction with our Dutch corporate structure.
- (5) Information for depreciation and amortization is for continuing businesses only.

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- (6) EBITDA represents income from continuing operations before interest income, interest expense, income taxes, other non-operating expenses, net, described in footnote four above, cumulative effect of change in accounting principle, depreciation and amortization charges as follows:

	Fiscal Years Ended March 31,				
	2008	2007	2006 (In millions)	2005	2004
Net cash provided by (used in) operating activities	\$ 319.3	\$ (67.1)	\$ 238.4	\$ 219.4	\$ 162.2
Adjustments to reconcile net (loss) income to net cash provided by (used in) operating activities	(318.9)	4.5	(789.1)	(60.8)	(50.7)
Change in operating assets and liabilities, net	<u>(72.0)</u>	<u>214.3</u>	<u>44.0</u>	<u>(31.7)</u>	<u>18.1</u>
Net (loss) income	(71.6)	151.7	(506.7)	126.9	129.6
(Income) loss from discontinued operations	—	—	—	1.0	(4.3)
Cumulative effect of change in accounting principle	—	(0.9)	—	—	—
Income tax expense (benefit)	36.1	(243.9)	71.6	61.9	40.4
Interest expense	11.1	12.0	7.2	7.3	11.2
Interest income	(12.2)	(5.5)	(7.0)	(2.2)	(1.2)
Other expense (income)	—	—	—	1.3	(3.5)
Depreciation and amortization	<u>56.5</u>	<u>50.7</u>	<u>45.3</u>	<u>36.3</u>	<u>36.4</u>
EBITDA	<u>\$ 19.9</u>	<u>\$ (35.9)</u>	<u>\$ (389.6)</u>	<u>\$ 232.5</u>	<u>\$ 208.6</u>

EBITDA is not a measure of financial performance under U.S. GAAP and should not be considered an alternative to, or more meaningful than, income from operations, net income or cash flows as defined by U.S. GAAP or as a measure of our profitability or liquidity. Not all companies calculate EBITDA in the same manner as we have and, accordingly, EBITDA may not be comparable with other companies. We have included information concerning EBITDA because we believe that this data is commonly used by investors to evaluate the ability of a company's earnings from its core business operations to satisfy its debt, capital expenditure and working capital requirements. To permit evaluation of this data on a consistent basis from period to period, EBITDA has been adjusted for noncash charges, as well as non-operating income and expense items.

- (7) Capital expenditures includes both cash and credit purchases, and is for continuing businesses only.
- (8) Fiber cement volume is measured in 5/16" thick square feet, which are referred to as standard feet.
- (9) Total current assets less total current liabilities.

## Risk Factors

***Our wholly owned Australian subsidiary, James Hardie 117 Pty Ltd (which we refer to as the Performing Subsidiary), is required to make payments to a special purpose fund that provides compensation for Australian asbestos-related personal injury and death claims for which certain former companies of the James Hardie Group are found liable. Such payments have reduced, and future payments will reduce, our funds available for capital expenditures on existing and new business opportunities, repayments of debt, payments of dividends or other distributions and may restrict our ability to access equity or debt capital markets. Such payments have also materially adversely affected, and will materially adversely affect, our business.***

On November 21, 2006, JHI NV, the AICF, the Government of the State of New South Wales, Australia (which we refer to as the NSW Government) and the Performing Subsidiary entered into a restated and amended Final Funding Agreement (which we refer to as the Amended FFA) to provide long-term funding to the AICF, a special purpose fund that provides compensation for Australian asbestos-related personal injury and death claims for which certain former companies of the James Hardie Group, including ABN 60 Pty Limited (which we refer to as ABN 60), Amaca Pty Ltd (which we refer to as Amaca) and Amaba Pty Ltd (which we refer to as Amaba) (collectively, the Former James Hardie Companies) are found liable. We have recorded an asbestos liability of \$1.6 billion in our consolidated financial statements as of March 31, 2008, relating to our anticipated future payments to the AICF pursuant to the Amended FFA. Through March 31, 2008 we have made funding payments totaling A\$184.3 million (\$169.0 million) to the AICF, and we expect to pay an additional A\$114.7 million (\$109.2 million — converted at the June 24, 2008 exchange rate as prescribed in the Amended FFA) in funding payments to the AICF in fiscal year 2009. In addition, interest compensation of A\$3.3 million will also be paid to the AICF in fiscal year 2009.

As a result of our obligation to make payments under the Amended FFA, our funds available for capital expenditures (either with respect to our existing business or new business opportunities), repayments of debt, payments of dividends or other distributions have been, and will be, reduced by the funding paid to the AICF, and consequently, our financial position, liquidity, results of operations and cash flows have been, and will be, reduced or materially adversely affected. Our obligation to make these payments could also affect or restrict our ability to access equity or debt capital markets.

See Item 4, “Information on the Company — Commitment to Provide Funding on a Long-Term Basis in Respect of Asbestos-Related Liabilities of Former Subsidiaries,” for additional information concerning the Amended FFA.

***Even though the Amended FFA has been implemented, we may be subject to potential additional liabilities (including claims for compensation or property remediation outside the arrangements reflected in the Amended FFA) because certain current and former companies of the James Hardie Group previously manufactured products that contained asbestos.***

Up to 1987, two former subsidiaries of ABN 60, Amaca and Amaba, which are now owned and controlled by the AICF, manufactured products in Australia that contained asbestos. In addition, prior to 1937, ABN 60, which is also now owned and controlled by the AICF, manufactured products in Australia that contained asbestos. ABN 60 also held shares in companies that manufactured asbestos-containing products in Indonesia and Malaysia, and held minority shareholdings in companies that conducted asbestos-mining operations based in Canada and Southern Africa. Former ABN 60 subsidiaries also exported asbestos-containing products to various countries. The AICF is designed to provide compensation only for certain claims and to meet certain related expenses and liabilities, and the legislation introduced in New South Wales in connection with the Amended FFA seeks to defer all other claims against the Former James Hardie Companies. The funds contributed to the AICF will not be available to meet any asbestos-related claims made outside Australia, or claims made arising from exposure to asbestos occurring outside Australia, or any claim for pure property loss or pure economic loss or remediation of property. In these circumstances, it is possible that persons with such excluded claims may seek to pursue those claims directly against us. Defending any such litigation could be costly and time consuming, and consequently, our financial position, liquidity, results of operations and cash flows could be materially adversely affected.

Prior to 1988, a New Zealand subsidiary in the James Hardie Group manufactured products in New Zealand that contained asbestos. In New Zealand, asbestos-related disease compensation claims are managed by the state-run Accident Compensation Corporation (which we refer to as the ACC). Our New Zealand subsidiary that manufactured products that contained asbestos contributed financially to the ACC fund as required by law via payment of an annual levy while it carried on business. All decisions relating to the amount and allocation of payments to claimants in New Zealand are made by the ACC in accordance with New Zealand law. The Injury



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Prevention, Rehabilitation and Compensation Act 2001 (NZ) bars compensatory damages for claims that are covered by the legislation which may be made against the ACC fund. However, we may be subject to potential liability if any of these claims are found not to be covered by the legislation and are later brought against us, and consequently, our financial position, liquidity, results of operations and cash flows could be materially adversely affected.

Apart from the funding obligations arising out of the Amended FFA, it is possible that we could become subject to suits for damages for personal injury or death in connection with the former manufacture or sale of asbestos products that have been or may be filed against the Former James Hardie Companies. Although the ability of any claimants to initiate or pursue such suits is restricted by the legislation enacted by the NSW Government under the terms of the Amended FFA (see Item 4, “Information on the Company — Commitment to Provide Funding on a Long-Term Basis in Respect of Asbestos-Related Liabilities of Former Subsidiaries”), we cannot predict with any certainty the outcome of any future claims or allegations that may be made, how the laws of various jurisdictions may be applied to the facts or how the laws may change in the future. If a court of competent jurisdiction relying on applicable law at the time were to find JHI NV or another James Hardie Group subsidiary liable for damages connected with existing or former subsidiaries for their past manufacture of asbestos-containing products, we may incur material liabilities in connection with any damages that may be awarded in the legal proceedings, in addition to the costs associated with defending against such claims. Any such additional liabilities could have a material adverse effect on our financial position, liquidity, results of operations and cash flows.

### ***Indemnification claims arising under certain indemnification agreements we have granted to third parties could have a material adverse effect on our business.***

When we sold our former United States gypsum wallboard manufacturing facilities in April 2002, we agreed to indemnify the buyer from certain future liabilities, including, for a period of 30 years, liabilities arising from asbestos-related injuries to persons or property arising from our former gypsum business that exceed \$5 million in the aggregate, subject to a \$250 million in the aggregate limit. In addition, in connection with the separation of Amaca, Amaba and ABN 60 from the James Hardie Group, we agreed to indemnify ABN 60 Foundation Pty Ltd (which we refer to as ABN 60 Foundation) in perpetuity for any non asbestos-related legal claims made against ABN 60. We have not recorded any liabilities, or pledged any assets as collateral, for either of these indemnities. If we are required to pay out any indemnification claims under either of these indemnification agreements it could materially adversely affect our financial position, liquidity, results of operations and cash flows.

### ***The Amended FFA imposes certain non-monetary obligations which could materially adversely affect our business.***

Under the Amended FFA, we are also subject to certain non-monetary obligations that could prove to be onerous or to otherwise materially adversely affect our ability to undertake proposed transactions or to pay dividends. For example, the Amended FFA contains certain restrictions that generally prohibit us from undertaking transactions that would materially adversely affect the relative priority of the AICF as a creditor, or that would materially impair our legal or financial capacity and that of the Performing Subsidiary, in each case such that we and the Performing Subsidiary would cease to be likely to be able to meet the funding obligations that would have arisen under the Amended FFA had the relevant transaction not occurred. Those restrictions apply to dividends and other distributions, reorganizations of, or dealings in, share capital which create or vest rights in such capital in third parties, or non-arm’s length transactions. While the Amended FFA contains certain exemptions from such restrictions (including, for example, exemptions for arm’s length dealings; transactions in the ordinary course of business; certain issuances of equity securities or bonds; and certain transactions provided certain financial ratios are met and certain amounts of dividends), implementing such restrictions could materially adversely affect our ability to enter into transactions that might otherwise be favorable to us and could materially adversely affect our financial position, liquidity, results of operations and cash flows.

***The Amended FFA does not eliminate the risk of adverse action being taken against us.***

There is a possibility that, despite certain covenants agreed to by the NSW Government in the Amended FFA, adverse action could be directed against us by one or more of the NSW Government, the government of the Commonwealth of Australia (which we refer to as the Australian Commonwealth Government), governments of the states or territories of Australia or any other governments, unions or union representative groups, or asbestos disease groups with respect to the asbestos liabilities of Amaba, Amaca and ABN 60. Any such adverse action could materially adversely affect our financial position, liquidity, results of operations and cash flows.

***If the Amended FFA is terminated, the NSW Government may pass legislation that would seek to impose liability on us for asbestos claims.***

If the Amended FFA is terminated for any reason, the NSW Government has indicated that it may pass or attempt to pass legislation to impose liability on us for certain asbestos claims of the Former James Hardie Companies. The Australian Commonwealth Government and governments of other states and territories in Australia could also seek to introduce legislation seeking to have a similar effect. However, the Company has no detailed information as to the content of any such legislation. Any such legislation could materially adversely affect our financial position, liquidity, results of operations and cash flows.

In addition, if the Amended FFA is terminated without a suitable alternative having been reached, our financial position, liquidity, results of operations and cash flows could be materially adversely affected due to uncertainties surrounding our potential exposure to the asbestos-related liabilities of the Former James Hardie Companies, and any related liability which may arise by legislation which may be introduced by one or more of the Australian Commonwealth Governments, the NSW Government and other state and territory governments.

***Since our revenues are primarily derived from sales in U.S. dollars and payments pursuant to the Amended FFA are made in Australian dollars, unfavorable fluctuations in the U.S. dollar (and other currencies from which we derive our sales) compared to the Australian dollar, will require us to pay more of our revenues to discharge our obligations under the Amended FFA. In addition, since our results of operations are reported in U.S. dollars, unfavorable fluctuations in the U.S. dollar compared to the Australian dollar will require us to expense the difference in the reported period in order to increase the amount of our asbestos liability on our balance sheet.***

Approximately 14% and 11% of our net sales in fiscal years 2008 and 2007, respectively, were derived from sales in Australia. Payments pursuant to the Amended FFA are required to be made to the AICF in Australian dollars. In addition, annual payments to the AICF are calculated based on various estimates that are denominated in Australian dollars. To the extent that our future obligations exceed our Australian dollar cash flows, and we do not hedge this foreign exchange exposure, we will need to convert U.S. dollars or other foreign currency into Australian dollars in order to meet our obligations pursuant to the Amended FFA. As a result, any unfavorable fluctuations in the U.S. dollar (the majority of our revenues is derived from sales in U.S. dollars) and other currencies from which we derive our sales compared to the Australian dollar will require us to convert more U.S. dollars and other currencies from which we derive our sales to pay the same amount of Australian denominated annual payments to the AICF.

In addition, since our results of operations are reported in U.S. dollars and the asbestos liability is based on estimated payments denominated in Australian dollars, unfavorable fluctuations in the U.S. dollar compared to the Australian dollar may materially affect our reported results of operations since we will be required to expense any such fluctuations in the reported period in order to increase the reported value of the asbestos liability on our balance sheet. For example, due to the strengthening of the Australian dollar compared to the U.S. dollar, we recorded an \$87.2 million expense during fiscal year 2008 related to the impact of foreign exchange rate movements.

At March 31, 2008, there were no material forward exchange contracts outstanding to mitigate this risk. Accordingly, due to the size of the asbestos liability recorded on our balance sheet, fluctuations in the exchange rate will cause unpredictable volatility in our reported results for the foreseeable future and any unfavorable fluctuation in U.S. dollar and the other currencies from which we derive our sales compared to the Australian dollar could have a material adverse effect on our financial position, liquidity, results of operations and cash flows. See Item 11, "Quantitative and Qualitative Disclosures About Market Risk."

***Regulatory action and continued scrutiny resulting from ongoing investigations may have an adverse effect on our business.***

Statutory notices previously issued by the Australian Securities and Investments Commission (which we refer to as ASIC) indicate that ASIC is conducting an investigation into suspected contraventions of certain provisions of Australian corporations and crimes legislation concerning the affairs of ABN 60, Amaca, Amaba and the Company during the period July 1, 1994 to October 31, 2004.

On February 14, 2007, ASIC commenced civil proceedings in the Supreme Court of New South Wales (which we refer to as the Supreme Court) against the Company, ABN 60 and ten then-present or former officers and directors of the James Hardie Group. While the subject matter of the allegations varies between individual defendants, the allegations against the Company are confined to alleged contraventions of provisions of the Australian Corporations Act 2001 (which we refer to as the Corporations Act) relating to continuous disclosure, a director's duty of care and diligence, and engaging in misleading or deceptive conduct in respect of a security.

In the proceedings, ASIC seeks:

- declarations regarding the alleged contraventions;
- orders for pecuniary penalties in such amount as the Supreme Court thinks fit up to the limits specified in the Corporations Act. The Corporations Act presently limits such penalties to A\$200,000 (\$183,436) per contravention;
- orders that former James Hardie Group directors or officers, including Mr. Michael Brown, Mr. Michael Gillfillan, Ms. Meredith Hellicar, Mr. Martin Koffel, Mr. Peter Macdonald, Mr. Philip Morley, Mr. Geoffrey O'Brien, Mr. Peter Shafron, Mr. Gregory Terry and Mr. Peter Willcox, be prohibited from managing an Australian corporation for such period as the Supreme Court thinks fit;
- an order that the Company execute a deed of indemnity in favor of ABN 60 providing that the Company indemnify ABN 60 for an amount up to a maximum of A\$1.9 billion (\$1.7 billion), for such amount as ABN 60, or its directors, consider, after giving careful consideration, is necessary to ensure that ABN 60 is able to pay its debts, as and when they fall due, and for such amount as ABN 60, or its directors, reasonably believe is necessary to ensure that ABN 60 remains solvent; and
- its costs of the proceedings.

ASIC stated in February 2007 that it would not pursue the claim for a deed of indemnity in favor of ABN 60 if the conditions precedent to the original Final Funding Agreement as announced on December 1, 2005 (which we refer to as the Original FFA) were satisfied. The Company and the other parties to the agreement provided certification to ASIC in March 2007 that the conditions precedent to the Amended FFA dated November 21, 2006 have been satisfied. Despite this, ASIC has not agreed to withdraw the indemnity claim.

There remains considerable uncertainty surrounding the likely outcome of the ASIC proceedings in the longer term and there is a possibility that we could become responsible for other amounts in addition to our own defense costs. However, at this stage, we believe that, although it is reasonably possible that such amounts will be incurred in the ASIC proceedings, the actual amount or range of amounts is not estimable and accordingly, as of March 31, 2008, we have not recorded any related reserves. See Item 4, "Information on the Company —Legal Proceedings," for additional information on the ASIC proceedings. Losses and expenses arising from the ASIC proceedings could have a material adverse effect on our financial position, liquidity, results of operations and cash flows.

***We may be liable for costs, penalties, fees and expenses incurred by current or former directors, officers or employees of the James Hardie Group to the extent that those costs are covered by indemnity arrangements granted by the James Hardie Group to those persons.***

We have entered into deeds of indemnity with certain of our directors and officers, as is common practice for publicly listed companies. Our Articles of Association also contain an indemnity for directors and officers and we have granted indemnities to certain of our former related corporate bodies which may require us to indemnify those entities against indemnities they have granted their directors and officers. To date, claims for payments of expenses incurred have been received from certain former directors and officers in relation to the ASIC investigation, and in relation to the examination of these persons by ASIC delegates. It is our policy to expense legal costs as incurred and as of March 31, 2008, we had incurred \$5.5 million of net expenses related to ASIC defense costs.

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Now that proceedings have been brought against former directors and officers of the James Hardie Group, we have and will continue to incur further costs under these indemnities which may be material. Initially, we have obligations, or have offered, to advance funds in respect of defense costs and such advances have been and will continue to be made. Currently, a portion of the defense costs of the former directors are being advanced by third parties, with us paying the balance. Based on the information currently available, we expect this to continue absent any finding of dishonesty against any former director or officer. If such costs are not insured or substantially exceed the amount of the insurance that we maintain, our financial position, liquidity, results of operations and cash flows could be materially adversely affected, subject to any entitlement we might have to recover such costs from third parties.

### ***Negative publicity may continue to adversely affect our business.***

As a result of the events that were considered by the Special Commission of Inquiry (which we refer to as the SCI) and the ASIC proceedings, we have been the subject of negative publicity, both in Australia and elsewhere in the world which we believe has contributed to declines in the price of our publicly traded securities in recent years. While such negative publicity has been significantly less frequent following our entry into the Original FFA, the potential for such negative publicity to increase in the future, for example, during the ASIC proceedings' trial, cannot be eliminated. Any uncertainty created by future negative publicity or by the events underlying such negative publicity could have a material adverse effect on our results of operations, staff morale and the market price of our publicly traded securities and create difficulties in attracting or retaining high caliber staff.

### ***We may have insufficient Australian taxable income to utilize tax deductions.***

We may not have sufficient Australian taxable income in future years to utilize the tax deductions resulting from the funding payments under the Amended FFA to the AICF. Further, if as a result of making such funding payments we incur tax losses, we may not be able to fully utilize such tax losses in future years of income. Any inability to utilize such deductions or losses could materially adversely affect our financial position, liquidity, results of operations and cash flows.

### ***Potential escalation in proven claims made against, and associated costs of, the AICF could increase our annual funding payments required to be made under the Amended FFA, which may cause us to have to increase our asbestos liability in the future.***

The amount of our asbestos liability is based, in part, on actuarially determined, anticipated (estimated), future annual funding payments to be made to the AICF on an undiscounted and uninflated basis. Future annual payments to the AICF are based on updated actuarial assessments that are to be performed as of March 31 of each year to determine expected asbestos-related personal injury and death claims to be funded under the Amended FFA for the financial year in which the payment is made and the next two financial years. Estimates of actuarial liabilities are based on many assumptions, which may not prove to be correct, and which are subject to considerable uncertainty, since the ultimate number and cost of claims are subject to the outcome of events that have not yet occurred, including social, legal and medical developments as well as future economic conditions. For instance, it is possible that the categories of payable claims could be extended to include claims that are not presently compensable or legally recognized. Further, estimating the future extent and pattern of asbestos-related diseases that will arise from past exposure to asbestos and the proportion of those claims that will be successful is inherently difficult and therefore could materially differ from actual results. In addition, particularly during times of credit market downturns, it is possible that the investments of the AICF could decline in value. If future proven claims are more numerous, the liabilities arising from them are larger than that currently estimated by KPMG Actuaries Pty Ltd (which we refer to as KPMG Actuaries) or the AICF investments decline in value, it is possible that pursuant to the terms of the Amended FFA, we will be required to pay higher annual funding payments to the AICF than currently anticipated and on which our asbestos liability is based. If this occurs, we may be required to increase our asbestos liability which would be reflected as a charge in our consolidated statements of operations at that date. Any such changes to actuarial estimates which require us to increase our asbestos liability could have a material adverse effect on our financial position, liquidity, results of operations and cash flows.

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*We have experienced product bans and boycotts and have been subject to other measures taken in response to the events investigated by the SCI and could continue to experience product bans and boycotts in the future.*

Following the release of the SCI report, the Australian Council of Trade Unions (which we refer to as the ACTU), UnionsNSW (formerly known as the Labour Council of New South Wales) and a representative of the asbestos claimants (which we collectively refer to as the Representatives) and others indicated that they would encourage or continue to encourage consumers and union members in Australia and elsewhere to ban or boycott the Company's products, to demonstrate or otherwise create negative publicity toward the Company in order to influence the Company's approach to the discussions with the NSW Government or to encourage governmental action if the discussions are unsuccessful. As previously disclosed, our financial position, liquidity, results of operations and cash flows were affected by such bans and boycotts.

Pursuant to the Heads of Agreement signed on December 21, 2004 and the Original FFA signed on December 1, 2005 the Representatives agreed to use their best endeavors to achieve forthwith the lifting of all bans or boycotts on any products manufactured, produced or sold by the Company, and the Company and the Representatives signed a deed of release in December 2005 under which the Company agreed to release the Representatives and the members of the ACTU and UnionsNSW from civil liability arising in relation to bans or boycotts instituted as a result of the events described above. All bans and boycotts have now been lifted. However, if the Amended FFA is terminated, new bans or boycotts could be implemented against the Company's products. Any such measures, and the influences resulting from them, could have a material adverse impact on the Company's financial position, liquidity, results of operations and cash flows.

*The complexity and long-term nature of the Amended FFA and related legislation and agreements may result in litigation as to their interpretation or one or more of the parties to the agreements may seek to renegotiate their terms.*

Certain legislation, the Amended FFA and related agreements, which govern the implementation and performance of the Amended FFA are complex and have been negotiated over the course of extended negotiation periods between various parties. There is a risk that, over the term of the Amended FFA, some or all parties may become involved in disputes as to the interpretation of such legislation, the Amended FFA or related agreements. We cannot guarantee that no party will commence litigation seeking remedies with respect to such a dispute, nor can we guarantee that a court will not order other remedies which may materially adversely affect the Company.

Due to the long-term nature of the Amended FFA, unforeseen events may result in one or more of the parties to the Amended FFA (including the Company) wishing to renegotiate the terms and conditions of the Amended FFA or any of the related agreements. Any amendments to the Amended FFA or related agreements in the future would require the consent of the Company, the Performing Subsidiary, the NSW Government and the AICF, and therefore may not be achieved.

*Risk of certain Amended FFA tax conditions ceasing to be satisfied.*

Despite the Australian Taxation Office (which we refer to as the ATO) rulings for the expected life of the Amended FFA, it is possible that new (and adverse) tax legislation could be enacted in the future. It is also possible that the facts and circumstances relevant to operation of the ATO rulings could change over the life of the Amended FFA. We may elect to terminate the Amended FFA if certain tax conditions cease to be satisfied for more than 12 months. However, we do not have a right to terminate the Amended FFA if, among other things, the tax conditions cease to be satisfied as a result of the actions of a member of the James Hardie Group.

Under certain circumstances, we may still have an obligation to make annual funding payments on an adjusted basis if the tax conditions remain unsatisfied for more than 12 months. If the tax conditions cease to be satisfied in a manner which does not permit us to terminate the Amended FFA, our financial position, liquidity, results of operations and cash flows may be materially adversely affected. The extent of this adverse effect will be determined by the nature of the tax condition which has ceased to be satisfied.

***Our effective income tax rate could increase and materially adversely affect our business.***

We operate in multiple jurisdictions and pay tax on our income according to the tax laws of these jurisdictions. Various factors, some of which are beyond our control, determine our effective tax rate, including changes in or interpretations of tax laws in any given jurisdiction, our ability to use net operating losses and tax credit carry forwards and other tax attributes, changes in geographical allocation of income and expense, and our judgment about the realizability of deferred tax assets. Such changes to our effective tax rate could materially adversely affect our financial position, liquidity, results of operations and cash flows.

***Exposure to additional income tax liabilities due to audits could materially adversely affect our business.***

Due to our size and the nature of our business, we are subject to ongoing reviews by taxing jurisdictions on various tax matters, including challenges to various positions we assert on our income tax and withholding tax returns. We accrue for tax contingencies based upon our best estimate of the taxes ultimately expected to be paid, which we update over time as more information becomes available. Such amounts are included in taxes payable or other non-current liabilities, as appropriate. We record additional tax expense in the period in which we determine that the recorded tax liability is less than the ultimate assessment we expect.

We are currently subject to audit and review in a number of jurisdictions in which we operate and have been advised that further audits may commence in the next 12 months. For example, the Internal Revenue Service (which we refer to as the IRS) is currently conducting an audit to determine whether we are in compliance with the limitation on benefits (which we refer to as the LOB) provision in the amended U.S. Netherlands Income Tax Treaty. If we are not in compliance, we will not be entitled to beneficial withholding tax rates on payments from our U.S. subsidiaries to certain of our Dutch companies. In addition, the ATO is auditing our Australian income tax return for the years ended March 31, 2002 and March 31, 2004 through March 31, 2006. These and other audits are discussed in greater detail in the three risk factors immediately below.

Of the audits currently being conducted, none has progressed sufficiently to predict its ultimate outcome. We accrue income tax liabilities for these audits and reviews based on our knowledge of all relevant facts and circumstances, taking into account existing tax laws, our experience with previous audits and settlements, the status of current tax examinations and how the tax authorities view certain issues. It is reasonably possible that the amount of our unrecognized tax benefits could significantly increase or decrease within the next 12 months. These changes could result from the settlement of ongoing litigation, the completion of ongoing examinations, the expiration of the statute of limitations or other circumstances. At this time, we cannot make an estimate of the range of the reasonably possible change.

The amounts ultimately paid upon resolution of these examinations could be materially different from the amounts included in taxes payable or other non-current liabilities and result in additional tax expense which could materially adversely affect our financial position, liquidity, results of operations and cash flows.

***Tax benefits are available under the U.S.-Netherlands income tax treaty to U.S. and Dutch taxpayers that qualify for those benefits. The IRS is auditing us in connection with our eligibility for those benefits on and after February 1, 2006 and has issued a notice of proposed adjustment asserting that we are not eligible.***

On December 28, 2004, the United States and The Netherlands amended the U.S.-Netherlands Income Tax Treaty (prior to amendment, the "Original U.S.-NL Treaty"; post amendment, the "New U.S.-NL Treaty"). We believe that, based on the transitional rules set forth in the New U.S.-NL Treaty, the Original U.S.-NL Treaty applied to us and to our Dutch and U.S. subsidiaries until January 31, 2006. We believe that, under the LOB provision of the Original U.S.-NL Treaty, a 5% U.S. withholding tax applied to dividends, and no U.S. withholding tax applied to interest or royalties that our U.S. subsidiaries paid to JHI NV or our Dutch finance subsidiary. The LOB provision of the Original U.S.-NL Treaty had various conditions of eligibility for reduced U.S. withholding tax rates and other treaty benefits, all of which we satisfied. If, however, we do not qualify for benefits under the New U.S.-NL Treaty, those dividend, interest and royalty payments would be subject to a 30% U.S. withholding tax.

Companies eligible for benefits under the New U.S.-NL Treaty qualify for a zero percent U.S. withholding tax rate not only on interest and royalties but also, in certain circumstances, on dividends. However, the LOB provision of the New U.S.-NL Treaty has a number of new, more restrictive eligibility requirements for eliminating or reducing U.S. withholding taxes and for other treaty benefits. We changed our organizational and operational structure as of

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January 1, 2006 to satisfy the requirements of the LOB provision of the New U.S.-NL Treaty and believe we are eligible for the benefits of the New U.S.-NL Treaty commencing February 1, 2006.

The IRS is currently conducting an audit to determine whether we satisfy those requirements and thus are entitled to beneficial withholding tax rates on payments from our United States subsidiaries to our Netherlands companies. As part of this audit process, on June 23, 2008, we announced that the IRS issued us a Notice of Proposed Adjustment (which we refer to as NOPA) that concludes we do not satisfy the LOB provision of the New U.S.-N.L. Treaty and that accordingly we are not entitled to beneficial withholding tax rates on payments from our United States subsidiaries to our Netherlands companies. We do not agree with the conclusions reached by the IRS, and we intend to contest the IRS' findings through the continuing audit process and, if necessary, through subsequent administrative appeals and possibly litigation.

If the IRS position ultimately were to prevail, we would be liable for a 30% withholding tax on dividend, interest and royalty payments made any time on or after February 1, 2006 by our U.S. subsidiaries to JHI NV or our Dutch finance subsidiary. In that event, we estimate we would owe approximately \$37.0 million in additional tax for calendar years 2006 and 2007 plus, as of June 30, 2008, \$3.0 million in interest and \$7.0 million in penalties related to that tax. Interest will continue to accrue and compound daily at the published monthly Federal short term rate plus 3% until the issue is resolved or a deposit of the full amount of the tax, interest and penalties is made with the IRS or a bond for such amounts is posted. Penalties for calendar years 2006 and 2007 will continue to accrue at the rate of one-half percent per month up to a maximum of 25%. The \$7.0 million accrued penalty through June 30, 2008 could continue to accrue to a maximum total of \$13.0 million. Additional tax, interest and penalties would be payable for later calendar years and such amounts could be significantly more per year in later years than the amounts indicated in the NOPA for calendar years 2006 and 2007. As a result, our effective income tax rate will increase significantly for both past and future periods, which will materially adversely affect our financial position, liquidity, results of operations and cash flows.

***In finalizing its audit of our fiscal year ended March 31, 2002 the ATO may issue amended assessments which may require substantial cash deposits to be made and substantial expenses to be incurred in appealing any assessment. In addition, if an assessment is ultimately upheld this also would materially and adversely affect our business.***

On June 18, 2008 the ATO commenced proceedings in the Federal Court of Australia (which we refer to as the Federal Court) seeking the reinstatement of our former wholly-owned subsidiary James Hardie Australia Finance Pty Limited (which we refer to as JHAF). The Federal Court will further consider the reinstatement of JHAF on July 18, 2008.

JHAF was deregistered on August 23, 2005 following a subsidiary's voluntary winding up. We understand that the reinstatement of JHAF is a necessary pre-requisite to the ATO issuing an amended assessment in respect of one of the issues that has been the focus of the ATO's inquiries during the tax audit of fiscal year 2002.

We understand that it is the view of the ATO that an amended assessment issued to JHAF would comprise primary tax of A\$101.5 million (\$93.1 million), estimated penalties of A\$50.8 million (\$46.6 million) and as of June 30, 2008 estimated general interest charges (which we refer to as GIC) of A\$88.0 million (\$80.7 million). GIC will continue to accrue until the issue is resolved or a bond is posted.

Any reinstatement of JHAF would be likely to involve the appointment of a new liquidator, who would need to determine, among other things, whether and to what extent JHAF was able to put itself in a position to meet any ultimate tax liability assessed in respect of it.

We are considering our position with respect to the ATO proceedings, the merits of the potential amended assessment and any obligations of JHAF to the ATO given its prior winding up.

If the ATO were successful in reinstating JHAF and if we are found to have, or otherwise accept, any liability for tax assessed solely against JHAF or if we are required to make payments on account of that tax while in dispute our financial position, liquidity, results of operations and cash flows could be materially adversely affected.

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***Our wholly-owned subsidiary, RCI Pty Ltd (which we refer to as RCI), has been required to post a substantial cash deposit and may incur substantial expenses in order to pursue an appeal of an assessment by the ATO. In addition, if the assessment is ultimately upheld this also would materially and adversely affect our business.***

In March 2006, RCI received an amended assessment from the ATO. The amended assessment is based on the ATO's calculation of RCI's net capital gains arising as a result of an internal corporate restructuring carried out in 1998. The amended assessment originally was for A\$412.0 million (\$377.9 million). However, after two subsequent remissions of general interest charges (which we refer to as GIC), by the ATO, the total assessment was changed to A\$368.0 million (\$337.5 million), which includes: A\$172.0 million (\$157.8 million) as the primary tax after allowable credits; A\$43.0 million (\$39.4 million) in penalties (representing 25% of the primary tax); and A\$153.0 million (\$140.3 million) in GIC.

During fiscal year 2007, we agreed with the ATO that in accordance with the ATO Receivables Policy, we would pay 50% of the total amended assessment being A\$184.0 million (\$168.8 million) and provide a guarantee from JHI NV in favor of the ATO for the remaining unpaid 50% of the amended assessment, pending the outcome of the appeal of the amended assessment. We also agreed to pay GIC accruing on the unpaid balance of the amended assessment in arrears on a quarterly basis. Up to March 31, 2008, we have paid A\$95.2 million (\$87.3 million) of GIC to the ATO. This amount includes GIC of A\$76.7 million (\$70.3 million) paid as part of the payment of A\$184.0 million (\$168.8 million) towards the amended assessment in fiscal year 2007. On April 15, 2008, we paid an additional A\$3.3 million (\$3.0 million) in GIC in respect of the quarter ended March 31, 2008.

On May 30, 2007, the ATO disallowed our objection to RCI's notice of amended assessment for RCI for the year ended March 31, 1999. On July 11, 2007, we filed an application appealing the Objection Decision with the Federal Court of Australia. The hearing date for RCI's appeal is presently scheduled to commence on December 8, 2008. We will continue to pursue all avenues of appeal to contest the ATO's position in this matter. RCI may incur substantial legal and other expenses in pursuing this appeal.

As of March 31, 2008, we had not recorded any liability for the amended assessment as we believe that the requirements under Financial Accounting Standards Board (which we refer to as FASB) Interpretation No. 48 (which we refer to as FIN 48) for recording a liability have not been met. We have accounted for all payments made to the ATO as a deposit, see the line item "Deposit with Australian Taxation Office" in our consolidated balance sheets in Item 18. In addition, it is our intention to treat any payments to be made at a later date as a deposit. Even if RCI is successful in appealing the amended assessment and the amount paid to the ATO is ultimately refunded to RCI, the requirement to initially pay 50% of the amended assessment and ongoing payments of accruing general interest charges pending the outcome of the appeal could materially and adversely affect our financial position and liquidity, as the cash required to make these payments is not available during the appeals process for ordinary corporate purposes. If RCI is unsuccessful in appealing the amended assessment, RCI will be required to pay the remaining 50% of the unpaid amended assessment, reverse the "Deposit with Australian Taxation Office" amount and recognize an expense amount for the total amended assessment and general interest charge payments. In which case, our financial position, liquidity, results of operations and cash flows will be materially and adversely affected. See Item 4, "Information on the Company — Legal Proceedings" and Note 15 to the notes to our consolidated financial statements included in Item 18 for more information.

***Under Dutch tax law, we derive tax benefits from the group finance operations of our Netherlands-based finance subsidiary, and changes in the laws applicable to the finance subsidiary could increase our effective tax rate and, as a result, could materially adversely affect our business.***

We have concentrated our finance and treasury activities in our Dutch finance subsidiary located in The Netherlands. In addition to providing financing to our various subsidiaries, the finance subsidiary owns and develops intellectual property that it licenses to our operating subsidiaries. Under The Netherlands International Group Finance Company rules, we have obtained a ruling from the Dutch Revenue authority that allows the finance subsidiary to set aside, in a Financial Risk Reserve (which we refer to as FRR), a portion of its taxable profits from financing and from licensing its intellectual property. The amounts set aside in the FRR are free of current Dutch income tax. Consequently, the finance subsidiary will generally incur a tax rate of approximately 13% to 15% on its qualifying financing and licensing income and a 25.5% statutory rate on all other income (25.5% is the Dutch statutory rate for calendar year 2007 and subsequent years), including any amounts involuntarily released from the FRR to cover any risks (including currency, bad debt and foreign branch losses) for which the FRR was established. The tax rate on qualifying income may be reduced to as low as approximately 5% to 7% depending on the extent to which amounts from the FRR pay for certain qualifying operating costs and expenditures and result in a tax exempt



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release from the FRR. However, the effective tax rate may also be higher than 13% to 15% if (1) the risks for which the FRR was formed materialize or (2) if there are insufficient opportunities to obtain tax exempt releases from the FRR. The Dutch revenue ruling became effective on July 1, 2001 and, when issued, was to apply for 10 years so long as we satisfy the requirements of The Netherlands International Group Finance Company provisions under Dutch tax law. As discussed below, the Dutch revenue ruling is set to expire on December 31, 2010.

The European Commission (which we refer to as the Commission), the executive arm of the European Union (which we refer to as the EU), also reviewed the tax regimes of its member countries to identify tax concessions that the Commission considered to be a form of “prohibited state aid” and, therefore, contrary to the provisions of the European Community Treaty. In February 2003, the Commission concluded that the existence of special tax concessions in certain countries, including The Netherlands International Group Finance Company regime, cannot be reconciled with EU rules regarding state aid. Accordingly, the Commission banned certain concessionary tax regimes, including The Netherlands International Group Finance Company regime, but allowed companies then operating under that regime, including our Dutch finance subsidiary, to continue to operate under the regime until December 31, 2010.

***We may reorganize our corporate structure by changing our place of incorporation and/or tax residency (which we refer to collectively as Domicile) and this may materially affect our financial position.***

Our current Domicile is in The Netherlands. As outlined above, we believe our Domicile provides certain tax benefits based on the New U.S.-NL Treaty and Dutch tax law. However, these benefits depend on our successful resolution of the IRS audit concerning our eligibility for the New U.S.-NL Treaty benefits and continued compliance with the New U.S.-N.L. Treaty LOB provisions and the FRR rules (see the risk factors above entitled “Tax benefits are available under the U.S.-Netherlands income tax treaty to U.S. and Dutch taxpayers that qualify for those benefits. The IRS is auditing us in connection with our eligibility for those benefits on and after February 1, 2006 and has issued a notice of proposed adjustment asserting that we are not eligible” and “Under Dutch tax law, we derive tax benefits from the group finance operations of our Netherlands-based finance subsidiary, and changes in the laws applicable to the finance subsidiary could increase our effective tax rate and, as a result, could materially adversely affect our business”). In addition, our Domicile in The Netherlands may make it more difficult to recruit qualified successors to our executives who would be required to be based in The Netherlands.

In response, we are evaluating whether or not we can or should change our Domicile. Although no decision to change our Domicile has been made, if we are able and choose to change our Domicile, it may have a material adverse effect on our financial position, liquidity, results of operations and cash flows. Any change in Domicile will require us to incur significant costs including tax payments, advisor-related fees, administrative costs and other costs of which we are not yet aware. Although the amount of these costs cannot be reasonably determined at this time, if we change our Domicile such costs would be material.

If we change our Domicile, we will be subject to the laws and regulations of the country of our new Domicile which may result in potential additional liabilities and restrictions under the new tax, corporate, and securities regimes, and may affect the rights you have currently as a security holder of a company whose Domicile is in The Netherlands.

***If we are classified as a “controlled foreign corporation” or a “passive foreign investment company,” our shareholders could be subject to increased tax liability as a consequence of their investment in our securities.***

Our shareholders that are United States persons could incur adverse U.S. federal income tax consequences if, for federal income tax purposes, we are classified as a “controlled foreign corporation” (which we refer to as a CFC) or a “passive foreign investment company” (which we refer to as a PFIC). For information regarding these consequences, see Item 10, “Additional Information — Taxation — United States Taxation.” In addition, shareholders could be adversely affected by changes in the current tax laws, regulations and interpretations thereof in the United States and The Netherlands, including changes that could have retroactive effect.

***Our board of directors and senior management continue to devote significant attention to the Amended FFA, ASIC proceedings, tax audits and tax litigation.***

Our board of directors, senior management and others within our organization continue to devote a significant amount of time and resources related to the Amended FFA, ASIC proceedings, tax audits and tax litigation, which are described in the risk factors above and elsewhere in this annual report on Form 20-F. To the extent we are required to devote time and resources to dealing with such issues rather than solely focusing on conducting our business, this could have a material adverse effect on our results of operations.

***Substantial and increasing competition in the building products industry could materially adversely affect our business.***

Competition in the building products industry is based largely on price, quality, performance and service. Our fiber cement products compete with products manufactured from natural and engineered wood, vinyl, stucco, masonry, gypsum and other materials as well as fiber cement products offered by other manufacturers. Some of our competitors may have greater product diversity and greater financial and other resources than we do and, among other factors, may be less affected by reductions in margins resulting from price competition.

Some of our competitors have lowered prices of their products to compete for sales. In addition, we expect our competitors to continue to expand their manufacturing capacities, to improve the design and performance of their products and to introduce new products with competitive price and performance characteristics. Increased competition by existing or future competitors could adversely impact fiber cement prices and could require us to increase our investment in product development, productivity improvements and customer service and support to compete in our markets.

Fiber cement product prices in the United States, Australia and New Zealand have fluctuated for a number of years due to the entry into the market of new producers and competition from alternative products, among other reasons, and these prices could continue to fluctuate in the future. Because of the maturity of the Australian and New Zealand markets, prices in those markets could decline and sales volumes may not increase significantly or may decline in the future.

Historically, in addition to the manufacturing costs associated with our products, the overall costs of our products have been affected by changes in our product mix, the addition of proprietary products to our product mix and the operating efficiencies of our manufacturing facilities. For instance, unanticipated technical problems could impair our efforts to commission new equipment aimed at improving operating efficiencies. Additionally, the current state of the U.S. housing industry increases the possibility of further price pressures. Increased competition into any of the markets in which we compete, would likely cause pricing pressures in those markets. Any of these factors could have a material adverse effect on our financial position, liquidity, results of operations and cash flows.

***If damages resulting from product defects exceed our insurance coverage, paying these damages could result in a material adverse effect on our business.***

The actual or alleged existence of defects in any of our products could subject us to significant product liability claims. Although we do not have replacement insurance coverage for damage to, or defects in, our products, we do have product liability insurance coverage for consequential damages that may arise from the use of our products. Although we believe this coverage is adequate and currently intend to maintain this coverage in the future, we cannot assure you that this coverage will be sufficient to cover all future product liability claims or that this coverage will be available at reasonable rates in the future. The successful assertion of one or more claims against us that exceed our insurance coverage could require us to incur significant expenses to pay these damages. These additional expenses could have a material adverse effect on our financial position, liquidity, results of operations and cash flows.

***If one or more of our fiber cement products fail to perform as expected or contain a design defect, such failure or defect, and any resulting negative publicity, could result in lower sales and may subject us to claims from purchasers or users of our fiber cement products.***

Because our fiber cement products have been used only since the early-1980s, we cannot assure you that these products will perform in accordance with our expectations over an extended period of time or that there are no serious design defects in such products. If our fiber cement technology fails to perform as expected or a product is discovered to have design defects, such failure or defects, and any resulting negative publicity, could result in lower sales of our products and may subject us to claims from purchasers or users of defective products, either of which could have a material adverse effect on our financial position, liquidity, results of operations and cash flows.

***Warranty claims resulting from unforeseen defects in our products and exceeding our warranty reserves could have a material adverse effect on our business.***

We have offered, and continue to offer, various warranties on our products, including a 50-year limited warranty on certain of our fiber cement siding products in the United States. As of March 31, 2008, we have accrued \$17.7 million for such warranties. See the line items “Accrued product warranties” in our consolidated balance sheets and Note 11 to our consolidated financial statements in Item 18. Although we maintain reserves for warranty-related claims and legal proceedings that we believe are adequate, we cannot assure you that warranty expense levels or the results of any warranty-related legal proceedings will not exceed our reserves. If our warranty reserves are significantly exceeded, the costs associated with such warranties could have a material adverse effect on our financial position, liquidity, results of operations and cash flows.

***We may incur significant costs in the future in complying with applicable environmental and health and safety laws and regulations. A failure to comply with or a change in these laws and regulations could subject us to significant liabilities, including, but not limited to, damages and penalties and could have a material adverse effect on our business.***

In all the jurisdictions in which we operate, we are subject to environmental, health and safety laws and regulations governing, among other matters, our operations, including the air and water quality of our plants, and the use, handling, disposal and remediation of hazardous substances currently or formerly used by us or any of our affiliates. Under these laws and regulations, we may be held jointly and severally responsible for the remediation of any hazardous substance contamination at our or our predecessors’ past or present facilities and at third-party waste disposal sites. We may also be held liable for any claims arising out of human exposure to hazardous substances or other environmental damage and our failure to comply with air, water, waste, and other environmental regulations. In addition, we will continue to be liable for any environmental claims that arose while we owned or operated any of the three gypsum facilities that we sold in April 2002. Pursuant to the terms of our agreement to sell our gypsum business, we retained responsibility for any losses incurred by the buyer resulting from environmental conditions at the Duwamish River in the State of Washington so long as notice of a claim is given within 10 years of closing. Our indemnification obligations in this regard are subject to a \$34.5 million limitation. The Seattle gypsum facility had previously been included on the “Confirmed and Suspected Contaminate Sites Report” released in 1987 due to the presence of metals in the groundwater. See Item 10, “Additional Information — Material Contracts.”

In addition, many of our products contain crystalline silica, which can be released in a respirable form in connection with manufacturing practices and handling or use. The inhalation of respirable crystalline silica at certain exposure levels is known or suspected to be associated with silicosis, potentially causing lung cancer and other adverse human health effects. We may face future costs of engineering and compliance to meet new standards relating to crystalline silica if standards are heightened. In addition, there is a risk that claims for silica-related health effects could be made against us. We cannot assure you that we will have adequate resources, including adequate insurance coverage, to satisfy any future silica-related health effect claims. In addition, our sales could decrease if silica-related health effect claims are made against us and as a result potential users of our products decide not to use our products. Any such claims may have a material adverse effect on our financial position, liquidity, results of operations and cash flows. See also Risk Factor above captioned “If damages resulting from product defects exceed our insurance coverage, paying these damages could result in a material adverse effect on our business.”

The costs of complying with environmental and health and safety laws relating to our operations or the liabilities arising from past or future releases of, or exposure to, hazardous substances or product liability matters, or our failure to comply with air, water, waste, and other than existing environmental regulations may result in us making future expenditures that could have a material adverse effect on our financial position, liquidity, results of operations

and cash flows. In addition, we cannot make any assurances that the laws currently in place will not change. Also, if applicable laws or judicial interpretations related to successor liability or “piercing the corporate veil” were to change, it could have a material adverse effect on our financial position, liquidity, results of operations and cash flows. See Item 4, “Information on the Company — Legal Proceedings.”

***Our business is dependent on the residential and commercial construction markets and we expect a slow down in housing construction in the markets we serve, including the U.S., Australia and New Zealand, over the short to medium term.***

Demand for our products depends in large part on residential construction markets and, to a lesser extent, on commercial construction markets. The level of activity in residential construction markets depends on new housing starts and residential remodeling projects, which are a function of many factors not within our control, including general economic conditions, the availability of financing, mortgage and other interest rates, inflation, unemployment, demographic trends, gross domestic product growth and consumer confidence in each of the countries and regions in which we operate. According to the U.S. Census Bureau, the United States housing starts continued to deteriorate in each quarter of calendar year 2007 in comparison to the same period in the prior year. New housing starts in calendar year 2007 were down 25% compared to calendar year 2006 and 35% from their peak in calendar year 2005. The National Association of Home Builders (which we refer to as the NAHB), and other analysts expect the new construction single-family residential segment to slow further in calendar year 2008. Based on the Housing Industry Association of Australia and InfoMetrics New Zealand, the short-term outlook is for residential construction activity to be flat in Australia and weaker in New Zealand. Any slow down in the markets we serve could result in decreased demand for our products and cause us to experience decreased sales and operating income. In addition, the level of activity in construction markets also depends on our ability to grow primary demand for fiber cement and convert sales of alternative materials to sales of fiber cement. Historically, in periods of economic decline, both new housing starts and residential remodeling also decline. The level of activity in the commercial construction market depends largely on vacancy rates and general economic conditions. Because residential and commercial construction markets are sensitive to cyclical changes in the economy, downturns in the economy or a lack of substantial improvement in the economy of any of our geographic markets could materially adversely affect our financial position, liquidity, results of operations and cash flows. In addition, during periods of economic decline, we may have difficulty retaining our workforce which may, in turn, lead to additional costs such as the costs of deferred bonus programs and the training of new workers. Because of these and other factors, our results of operations may be subject to substantial fluctuations and the results for any prior period may not be indicative of results for any future period.

***Because demand for our products in our major markets is seasonal, our quarterly results of operations may vary throughout the year.***

In the United States, a large proportion of our fiber cement products are sold in the Southeastern, South Central and Pacific Northwest regions of the country. Demand for building products in these regions is seasonal because construction activity diminishes during the winter season. In Australia, New Zealand and the Philippines, demand for building products is also seasonal because, in Australia and New Zealand, construction activity diminishes during the summer period of December to February, and in the Philippines, construction activity diminishes during the wet season from June to September and the last half of December due to the slowdown in business activity over the holiday period. Because of these and other factors, our quarterly results of operations may vary throughout the year and the results for any quarterly period may not be indicative of results for any future period.

***We may experience adverse fluctuations in the supply and cost of raw materials necessary to our business. A significant reduction or cessation of shipments from an important supplier could have a material adverse effect on our business.***

Cellulose fiber, silica, cement and water are the principal raw materials used in the production of fiber cement. Our fiber cement business periodically experiences fluctuations in the supply and costs of raw materials, and some of our supply markets are concentrated. For example, during both fiscal years 2008 and 2007 in the United States, pulp and cement prices rose. Market pulp prices rose by 11% and 16% in fiscal years 2008 and 2007, respectively, and the price we pay for cement increased by 3% and 7% in fiscal years 2008 and 2007, respectively. Pulp selling prices have increased primarily because of tight global supply and low inventory levels. As pulp is globally traded in U.S. dollars, the weakening of the U.S. dollar has also eroded profitability for producers outside of the United States. This has resulted in declining viability for less efficient softwood pulp producers, particularly in Canada, and this in

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turn has impacted global supply. Strengthening of currencies relative to the U.S. dollar (particularly in Asia and Europe) has also enabled pulp producers to push through higher U.S. pricing. In fiscal year 2008, strong increases in energy related costs including coal, diesel and electricity also adversely impacted materials which have a high energy cost component, including cement and quarrying products such as silica. Price fluctuations or material delays may occur in the future due to lack of raw materials or suppliers. The loss or deterioration of our relationship with a major supplier, an increase in demand by third parties for a particular supplier's products or materials or delays in obtaining materials could have a material adverse effect on our financial position, liquidity, results of operations and cash flows.

***If our research and development efforts fail to generate new, innovative products or processes, our overall profit margins may decrease and demand for our products may fall, which would have a material adverse effect on our business. In addition we may incur substantial expenses related to unsuccessful research and development efforts.***

For fiscal years 2008, 2007 and 2006, our expenses for research and development were \$27.3 million, \$25.9 million and \$28.7 million, respectively. We believe that investing in research and development is key to sustaining and growing our existing market leadership position in fiber cement. Because profit margins for fiber cement products and building products generally erode the longer a product has been on the market, innovation is particularly important. We rely on our research and development efforts to generate new products and processes to increase demand and to protect profit margins. If our research and development efforts fail to generate new, innovative products or processes, our overall profit margins may decrease and demand for our products may fall, which would have a material adverse effect on our financial position, liquidity, results of operations and cash flows. In addition, we may incur substantial expenses related to unsuccessful research and development efforts.

***Demand for our products is subject to changes in consumer preference.***

The continued development of builder and consumer preference for our fiber cement products over competitive products is critical to sustaining and expanding demand for our products. Therefore, the failure to maintain and increase builder and consumer acceptance of our fiber cement products could have a material adverse effect on our growth strategy, as well as our financial position, liquidity, results of operations and cash flows.

In addition, our inventories are recorded at the lower of cost or market. In order to determine market, management regularly reviews inventory quantities on hand and evaluates significant items to determine whether they are excess, slow-moving or obsolete. The estimated value of excess, slow-moving and obsolete inventory is recorded as a reduction to inventory and an expense in cost of sales in the period it is identified. This estimate requires management to make judgments about the future demand for inventory, and is therefore at risk to change from period to period. If our estimate for the future demand for inventory is greater than actual demand and we fail to reduce manufacturing output accordingly, we could be required to record additional inventory reserves, which could have a material adverse effect on our financial position, liquidity, results of operations and cash flows.

***Our ability to sell our products into certain markets is influenced by building codes and ordinances in effect in the related localities and states and may limit our ability to compete effectively in certain markets and our ability to increase or maintain our current market share for our products.***

Most states and localities in the markets in which we sell our products maintain building codes and ordinances that determine the requisite qualities of materials that may be used to construct homes and buildings for which our products are intended. Our products may not qualify under building codes and ordinances in certain markets, prohibiting our customers from using our products in those markets. This may limit our ability to sell our products into certain markets. In addition, ordinances and codes may change over time which may, from the time they are implemented, prospectively limit or prevent the use of our products in those markets, causing us to lose market share for our products. Although we keep up-to-date on the current and proposed building codes and ordinances of the markets in which we sell or plan to sell our products, and when appropriate, become involved in the ordinance and code setting process, our efforts may be ineffective, which would have a material adverse effect on our financial condition, liquidity, results of operations and cash flows.

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***We rely on only a few customers to buy our fiber cement products and the loss of any customer could materially adversely affect our business.***

Our top three customers in the United States represented approximately 59% of our total USA Fiber Cement gross sales in fiscal year 2008. Our top four customers in Australia and our top three customers in New Zealand accounted for approximately 47% and 78% of our total gross sales of fiber cement in Australia and New Zealand, respectively, in fiscal year 2008. We generally do not have long-term contracts with our large customers. Accordingly, if we were to lose one or more of these customers because our competitors were able to offer customers more favorable pricing terms or for any other reasons, we may not be able to replace customers in a timely manner or on reasonable terms. The loss of one or more customers could have a material adverse effect on our financial position, liquidity, results of operations and cash flows.

***Changes in, or failure to comply with, the laws, regulations, policies or conditions of any jurisdiction in which we conduct our business could result in, among other consequences, the loss of our assets in such jurisdiction, the elimination of certain rights that are critical to the operation of our business in such jurisdiction, a decrease in revenues or the imposition of additional taxes or other costs.***

Because we own assets, manufacture and sell our products internationally, our activities are subject to political, economic, legal and other uncertainties, including:

- changing political and economic conditions;
- changing laws and policies;
- the general hazards associated with the assertion of sovereign rights over certain areas in which we conduct our business; and
- laws limiting or conditioning the right and ability of subsidiaries and joint ventures to pay dividends or remit earnings to affiliated companies.

Although we seek to take applicable laws, regulations and conditions into account in structuring our business on a global basis, changes in, or our failure to comply with, the laws, regulations, policies or conditions of any jurisdiction in which we conduct our business could result in, among other consequences, the loss of our assets in such jurisdiction, the elimination of certain rights that are critical to the operation of our business in such jurisdiction, a decrease in revenues or the imposition of additional taxes. Therefore, any change in laws, regulations, policies or conditions of a jurisdiction could have a material adverse effect on our financial position, liquidity, results of operations and cash flows.

***Our ability to pay you dividends is dependent on Dutch law and may be limited in the future if we are not able to maintain sufficient levels of Freely Distributable Reserves (which we refer to as FDRs).***

Under Dutch corporate law, a Dutch company is able to pay dividends up to the amount of its FDRs which are determined under applicable accounting principles generally accepted in The Netherlands (which we refer to as Dutch GAAP). We believe that our current corporate structure has allowed us to maintain sufficient levels of FDRs to continue paying dividends in accordance with our publicly disclosed dividend policy, which is updated from time to time. However, transactions or events could cause a reduction in our FDRs, resulting in our inability to pay dividends over our securities, which could have a material adverse impact on the market value of the securities that you have invested in.

***Because our intellectual property and other proprietary information may be or may become publicly available, we are subject to the risk that competitors could copy our products or processes.***

Our success depends, in part, on the proprietary nature of our technology, including non-patentable intellectual property such as our process technology. To the extent that a competitor is able to reproduce or otherwise capitalize on our technology, it may be difficult, expensive or impossible for us to obtain adequate legal or equitable relief. Also, the laws of some foreign countries may not protect our intellectual property to the same extent as do the laws of the United States. In addition to patent protection of intellectual property rights, we consider elements of our product designs and processes to be proprietary and confidential and/or trade secrets. To safeguard our confidential

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information, we rely on employee, consultant and vendor non-disclosure agreements and contractual provisions and a system of internal and technical safeguards to protect our proprietary information. However, any of our registered or unregistered intellectual property rights may be challenged or exploited by others in the industry, which could materially adversely affect our financial position, liquidity, results of operations, cash flows and competitive position.

### ***Natural disasters could have an adverse effect on our overall business.***

Our plants and other facilities are located in places that could be affected by natural disasters, such as hurricanes, typhoons, cyclones, earthquakes, floods, tornados and other natural disasters. Natural disasters that directly impact our plants or other facilities could materially adversely affect our manufacturing or other operations and, thereby, harm our overall financial position, liquidity, results of operations and cash flows.

### ***We rely on a continuous power supply and availability of utilities to conduct our operations, and any shortages or interruptions could disrupt our operations and increase our expenses.***

In the manufacture of our products, we rely on a continuous and uninterrupted supply of electric power, water and, in some cases, natural gas, as well as the availability of water, waste and emissions discharge facilities. Any future shortages or discharge curtailments, of a material nature, could significantly disrupt our operations and increase our expenses. We currently do not have backup generators on our sites with the capability of maintaining all of a site's full operational power needs and we do not have alternate sources of power in the event of a sustained blackout. While our insurance includes coverage for certain "business interruption" losses (i.e., lost profits) and for certain "service interruption" losses, such as an accident at our supplier's facility, any losses in excess of the insurance policy's coverage limits or any losses not covered by the terms of the insurance policy could have a material adverse effect on our financial condition. If blackouts interrupt our power supply, we would be temporarily unable to continue operations at the affected facilities. Any future material and sustained interruptions in our ability to continue operations at our facilities could damage our reputation, harm our ability to retain existing customers or obtain new customers and could result in lost revenue, any of which could have a material adverse effect on our financial position, liquidity, results of operations and cash flows.

### ***Because we have significant operations outside of the United States and report our earnings in U.S. dollars, unfavorable fluctuations in currency values and exchange rates could have a material adverse effect on our business.***

Because our reporting currency is the U.S. dollar, our non-U.S. operations face the additional risk of fluctuating currency values and exchange rates. Such operations may also face hard currency shortages and controls on currency exchange. Approximately 22% and 17% of our net sales in fiscal years 2008 and 2007, respectively, were derived from sales outside the United States. Consequently, changes in the value of foreign currencies (principally Australian dollars, New Zealand dollars, Philippine pesos, Euros, U.K. pounds and Canadian dollars) could materially affect our business, results of operations and financial condition. We generally attempt to mitigate foreign exchange risk by entering into contracts that require payment in local currency, hedging transactional risk, where appropriate, and having non-U.S. operations borrow in local currencies. Although we may enter into such financial instruments from time to time in order to attempt to manage our market risks, we did not have any material interest rate swaps or forward exchange contracts outstanding as of March 31, 2008. There can be no assurance that we will be successful in these mitigation strategies, or that fluctuations in foreign currencies and other foreign exchange risks and interest rate risks will not have a material adverse effect on our financial position, liquidity, results of operations and cash flows. See also Risk Factor above captioned "Since our revenues are primarily derived from sales in U.S. dollars and payments pursuant to the Amended FFA are made in Australian dollars, unfavorable fluctuations in the U.S. dollar (and other currencies from which we derive our sales) compared to the Australian dollar, will require us to pay more of our revenues to discharge our obligations under the Amended FFA. In addition, since our results of operations are reported in U.S. dollars, unfavorable fluctuations in the U.S. dollar compared to the Australian dollar will require us to expense the difference in the reported period in order to increase the amount of our asbestos liability on our balance sheet." Any of these factors could materially affect our financial position, liquidity, results of operations and cash flows.

***Our Articles of Association and Dutch law contain provisions that could delay or prevent a change of control that may otherwise be beneficial to you.***

Our Articles of Association contain several provisions that could have the effect of delaying or preventing a change of control of our ownership. Our Articles of Association generally prohibit the holding of shares of our common stock if, because of an acquisition of a relevant interest (including interests held in the form of shares of our common stock, CUFS or ADRs) in such shares, the number of shares in which a person holds relevant interests increases from 20% or below to over 20% or from a starting point that is above 20% and below 90%. However, this prohibition is subject to exceptions, including acquisitions that result from acceptance under a takeover bid as described in our Articles of Association. Although these provisions in our Articles of Association may help to ensure that no person acquires voting control of us without making an offer to all shareholders, these provisions may also have the effect of delaying or preventing a change of control that may otherwise be beneficial to you. See Item 10, “Additional Information — Key Provisions of our Articles of Association — Limitations on Right to Hold Common Stock.”

***Because we are incorporated under Dutch law, you may not be able to effectively seek legal recourse against us or our management and you may have difficulty enforcing any U.S. judgments or rulings in a foreign jurisdiction.***

We are incorporated under the laws of The Netherlands. In addition, many of our directors and executive officers are residents of jurisdictions outside the United States and a substantial portion of our assets are located outside the United States. As a result, it may be difficult to effect service of process within the United States upon such persons, or to enforce outside the United States judgments obtained against such persons in U.S. courts, or to enforce in U.S. courts any judgments obtained against such persons in courts located in jurisdictions outside the United States, including actions predicated upon the civil liability provisions of the U.S. securities laws. In addition, it may be difficult for you to enforce, in original actions brought in courts located in jurisdictions outside the United States, rights predicated upon the U.S. securities laws.

The rights of shareholders and the responsibilities of directors under the laws of The Netherlands may not be as clearly established as under statutes or judicial precedent in existence in certain U.S. jurisdictions, and such rights under the laws of The Netherlands may differ substantially from what those rights would be under the laws of various jurisdictions in the United States. Therefore, our shareholders may have more difficulty in challenging the actions by our directors than they would otherwise as shareholders of a corporation incorporated in the United States.

***The issuance of shares of common stock or the grant of options to acquire shares of common stock could dilute the value of your shares and materially adversely affect the price of our common stock.***

The authority to issue shares and to grant rights (e.g. options) to subscribe for shares, up to the amount of authorized share capital has been delegated to our Supervisory Board subject to the approval of the Joint Board. Accordingly, our Supervisory Board could decide to issue shares or grant rights to subscribe for shares, such as options, up to the amount of our authorized share capital, without shareholder approval, which could dilute the value of your shares and materially adversely affect the price of our common stock.

In addition, if we issue a large number of our equity securities, the trading price of our equity securities could decrease. We may pursue acquisitions of businesses and may issue equity securities in connection with these acquisitions, although we do not currently have specific acquisitions planned. We may also issue equity securities to satisfy other liabilities of the Company. We cannot predict the effect, if any, that future sales or issuances of our equity securities or the availability of such securities for future sale will have on our securities market price from time to time.

***If we experience labor disputes or interruptions, as we have from time to time in the past, our operations may be disrupted and our business may be materially adversely affected.***

As of May 31, 2008, approximately 28%, or 155, of our employees in Australia<sup>1</sup> and approximately 52%, or 105, of our employees in New Zealand were represented by labor unions. Our unionized employees are covered by a range

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<sup>1</sup> Under Australian law, we cannot keep records of union members. The number quoted is the number of people who work in our factories that have union participation and therefore may be represented by a union.



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of federal and state-based agreements in Australia and other agreements in New Zealand. Two Australian labor agreements applying to our NSW operation expired in June 2006, one of which was subsequently renewed for two years (until September 2008) and the other is still in negotiation. In addition, we renegotiated one labor agreement for our Queensland (Meeandah) plant which now expires in October 2008. Our New Zealand labor agreement expires in September 2009. We cannot assure you that any of these agreements will be renewed on reasonable terms, or at all. During the past three years, we experienced occasional strikes and work interruptions lasting up to 5 days in Australia. In each case the strike action was confined to a small group of employees and had minimal impact on the operation. If we were to experience a prolonged labor dispute at any of our facilities, any strikes or work interruptions associated with such dispute could have a material adverse effect on our financial position, liquidity, results of operations and cash flows.

***We may acquire or divest businesses from time to time, and this may materially adversely affect our results of operations and financial condition and may significantly change the nature of the company in which you have invested.***

In the past, we have divested business segments. In the future, we may acquire other businesses or sell some or all of our assets or business segments. Any significant acquisition or sale may materially adversely affect our results of operations and financial condition and could change the overall profile of our business. As a result, the value of our shares may decrease in response to any such acquisition or sale and, upon any such acquisition or sale, our shares may represent an investment in a company with significantly different assets and prospects from the Company when you made your initial investment in us.

***We are dependent upon our key management personnel for our future success.***

Our success depends to a significant extent on the continued contributions of our Amsterdam-based executives for the management of our business and development and implementation of our business strategy. Our ability in the future to recruit qualified successors for our Amsterdam-based executives may be more difficult than it may be for U.S. based companies in our industry due to the location of our corporate offices in The Netherlands. The loss of senior management, coupled with our failure to recruit qualified successors, could have a material adverse effect on our business and the trading price of our common stock.

### **Forward-Looking Statements**

This annual report contains forward-looking statements. We may from time to time make forward-looking statements in our periodic reports filed with or furnished to the United States Securities and Exchange Commission (which we refer to as the SEC), on Forms 20-F and 6-K, in our annual reports to shareholders, in offering circulars, invitation memoranda and prospectuses, in media releases and other written materials and in oral statements made by our officers, directors or employees to analysts, institutional investors, lenders and potential lenders, representatives of the media and others. Examples of forward-looking statements include:

- expectations about the timing and amount of payments to the AICF, a special purpose fund for the compensation of proven Australian asbestos-related personal injury and death claims;
- statements regarding tax liabilities and related audits and proceedings;
- statements as to the possible consequences of proceedings brought against us and certain of our former directors and officers by the ASIC;
- expectations concerning indemnification obligations;
- expectations concerning the costs associated with the suspension of operations at our Blandon, Pennsylvania and Plant City, Florida plants;
- expectations that our credit facilities will be extended or renewed;
- expectations concerning dividend payments;
- projections of our results of operations or financial condition;

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- statements regarding our plans, objectives or goals, including those relating to competition, acquisitions, dispositions and our products;
- statements about our future performance; and
- statements about product or environmental liabilities.

Words such as “believe,” “anticipate,” “plan,” “expect,” “intend,” “target,” “estimate,” “project,” “predict,” “forecast,” “guideline,” “should,” “aim” and similar expressions are intended to identify forward-looking statements but are not the exclusive means of identifying such statements. Forward-looking statements involve inherent risks and uncertainties. We caution that a number of important factors could cause actual results to differ materially from the plans, objectives, expectations, estimates and intentions expressed in such forward-looking statements. These factors, some of which are discussed under “Key Information — Risk Factors” beginning on page 6, include, but are not limited to: all matters relating to or arising out of the prior manufacture of products that contained asbestos by current and former James Hardie Group subsidiaries; required contributions to the AICF and the effect of foreign exchange rates on the amount recorded in our financial statements as an asbestos liability; compliance with and changes in tax laws and treatments; competition and product pricing in the markets in which we operate; the consequences of product failures or defects; exposure to environmental, asbestos or other legal proceedings; general economic and market conditions; the supply and cost of raw materials; the success of our research and development efforts; our reliance on a small number of customers; risks of conducting business internationally; compliance with and changes in environmental and health and safety laws; risks of conducting business internationally; compliance with and changes in laws and regulations; foreign exchange risks; and the effect of natural disasters and changes in our key management personnel. We caution that the foregoing list of factors is not exclusive and that other risks and uncertainties may cause actual results to differ materially from those in forward-looking statements. Forward-looking statements speak only as of the date they are made.

### **Item 4. Information on the Company**

#### **History and Development of the Company**

Our legal name was changed to James Hardie Industries N.V. from RCI Netherlands Holdings B.V. in July 2001 when our legal form was converted from *‘besloten vennootschap met beperkte aansprakelijkheid’* (a “B.V.”), or private limited liability company, to a *“naamloze vennootschap”* (a “N.V.”), or a public limited liability company whose stock, unlike a private limited liability company, may be transferred without executing a notarial deed if such company is listed on a recognized stock exchange. We operate under Dutch law. Our corporate seat is located in Amsterdam, The Netherlands. The address of our registered office in The Netherlands is Atrium, 8<sup>th</sup> floor, Strawinskylaan 3077, 1077 ZX Amsterdam. The telephone number there is +31 20 301 2980. Our agent in the United States is CT Corporation. Their office is located at 3 Winners Circle, 3<sup>rd</sup> Floor, Albany, New York 12205.

#### **Corporate Restructuring**

On July 2, 1998, James Hardie Industries Limited (which we refer to as JHIL or ABN 60), now called ABN 60 Pty Limited, which was then a public company organized under the laws of Australia and listed on the ASX, announced a plan of reorganization and capital restructuring (which we refer to as the 1998 Reorganization).

James Hardie N.V. (which we refer to as JHNV) was incorporated in August 1998 as an intermediary holding company, with all of its common stock owned by indirect subsidiaries of ABN 60. On October 16, 1998, the shareholders of ABN 60 approved the 1998 Reorganization. We began our restructuring in November 1998, primarily to address the structural imbalance and resulting operational, financial and commercial issues associated with the increasing significance and growth opportunities of our U.S. operations and the location of corporate management and our shareholder base in Australia. At that time, we successfully completed:

- the formation of JHNV;
- the transfer to subsidiaries of JHNV of all of our fiber cement businesses, our U.S. gypsum wallboard business, our Australian and New Zealand building systems business and our Australian windows business, all of which, except for fiber cement, were subsequently sold;

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- a debt financing, consisting of an issuance of notes to U.S. purchasers, and the arrangement of an Australian credit facility; and
- the relocation of most of our senior executives and managers to our operational headquarters in the United States.

In February 2001, ABN 60, or JHIL, established the Medical Research and Compensation Foundation (which we refer to as the Foundation) by gifting A\$3.0 million (\$1.7 million based on the March 31, 2001 exchange rate of A\$1.7989 to US\$1.0000) in cash and transferring ownership of Amaca and Amaba to the Foundation.

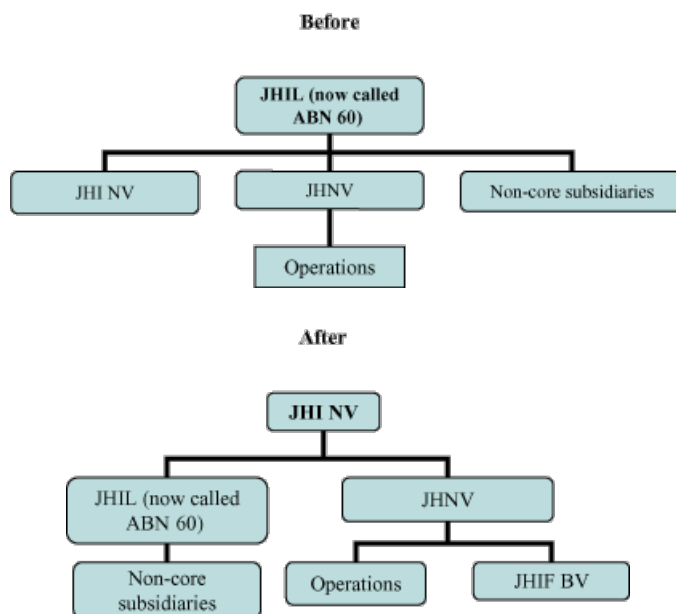
On July 24, 2001, ABN 60 announced a further plan of reorganization and capital restructuring (which we refer to as the 2001 Reorganization). On October 19, 2001, we completed our 2001 Reorganization. This restructuring was done to provide us with a more efficient financial structure in light of potential global expansion, to allow us to use our stock for acquisitions if necessary and to increase overall returns to our shareholders. The 2001 Reorganization consisted of the following:

- the issuance of shares of JHI NV common stock represented by CUFS to substantially all ABN 60 shareholders in exchange for their shares of ABN 60 common stock pursuant to an approved Australian scheme of arrangement;
- the transfer by ABN 60 of all of the outstanding shares of JHNV (which directly or indirectly held substantially all of the assets of the James Hardie Group at that time) to JHI NV;
- a capital reduction and payment of a dividend by ABN 60 to its then sole shareholder, JHI NV;
- the issuance by ABN 60 of 100,000 partly-paid ordinary shares to JHI NV for a total issue price approximately equal to the market value of the James Hardie Group immediately prior to the scheme's implementation (which equaled approximately A\$1.9 billion). There was an initial subscription price paid of A\$50 per partly-paid ordinary share (that is, for a total subscription price for such shares of A\$5 million), and the remainder was left uncalled. A partly-paid share is a share that is issued with only part of its value paid by the owner of the share. The partly-paid shares were issued by ABN 60 to enable it to call on JHI NV for funds in the future if ABN 60 needed such funds to maintain its solvency;
- the listing of the shares of JHI NV represented by CUFS on the ASX and the listing of ADRs, representing CUFS, which in turn represent shares of JHI NV, on the NYSE; and
- the establishment of a Dutch financing subsidiary, James Hardie International Finance B.V. (which we refer to as JHIF BV).

As a result of the share exchange, ABN 60 shareholders ceased to hold any direct interest in ABN 60 and instead became the holders of interests in JHI NV common shares, receiving substantially their same proportional ownership interests in the Company as they had in ABN 60 before exchanging their shares.

In addition, as a result of the exchange, ABN 60 and JHNV became direct subsidiaries of JHI NV.

The 2001 Reorganization is generally depicted in the following simplified diagrams:



Following the 2001 Reorganization, JHI NV controlled the same assets and liabilities as ABN 60 controlled immediately prior to the 2001 Reorganization.

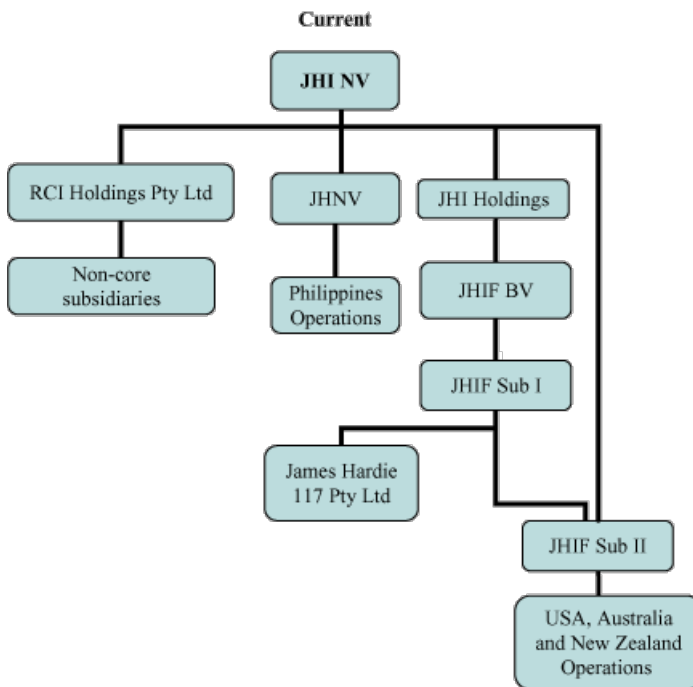
During fiscal year 2003:

- JHI NV and ABN 60 cancelled the partly-paid shares. The decision to cancel the partly-paid shares was taken by the directors of ABN 60 who did so based on a determination that the reduction in capital would not materially prejudice ABN 60's ability to pay its creditors, including Amaba and Amaca, which, under the terms of the Deed of Covenant and Indemnity, were creditors of ABN 60 only to the extent of the limited financial obligations under that Deed. The directors of ABN 60, after due consideration of ABN 60's financial position, determined that the reduction in capital would not materially prejudice ABN 60's ability to pay its creditors;
- ABN 60 transferred control of all of its non-operating subsidiaries to RCI Holdings Pty Ltd, a wholly owned subsidiary of JHI NV, to distinguish between the operating group of companies and non-operating subsidiaries; and
- Following the consolidation of the operating assets of the James Hardie Group under JHI NV and JHNV in fiscal year 2003, the principal activity of ABN 60 was paying amounts in accordance with the Deed of Covenant and Indemnity. At that time, the cash position of the Company had improved significantly as a result of the sale of the Company's gypsum business in the United States and the impending sale of a gypsum mine in Nevada. On March 31, 2003, following a review of all available options to address this issue and after a thorough review had been conducted to determine that the funds available to ABN 60 would be sufficient to meet the claims of all creditors, the shares in ABN 60 were transferred to the ABN 60 Foundation. ABN 60 Foundation was established to be the sole shareholder of ABN 60. ABN 60 was managed by independent directors and operated entirely independently of the Company. During fiscal year 2006, we completed a further restructuring which we believe will enable us to continue paying

dividends and continue realizing benefits available under the Dutch Financial Risk Reserve regime. See Item 3, “Key Information — Risk Factors.”

The 2006 reorganization consisted of the following: The subsidiary that owns our United States operations issued a second series of shares to a new subsidiary of JHIF BV. Our United States operations are now partly owned by JHI NV and the new subsidiary of JHIF BV. We expect that dividends paid to the new subsidiary of JHIF BV will be used to fund our ongoing obligations pursuant to the Amended FFA, to the AICF, through the Performing Subsidiary, while dividends paid to JHI NV will be available for other corporate purposes.

The following is a simplified diagram of our current corporate structure:



**Consolidation of the AICF**

In February 2007, the Amended FFA was approved by our shareholders to provide long-term funding to the AICF, a special purpose fund that provides compensation for Australian asbestos-related personal injury and death claims for which the Former James Hardie Companies are found liable. After the Amended FFA was approved, shares in Amaca and Amaba were transferred from the Foundation to the AICF. In addition, shares in ABN 60 were transferred from the ABN 60 Foundation to the AICF.

Although we have no legal ownership in the AICF, we have contractual and pecuniary interests in the AICF as a result of funding arrangements outlined in the Amended FFA. The Amended FFA results in the Performing Subsidiary having a contractual liability to pay the initial funding and ongoing annual payments to the AICF, subject to the terms and conditions of the Amended FFA, including application of the cash flow cap. These payments to the AICF will result in us having a pecuniary interest in the AICF. The interest is considered variable because the potential impact on us will vary based upon the annual actuarial assessments obtained by the AICF with respect to Australian asbestos-related personal injury and death claims for which the Former James Hardie Companies are found liable.

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Due to our variable interest in the AICF we consolidate the AICF in accordance with FIN 46R, "Consolidation of Variable Interest Entities." See Note 2 to our consolidated financial statements in Item 18.

### **Recent Developments (events occurring after April 1, 2008)**

On April 2, 2008, we announced our Supervisory Board's approval of the engagement of Ernst & Young LLP as our external auditor for the year ending March 31, 2009. We will be seeking shareholder ratification of the selection of Ernst & Young LLP as our external auditor at our Annual General Meeting (which we refer to as AGM) in August 2008.

On May 22, 2008, we announced plans to cease production at our Plant City, Florida Hardie Pipe manufacturing facility in the United States. As a result, we recorded an asset impairment of \$25.4 million in fiscal year 2008. See Item 5, "Operating and Financial Review and Prospects" and Note 7 to our consolidated financial statements in Item 18.

On June 18, 2008, the ATO commenced proceedings in the Federal Court of Australia seeking the reinstatement of our former wholly-owned subsidiary JHAF. We are considering our position with respect to the ATO proceedings, the merits of the potential amended assessment and any obligations of JHAF to the ATO given its prior winding up. See Item 3, "Key Information — Risk Factors", Item 4, "Information on the Company — Legal Proceedings" and Note 14 to the notes to our consolidated financial statements included in Item 18 for more information.

On June 23, 2008, we announced that the IRS issued us a NOPA that concludes that we do not satisfy the LOB provision of the New U.S.-N.L. Treaty and that accordingly we are not entitled to beneficial withholding tax rates on payments from our United States subsidiaries to our Netherlands companies. We do not agree with the conclusions reached by the IRS, and we intend to contest the IRS' findings through the continuing audit process and, if necessary, through subsequent administrative appeals and possibly litigation. See Item 3, "Key Information — Risk Factors", Item 4, "Information on the Company — Legal Proceedings" and Note 14 to the notes to our consolidated financial statements included in Item 18 for more information.

### ***Board and Management Changes***

Effective May 7, 2008, Mr. Robert Cox was appointed as our Company Secretary and as a member of our Managing Board.

Effective May 19, 2008, Mr. David Harrison was appointed as a non-executive director of our Joint and Supervisory Boards.

Effective May 23, 2008, Mr. Steve Ashe, Vice President — Investor Relations, separated from the Company.

Mr. Donald DeFosset will be resigning from our Joint and Supervisory Boards effective August 31, 2008.

Mr. James Loudon will resign from our Joint and Supervisory Boards immediately after the AGM in August 2008.

### **General Overview of Our Business**

Based on net sales, we believe we are the largest manufacturer of fiber cement products and systems for internal and external building construction applications in the United States, Australia, New Zealand, and the Philippines. Fiber cement has been one of the fastest growing segments (in terms of market growth) of the U.S. residential exteriors industry for the past three years according to NAHB's Builder Practices Reports – Siding Usage/Exterior Wall Finish In New Construction and Consumer Practices Reports – Siding Usage/Exterior Wall Finish In Repair & Remodel (which we refer to as the NAHB's Builder Practices Reports). Based on our knowledge, experience and third-party data regarding our industry, we estimate that the total U.S. industry shipments of fiber cement siding was between 1.4 and 1.5 billion square feet during fiscal year 2008, a decrease of approximately 7 to 13% from fiscal year 2007. Based on our knowledge, experience and third-party data, we estimate that we have 35 to 45% of the U.S. backerboard market. We market our fiber cement products and systems under various Hardie brand names and other brand names such as Artisan<sup>®</sup> Lap and Artisan<sup>™</sup> Accent Trim by James Hardie and Cemplank<sup>®</sup> siding (we also formerly marketed siding under the brand name Sentry<sup>®</sup> siding). We believe that, in certain applications, our fiber cement products and systems provide a combination of distinctive performance, design and cost advantages when

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compared to other fiber cement products and alternative products and systems that use solid wood, engineered wood, vinyl, brick, stucco or gypsum wallboard.

The sale of fiber cement products in the United States accounted for 78%, 82% and 82% of our total net sales from continuing operations in fiscal years 2008, 2007 and 2006, respectively.

Our fiber cement products are used in a number of markets, including new residential construction (single and multi-family housing), manufactured housing (mobile and pre-fabricated homes), repair and remodeling and a variety of commercial and industrial applications (stores, warehouses, offices, hotels, motels, schools, libraries, museums, dormitories, hospitals, detention facilities, religious buildings and gymnasiums). We manufacture numerous types of fiber cement products with a variety of patterned profiles and surface finishes for a range of applications, including external siding and soffit lining, internal linings, facades, fencing, pipes and floor and tile underlayments.

In contrast to some other building materials, fiber cement provides durability attributes, such as strong resistance to moisture, fire, impact and termites, requires relatively little maintenance and can be used as a substrate to create a wide variety of architectural effects with textured and colored finishes. Based on our knowledge, experience and third-party data regarding our industry, we estimate that, in fiscal year 2008, we sold approximately 12%<sup>2</sup> of the estimated total 9.6 to 9.8 billion square foot U.S. exterior siding market (all types of siding; excludes fascia, trim and soffit).

The breakdown of our net sales by operating segment for each of our last three fiscal years is as follows:

	Fiscal Year Ended March 31,		
	2008	2007	2006
USA Fiber Cement	\$ 1,144.8	\$ 1,262.3	\$ 1,218.4
Asia Pacific Fiber Cement	298.3	251.7	241.8
Other	25.7	28.9	28.3
Total	<u>\$ 1,468.8</u>	<u>\$ 1,542.9</u>	<u>\$ 1,488.5</u>

## Industry Overview

### *U.S. Housing Industry and Fiber Cement Industry*

In the United States, fiber cement is principally used in the residential building industry. Such usage fluctuates based on the level of new home construction and the repair and remodeling of existing homes. The level of activity is generally a function of interest rates and the availability of finance to homeowners to purchase a new home or make improvements to their existing homes, inflation, unemployment levels, demographic trends, gross domestic product growth and consumer confidence. Demand for building products is also affected by residential housing starts and existing home sales, the age and size of the housing stock and overall home improvement expenditures. According to the U.S. Census Bureau, annual domestic housing starts decreased from approximately 1.80 million in calendar year 2006 to approximately 1.35 million in calendar year 2007 and residential remodeling and repair expenditures decreased from approximately \$228.2 billion in calendar year 2006 to approximately \$226.4 billion in calendar year 2007, as preliminarily reported in the U.S. Census Bureau on May 1, 2008. However, other indicators of residential repair and remodeling activity reflect a steeper decline, such as year-over-year sales at The Home Depot and Lowe's which both sell building materials estimated to be predominantly to the repair & remodeling market segment.

Based on our knowledge, experience and third-party data regarding our industry, we estimate that total U.S. industry shipments of fiber cement siding was between 1.4 and 1.5 billion square feet during fiscal year 2008, a decrease of approximately 7 to 13% from fiscal year 2007. The future growth of fiber cement products will depend on overall demand for building products and on the rate of penetration of fiber cement products against competing materials such as wood, engineered wood (hardboard and oriented strand board), vinyl, masonry and stucco. See Item 3, "Key Information — Risk Factors."

<sup>2</sup> Actual siding usage reports from NAHB for calendar year 2007 will not be available until August and November 2008.

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In the United States, the largest application for fiber cement products is in the external siding industry. Based on the NAHB's Builder Practices Reports, for the past three years, fiber cement has been one of the fastest growing segments (in terms of market growth) of the siding industry. Siding is a component of every building and it usually occupies more square footage than any other building component, such as windows and doors. Selection of siding material is based on installed cost, durability, aesthetic appeal, strength, weather resistance, maintenance requirements and cost, insulating properties and other features. Different regions of the United States show a decided preference among siding materials according to economic conditions, weather, materials availability and local taste. The principal siding materials are vinyl, stucco, fiber cement, solid wood, and brick. Vinyl has the largest share of the siding market. In recent years, based on the NAHB's Builder Practices Reports, fiber cement has been gaining market share against vinyl and wood, and this is believed to be due to a number of reasons, including aesthetics, durability concerns and lower maintenance requirements compared to wood.

### *International Fiber Cement Industry*

In Australia and New Zealand, fiber cement building products are used in both the residential and commercial building industries with applications in external siding, internal walls, ceilings, floors, soffits and fences. The residential building industry represents the principal market for fiber cement products. We believe the level of activity in this industry is generally a function of interest rates, inflation, unemployment levels, demographic trends, gross domestic product growth and consumer confidence. Demand for fiber cement building products is also affected by the level of new housing starts and renovation activity. According to the Australian Bureau of Statistics (which we refer to as the ABS) total dwelling commencements in Australia declined from 165,336 in calendar year 2004 to 148,880 in calendar year 2007. Renovation activity, as measured in local currency expenditures by the ABS has increased from calendar year 2004 to calendar year 2007 for a total increase over this period of approximately 9%. According to Statistics New Zealand, new dwellings authorized in New Zealand declined from approximately 31,423 in calendar year 2004 to 25,544 in calendar year 2007. Residential renovation activity in New Zealand has increased from calendar year 2004 to calendar year 2007 for a total increase over this period of approximately 19%. The Housing Industry Association of Australia and InfoMetrics New Zealand believe new housing construction and renovation activity are expected to soften over the short to medium term in Australia and New Zealand, respectively.

Fiber cement products have, across a range of product applications, gained broader acceptance in Australia and New Zealand than in the United States, primarily due to earlier introduction in Australia and New Zealand. Former subsidiaries of ABN 60 developed fiber cement in Australia as a replacement for asbestos cement in the early 1980s. Asbestos sheet production ceased in the early 1980s and asbestos pipe production ceased in early 1987. Competition has intensified over the past decade in Australia. In addition to competition from solid wood, engineered wood, wallboard, masonry and brick, two Australian competitors have established fiber cement manufacturing facilities in Australia and fiber cement imports are also growing. Competition continues to intensify in New Zealand as fiber cement imports have become more cost competitive with the strengthening New Zealand dollar, resulting in increasingly competitive market pricing. See Item 3, "Key Information — Risk Factors."

In the Philippines and other Asian and Middle East (Israel, Kuwait, Qatar and the United Arab Emirates) markets, fiber cement building products are used in both the residential and commercial building industries with applications in external siding, external facades, internal walls, ceilings, floors, and soffits. The residential building industry represents the principal market for fiber cement products. In general, fiber cement products have, across a range of product applications, gained broader acceptance in these regions over the last 10 years. However, in some of the developing markets, gypsum usage has increased and penetrated into fiber cement applications. Fiber cement and asbestos cement facilities are located throughout Asia and exporting between countries is common practice. Management believes that fiber cement has good long-term growth potential because of the benefits of framed construction over traditional masonry construction. In addition, we believe the opportunity to replace wood-based products, such as plywood, with more durable fiber cement will be attractive to some consumers in some of these markets.



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In Europe, fiber cement building products are used in both residential and commercial building industries with applications in external siding, internal walls, floors, soffits and roofing. We compete in most segments except roofing and promote the use of fiber cement products against traditional masonry, gypsum based products and wood based products. Since we commenced selling our products in Europe in fiscal year 2004, we have continued to work to grow demand for our products by building awareness among distributors, builders and contractors. Management believes that the growth outlook for fiber cement in Europe is favorable in light of stricter insulation requirements driving demand for advanced cladding systems and better building practices increasing the use of fiber cement in interior applications.

### **Products**

We manufacture fiber cement products in the United States, Australia, New Zealand and the Philippines. In July 2005, we sold our Chilean fiber cement business. In fiscal year 2004, we commenced our European fiber cement business by distributing our fiber cement products in the United Kingdom and France. Our total product offering is aimed at the building and construction markets, including new residential construction, manufactured housing, repair and remodeling and a variety of commercial and industrial building applications.

We offer a wide range of fiber cement products for both exterior and interior applications, some of which have not yet been introduced into the United States. In the United States and elsewhere, our products are typically sold as planks or flat sheets with a variety of patterned profiles and finishes. Planks are used for external siding while flat sheets are used for internal and external wall linings and floor and tile underlayments. Outside the United States, we also manufacture fiber cement products for use in other applications such as building facades, lattice, fencing, decorative columns, flooring, soffit lining and ceiling applications.

We have developed a proprietary technology platform that enables us to produce thicker yet lighter-weight fiber cement products that are generally lighter and easier to handle than traditional building products. The first application of this technology has been our Hardietrim™ plank. Hardietrim™ plank is a fiber cement trim product that is used on the exterior of residential and commercial construction to replace traditional wood and engineered wood trim. Hardietrim™ plank was launched in fiscal year 1999, with the introduction of Hardietrim HLD® plank, from our Cleburne, Texas plant and demand has been strong since that time. A new production process for manufacturing Hardietrim™ plank was completed at the Cleburne plant and production commenced in fiscal year 2002. Additional trim capacity was added in the Peru plant in fiscal years 2004 and 2005.

We believe that our products provide certain performance, design and cost advantages. The principal fiber cement attribute in exterior applications is durability, particularly when compared to competing wood and wood-based products, while offering comparable aesthetics. Our fiber cement products exhibit superior resistance to the damaging effects of moisture, fire, impact and termites compared to wood and wood-based products, which has enabled us to gain a competitive advantage over competing products. Vinyl siding products generally have better durability characteristics than wood-based products, but typically cannot duplicate the superior aesthetics of fiber cement and lack the characteristics necessary for effectively accepting paint applications.

Our fiber cement products provide strength and the ability to imprint simulated patterns that closely resemble patterns and profiles of traditional materials such as wood and stucco. The surface properties provide a superior paint-holding finish to wood and engineered wood products such that the periods between necessary maintenance and repainting are longer. Compared to masonry construction, fiber cement is lightweight, physically flexible and can be cut using readily available tools. This makes fiber cement suitable for lightweight construction across a range of architectural styles. Fiber cement is well suited to both timber and steel-framed construction.

In our interior product range, our ceramic tile underlayment products provide superior handling and installation characteristics compared to fiberglass mesh cement boards. Compared to wood and wood-based products, our products provide the same general advantages that apply to external applications. In addition, our fiber cement products exhibit less movement in response to exposure to moisture than many alternative competing products, providing a more consistent and durable substrate on which to install tiles. In internal lining applications where exposure to moisture and impact damage are significant concerns, our products provide superior moisture resistance and impact resistance than traditional gypsum wet area wallboard and other competing products.

We also manufacture fiber cement pipes in Australia.

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During fiscal year 2004, we introduced pre-finished trim accessories to further expand our ColorPlus® collection line.

During fiscal years 2005 and 2006, after considerable market research, we re-launched the ColorPlus® collection of products with additional colors, board profiles, and pallet sizes. In addition, we expanded our manufacturing capacity and capabilities to meet increasing demand for our siding, trim and soffit products with ColorPlus® Technology.

During fiscal year 2006, we added Moldblock™ Protection to our EZGrid® underlay and Hardiebacker™ sheets. During fiscal year 2008, we introduced Artisan® Lap siding, Artisan™ Trim and HardieWrap™ weather barrier. Additionally, in the past five years, we launched many new textures, styles and coatings in fiber cement siding products in the United States to capitalize on demand for a variety of styles among homebuilders and homeowners.

In Australia and New Zealand, new products released over the past five years include EziGrid® tile underlay, Eclipsa™ eaves lining, Linea™ weatherboard, ExoTec® facade panel, Axon® cladding, Matrix™ cladding, Scyon® trim and Scyon® Wet Area Flooring (in Australia only) and Monotek® facade panel, ShingleSide panel and CLD Cavity Battens (in New Zealand only).

In the Philippines, new products released over the past five years include Hardisenepa™ Fascia Board, Hardiplank® Siding, Hardifloor™ Boards and Hardipattern™ Boards.

### **Seasonality**

Our earnings are seasonal and typically follow activity levels in the building and construction industry. In the United States, the calendar quarters ending in December and March generally reflect reduced levels of building activity depending on weather conditions. In Australia and New Zealand, the calendar quarter ending in March is usually affected by a slowdown due to summer holidays. In the Philippines, construction activity diminishes during the wet season from June through September and during the last half of December due to the slowdown in business activity over the holiday period. Also, general industry patterns can be affected by weather, economic conditions, industrial disputes and other factors. See Item 3, “Key Information — Risk Factors.”

### **Raw Materials**

The principal raw materials used in the manufacture of fiber cement are cellulose fiber (wood-based pulp), silica (sand), portland cement and water.

*Cellulose Fiber.* Reliable access to specialized, consistent quality, low cost pulp is critical to the production of fiber cement building materials. Cellulose fiber is sourced from New Zealand, the United States, Canada, and South America (Chile) and is processed to our specifications. It is further processed using our proprietary technology to provide the reinforcing material in the cement matrix of fiber cement. We have developed a high level of internal expertise in the production and use of wood-based pulps. This expertise is shared with pulp producers, which have access to appropriate raw wood stocks, in order to formulate superior reinforcing pulps. The resulting pulp formulas are typically proprietary and are the subject of confidentiality agreements between the pulp producers and us. Moreover, we have obtained patents in the United States and in certain other countries abroad covering certain unique aspects of our pulping formulas and processes that we believe cannot adequately be protected through confidentiality agreements. However, we cannot assure you that our intellectual property and other proprietary information will be protected in all cases. See Item 3, “Key Information — Risk Factors.” During both fiscal years 2008 and 2007 we experienced cost increases related to increases in the price of pulp. We have entered into contracts that discount pulp prices in relation to various pulp indices over a longer-term and purchase our pulp from several qualified suppliers in an attempt to mitigate price increases and supply interruptions.

*Silica.* High purity silica is sourced locally by the various production plants. In the majority of locations, we use silica sand as a silica source. In certain other locations, however, we process quartz rock and beneficiate silica sand to ensure the quality and consistency of this key raw material.

*Cement.* Cement is acquired in bulk from local suppliers and is supplied on a just-in-time basis to our manufacturing facilities. The silos at each fiber cement plant hold between one and three days of our cement requirements. During fiscal years 2008 and 2007 we experienced cost increases related to increases in the price of cement. In fiscal year 2008, strong increases in energy related costs including coal, diesel and electricity also adversely impacted materials

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which have a high energy cost component, including cement and quarrying products such as silica. We continue to evaluate options on agreements with suppliers for the purchase of cement that could fix our cement prices over longer periods of time.

*Water.* We use local water supplies and seek to process all wastewater to comply with environmental requirements.

### **Sales, Marketing and Distribution**

The principal markets for our fiber cement products are the United States, Australia, New Zealand, the Philippines, Canada, and increasingly in parts of Europe, including the United Kingdom and France. In addition, we sell fiber cement products in many other countries, including Belgium, China, Denmark, Germany, Hong Kong, India, Indonesia, Ireland, Malta, the Middle East (Israel, Kuwait, Qatar and the United Arab Emirates), The Netherlands, Norway, various Pacific Islands, South Africa, South Korea, Spain, Sri Lanka, Switzerland, Taiwan, Turkey and Vietnam. Our brand name, customer education in comparative product advantages, differentiated product range and customer service, including technical advice and assistance, provide the basis for our marketing strategy. We offer our customers support through a specialized fiber cement sales force and customer service infrastructure in the United States, Australia, New Zealand, the Philippines, Europe and Canada. The customer service infrastructure includes inbound customer service support coordinated nationally in each country (customer service support for Canada is based out of the United States), and is complemented by outbound telemarketing capability. Within each regional market, we provide sales and marketing support to building products dealers and lumber yards and also provide support directly to the customers of these distribution channels, principally homebuilders and building contractors.

In the United States, we sell fiber cement products for new residential construction predominantly to distributors, which then sell these products to dealers or lumber yards. This two-step distribution process is supplemented with direct sales to dealers as a means of accelerating product penetration and sales. Repair and remodel products in the United States are typically sold through the large home center retailers and specialist distributors. Our top three U.S. customers accounted for approximately 59% of our total USA Fiber Cement gross sales in fiscal year 2008. See Item 3, “Key Information — Risk Factors.” In Australia and New Zealand, both new construction and repair and remodel products are generally sold directly to distributor/hardware stores and lumber yards rather than through the two-step distribution process, which is generally used in the United States. In the Philippines, a network of thousands of small to medium size dealer outlets sells our fiber cement products to consumers, builders and real estate developers. Physical distribution of product in each country is primarily by road or sea transport, except for in the United States where transportation is primarily by road and a small use of rail.

We maintain dedicated regional sales management teams in our major sales territories. As of May 31, 2008, the sales teams (including telemarketing staff) consisted of approximately 368 people in the United States and Canada, 72 people in Australia, 21 people in New Zealand, 36 people in the Philippines, and 28 people in Europe. We also employ one person based in Taiwan who functions as a regional export salesperson, and who covers markets such as South Korea, Hong Kong, Macau, China and the Middle East (Israel, Kuwait, Qatar and the United Arab Emirates). Our national sales managers and national account managers, together with the regional sales managers and sales representatives, maintain relationships with national and other major accounts. Our sales force includes skilled trades people who provide on-site technical advice and assistance. In some cases, sales forces manage specific product categories. For example, in the United States, there are individuals who may specialize in siding products or interior products, although recent reorganizations have integrated many of these individuals into collaborative teams. Some interior products sales representatives provide in-store merchandising support for home center retailers.

We also use trade and consumer advertising and public relations campaigns to generate demand for our products. These campaigns usually explain the differentiating attributes of our fiber cement products and the suitability of our fiber cement products and systems for specific applications.

Despite the fact that distributors and dealers are generally our direct customers, we also aim to increase primary demand for our products by marketing our products directly to homeowners, architects and builders. We encourage them to specify and install James Hardie® products because of the quality and craftsmanship of our products. This “pull through” strategy, in turn, assists us in expanding sales for our distribution network as distributors benefit from the increasing demand for our products. See Item 3, “Key Information — Risk Factors.”

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Geographic expansion of our fiber cement business has occurred in markets where framed construction is prevalent for residential applications or where there are opportunities to change building practices from masonry to framed construction. Expansion is also possible where there are direct substitution opportunities irrespective of the methods of construction. Our entry into the Philippines is an example of the ability to substitute fiber cement for an alternative product (in this case plywood). With the exception of our current major markets, as well as Japan and certain rural areas in Asia, Scandinavia, and Eastern Europe, most markets in the world principally utilize masonry construction for external walls in residential construction. Accordingly, further geographic expansion depends on our ability to provide alternative construction solutions and for those solutions to be accepted by the markets.

Because fiber cement products were relatively new to the Philippines, the launch of our fiber cement products in the Philippines in fiscal year 1999 was accompanied by strategies to address the particular needs of local customers and the building trade. For example, we established a carpenter training and accreditation program whereby Filipino carpenters who are unfamiliar with our products are taught installation techniques. We have also put greater emphasis on building our relationships with new home developers and builders in order to educate the market on the benefits of our products in this particular sector.

Fiber cement products manufactured in Australia, New Zealand and the Philippines are exported to a number of markets in Asia, the Pacific, and the Middle East (Israel, Kuwait, Qatar and the United Arab Emirates) by sea transport. A regional sales management team managed out of the Philippines is responsible for coordinating export sales into Asia and the Middle East (Israel, United Arab Emirates, Kuwait, and Qatar). A regional sales coordinator based in New Zealand is responsible for export sales to the Pacific and Papua New Guinea.

### **Research and Development**

We pioneered the successful development of cellulose reinforced fiber cement and, since the 1980s, have progressively introduced products resulting from our proprietary product formulation and process technology. We have capitalized on our strong market positions to maintain leadership in product research and development and process technology enhancements. Our product differentiation strategy, and our quest to maintain our position as one of the low cost manufacturers of fiber cement, is supported by our significant investment in research and development activities. In fiscal year 2008, we spent \$27.4 million or approximately 1.9% of total net sales, in research and development activities. This amount included \$0.1 million of amounts classified as selling, general and administrative expenses for U.S. GAAP purposes. In fiscal year 2007, we spent \$30.0 million or approximately 1.9% of total net sales, in research and development activities. This amount included \$4.1 million of amounts classified as selling, general and administrative expenses for U.S. GAAP purposes. In fiscal year 2006, we spent \$32.1 million, or approximately 2.2% of total net sales, in research and development activities. This amount included \$3.4 million of amounts classified as selling, general and administrative expenses for U.S. GAAP purposes. See Item 3, “Key Information — Risk Factors.”

### **Dependence on Trade Secrets and Research and Development**

Our current patent portfolio is based mainly on fiber cement compositions, associated manufacturing processes and the resulting products. Our non-patent technical intellectual property consists primarily of our operating and manufacturing know-how, which is maintained as trade secret information. We have increased our abilities to effectively create, manage and utilize our intellectual property and have implemented a strategy that increasingly uses patenting, licensing, trade secret protection and joint development to protect and increase our market share. However, we cannot assure you that our intellectual property and other proprietary information will be protected in all cases. In addition, if our research and development efforts fail to generate new, innovative products or processes, our overall profit margins may decrease and demand for our products may fall. We do not materially rely on intellectual property licensed from any outside third parties. See Item 3, “Key Information — Risk Factors.”

**Governmental Regulation**

*Environmental Regulation*

Our operations and properties are subject to extensive federal, state and local and foreign environmental protection and health and safety laws, regulations and ordinances. These environmental laws, among other matters, govern activities and operations that may have adverse environmental effects, such as discharges to air, soil and water, and establish standards for the handling of hazardous and toxic substances and the handling and disposal of solid and hazardous wastes. In the United States, these environmental laws include, but are not limited to:

- the Resource Conservation and Recovery Act;
- the Comprehensive Environmental Response, Compensation and Liability Act;
- the Clean Air Act;
- the Occupational Safety and Health Act;
- the Emergency Planning and Community Right to Know Act;
- the Clean Water Act;
- the Safe Drinking Water Act;
- the Surface Mining Control and Reclamation Act;
- the Toxic Substances Control Act;
- the National Environmental Policy Act; and
- the Endangered Species Act,

as well as analogous state, regional and local regulations. Other countries also have statutory schemes relating to the protection of the environment.

Some environmental laws provide that a current or previous owner or operator of real property may be liable for the costs of removal or remediation of environmental contamination on, under, or in that property or other impacted properties. In addition, persons who arrange, or are deemed to have arranged, for the disposal or treatment of hazardous substances may also be liable for the costs of removal or remediation of environmental contamination at the disposal or treatment site, regardless of whether the affected site is owned or operated by such person. Environmental laws often impose liability whether or not the owner, operator or arranger knew of, or was responsible for, the presence of such environmental contamination. Also, third parties may make claims against owners or operators of properties for personal injuries, property damage and/or for clean-up associated with releases of hazardous or toxic substances pursuant to applicable environmental laws and common law tort theories, including strict liability.

Environmental compliance costs in the future will depend, in part, on continued oversight of operations, expansion of operations and manufacturing activities, regulatory developments and future requirements that cannot presently be predicted. See Item 3, “Key Information — Risk Factors.” Also see “Legal Proceedings” below.

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**Organizational Structure**

JHI NV is incorporated in The Netherlands, with its corporate seat in Amsterdam.

The table below sets forth our significant subsidiaries, all of which are 100% owned by JHI NV, either directly or indirectly, as of May 31, 2008.

<u>Name of Company</u>	<u>Jurisdiction of Establishment</u>
James Hardie 117 Pty Ltd.	Australia
James Hardie Aust Holdings Pty Ltd.	Australia
James Hardie Austgroup Pty Ltd.	Australia
James Hardie Australia Management Pty Ltd.	Australia
James Hardie Australia Pty Ltd.	Australia
James Hardie Building Products Inc.	United States
James Hardie Europe B.V.	Netherlands
James Hardie International Finance B.V.	Netherlands
James Hardie International Finance Holdings Sub I B.V.	Netherlands
James Hardie International Finance Holdings Sub II B.V.	Netherlands
James Hardie International Holdings B.V.	Netherlands
James Hardie N.V.	Netherlands
James Hardie New Zealand Limited.	New Zealand
James Hardie Philippines Inc.	Philippines
James Hardie Research (Holdings) Pty Ltd.	Australia
James Hardie Research Pty Ltd.	Australia
James Hardie U.S. Investments Sierra Inc.	United States
N.V. Technology Holdings A Limited Partnership	Australia
RCI Pty Ltd.	Australia

**Capital Expenditures and Divestitures**

The following table sets forth our capital expenditures, calculated on an accrual basis, for each year in the three-year period ended March 31, 2008.

	<b>Fiscal Years Ended March 31,</b>		
	<b>2008</b>	<b>2007</b>	<b>2006</b>
		<b>(In millions)</b>	
USA Fiber Cement	\$ 31.3	\$ 80.3	\$ 154.5
Asia Pacific Fiber Cement	5.6	10.5	6.6
Chile, U.S. Pipes, U.S. Roofing and Europe (1)	1.6	1.3	1.7
Total Capital Expenditures	<u>\$ 38.5</u>	<u>\$ 92.1</u>	<u>\$ 162.8</u>

(1) In July 2005, we sold our fiber cement business located in Chile; in April 2006, we closed our roofing pilot plant located in Fontana, California; and in May 2008, we closed our pipes plant located in Plant City, Florida. For further information See Note 7 to our consolidated financial statements in Item 18.

The significant capital expenditure projects over the past three fiscal years in our USA Fiber Cement business include:

- construction of a new fiber cement manufacturing plant in Pulaski, Virginia which began in March 2005. The plant includes two manufacturing lines, each with an annual design capacity of 300 million square feet. At the end of fiscal year 2006, we completed construction on the first manufacturing line and, in April 2006, we commenced commercial production on this line. In May 2006, we completed construction on the second manufacturing line. However, we have not yet commissioned or commenced commercial production on this second manufacturing line. The plant produces external siding and interior backerboard products for new residential construction, repair and remodel and manufactured housing markets. As of March 31, 2008, we have incurred \$105.7 million related to the construction of our Pulaski, Virginia plant;

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- the continued implementation of our ColorPlus® strategy. This strategy includes constructing additional ColorPlus® coating capacity inside our existing plants. In fiscal year 2006, we completed construction of, and commenced production on, a new ColorPlus® line at our Blandon, Pennsylvania plant. In fiscal year 2007, we completed construction of, and commenced production on, new ColorPlus® lines at our Reno, Nevada and Pulaski, Virginia plants. In fiscal year 2008, we suspended production at our Blandon, Pennsylvania plant. As of March 31, 2008, we have incurred \$52.1 million related to our ColorPlus® strategy;
- commencement of a new finishing capability on a new product line in fiscal year 2007. As of March 31, 2008 we have incurred \$18.8 million related to this project;
- the addition of a new fiber cement plant in Reno, Nevada at a cost of \$58.0 million, which occurred during fiscal years 2006, 2005 and 2004; and
- the addition of a new trim line at our Peru, Illinois plant. As of March 31, 2005, we were in pre-production and in fiscal year 2006 we commenced the ramp-up of this new trim line. As of March 31, 2007, this project was completed and we had incurred a total cost of \$59.0 million related to the construction of this new trim line. These expenditures primarily occurred during fiscal years 2006, 2005 and 2004.

In addition, in fiscal year 2006 we commenced our implementation of a new ERP software system. As of March 31, 2008, we have incurred \$14.7 million related to this project.

In fiscal year 2006, we spent \$3.5 million to upgrade our fiber cement manufacturing plant at Rosehill in Sydney. The purpose of the upgrade was to improve production line efficiencies in order to increase productivity and cost savings.

We currently expect to spend approximately \$40 million to \$60 million in fiscal year 2009 for capital expenditures, including facility upgrades and the implementation of new fiber cement technologies. We expect to fund our capital expenditures through a combination of internal cash and funds from our credit facilities.

Competitive pressures and market developments could require further increases in capital expenditures. Our financing for these capital expenditures is expected to come from our cash from our future operations and from external debt to the extent that cash from operations does not cover our capital expenditures. However, if we are unable to extend our credit facilities, or are unable to renew our credit facilities on terms that are substantially similar to the ones we presently have, we may experience liquidity issues and may have to reduce our levels of planned capital expenditures to conserve cash for future cash flow requirements. See Item 3, “Key Information — Risk Factors.”

### **Property, Plant and Equipment**

We estimate that our manufacturing plants are among the largest and lowest cost fiber cement manufacturing plants in the United States. We believe that the location of our plants positions us near growth markets in the United States while minimizing our transportation costs for product distribution and raw material sourcing.

Our manufacturing plants use significant amounts of water which, after internal recycling and reuse, are eventually discharged to publicly owned treatment works (with the exception of our Blandon, Pennsylvania and Summerville, South Carolina facilities, which maintain a closed loop system). The discharge of process water is monitored by us, as well as by regulators. In addition, we are subject to regulations that govern the air quality and emissions from our plants. In the past, from time to time, we have received notices of discharges in excess of our water and air permit limits. In each case, we have addressed the concerns raised in those notices, including the payment of any associated minor fines. See Item 3, “Key Information — Risk Factors.”

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### *Plants and Process*

We manufacture fiber cement products in the United States, Australia, New Zealand and the Philippines. The location of each of our fiber cement plants and the annual design capacity for such plants are set forth below:

Location	Existing Annual Design Capacity (1)
<b>Fiber Cement (in million square feet)</b>	
<b>United States</b>	
Fontana, California	180
Plant City, Florida	300
Cleburne, Texas	500
Tacoma, Washington	200
Peru, Illinois	560
Waxahachie, Texas	360
Blandon, Pennsylvania (2)	200
Summerville, South Carolina	190
Reno, Nevada	300
Pulaski, Virginia (3)	600
Total United States	3,390
<b>Australia</b>	
Sydney, New South Wales (4)	180
Brisbane, Queensland (Carole Park) (4) (6)	120
Total Australia	300
<b>New Zealand</b>	
Auckland (5)	75
<b>The Philippines</b>	
Manila	145
Total Fiber Cement Flat Sheet	3,910
<b>Fiber Reinforced Concrete Pipes (in tons) (7)</b>	
Plant City, Florida (pipes) (8)	—
Brisbane, Queensland (Meeandah) (4) (6)	50,000
Total Fiber Reinforced Concrete Pipes	50,000

- (1) Annual design capacity is based on management's historical experience with our production process and is calculated assuming continuous operation, 24 hours per day, seven days per week, producing 5/16" thickness siding at a target operating speed. Annual design capacity is not necessarily reflective of our actual capacity utilization at each plant. See below for a description of average capacity utilization rates for our fiber cement plants by country. Plants outside the United States produce a range of thicker products, which negatively affect their outputs. Actual production is affected by factors such as product mix, batch size, plant availability and production speeds and is usually less than annual design capacity.
- (2) On October 31, 2007, we announced plans to suspend production at our Blandon, Pennsylvania plant. See Note 7 to the notes to our consolidated financial statements included in Item 18 for more information.
- (3) Our plant in Pulaski, Virginia has two manufacturing lines with a total annual design capacity of 600 million square feet (300 million square feet per line). Both manufacturing lines have been completed, however, currently only one line, with a capacity of 300 million square feet, has commenced commercial production.
- (4) Prior to March 2004, the land and buildings on which these facilities are located were leased on a long-term basis from Amaca. In March 2004, various subsidiaries of Multiplex Property Trust (which we collectively refer to as Multiplex) an unrelated third party, acquired the land and buildings related to these three fiber cement manufacturing facilities from Amaca. The land and buildings on which these facilities are located are leased on a long-term basis from Multiplex.



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- (5) Prior to March 2004, the land and buildings on which this facility is located were leased on a long-term basis from Studorp Limited or Studorp. In March 2004, Multiplex acquired the relevant land and buildings from Studorp. On June 30, 2005, an unrelated third party, the Location Group Limited, acquired the relevant land and buildings from Multiplex. Penrose Land Limited, a company within the Location Group Limited, took over as landlord in respect of the lease of the land and buildings to James Hardie New Zealand Limited.
- (6) There are two manufacturing plants in Brisbane. Carole Park produces only flat sheets and Meeandah produces only pipes and columns.
- (7) Pipe and column capacity is measured in tons rather than million square feet.
- (8) Our Plant City, Florida Pipe plant ceased operations in May 2008.

While the same basic process is used to manufacture fiber cement products at each facility, plants are designed to produce the appropriate mix of products to meet each market's specific, projected needs. Many of our manufacturing facilities have been either newly constructed or substantially modernized and upgraded in the past five years. The facilities were constructed so production can be efficiently adjusted in response to increased consumer demand by increasing production capacity utilization, enhancing the economies of scale or adding additional lines to existing facilities, or making corresponding reductions in production capacity in response to weaker demand. Except for the Waxahachie, Texas plant, we own all of our fiber cement sites and plants located in the United States. The lease for the Waxahachie, Texas site and plant expires on March 31, 2020, at which time we have an option to purchase the plant. In 1998, we entered into lease agreements with a former subsidiary, now owned by the AICF, for all of our fiber cement sites located in Australia. In March 2004, various subsidiaries of Multiplex Property Trust (which we collectively refer to as Multiplex) acquired the land and buildings related to the three fiber cement manufacturing facilities from the former subsidiary. Prior to that acquisition, we renegotiated the three leases with Multiplex. Upon completion of the acquisition and subsequent transfer of title to Multiplex, Multiplex assumed the responsibility of landlord under each of the amended leases. One of the leases for our Australian sites expires on March 22, 2016 with an option to renew the lease for two further terms of 10 years expiring in March 2036. The other two leases for our Australian sites expire on March 22, 2019 and contain options to renew for two further terms of 10 years expiring in March 2039. There is no purchase option available under our leases related to our Australian sites. In addition, in March 2004, we entered into a lease agreement with Multiplex for our fiber cement site located in New Zealand. On June 30, 2005, an unrelated third party, the Location Group Limited, acquired the land and buildings related to the fiber cement manufacturing facilities in New Zealand from Multiplex and we now make lease payments related to this site to the Penrose Land Limited, a company within the Location Group Limited, as landlord under the lease. The leases for our New Zealand facilities expire on March 22, 2016, at which time we have an option to renew the lease for two further terms of 10 years expiring in March 2036. There is no purchase option available under our leases related to our New Zealand facilities. We own our pipe plant in the United States. In addition, we own 40% of the land on which our Philippines fiber cement plant is located, and 100% of the Philippines plant itself.

For fiscal year 2008, average capacity utilization for our fiber cement plants by country was approximately as follows:

Country	Capacity Utilization (1)
United States	59%
Australia	76%
New Zealand	72%
Philippines	77%

- (1) Capacity utilization is based on design capacity. Design capacity is based on management's estimates, as described above. No accepted industry standard exists for the calculation of fiber cement manufacturing facility capacities.

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### *Mines*

We lease silica quartz mine sites in Tacoma, Washington; Reno, Nevada; and Victorville, California. Our lease for our quartz mine in Tacoma, Washington expires in February 2010 (with options to renew). The lease for our silica quartz mine site in Reno, Nevada expires in May 2011 (with options to renew or purchase). The lease for our silica quartz mine site in Victorville, California expires in July 2015.

### **Commitment to Provide Funding on a Long-Term Basis in Respect of Asbestos-Related Liabilities of Former Subsidiaries**

The Amended FFA to provide long-term funding to the AICF was approved by shareholders in February 2007. The accounting policies utilized by the Company to account for the Amended FFA are described in Note 2 to our consolidated financial statements in Item 18.

### *Asbestos Adjustments*

The asbestos adjustments included in the consolidated statements of operations comprise the following:

(In millions)	Fiscal Years Ended March 31,		
	2008	2007	2006
Change in estimates			
Change in actuarial estimate – asbestos liability	\$ (175.0)	\$ 50.3	\$ —
Change in actuarial estimate – insurance receivable	27.4	(22.6)	—
Change in estimate – AICF claims-handling costs	(6.5)	0.8	—
Change in estimate – Other	1.2	—	—
Subtotal – Change in estimates	(152.9)	28.5	—
Effect of foreign exchange	(87.2)	(94.5)	—
Tax impact related to the implementation of the Amended FFA	—	(335.0)	—
Initial recording of provision at March 31, 2006	—	—	(715.6)
Other adjustments	—	(4.5)	—
<b>Total Asbestos Adjustments</b>	<b>\$ (240.1)</b>	<b>\$ (405.5)</b>	<b>\$ (715.6)</b>

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### *Asbestos-Related Assets and Liabilities*

Under the terms of the Amended FFA, the Company has included on its consolidated balance sheets certain asbestos-related assets and liabilities. These amounts are detailed in the table below, and the net total of these asbestos-related assets and liabilities is commonly referred to by the Company as the “Net Amended FFA Liability.”

(In millions)	March 31,	
	2008	2007
Asbestos liability – current	\$ (78.7)	\$ (63.5)
Asbestos liability – non-current	(1,497.8)	(1,225.8)
Asbestos liability – Total	(1,576.5)	(1,289.3)
Insurance receivable – current	14.1	9.4
Insurance receivable – non-current	194.3	165.1
Insurance receivable – Total	208.4	174.5
Workers’ compensation asset – current	6.9	2.7
Workers’ compensation asset – non-current	78.5	76.5
Workers’ compensation liability – current	(6.9)	(2.7)
Workers’ compensation liability – non-current	(78.5)	(76.5)
Workers’ compensation – Total	—	—
Deferred income taxes – current	9.1	7.8
Deferred income taxes – non-current	397.1	318.2
Deferred income taxes – Total	406.2	326.0
Income tax payable (reduction in income tax payable)	20.4	9.0
Other net liabilities	(3.4)	(6.3)
<b>Net Amended FFA liability</b>	<b>(944.9)</b>	<b>(786.1)</b>
Restricted cash and cash equivalents and restricted short-term investment assets of the AICF	115.1	146.9
<b>Unfunded Net Amended FFA liability</b>	<b>\$ (829.8)</b>	<b>\$ (639.2)</b>

### Asbestos Liability

The amount of the asbestos liability has been calculated by reference to (but is not exclusively based upon) the most recent actuarial estimate of the projected future asbestos-related cash flows prepared by KPMG Actuaries and is in accordance with the terms of the Amended FFA. The asbestos liability also includes an allowance for the future claims-handling costs of the AICF. The Company will receive an updated actuarial estimate as of March 31 each year. The last actuarial assessment was performed as of March 31, 2008.

The changes in the asbestos liability for the year ended March 31, 2008 are detailed in the table below:

	AS Millions	AS to US\$ rate	US\$ Millions
Asbestos liability – March 31, 2007	AS (1,598.1)	1.2395	\$ (1,289.3)
Asbestos claims paid (1)	74.3	1.1503	64.6
AICF claims-handling costs incurred (1)	2.8	1.1503	2.4
Change in actuarial estimate (2)	(190.8)	1.0903	(175.0)
Change in estimate of AICF claims-handling costs (2)	(7.1)	1.0903	(6.5)
Effect of foreign exchange			(172.7)
<b>Asbestos liability – March 31, 2008</b>	<b>AS (1,718.9)</b>	<b>1.0903</b>	<b>\$ (1,576.5)</b>

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- (1) The average exchange rate for the period is used to convert the Australian dollar amount to U.S. dollars based on the assumption that these transactions occurred evenly throughout the period.
- (2) The spot exchange rate at March 31, 2008 is used to convert the Australian dollar amount to U.S. dollars as the adjustment to the estimate was made on that date.

### Insurance Receivable – Asbestos

The changes in the insurance receivable for the year ended March 31, 2008 are detailed in the table below:

	<u>AS</u> <u>Millions</u>	<u>AS to</u> <u>US\$ rate</u>	<u>US\$</u> <u>Millions</u>
Insurance receivable – March 31, 2007	A\$ 216.3	1.2395	\$ 174.5
Insurance recoveries (1)	(19.2)	1.1503	(16.7)
Change in estimate (3)	0.2	1.1782	0.2
Change in actuarial estimate (2)	29.9	1.0903	27.4
Effect of foreign exchange			<u>23.0</u>
<b>Insurance receivable – March 31, 2008</b>	<u>A\$ 227.2</u>	1.0903	<u>\$ 208.4</u>

- (1) The average exchange rate for the period is used to convert the Australian dollar amount to U.S. dollars based on the assumption that these transactions occurred evenly throughout the period.
- (2) The spot exchange rate at March 31, 2008 is used to convert the Australian dollar amount to U.S. dollars as the adjustment to the estimate was made on that date.
- (3) The spot exchange rate at June 30, 2007 is used to convert the Australian dollar amount to U.S. dollars as the adjustment to the estimate was made on that date.

### Deferred Income Taxes – Asbestos

The changes in the deferred income taxes — asbestos for the year ended March 31, 2008 are detailed in the table below:

	<u>AS</u> <u>Millions</u>	<u>AS to US\$</u> <u>rate</u>	<u>US\$</u> <u>Millions</u>
Deferred tax assets – March 31, 2007	A\$ 404.1	1.2395	\$ 326.0
Amounts offset against income tax payable (1)	(11.1)	1.1503	(9.6)
Impact of change in actuarial estimates (2)	50.4	1.0903	46.2
Impact of other asbestos adjustments (1)	(0.5)	1.1503	(0.4)
Effect of foreign exchange			<u>44.0</u>
<b>Deferred tax asset – March 31, 2008</b>	<u>A\$ 442.9</u>	1.0903	<u>\$ 406.2</u>

- (1) The average exchange rate for the period is used to convert the Australian dollar amount to U.S. dollars based on the assumption that these transactions occurred evenly throughout the period.
- (2) The spot exchange rate at March 31, 2008 is used to convert the Australian dollar amount to U.S. dollars as the adjustment to the estimate was made on that date.

### Income Tax Payable

A portion of the deferred income tax asset is applied against the Company's income tax payable. At March 31, 2008 and 2007, this amount was \$20.4 million and \$9.0 million, respectively. During the year ended March 31, 2008, there was a \$1.7 million favorable effect of foreign exchange.

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### Other Net Liabilities

Other net liabilities include a provision for asbestos-related education and medical research contributions of \$3.3 million and \$4.6 million at March 31, 2008 and 2007, respectively. Also included in other net liabilities are the other assets and liabilities of the AICF including trade receivables, prepayments, fixed assets, trade payables and accruals. These other assets and liabilities of the AICF were a net liability of \$0.1 million and \$1.7 million at March 31, 2008 and 2007, respectively. During the year ended March 31, 2008, there was a \$1.0 million favorable adjustment related to changes in estimates of the other net liabilities and a \$0.5 million unfavorable effect of foreign exchange.

### Restricted Cash and Short-term Investment Assets of the AICF

Cash and cash equivalents and short-term investments of the AICF are reflected as restricted assets as these assets are restricted for use in the settlement of asbestos claims and payment of the operating costs of the AICF. During the year ended March 31, 2008, no short-term investments were purchased or sold.

The changes in the restricted cash and cash equivalents and restricted short-term investment assets of the AICF for the year ended March 31, 2008 are detailed in the table below:

	<u>AS</u> <u>Millions</u>	<u>AS to US\$</u> <u>rate</u>	<u>US\$</u> <u>Millions</u>
Restricted cash and cash equivalents and restricted short-term investment assets – March 31, 2007	A\$ 182.1	1.2395	\$ 146.9
Asbestos claims paid (1)	(74.3)	1.1503	(64.6)
AICF operating costs paid – claims handling (1)	(2.8)	1.1503	(2.4)
AICF operating costs paid – non-claims handling (1)	(4.6)	1.1503	(4.0)
Insurance recoveries (1)	19.2	1.1503	16.7
Interest and investment income (1)	10.8	1.1503	9.4
Unrealized loss on investments (1)	(5.1)	1.1503	(4.4)
Other (1)	0.2	1.1503	0.2
Effect of foreign exchange			17.3
<b>Restricted cash and cash equivalents and restricted short-term investment assets – March 31, 2008</b>	<u>A\$ 125.5</u>	1.0903	<u>\$ 115.1</u>

(1) The average exchange rate for the period is used to convert the Australian dollar amount to U.S. dollars based on the assumption that these transactions occurred evenly throughout the period.

### Actuarial Study; Claims Estimate

The AICF commissioned an updated actuarial study of potential asbestos-related liabilities as of March 31, 2008. Based on KPMG Actuaries' assumptions, KPMG Actuaries arrived at a range of possible total cash flows and proposed a central estimate which is intended to reflect an expected outcome. The Company views the central estimate as the basis for recording the asbestos liability in the Company's financial statements, which under U.S. GAAP, it considers the best estimate under SFAS No. 5. Based on the results of these studies, it is estimated that the discounted (but inflated) value of the central estimate for claims against the Former James Hardie Companies was approximately A\$1.4 billion (\$1.3 billion). The undiscounted (but inflated) value of the central estimate of the asbestos-related liabilities of Amaca and Amaba as determined by KPMG Actuaries was approximately A\$3.0 billion (\$2.8 billion). Actual liabilities of those companies for such claims could vary, perhaps materially, from the central estimate described above. The asbestos liability includes projected future cash flows as undiscounted and uninflated on the basis that it is inappropriate to discount or inflate future cash flows when the timing and amounts of such cash flows is not fixed or readily determinable.

The asbestos liability has been revised to reflect the most recent actuarial estimate prepared by KPMG Actuaries as of March 31, 2008 and to adjust for payments made to claimants during the year then ended.

In estimating the potential financial exposure, KPMG Actuaries made assumptions related to the total number of claims which were reasonably estimated to be asserted through 2071, the typical cost of settlement (which is sensitive to, among other factors, the industry in which a plaintiff claims exposure, the alleged disease type and the jurisdiction in which the action is brought), the legal costs incurred in the litigation of such claims, the rate of receipt of claims, the settlement strategy in dealing with outstanding claims and the timing of settlements.

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Further, KPMG Actuaries relied on the data and information provided by the AICF and assumed that it is accurate and complete in all material respects. The actuaries tested the data for reasonableness and consistency, but have not verified the information independently nor established the accuracy or completeness of the data and information provided or used for the preparation of the report.

Due to inherent uncertainties in the legal and medical environment, the number and timing of future claim notifications and settlements, the recoverability of claims against insurance contracts, and estimates of future trends in average claim awards, as well as the extent to which the above named entities will contribute to the overall settlements, the actual amount of liability could differ materially from that which is currently projected.

A sensitivity analysis has been performed to determine how the actuarial estimates would change if certain assumptions (i.e., the rate of inflation and superimposed inflation, the average costs of claims and legal fees, and the projected numbers of claims) were different from the assumptions used to determine the central estimates. This analysis shows that the discounted (but inflated) central estimates could be in a range of A\$1.0 billion (\$0.9 billion) to A\$2.1 billion (\$1.9 billion) (undiscounted, but inflated, estimates of A\$1.9 billion (\$1.7 billion) to A\$5.4 billion (\$5.0 billion)), as of March 31, 2008. It should be noted that the actual cost of the liabilities could be outside of that range depending on the results of actual experience relative to the assumptions made.

The potential range of costs as estimated by KPMG Actuaries is affected by a number of variables such as nil settlement rates (where no settlement is payable by the Former James Hardie Companies because the claim settlement is borne by other asbestos defendants (other than the Former James Hardie Companies) which are held liable), peak year of claims, past history of claims numbers, average settlement rates, past history of Australian asbestos-related medical injuries, current number of claims, average defense and plaintiff legal costs, base wage inflation and superimposed inflation. The potential range of losses disclosed includes both asserted and unasserted claims. While no assurances can be provided, the Company believes that it is likely to be able to partially recover losses from various insurance carriers. As of March 31, 2008, KPMG Actuaries' undiscounted central estimate of asbestos-related liabilities was A\$3.0 billion (\$2.8 billion). This undiscounted (but inflated) central estimate is net of expected insurance recoveries of A\$497.8 million (\$456.6 million) after making a general credit risk allowance for bad debt insurance carriers and an allowance for A\$72.7 million (\$66.7 million) of "by claim" or subrogation recoveries from other third parties. In accordance with FIN 39, the Company has not netted the insurance receivable against the asbestos liability on its consolidated balance sheets.

### **Claims Data**

The AICF provides compensation payments for Australian asbestos-related personal injury claims against the Former James Hardie Companies. The claims data in this section are only reflective of these Australian asbestos-related personal injury claims against the Former James Hardie Companies.

For the years ended March 31, 2008, 2007 and 2006, the following table, provided by KPMG Actuaries, shows the claims filed, the number of claims dismissed, settled or otherwise resolved for each period and the average settlement amount per claim:

	Years Ended March 31,		
	2008	2007	2006(t)
Number of claims filed	552	463	346
Number of claims dismissed	74	121	97
Number of claims settled or otherwise resolved	445	416	405
Average settlement amount per claim	A\$147,349	A\$166,164	A\$151,883
Average settlement amount per claim	\$128,096	\$127,165	\$114,322

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The following table, provided by KPMG Actuaries, shows the activity related to the numbers of open claims, new claims and closed claims during each of the past five years and the average settlement per settled claim and case closed:

	As of March 31,				
	2008	2007	2006(1)	2005	2004
Number of open claims at beginning of period	490	564	712	687	743
Number of new claims	552	463	346	489	379
Number of closed claims	519	537	502	464	435
Number of open claims at end of period	523	490	556	712	687
Average settlement amount per settled claim	A\$147,349	A\$166,164	A\$151,883	A\$157,594	A\$167,450
Average settlement amount per settled claim	\$128,096	\$127,163	\$114,318	\$116,572	\$116,123
Average settlement amount per case closed	A\$126,340	A\$128,723	A\$122,535	A\$136,536	A\$121,642
Average settlement amount per case closed	\$109,832	\$ 98,510	\$ 92,229	\$100,996	\$ 84,356

(1) Information includes claims data for only 11 months ended February 28, 2006. Claims data for the 12 months ended March 31, 2006 was not available at the time our financial statements were prepared.

Under the terms of the Amended FFA, the Company has obtained rights of access to actuarial information produced for the AICF by the actuary appointed by the AICF (which we refer to as the Approved Actuary). The Company's future disclosures with respect to claims statistics are subject to it obtaining such information from the Approved Actuary. The Company has had no general right (and has not obtained any right under the Amended FFA) to audit or otherwise require independent verification of such information or the methodologies to be adopted by the Approved Actuary. As such, the Company will need to rely on the accuracy and completeness of the information and analysis of the Approved Actuary when making future disclosures with respect to claims statistics.

See Item 3, "Key Information — Risk Factors" for additional information concerning the Amended FFA.

### Legal Proceedings

Our operations, like those of other companies engaged in similar businesses, are subject to a number of federal, state and local laws and regulations on air and water quality, waste handling and disposal. Our policy is to accrue for environmental costs when it is determined that it is probable that an obligation exists and the amount can be reasonably estimated. In the opinion of management, based on information presently known, except as set forth below, the ultimate liability for such matters should not have a material adverse effect on either our consolidated financial position, results of operations or cash flows.

We are involved from time to time in various legal proceedings and administrative actions incidental or related to the normal conduct of business. Although it is impossible to predict the outcome of any pending legal proceeding, our management believes that such proceedings and actions should not, except as described below, individually or in the aggregate, have a material adverse effect on either our consolidated financial position, results of operations or cash flows. See also Item 3, "Key Information — Risk Factors."

### ASIC Proceedings

In February 2007, ASIC commenced civil proceedings against the Company, ABN 60 and ten then-present or former officers and directors of the James Hardie Group. While the subject matter of the allegations varies between individual defendants, the allegations against the Company are confined to alleged contraventions of provisions of the Corporations Act relating to continuous disclosure, a director's duty of care and diligence, and engaging in misleading or deceptive conduct in respect of a security.

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In the proceedings, ASIC seeks:

- declarations regarding the alleged contraventions;
- orders for pecuniary penalties in such amount as the Supreme Court thinks fit up to the limits specified in the Corporations Act;
- orders that Former James Hardie Group directors or officers Michael Brown, Michael Gillfillan, Meredith Hellicar, Martin Koffel, Peter Macdonald, Philip Morley, Geoffrey O'Brien, Peter Shafron, Gregory Terry and Peter Willcox be prohibited from managing an Australian corporation for such period as the Supreme Court thinks fit;
- an order that the Company execute a deed of indemnity in favor of ABN 60 providing that the Company indemnify ABN 60 for an amount up to a maximum of A\$1.9 billion (\$1.7 billion), for such amount as ABN 60, or its directors, consider, after giving careful consideration, is necessary to ensure that ABN 60 is able to pay its debts, as and when they fall due, and for such amount as ABN 60, or its directors, reasonably believe is necessary to ensure that ABN 60 remains solvent; and
- its costs of the proceedings.

The Company is defending each of the allegations made by ASIC and the orders sought against it in the proceedings, as are the other former directors and officers.

ASIC has indicated that its investigations into other related matters continue and may result in further actions, both civil and criminal. However, it has not indicated the possible defendants to any such actions.

The Company has entered into deeds of indemnity with certain of its directors and officers, as is common practice for publicly listed companies. The Company's articles of association also contain an indemnity for directors and officers and the Company has granted indemnities to certain of its former related corporate bodies which may require the Company to indemnify those entities against indemnities they have granted their directors and officers. To date, claims for payments of expenses incurred have been received from certain former directors and officers in relation to the ASIC investigation, and in relation to the examination of these persons by ASIC delegates. Now that proceedings have been brought against former directors and officers of the James Hardie Group, the Company has and will continue to incur further costs under these indemnities which may be significant. Initially, the Company has obligations, or has offered, to advance funds in respect of defense costs and such advances have been and will continue to be made. Currently, a portion of the defense costs of former directors are being advanced by third parties, with the Company paying the balance. Based upon the information available to it presently, the Company expects this to continue absent any finding of dishonesty against any former director or officer. The Company notes that other recoveries may be available, depending upon the outcome of the ASIC proceedings, including either as a result of a costs order being made against ASIC or, if ASIC is successful in securing civil penalty declarations, as a result of repayments by former directors and officers in accordance with the terms of their indemnities. It is the Company's policy to expense legal costs as incurred.

There remains considerable uncertainty surrounding the likely outcome of the ASIC proceedings in the longer term and there is a possibility that the Company could become responsible for other amounts in addition to the defense costs. However, at this stage, the Company believes that although such amounts are reasonably possible, the amount or range of such amounts are not estimable.

### ***Tax Contingencies***

Due to the size of the Company and the nature of its business, the Company is subject to ongoing reviews by taxing jurisdictions on various tax matters, including challenges to various positions the Company asserts on its income tax returns. The Company accrues for tax contingencies based upon its best estimate of the taxes ultimately expected to be paid, which it updates over time as more information becomes available. Such amounts are included in taxes payable or other non-current liabilities, as appropriate. If the Company ultimately determines that payment of these amounts is unnecessary, the Company reverses the liability and recognizes a tax benefit during the period in which the Company determines that the liability is no longer necessary. The Company records additional tax expense in the period in which it determines that the recorded tax liability is less than the ultimate assessment it expects.

In fiscal years 2008, 2007 and 2006, the Company recorded income tax benefit of nil, \$10.4 million and \$20.7 million, respectively, as a result of the finalization of certain tax audits (whereby certain matters were settled), the



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expiration of the statute related to certain tax positions and adjustments to income tax balances based on the filing of amended income tax returns, which give rise to the benefit recorded by the Company.

The Company or one of its subsidiaries files income tax returns in the U.S. federal jurisdiction, and various states and foreign jurisdictions including Australia and The Netherlands. The Company is no longer subject to U.S. federal examinations by the IRS for tax years prior to and including tax year 2004. The Company is no longer subject to examinations by The Netherlands tax authority, for tax years prior to tax year 2002. With certain limited exceptions, the Company is no longer subject to examinations by the ATO for tax years prior to tax year 2000. The Company is currently subject to audit and review in a number of jurisdictions in which it operates and has been advised that further audits will commence in the next 12 months. In particular, the IRS is currently conducting an audit to determine whether the Company is in compliance with the revised U.S. – Netherlands Tax Treaty Limitations on Benefits provision that entitles it to beneficial withholding tax rates on payments from the U.S. to The Netherlands.

On June 23, 2008, we announced that the IRS issued us a NOPA that concludes that we do not satisfy the LOB provision of the New U.S.-N.L. Treaty and that accordingly we are not entitled to beneficial withholding tax rates on payments from our United States subsidiaries to our Netherlands companies. We do not agree with the conclusions reached by the IRS, and we intend to contest the IRS' findings through the continuing audit process and, if necessary, through subsequent administrative appeals and possibly litigation. If the IRS position ultimately were to prevail, we would be liable for a 30% withholding tax on dividend, interest and royalty payments made any time on or after February 1, 2006 by our U.S. subsidiaries to JHI NV or our Dutch finance subsidiary. In that event, we estimate we would owe approximately \$37.0 million in additional tax for calendar years 2006 and 2007 plus, as of June 30, 2008, \$3.0 million in interest and \$7.0 million in penalties related to that tax. Interest will continue to accrue and compound daily at the published monthly Federal short term rate plus 3% until the issue is resolved or a deposit of the full amount of the tax, interest and penalties is made with the IRS or a bond for such amounts is posted. Penalties for calendar years 2006 and 2007 will continue to accrue at the rate of one-half percent per month up to a maximum of 25%. The \$7.0 million accrued penalty through June 30, 2008 could continue to accrue to a maximum total of \$13.0 million. Additional tax, interest and penalties would be payable for later calendar years and such amounts could be significantly more per year in later years than the amounts indicated in the NOPA for calendar years 2006 and 2007. See Item 3, "Key Information — Risk Factors."

In addition, the ATO is auditing the Company's Australian income tax returns for the years ended March 31, 2002 and March 31, 2004 through March 31, 2006. On June 18, 2008, the ATO commenced proceedings in the Federal Court seeking the reinstatement of our former wholly-owned subsidiary JHAF. The Federal Court will further consider the reinstatement of JHAF on July 18, 2008. JHAF was deregistered on August 23, 2005 following a subsidiary's voluntary winding up. We understand that the reinstatement of JHAF is a necessary pre-requisite to the ATO issuing an amended assessment in respect of one of the issues that has been the focus of the ATO's inquiries during the tax audit of fiscal year 2002. We understand that it is the view of the ATO that an amended assessment issued to JHAF would comprise primary tax of A\$101.5 million (\$93.1 million), estimated penalties of A\$50.8 million (\$46.6 million) and as of June 30, 2008 estimated GIC charges of A\$88.0 million (\$80.7 million). GIC will continue to accrue until the issue is resolved or a bond is posted. Any reinstatement of JHAF would be likely to involve the appointment of a new liquidator, who would need to determine, among other things, whether and to what extent JHAF was able to put itself in a position to meet any ultimate tax liability assessed in respect of it. We are considering our position with respect to the ATO proceedings, the merits of the potential amended assessment and any obligations of JHAF to the ATO given its prior winding up. See Item 3, "Key Information — Risk Factors."

It is anticipated that the audits and reviews currently being conducted will be completed within the next 24 months. Of the audits currently being conducted, none have progressed sufficiently to predict their ultimate outcome. The Company accrues income tax liabilities for these audits based upon knowledge of all relevant facts and circumstances, taking into account existing tax laws, its experience with previous audits and settlements, the status of current tax examinations and how the tax authorities view certain issues.

For further information, see Note 14 to our consolidated financial statements in Item 18 and Item 3, "Key Information — Risk Factors."

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### *Amended Australian Taxation Office Assessment*

In March 2006, RCI, a wholly owned subsidiary of the Company, received an amended assessment from the ATO in respect of RCI's income tax return for the year ended March 31, 1999. The amended assessment relates to the amount of net capital gains arising as a result of an internal corporate restructure carried out in 1998 and has been issued pursuant to the discretion granted to the Commissioner of Taxation under Part IVA of the Australian Income Tax Assessment Act 1936. The original amended assessment issued to RCI was for a total of A\$412.0 million. However, after two remissions of GIC made by the ATO during fiscal year 2007, the total was revised to A\$368.0 million and is comprised of the following as of March 31, 2008:

<b>(In millions)</b>	<b>\$(1)</b>	<b>A\$</b>
Primary tax after allowable credits	\$ 157.8	A\$ 172.0
Penalties (2)	39.4	43.0
General interest charges	140.3	153.0
Total amended assessment	<u>\$ 337.5</u>	<u>A\$ 368.0</u>

(1) U.S. dollar amounts calculated using the Australian dollar to U.S. dollar foreign exchange spot rate at March 31, 2008.

(2) Represents 25% of primary tax.

During fiscal year 2007, the Company agreed with the ATO that in accordance with the ATO Receivables Policy, the Company would pay 50% of the total amended assessment being A\$184.0 million (\$168.8 million), and provide a guarantee from James Hardie Industries N.V. in favor of the ATO for the remaining unpaid 50% of the amended assessment, pending outcome of the appeal of the amended assessment. The Company also agreed to pay GIC accruing on the unpaid balance of the amended assessment in arrears on a quarterly basis. Up to March 31, 2008, GIC totaling A\$95.2 million has been paid to the ATO. On April 15, 2008, the Company paid A\$3.3 million in GIC in respect of the quarter ended March 31, 2008.

On May 30, 2007, the ATO issued a Notice of Decision disallowing the Company's objection to the amended assessment. On July 11, 2007, the Company filed an application appealing the Objection Decision with the Federal Court of Australia. The hearing date for RCI's trial is presently scheduled for December 8, 2008.

RCI strongly disputes the amended assessment and is pursuing all avenues of appeal to contest the ATO's position in this matter. The ATO has confirmed that RCI has a reasonably arguable position that the amount of net capital gains arising as a result of the corporate restructure carried out in 1998 has been reported correctly in the fiscal year 1999 tax return and that Part IVA does not apply. As a result, the ATO reduced the amount of penalty from an automatic 50% of primary tax that would otherwise apply in these circumstances, to 25% of primary tax. In Australia, a reasonably arguable position means that the tax position is about as likely to be correct as it is not correct. The Company and RCI received legal and tax advice at the time of the transaction, during the ATO inquiries and following receipt of the amended assessment. The Company believes that it is more likely than not that the tax position reported in RCI's tax return for the 1999 fiscal year will be upheld on appeal. Therefore, the Company believes that the requirements under FIN 48 for recording a liability have not been met and therefore it has not recorded any liability at March 31, 2008 for the amended assessment.

The Company expects that amounts paid in respect of the amended assessment will be recovered by RCI (with interest) at the time RCI is successful in its appeal against the amended assessment. As a result, the Company has treated all payments in respect of the amended assessment that have been made up to March 31, 2008 as a deposit and it is the Company's intention to treat any payments to be made at a later date as a deposit.

For further information on the amended ATO assessment, see Item 3, "Key Information — Risk Factors."

**Item 4A. Unresolved Staff Comments**

None.

**Item 5. Operating and Financial Review and Prospects**

The following discussion of our financial condition and results of operations should be read in conjunction with the consolidated financial statements and the related notes thereto, included under Item 18.

**Overview**

We intend this discussion to provide information that will assist in understanding our March 31, 2008 consolidated financial statements, the changes in significant items in those consolidated financial statements from year to year, and the primary reasons for those changes and the factors and trends which are anticipated to have a material effect on our financial condition and results of operations in future periods. This discussion includes information about our critical accounting policies and how these policies affect our consolidated financial statements, and information about the consolidated financial results of each business segment to provide a better understanding of how each segment and its results affect our financial condition and results of operations as a whole.

Our pre-tax results for fiscal years 2008 and 2007 were substantially and adversely affected by asbestos adjustments of \$240.1 million and \$405.5 million, respectively; impairment charges of \$71.0 million and nil, respectively; and AICF SG&A expenses of \$4.0 million and nil, respectively. The asbestos provision was originally recorded in fiscal year 2006 for \$715.6 million for estimated future asbestos-related compensation payments. We also incurred \$13.6 million and \$17.4 million related to the SCI and other related matters during fiscal years 2007 and 2006, respectively. Information regarding our asbestos-related matters and the SCI and other related matters can be found in this discussion, Item 3, “Key Information — Risk Factors,” Item 4, “Information on the Company — Commitment to Provide Funding on a Long-Term Basis in Respect of Asbestos-Related Liabilities of Former Subsidiaries” and Note 12 to our consolidated financial statements in Item 18.

**The Company and the Building Product Markets**

Based on net sales, we believe we are the largest manufacturer of fiber cement products and systems for internal and external building construction applications in the United States, Australia, New Zealand, and the Philippines. Our current primary geographic markets include the United States, Australia, New Zealand, the Philippines, Europe and Canada. Through significant research and development expenditure, we develop key product and production process technologies that we patent or hold as trade secrets. We believe that these technologies give us a competitive advantage.

Our fiber cement products are used in a number of markets, including new residential construction (single and multi-family housing), manufactured housing (mobile and pre-fabricated homes), repair and remodeling and a variety of commercial and industrial applications (stores, warehouses, offices, hotels, motels, schools, libraries, museums, dormitories, hospitals, detention facilities, religious buildings and gymnasiums). We manufacture numerous types of fiber cement products with a variety of patterned profiles and surface finishes for a range of applications, including external siding and soffit lining, internal linings, facades, fencing, pipes and floor and tile underlayments. We believe that in certain construction applications, our fiber cement products and systems provide a combination of distinctive performance, design and cost advantages over competing building products and systems.

Our products are primarily sold in the residential housing markets. Residential construction levels fluctuate based on new home construction activity and the repair and renovation of existing homes. These levels of activity are affected by many factors, including home mortgage interest rates, the availability of financing to homeowners to purchase a new home or make improvements to their existing homes, inflation rates, unemployment levels, existing home sales, the average age and the size of housing inventory, consumer home repair and renovation spending, gross domestic product growth and consumer confidence levels. A number of these factors were generally unfavorable during fiscal year 2008, resulting in weaker residential construction activity.

### **Fiscal Year 2008 Key Results**

Total net sales decreased 5% to \$1,468.8 million in fiscal year 2008. However, the asbestos adjustments resulted in an operating loss of \$36.6 million compared to an operating loss of \$86.6 million in fiscal year 2007. We reported a loss from continuing operations of \$71.6 million in fiscal year 2008.

Our largest market is North America. Based on the NAHB's Builder Practices Reports, for the past three years, fiber cement has been one of the fastest growing segments (in terms of market growth) of the U.S. residential exteriors industry. During fiscal year 2008, USA Fiber Cement net sales contributed approximately 78% of total net sales, and its operating income was the primary contributor to the total Company results. Net sales for our USA Fiber Cement business decreased due to a reduction in sales volume, partially offset by a higher average net sales price.

Operating income for our USA Fiber Cement segment decreased from fiscal year 2007 primarily due to decreased sales volume and higher freight costs, which were partially offset by lower selling, general and administrative expenses.

During fiscal year 2008, Asia Pacific net sales contributed approximately 20% of total net sales, and its operating income was the second largest contributor to the total Company results. Net sales increased in fiscal year 2008 in our Asia Pacific businesses due to favorable currency exchange rates of the Asia Pacific business' currencies compared to the U.S. dollar, increased volume and a higher average Australian dollar net sales price.

Our emerging business of Europe Fiber Cement continued to make good progress. Sales in our Europe Fiber Cement business in fiscal year 2008 continued to grow steadily, albeit from a low base.

In fiscal year 2008, we recorded asset impairment charges of \$45.6 million in our USA Fiber Cement segment related to the suspension of production at our Blandon, Pennsylvania plant and buildings and machinery utilized to produce materials for our products; and \$25.4 million in our Other segment related to the closure of our Plant City, Florida Hardie Pipe plant.

For further information regarding our business and operations, see Item 4, "Information on the Company."

### **Critical Accounting Policies**

The accounting policies affecting our financial condition and results of operations are more fully described in Note 2 to our consolidated financial statements included in Item 18. Certain of our accounting policies require the application of judgment by management in selecting appropriate assumptions for calculating financial estimates, which inherently contain some degree of uncertainty. Management bases its estimates on historical experience and other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the reported carrying value of assets and liabilities and the reported amounts of revenues and expenses that may not be readily apparent from other sources. Actual results may differ from these estimates under different assumptions and conditions. We consider the following policies to be the most critical in understanding the judgments that are involved in preparing our consolidated financial statements and the uncertainties that could impact our results of operations, financial condition and cash flows.

### **Accounting for Contingencies**

We account for loss contingencies in accordance with SFAS No. 5 under which we accrue amounts for losses arising from contingent obligations when the obligations are probable and the amounts are reasonably estimable. As facts concerning contingencies become known, we reassess our situation and make appropriate adjustments to the consolidated financial statements. For additional information regarding asbestos-related matters, ASIC Proceedings and the ATO assessment, see Item 3, "Key Information — Risk Factors," Item 4, "Information on the Company — Commitment to Provide Funding on a Long-Term Basis in Respect of Asbestos-Related Liabilities of Former Subsidiaries," Item 4, "Information on the Company — Legal Proceedings" and Notes 12, 13 and 14 to our consolidated financial statements in Item 18.

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### ***Accounting for the Amended FFA***

Prior to March 31, 2007, our consolidated financial statements included an asbestos provision relating to our anticipated future payments to the AICF based on the terms of the Original FFA.

In February 2007, the Amended FFA was approved to provide long-term funding to the AICF, a special purpose fund that provides compensation for Australian asbestos-related personal injury and death claims for which the Former James Hardie Companies are found liable.

The amount of the asbestos liability reflects the terms of the Amended FFA, which has been calculated by reference to (but is not exclusively based upon) the most recent actuarial estimate of projected future cash flows prepared by KPMG Actuaries. Based on their assumptions, the KPMG Actuaries arrived at a range of possible total cash flows and proposed a central estimate which is intended to reflect an expected outcome. The Company views the central estimate as the basis for recording the asbestos liability in the Company's financial statements, which under U.S. GAAP, it considers the best estimate under SFAS No. 5. The asbestos liability includes these cash flows as undiscounted and uninflated on the basis that it is inappropriate to discount or inflate future cash flows when the timing and amounts of such cash flows is not fixed or readily determinable.

The asbestos liability also includes an allowance for the future operating costs of the AICF.

In estimating the potential financial exposure, KPMG Actuaries has made a number of assumptions. These include an estimate of the total number of claims by disease type which are reasonably estimated to be asserted through 2071, the typical average cost of a claim settlement (which is sensitive to, among other factors, the industry in which the plaintiff claims exposure, the alleged disease type and the jurisdiction in which the action is being brought), the legal costs incurred in the litigation of such claims, the proportion of claims for which liability is repudiated, the rate of receipt of claims, the settlement strategy in dealing with outstanding claims, the timing of settlements of future claims and the long-term rate of inflation of claim awards and legal costs.

Further, KPMG Actuaries has relied on the data and information provided by the AICF and assumed that it is accurate and complete in all material respects. The actuaries tested the data for reasonableness and consistency, but have not verified the information independently nor established the accuracy or completeness of the data and information provided or used for the preparation of the report.

Due to inherent uncertainties in the legal and medical environment, the number and timing of future claim notifications and settlements, the recoverability of claims against insurance contracts, and estimates of future trends in average claim awards, as well as the extent to which the above-named entities will contribute to the overall settlements, the actual amount of liability could differ materially from that which is currently projected and could result in significant debits or credits to the consolidated balance sheet and statement of operations.

An updated actuarial assessment will be performed as of March 31 each year. Any changes in the estimate will be reflected as a charge or credit to the consolidated statements of operations for the year then ended. Material adverse changes to the actuarial estimate would have an adverse effect on our business, results of operations and financial condition.

For additional information regarding our asbestos liability, see Item 3, "Key Information — Risk Factors," Item 4, "Information on the Company — Commitment to Provide Funding on a Long-Term Basis in Respect of Asbestos-Related Liabilities of Former Subsidiaries" and Note 12 to our consolidated financial statements in Item 18.

### ***Sales Rebates and Discounts***

We record estimated reductions to sales for customer rebates and discounts including volume, promotional, cash and other rebates and discounts. Rebates and discounts are recorded based on management's best estimate when products are sold. The estimates are based on historical experience for similar programs and products. Management reviews these rebates and discounts on an ongoing basis and the related accruals are adjusted, if necessary, as additional information becomes available.

***Accounts Receivable***

We evaluate the collectability of accounts receivable on an ongoing basis based on historical bad debts, customer credit-worthiness, current economic trends and changes in our customer payment activity. An allowance for doubtful accounts is provided for known and estimated bad debts. Although credit losses have historically been within our expectations, we cannot guarantee that we will continue to experience the same credit loss rates that we have in the past. Because our accounts receivable are concentrated in a relatively small number of customers, a significant change in the liquidity or financial position of any of these customers could impact their ability to make payments and result in the need for additional allowances which would decrease our net sales. For additional information regarding our customer concentration, see Item 3, “Key Information — Risk Factors” and Note 19 to our consolidated financial statements in Item 18.

***Inventory***

Inventories are recorded at the lower of cost or market. In order to determine market, management regularly reviews inventory quantities on hand and evaluates significant items to determine whether they are excess, slow-moving or obsolete. The estimated value of excess, slow-moving and obsolete inventory is recorded as a reduction to inventory and an expense in cost of sales in the period it is identified. This estimate requires management to make judgments about the future demand for inventory, and is therefore at risk to change from period to period. If our estimate for the future demand for inventory is greater than actual demand and we fail to reduce manufacturing output accordingly, we could be required to record additional inventory reserves, which would have a negative impact on our gross profit. For additional information regarding our inventories, see Item 3, “Key Information — Risk Factors.”

***Accrued Warranty Reserve***

We offer various warranties on our products, including a 50-year limited warranty on certain of our fiber cement siding products in the United States. Because our fiber cement products have only been used in North America since the early 1990s, there is a risk that these products will not perform in accordance with our expectations over an extended period of time. A typical warranty program requires that we replace defective products within a specified time period from the date of sale. We record an estimate for future warranty-related costs based on an analysis of actual historical warranty costs as they relate to sales. Based on this analysis and other factors, we adjust the amount of our warranty provisions as necessary. Although our warranty costs have historically been within calculated estimates, if our experience is significantly different from our estimates, it could result in the need for additional reserves. For additional information regarding warranties, see Item 3, “Key Information — Risk Factors.”

***Accounting for Income Tax***

We account for income taxes according to FASB’s Statement No. 109, “Accounting for Income Taxes,” under which we compute our deferred tax assets and liabilities, which arise from differences in the timing of recognition of revenue and expense for tax and financial statement purposes. We must assess whether, and to what extent, we can recover our deferred tax assets. If full or partial recovery is unlikely, we must increase our income tax expense by recording a valuation allowance against the portion of deferred tax assets that we cannot recover. We believe that we will recover all of the deferred tax assets recorded (net of valuation allowance) on our consolidated balance sheet at March 31, 2008. However, if facts later indicate that we will be unable to recover all or a portion of our net deferred tax assets, our income tax expense would increase in the period in which we determine that recovery is unlikely.

We account for uncertain income tax positions according to FIN 48, “Accounting for Uncertainty in Income Taxes an interpretation of FASB Statement No.109.” Due to our size and the nature of our business, we are subject to ongoing reviews by taxing jurisdictions on various tax matters, including challenges to various positions we assert on our income tax returns. Positions taken by an entity in its income tax returns must satisfy a more-likely-than-not recognition threshold, assuming that the positions will be examined by taxing authorities with full knowledge of all relevant information, in order for the positions to be recognized in the consolidated financial statements. Each quarter we evaluate the income tax positions taken, or expected to be taken, to determine whether these positions meet the more-likely-than-not threshold prescribed by FIN 48. We are required to make subjective judgments and assumptions regarding our income tax exposures and must consider a variety of factors, including the current tax statutes and the current status of audits performed by tax authorities in each tax jurisdiction. To the extent an uncertain tax position is resolved for an amount that varies from the recorded estimated liability, our income tax expense in a given financial statement period could be materially affected.

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For additional information, see Item 3, “Key Information — Risk Factors” and Note 14 to our consolidated financial statements in Item 18.

### Results of Operations

The following table shows our selected financial and operating data for continuing operations, expressed in millions of U.S. dollars and as a percentage of total net sales:

	Fiscal Years Ended March 31,					
	2008		2007		2006	
Net sales:						
USA Fiber Cement	\$ 1,144.8	77.9%	\$ 1,262.3	81.8%	\$ 1,218.4	81.9%
Asia Pacific Fiber Cement	298.3	20.3	251.7	16.3	241.8	16.2
Other (1)	25.7	1.8	28.9	1.9	28.3	1.9
Total net sales	1,468.8	100.0	1,542.9	100.0	1,488.5	100.0
Cost of goods sold	(938.8)	(63.9)	(969.9)	(62.9)	(937.7)	(63.0)
Gross profit	530.0	36.1	573.0	37.1	550.8	37.0
Selling, general and administrative expenses	(228.2)	(15.5)	(214.6)	(13.9)	(209.8)	(14.1)
Research and development expenses	(27.3)	(1.9)	(25.9)	(1.7)	(28.7)	(1.9)
Impairment charges	(71.0)	(4.8)	—	—	(13.4)	(0.9)
SCI and other related expenses	—	—	(13.6)	(0.8)	(17.4)	(1.2)
Asbestos adjustments	(240.1)	(16.4)	(405.5)	(26.3)	(715.6)	(48.1)
Other operating expense	—	—	—	—	(0.8)	—
Operating loss	(36.6)	(2.5)	(86.6)	(5.6)	(434.9)	(29.2)
Interest expense	(11.1)	(0.7)	(12.0)	(0.8)	(7.2)	(0.5)
Interest income	12.2	0.8	5.5	0.4	7.0	0.5
Loss from continuing operations before income taxes	(35.5)	(2.4)	(93.1)	(6.0)	(435.1)	(29.2)
Income tax (expense) benefit	(36.1)	(2.5)	243.9	15.8	(71.6)	(4.8)
(Loss) income from continuing operations	\$ (71.6)	(4.9)%	\$ 150.8	9.8%	\$ (506.7)	(34.0)%

- (1) Includes fiber reinforced concrete pipes manufactured and sold in the United States, fiber cement operations in Europe and a roofing pilot plant in the United States (fiscal year 2006 only). Our roofing pilot plant was closed and the business ceased operations in April 2006. Our Plant City, Florida Hardie Pipe Plant was closed and the business ceased operations in May 2008.

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The following table provides a breakdown of our operating loss:

(In millions)	Fiscal Years Ended March 31,		
	2008	2007	2006
USA Fiber Cement (1)	\$ 268.0	\$ 362.4	\$ 342.6
Asia Pacific Fiber Cement	50.3	39.4	41.7
Research and Development	(18.1)	(17.1)	(15.7)
Other (2)	(32.8)	(9.3)	(26.5)
Total segment operating income	267.4	375.4	342.1
General Corporate (3)	(63.9)	(56.5)	(61.4)
Asbestos adjustments	(240.1)	(405.5)	(715.6)
Total operating loss	\$ (36.6)	\$ (86.6)	\$ (434.9)

- (1) Fiscal year 2008 includes an asset impairment charge of \$32.4 million related to the suspension of production at our Blandon, Pennsylvania plant; and an asset impairment of \$13.2 million related to buildings and machinery utilized to produce materials for our products. See Note 7 to our consolidated financial statements in Item 18.
- (2) Fiscal year 2008 includes an asset impairment charge of \$25.4 million related to the closure of our Plant City, Florida Hardie Pipe plant. Fiscal year 2006 includes an asset impairment charge of \$13.4 million related to the closure of our roofing pilot plant. See Note 7 to our consolidated financial statements in Item 18.
- (3) Fiscal year 2008 includes \$4.0 million of AICF Selling, general and administrative expenses.

### Year Ended March 31, 2008 Compared to Year Ended March 31, 2007

**Total Net Sales.** Total net sales decreased 5% from \$1,542.9 million in fiscal year 2007 to \$1,468.8 million in fiscal year 2008. Net sales from USA Fiber Cement decreased 9% from \$1,262.3 million in fiscal year 2007 to \$1,144.8 million in fiscal year 2008 due to reduced sales volume, partially offset by a higher average net sales price. Net sales from Asia Pacific Fiber Cement increased 19% from \$251.7 million in fiscal year 2007 to \$298.3 million in fiscal year 2008 due to favorable currency exchange rates, increased sales volumes and a higher average net sales price. Other net sales decreased by 11% from \$28.9 million in fiscal year 2007 to \$25.7 million in fiscal year 2008 due to reduced sales performance in the USA Hardie Pipe business, partially offset by improved sales performance in the Europe Fiber Cement business.

**USA Fiber Cement Net Sales.** Net sales decreased 9% from \$1,262.3 million in fiscal year 2007 to \$1,144.8 million in fiscal year 2008 due to decreased sales volume, partially offset by a higher average net sales price. Sales volume decreased 11% from 2,148.0 mmsf in fiscal year 2007 to 1,916.6 mmsf in fiscal year 2008, as the decline in housing construction activity and deteriorating economic conditions led to weaker demand for our products. The average net sales price increased 2% from \$588 per msf in fiscal year 2007 to \$597 per msf in fiscal year 2008 due to price increases and a shift in the product mix.

Despite improved housing affordability as a result of further interest rate cuts, the housing market continued to deteriorate during fiscal year 2008 as weaker consumer confidence, tighter lending standards and falling housing prices weighed heavily on demand for new homes. Housing construction starts for fiscal year 2008 were at near record lows as builders again attempted to reduce high inventory levels of new homes for sale, and as increased foreclosures placed more existing homes on the market.

Artisan® Lap, the business' new premium exterior product launched in Atlanta last September, is continuing to be well received by architects, developers and builders who work in the custom home segment of the market. Artisan® Lap has now been launched in regions of the Western and Southern Divisions.



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Repair and remodelling activity has not been affected to the same extent as the new construction segment of the housing market, however some weakness in repair and remodelling activity has led to sales of our interior products being slightly lower in fiscal year 2008 compared to fiscal year 2007.

The overall rate of market penetration slowed during fiscal year 2008 and the business did not buffer the impact of the downturn in housing construction activity to the extent expected. The usual seasonal pickup in demand that was expected during the latter part of the fourth quarter of fiscal year 2008 did not occur and this led to inventory levels for the business at the end of the fiscal year 2008 being higher than expected.

Although the business is continuing to perform well at the operating income line relative to other participants in the housing sector, the business has shifted its focus for the next fiscal year to increase margins. We believe that this shift in focus will not result in funding cuts for key growth initiatives.

For fiscal year 2008, market penetration in the interior and exterior product categories and an increase in the average net sales price helped to partly offset the unfavorable impact of significantly weaker housing construction activity.

*Asia Pacific Fiber Cement Net Sales.* Net sales increased 19% from \$251.7 million in fiscal year 2007 to \$298.3 million in fiscal year 2008 due to a 17% increase in the average net sales price and 2% increase in sales volumes from 390.8 mmsf to 398.2 mmsf. Favorable currency exchange rates of the Asia Pacific business' currencies compared to the U.S. dollar accounted for 15% of the increase in net sales in U.S. dollars. In Australian dollars, net sales increased 4% due to a 2% increase in sales volume and a 2% increase in the average Australian dollar net sales price.

In fiscal year 2008 there was a stronger primary demand for fiber cement in Australia and New Zealand mainly due to growth in sales of the Scyon™ product range in Australia and Linea™ weatherboards in New Zealand, a higher average net sales price and favorable foreign currency movements. In Australia, sales of Scyon™ branded differentiated products continued to grow and increased as a proportion of the sales mix. Sales of Scyon™ branded products for fiscal year 2008 increased 150% compared to fiscal year 2007. Non-differentiated products remain subject to strong price competition. In New Zealand, differentiated products, including Linea™ weatherboards also continued to grow as a proportion of the sales mix. The increase in the average net sales price in fiscal year 2008 was due to the shift in the Australia and New Zealand sales mix.

*Other Sales.* Other sales include sales of Hardi® pipe in the United States and fiber cement operations in Europe.

In our U.S. pipes business, net sales decreased in fiscal year 2008 as compared to fiscal year 2007 due to materially lower sales volume resulting from weaker residential and non-residential construction activity in Florida. On May 22, 2008, we announced plans to cease production in our U.S. pipes business.

In our Europe Fiber Cement business, net sales continued to grow steadily in fiscal year 2008.

*Gross Profit.* Gross profit decreased 8% from \$573.0 million in fiscal year 2007 to \$530.0 million in fiscal year 2008. The gross profit margin decreased 1.0 percentage point from 37.1% in fiscal year 2007 to 36.1% in fiscal year 2008.

USA Fiber Cement gross profit decreased 12% compared to fiscal year 2007 due to lower sales volumes, higher freight costs and higher average unit costs, partially offset by a higher average net sales price. The gross profit margin decreased 1.3 percentage points in fiscal year 2008.

Asia Pacific Fiber Cement gross profit increased 24% compared to fiscal year 2007. Favorable currency exchange rates of the Asia Pacific business' currencies compared to the U.S. dollar accounted for 14% of this increase while the underlying Australian dollar business results accounted for the remaining 10% increase. In Australian dollars, gross profit increased 10% in fiscal year 2008 due to increased sales volumes, a higher average net sales price and an insurance claim recovery which accounted for 2% of the increase. The gross profit margin increased 1.4 percentage points in fiscal year 2008.

*Selling, General and Administrative (SG&A) Expenses.* SG&A expenses increased 6% from \$214.6 million in fiscal year 2007 to \$228.2 million in fiscal year 2008, primarily due to higher warranty provisions relating to non-U.S. activities, costs associated with the ASIC proceedings, non-claims handling related operating expenses of the AICF and the impact of the unfavorable currency exchange rates of the Asia Pacific business' currencies compared to the

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U.S. dollar. These increases were partially offset by improved SG&A performance of the USA Fiber Cement and Other segments. As a percentage of sales, SG&A expense increased 1.6 percentage points to 15.5% in fiscal year 2008. SG&A expenses in fiscal year 2008 include non-claims handling related operating expenses of the AICF of \$4.0 million.

### ASIC Proceedings

In February 2007, the ASIC commenced civil proceedings against JHI NV, a former subsidiary and ten then-present or former officers and directors of the James Hardie Group. The civil proceedings concern alleged contraventions of certain provisions of the Corporations Law and/or the Corporations Act connected with the affairs of the Company and certain subsidiaries during the period February 2001 to June 2003.

There remains considerable uncertainty surrounding the likely outcome of the ASIC proceedings in the longer term and there is a possibility that we could become responsible for other amounts in addition to the defense costs. However, at this stage, we believe that, while incurring such amounts is reasonably possible, the actual amount or range of amounts is not estimable.

See Note 13 to our consolidated financial statements in Item 18 and Item 3, “Key Information — Risk Factors.”

*Research and Development Expenses.* Research and development expenses include costs associated with “core” research projects that are designed to benefit all business units. These costs are recorded in the Research and Development segment rather than being attributed to individual business units. These costs were 38% higher at \$18.0 million in fiscal year 2008. Other research and development costs associated with commercialization projects in business units are included in the business unit segment results. In total, these costs were 28% lower at \$9.3 million in fiscal year 2008.

*Impairment Charges.* The downturn in U.S. construction activity has prompted us to review the carrying value of certain long-lived assets. As a result of these reviews, impairments charges of \$71.0 million have been taken in fiscal year 2008.

On October 31, 2007, we announced plans to suspend production at our Blandon, Pennsylvania plant in the United States. We recorded an asset impairment of \$32.4 million in fiscal year 2008 in our USA Fiber Cement segment. The impaired assets include buildings and machinery, which were reduced to their estimated fair value based on valuation methods including quoted market prices and discounted future cash flows. These assets are being held for use by us. Since the date of the announcement through March 31, 2008, we have incurred \$1.4 million of closure costs. These closure costs are not included in the impairment charge of \$32.4 million and have been included in cost of goods sold and selling, general and administrative expenses in the period in which they were incurred.

On May 22, 2008, we announced plans to cease production at our Plant City, Florida Hardie Pipe manufacturing facility in the United States. As a result, we recorded an asset impairment of \$25.4 million in fiscal year 2008 in our Other segment. The impaired assets include buildings and machinery, which were reduced to their estimated fair value based on valuation methods including quoted market prices and discounted future cash flows.

We recorded an asset impairment of \$13.2 million in fiscal year 2008 related to buildings and machinery utilized to produce materials for our products. This impairment charge was recorded in our USA Fiber Cement segment. The impaired assets were reduced to their estimated fair value based on valuation methods including quoted market prices and discounted future cash flows.

*SCI and Other Related Expenses.* During fiscal year 2008, SCI and other related expenses were nil compared to \$13.6 million in fiscal year 2007. Now that the Amended FFA has been implemented, we anticipate no significant SCI and other related expenses going forward.

*Asbestos Adjustments.* The asbestos adjustments are derived from an estimate of future Australian asbestos-related liabilities in accordance with the Amended FFA that was signed with the NSW Government on November 21, 2006 and approved by our security holders on February 7, 2007.

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The asbestos-related assets and liabilities are denominated in Australian dollars. Therefore the reported value of these asbestos-related assets and liabilities in our consolidated balance sheets in U.S. dollars is subject to adjustment, with a corresponding effect on our consolidated statement of operations, depending on the closing exchange rate between the two currencies at the balance sheet date.

The asbestos adjustments for the fiscal years ended March 31, 2008 and 2007 are as follows:

(In millions)	Fiscal Years Ended March 31,	
	2008	2007
Change in estimates	\$ (152.9)	\$ 28.5
Effect of foreign exchange	(87.2)	(94.5)
Impact of tax-effecting the net Amended FFA liability	—	(335.0)
Other adjustments	—	(4.5)
Asbestos adjustments	<u>\$ (240.1)</u>	<u>\$ (405.5)</u>

*Operating Loss.* Operating loss decreased from \$86.6 million in fiscal year 2007 to \$36.6 million in fiscal year 2008. Operating loss in fiscal year 2008 includes net unfavorable asbestos adjustments of \$240.1 million, AICF SG&A expenses of \$4.0 million and asset impairments of \$71.0 million. In fiscal year 2007, operating loss includes net unfavorable asbestos adjustments of \$405.5 million.

USA Fiber Cement operating income decreased 26% from \$362.4 million in fiscal year 2007 to \$268.0 million in fiscal year 2008, primarily due to impairment charges, lower volume and higher freight costs, partially offset by lower SG&A spending. The operating income margin in fiscal year 2008 was lower by 5.3 percentage points at 23.4%.

Asia Pacific Fiber Cement operating income for fiscal year 2008 increased 28% from \$39.4 million in fiscal year 2007 to \$50.3 million. Favorable currency exchange rates of the Asia Pacific business' currencies compared to the U.S. dollar accounted for 16% of this increase while the underlying Australian dollar business results accounted for the remaining 12% increase. In Australian dollars, Asia Pacific Fiber Cement operating income for fiscal year 2008 increased 12% due to an improved gross margin performance partially offset by increased SG&A expenses. The operating income margin was 1.2 percentage points higher at 16.9% for fiscal year 2008.

The USA Hardie Pipe business recorded a significantly greater operating loss for fiscal year 2008 compared to a small operating income in fiscal year 2007.

The Europe Fiber cement business incurred significantly reduced operating loss in fiscal year 2008 as it continued to build sales and improve operating margins.

*General Corporate Costs.* General corporate costs increased by \$7.4 million from \$56.5 million in fiscal year 2007 to \$63.9 million in fiscal year 2008. The increase was primarily due to AICF SG&A costs of \$4.0 million, higher warranty provisions relating to non-U.S. activities and costs associated with the ASIC proceedings, partially offset by the decrease in SCI costs.

*Net Interest Income (Expense).* Net interest income (expense) increased from an expense of \$6.5 million in fiscal year 2007 to income of \$1.1 million. The increase was primarily due to interest income of \$9.4 million earned on investments and cash balances held by the AICF and the lack of a make-whole payment in fiscal year 2008 compared to the \$6.0 million make-whole payment made in fiscal year 2007. These increases were partially offset by reduced capitalized interest and reduced interest income due to lower cash balances.

*Income Tax (Expense) Benefit.* Income tax decreased from an income tax benefit of \$243.9 million in fiscal year 2007 to an income tax expense of \$36.1 million in fiscal year 2008. Income tax expense in fiscal year 2008 includes a tax benefit related to asbestos adjustments of \$45.8 million; a tax benefit related to asset impairments of \$27.6 million; and unfavorable tax adjustments of \$5.8 million related to FIN 48 adjustments. Income tax expense in fiscal year 2007 includes a tax benefit related to asbestos adjustments of \$335.0 million and a favorable tax adjustment of \$10.4 million related to tax provision write-backs.

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With effect from April 1, 2007, we were required to adopt the provisions of FIN 48, "Accounting for Uncertainty in Income Taxes, an interpretation of SFAS No. 109, Accounting for Income Taxes." The adoption of FIN 48 resulted in the reduction of our consolidated beginning retained earnings of \$78.0 million.

See Note 14 to our consolidated financial statements in Item 18 for further information on the adoption of FIN 48.

*Net (Loss) Income.* Net income decreased from a net income of \$151.7 million in fiscal year 2007 to a net loss of \$71.6 million in fiscal year 2008. Net loss in fiscal year 2008 includes asbestos adjustments of \$240.1 million; a tax benefit related to asbestos adjustments of \$45.8 million; impairment charges of \$71.0 million (\$44.6 million, after tax); and unfavorable tax adjustments of \$5.8 million related to FIN 48 adjustments. Net income in fiscal year 2007 includes asbestos adjustments of \$405.5 million and a tax benefit related to the implementation of the Amended FFA of \$335.0 million. Also included in net income for fiscal year 2007 are SCI and other related expenses of \$13.6 million (\$12.6 million, after tax), the make-whole payment on the prepayment on notes of \$6.0 million (\$5.6 million after tax) and a tax provision write back of \$10.4 million.

### **Year Ended March 31, 2007 Compared to Year Ended March 31, 2006**

*Total Net Sales.* Total net sales increased 4% from \$1,488.5 million in fiscal year 2006 to \$1,542.9 million in fiscal year 2007. Net sales from USA Fiber Cement increased 4% from \$1,218.4 million in fiscal year 2006 to \$1,262.3 million in fiscal year 2007 due to a higher average net sales price, partially offset by decreased sales volume. Net sales from Asia Pacific Fiber Cement increased 4% from \$241.8 million in fiscal year 2006 to \$251.7 million in fiscal year 2007 due to increased sales volumes and favorable currency exchange rate differences, partially offset by a decreased average net sales price. Other net sales increased by 2% from \$28.3 million in fiscal year 2006 to \$28.9 million in fiscal year 2007 due to improved sales performance in the USA Hardie Pipe business and the Europe Fiber Cement business partially offset by decreased sales resulting from the sale of the Chile Fiber Cement business in July 2005.

*USA Fiber Cement Net Sales.* Net sales increased 4% from \$1,218.4 million in fiscal year 2006 to \$1,262.3 million in fiscal year 2007 due to a higher average net sales price partially offset by decreased sales volume. Sales volume decreased 2% from 2,182.8 mmsf in fiscal year 2006 to 2,148.0 mmsf in fiscal year 2007, due mainly to a decrease in base demand in our products during the second half of fiscal year 2007 as a result of weaker residential housing construction activity, partially offset by growth in primary demand during the first half of fiscal year 2007. The average net sales price increased 5% from \$558 per msf in fiscal year 2006 to \$588 per msf in fiscal year 2007 primarily due to price increases for certain products that were implemented during fiscal year 2007 and an increased proportion of higher-priced, differentiated products in the sales mix.

The new housing construction market continued to weaken, with the U.S. Census Bureau reporting that new housing starts were down 25% and 30%, respectively, for the three months ended December 31, 2006 and March 31, 2007, compared to the same periods last year. Despite interest rates remaining relatively low, deepening problems in the sub-prime mortgage market kept builder and consumer confidence at weak levels.

According to Brian Catalde, President of the NAHB, "Builders, overall, have been systematically cutting back on new building activity for more than a year now. This slowdown is enabling them to reduce their inventory and better position themselves for the balance of the year, especially when faced with uncertainties over the impacts of the sub-prime-related tightening of mortgage lending standards on home sales." Despite this, supply of new residential housing remains greater than demand and industry inventory levels at the end of the quarter continued to be above optimal levels at around 7 to 8 months supply, as reported by the NAHB.

Demand in our exterior products category for fiscal year 2007 was affected significantly by weaker housing construction activity. The decrease in net sales was due mainly to softer demand in our exterior products category, which spanned all regions except the mid-Atlantic region. Net sales were lower for all products in the exteriors category other than the higher-priced, differentiated products, XLD® trim and the ColorPlus® collection.

Repair and remodeling activity was relatively steady during fiscal year 2007 and sales in our interior products category were flat compared to fiscal year 2006. Continued acceptance of Hardibacker 1/2" board as a wet area wall solution helped grow sales for that product during the quarter, almost off-setting weaker sales of our 1/4" Hardibacker™ 1/4" product in a number of our larger markets.

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The net sales growth for the fiscal year 2007 largely reflects further market penetration against alternative materials, mainly wood and vinyl, across the Northern, Southern and Western Divisions and in the exterior and interior product categories, and an increase in the average net sales price.

*Asia Pacific Fiber Cement Net Sales.* Net sales increased 4% from \$241.8 million in fiscal year 2006 to \$251.7 million in fiscal year 2007 due to a 6% increase in sales volume from 368.3 mmsf to 390.8 mmsf, partly offset by a 2% decrease in the average net sales price. Net sales in Australian dollars increased 2% due to a 6% increase in sales volume, partly offset by a 3% decrease in the average Australian dollar net sales price.

In our Australia and New Zealand Fiber Cement business, net sales increased 2% from \$218.1 million in fiscal year 2006 to \$223.4 million in fiscal year 2007 due to a 5% increase in sales volumes, partially offset by a 3% decrease in the average net sales price compared to fiscal year 2006. In Australian dollars, net sales increased 1% due to a 5% increase in sales volumes, partially offset by a 4% decrease in the average Australian dollar net sales price compared to fiscal year 2006. In the Australia and New Zealand business, both the new housing and renovation markets weakened during fiscal year 2007, but sales volumes increased compared to fiscal year 2006 due to market initiatives designed to grow primary demand for fiber cement and increase sales of value-added, differentiated products. There was strong sales growth in the recently-launched Scyon™ range of premium products and in Linea™ weatherboards. Selling prices for non-differentiated products continue to be subject to strong competitive pressures, leading to a lower average net sales price.

In the Philippines, net sales increased in fiscal year 2007 due to increased sales volumes, partially offset by a slight decrease in the average Philippine peso net sales price. The increase in sales volume in fiscal year 2007 was due to stronger domestic building and construction activity and increased export demand.

*Other Sales.* Other sales include sales of Hardie™ pipe in the United States and fiber cement operations in Europe.

In our U.S. pipes business, net sales increased in fiscal year 2007 as compared to fiscal year 2006 due to an increase in sales volume and a higher average net sales price.

In our Europe Fiber Cement business, net sales continued to grow steadily, albeit from a low base.

*Gross Profit.* Gross profit increased 4% from \$550.8 million in fiscal year 2006 to \$573.0 million in fiscal year 2007. The gross profit margin increased 0.1 percentage points to 37.1% in fiscal year 2007.

USA Fiber Cement gross profit increased 5% compared to fiscal year 2006 due mainly to increases in net sales and, to a lesser extent, lower freight costs. The gross profit margin increased 0.5 percentage points in fiscal year 2007.

Asia Pacific Fiber Cement gross profit decreased 3% primarily due to reduced profitability in the Australian Fiber Cement business. The decrease was due mainly to a lower average net sales price, increased freight and raw material costs in Australia, costs associated with the start-up of the manufacture of new products, and inefficiencies associated with the rebuild of inventory at the Rosehill, New South Wales plant associated with the plant's temporary closure in December 2006 for asbestos-related reasons. In Australian dollars, gross profit decreased 5% in fiscal year 2007. The gross profit margin decreased 2.2 percentage points in fiscal year 2007.

*Selling, General and Administrative (SG&A) Expenses.* SG&A expenses increased 2% from \$209.8 million in fiscal year 2006 to \$214.6 million in fiscal year 2007, mainly due to an increase in spending in the USA Fiber Cement business reflecting expenditures on business initiatives including build-up of organizational infrastructure to drive growth strategies. As a percentage of sales, SG&A expense decreased 0.2 of a percentage point to 13.9% in fiscal year 2007.

*Research and Development Expenses.* Research and development expenses include costs associated with "core" research projects that are designed to benefit all business units. These costs are recorded in the Research and Development segment rather than being attributed to individual business units. These costs were 10% lower at \$25.9 million in fiscal year 2007. Other research and development costs associated with commercialization projects in business units are included in the business unit segment results. In total, these costs decreased 21% to \$12.9 million for fiscal year 2007.

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*SCI and Other Related Expenses.* Costs incurred associated with the SCI and other related expenses totaled \$13.6 million in fiscal year 2007 compared to \$17.4 million in fiscal year 2006. Further information on the SCI and other related matters can be found in Item 3, “Key Information — Risk Factors.”

*Asbestos Adjustments.* The asbestos adjustments are derived from an estimate of future Australian asbestos-related liabilities in accordance with the Amended FFA that was signed with the NSW Government on November 21, 2006 and approved by our security holders on February 7, 2007. The adjustments include the full implementation of the Amended FFA.

The asbestos adjustments are comprised of the following components for the fiscal years ended March 31:

(In millions)	<u>2007</u>	<u>2006</u>
Adjustments to the net Amended FFA liability at September 30, 2006	\$ (41.8)	\$ —
Adjustments to the net Amended FFA liability at March 31, 2007	70.3	—
Tax impact related to the implementation of the Amended FFA	(335.0)	—
Effect of foreign exchange	(94.5)	—
Contributions to asbestos research and education	(4.5)	—
Initial recording of provision at March 31, 2006	—	(715.6)
Asbestos adjustments	<u>\$ (405.5)</u>	<u>\$ (715.6)</u>

### Adjustments to the Net Amended FFA liability

The discounted central estimate as calculated by KPMG Actuaries is the main component of the net Amended FFA liability. In addition to the discounted central estimates, there are U.S. GAAP adjustments that are required to be made as the standards of U.S. GAAP differ from actuarial standards. KPMG Actuaries issued two additional reports during fiscal year 2007 (at September 30, 2006 and at March 31, 2007) adjusting the discounted central estimate and other amounts related to the net Amended FFA liability. The following table illustrates the impact on the net Amended FFA liability of the updated KPMG Actuaries’ valuations:

September 2006 Valuation:

	<u>September 30, 2006</u>	<u>March 31, 2006</u>	<u>Increase/ (decrease)</u>
	(In millions, except exchange rate data)		
Discounted Central Estimate	A\$ 1,554.8	A\$ 1,517.0	A\$ 37.8
<b>U.S. GAAP Adjustments</b>			
Discounting and inflation allowance	(112.6)	(113.2)	0.6
Uninflated and undiscounted central estimate	1,442.2	1,403.8	38.4
Provision for claims handling costs of AICF	67.7	67.7	—
Other U.S. GAAP adjustments	31.5	28.7	2.8
Net (assets) liabilities of AICF excluding funding payments	(33.0)	(71.6)	38.6
Total net Amended FFA liability pre-tax	1,508.4	1,428.6	79.8
Total net Amended FFA liability post-tax	A\$ 1,055.9	A\$ 1,000.0	A\$ 55.9
Exchange rate — A\$ to \$- September 30, 2006			1.3365
Increase in the net Amended FFA liability			<u>\$ 41.8</u>

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March 2007 Valuation:

	<u>March 31, 2007</u>	<u>September 30, 2006</u>	<u>Increase/ (decrease)</u>
	<u>(In millions, except exchange rate data)</u>		
Discounted Central Estimate	A\$ 1,355.1	A\$ 1,554.8	A\$ (199.7)
<b>U.S. GAAP Adjustments</b>			
Discounting and inflation allowance	<u>(82.1)</u>	<u>(112.6)</u>	<u>30.5</u>
Uninflated and undiscounted central estimate	<u>1,273.0</u>	<u>1,442.2</u>	<u>(169.2)</u>
Provision for claims handling costs of AICF	69.2	67.7	1.5
Other U.S. GAAP adjustments	39.6	31.5	8.1
Net (assets) liabilities of AICF excluding funding payments	<u>2.2</u>	<u>(33.0)</u>	<u>35.2</u>
Total net Amended FFA liability pre-tax	<u>1,384.0</u>	<u>1,508.4</u>	<u>(124.4)</u>
Total net Amended FFA liability post-tax	A\$ 968.8	A\$ 1,055.9	A\$ (87.1)
Exchange rate — A\$ to \$- March 31, 2007			1.2395
Decrease in the net Amended FFA liability			<u>\$ (70.3)</u>

The uninflated and undiscounted central estimate and the provision for claims handling costs of the AICF are recorded on the balance sheet under the caption asbestos liability. The other U.S. GAAP adjustments, net assets (liabilities) of the AICF, and the tax impact of the implementation of the Amended FFA are recorded within other captions on the balance sheet; readers are referred to the section Net Amended FFA Liability below for further details.

### Tax Impact Related to the Implementation of the Amended FFA

Following final approval of the Amended FFA by our shareholders on February 7, 2007, a deferred tax asset of \$335.0 million has been recorded to reflect the anticipated tax deductions commensurate with the projected payments under the Amended FFA to the AICF.

### Effect of Foreign Exchange

The components of the net Amended FFA liability are denominated in Australian dollars and thus the reported value of the net Amended FFA liability in our consolidated balance sheets in U.S. dollars is subject to adjustment depending on the closing exchange rate between the two currencies at the balance sheet date. The effect of foreign exchange rate movements between these currencies has caused an increase in the net Amended FFA liability of \$94.5 million for the fiscal year ended March 31, 2007.

### Contributions to Asbestos Research and Education

Following the adoption of the Amended FFA, a provision of \$4.5 million was recorded for amounts we will pay for asbestos medical research funding and an asbestos education campaign over the next ten years based on the provisions of the Amended FFA.

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### Net Amended FFA Liability

The net Amended FFA liability is presented in the consolidated balance sheet within the following captions at March 31, 2007:

	<b>In millions</b>
Insurance receivables	\$ 9.4
— current	165.1
— non-current	2.7
Workers' compensation receivable	76.5
— current	(2.7)
— non-current	(76.5)
Workers' compensation liability	(63.5)
— current	(1,225.8)
— non-current	7.8
Asbestos liability	318.2
— current	9.0
— non-current	(6.3)
Deferred tax asset	9.0
Income taxes payable (reduction to income tax payable)	(6.3)
Other net liabilities	(6.3)
Net Amended FFA liability at March 31, 2007	<u>\$ (786.1)</u>

Further information on the asbestos adjustments, the SCI, and other related matters can be found in Item 3, "Key Information — Risk Factors," Item 4, "Information on the Company — Commitment to Provide Funding on a Long-Term Basis in Respect of Asbestos-Related Liabilities of Former Subsidiaries" and Note 12 to our consolidated financial statements in Item 18.

*Operating Loss.* Operating loss decreased from a loss of \$434.9 million in fiscal year 2006 to a loss of \$86.6 million for fiscal year 2007. Fiscal year 2007 operating loss includes asbestos adjustments of a \$405.5 million and SCI and other related expenses of \$13.6 million.

USA Fiber Cement operating income increased 6% from \$342.6 million in fiscal year 2006 to \$362.4 million in fiscal year 2007. The increase was primarily due to increased net sales and lower unit freight costs, partially offset by higher SG&A expenses. The operating income margin was 0.6 percentage points higher at 28.7% in fiscal year 2007.

Asia Pacific Fiber Cement operating income decreased 6% from \$41.7 million in fiscal year 2006 to \$39.4 million in fiscal year 2007 due to reduced operating profit performance in the Australia and New Zealand Fiber Cement business, partly offset by improved operating profit performance in the Philippines Fiber Cement business. In Australian dollars, operating income for fiscal year 2007 decreased 7% from fiscal year 2006. Our Asia Pacific Fiber Cement operating income margin was 1.5 percentage points lower at 15.7% in fiscal year 2007. Australia and New Zealand Fiber Cement operating income decreased 8% from \$38.9 million in fiscal year 2006 to \$35.7 million in fiscal year 2007. In Australian dollars, our Australia and New Zealand business operating income fell by 10% due to increased manufacturing costs, including costs associated with the temporary closure of the Rosehill plant in late 2006, and a lower average net sales price, partially offset by an increase in sales volume and decreased SG&A spending. Our Australia and New Zealand business' operating income margin was 1.8 percentage points lower at 16.0% in fiscal year 2007. The Philippines Fiber Cement business recorded an increase in operating income due to increases in volume and improved operating efficiencies, partially offset by increased SG&A costs.

Our USA Hardie Pipe business recorded a small operating profit in fiscal year 2007 compared to an operating loss in fiscal year 2006.

Our Europe Fiber Cement business incurred an operating loss in fiscal year 2007 as it continued to build net sales.

Following a review of the results of our roofing product trials in California, we announced on April 18, 2006 that the pilot plant was to close. During the fiscal year 2007, this business incurred closure costs of \$1.2 million.



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General corporate costs decreased by \$4.9 million from \$61.4 million in fiscal year 2006 to \$56.5 million in fiscal year 2007. The reduction was primarily caused by a decrease of \$6.5 million in earnings-related bonuses and a decrease of \$3.8 million in SCI and other related expenses, partially offset by an increase of \$1.0 million in defined benefit pension costs and an increase of \$4.5 million in other corporate costs.

*Net Interest Expense.* Net interest expense increased by \$6.3 million to \$6.5 million in fiscal year 2007. The increase in net interest expense was due to the higher average level of net debt outstanding in fiscal year 2007 compared to fiscal year 2006.

*Income Tax Benefit (Expense).* Income tax benefit (expense) increased \$315.5 million from an expense of \$71.6 million in fiscal year 2006 to an income tax benefit of \$243.9 million in fiscal year 2007. The increase was due primarily to the \$335.0 million tax benefit related to asbestos adjustments and the tax provision write-back of \$10.4 million, partially offset by the increase in taxable income and a change in the geographical mix of earnings.

*Net Income.* Net income increased from a loss of \$506.7 million in fiscal year 2006 to a profit of \$151.7 million in fiscal year 2007. Net income in fiscal year 2007 includes asbestos adjustments of \$405.5 million and a tax benefit related to the implementation of the Amended FFA of \$335.0 million. Also included in net income for fiscal year 2007 are SCI and other related expenses of \$13.6 million (\$12.6 million, after tax), the make-whole payment on the prepayment of notes of \$6.0 million (\$5.6 million, after tax) and a tax provision write-back of \$10.4 million.

### **Impact of Recent Accounting Pronouncements**

#### *Fair Value Measurements*

In September 2006, the FASB issued Statement No. 157, "Fair Value Measurements" (which we refer to as SFAS No. 157), which defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles (which we refer to as GAAP) and expands disclosures about fair value measurements. The expanded disclosures in this statement about the use of fair value to measure assets and liabilities should provide users of financial statements with better information about the extent to which fair value is used to measure recognized assets and liabilities, the inputs used to develop the measurements, and the effect of certain measurements on earnings (or changes in net assets) for the period. Certain provisions of SFAS No. 157 are effective for us on April 1, 2008 and we are currently evaluating the impact on our financial statements of adopting SFAS No. 157.

#### *Fair Value Option for Financial Assets and Financial Liabilities*

In February 2007, the FASB issued Statement No. 159, "The Fair Value Option for Financial Assets and Financial Liabilities" (which we refer to as SFAS No. 159), which allows for voluntary measurement of financial assets and liabilities as well as certain other items at fair value. Unrealized gains and losses on financial instruments for which the fair value option has been elected are reported in earnings. The provisions of SFAS No. 159 are effective for us on April 1, 2008 and we are currently evaluating the impact on our financial statements of adopting SFAS No. 159.

#### *Business Combinations*

In December 2007, the FASB issued SFAS No. 141 (revised 2007), "Business Combinations" (which we refer to as SFAS No. 141R), which replaces SFAS No. 141. The statement establishes principles and requirements for how the acquirer in a business combination recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, and any controlling interest; recognizes and measures the goodwill acquired in the business combination or a gain from a bargain purchase; and determines what information to disclose to enable users of the financial statements to evaluate the nature and financial effects of the business combination. The provisions of SFAS No. 141R are effective for business combinations for which the acquisition date is on or after April 1, 2009.

#### *Noncontrolling Interests in Consolidated Financial Statements – an amendment to ARB No. 51*

In December 2007, the FASB approved the issuance of SFAS No. 160 "Noncontrolling Interests in Consolidated Financial Statements – an amendment to ARB No. 51" (which we refer to as SFAS No. 160). SFAS No. 160 establishes accounting and reporting standards that require the ownership interest in subsidiaries held by parties other than the entity be clearly identified and presented in the Consolidated Balance Sheets within equity, but separate from the entity's equity; the amount of consolidated net income attributable to the entity and the

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noncontrolling interest be clearly identified and presented on the face of the Consolidated Statement of Earnings; and changes in the entity's ownership interest while the entity retains its controlling financial interest in its subsidiary be accounted for consistently. The provisions of SFAS No. 160 are effective for us on April 1, 2009, and we are currently evaluating the impact on our financial statements of adopting SFAS No. 160.

### *Disclosures about Derivative Instruments and Hedging Activities*

In March 2008, the FASB issued SFAS No. 161, "Disclosures about Derivative Instruments and Hedging Activities" (which we refer to as SFAS No. 161). SFAS No. 161 is intended to improve financial reporting of derivative instruments and hedging activities by requiring enhanced disclosures to enable investors to better understand their effects on an entity's financial position, financial performance, and cash flows. SFAS No. 161 is effective for us on April 1, 2009, and we are currently evaluating the impact on our financial statements of adopting SFAS No. 161.

### *Hierarchy of Generally Accepted Accounting Principles*

In May 2008, the FASB issued SFAS No. 162 "The Hierarchy of Generally Accepted Accounting Principles" (which we refer to as SFAS No. 162). SFAS No. 162 identifies the sources of accounting principles and the framework for selecting the principles used in the preparation of financial statements of nongovernmental entities that are presented in conformity with U.S. GAAP. This statement shall be effective 60 days following the Securities Exchange and Commission's approval of the Public Company Accounting Oversight Board amendments to AU Section 411, "The Meaning of Present Fairly in Conformity With Generally Accepted Accounting Principles." We do not expect its adoption will have a material impact on our consolidated financial statements.

### **Liquidity and Capital Resources**

Our treasury policy regarding our liquidity management, foreign exchange risks management, interest rate risk management and cash management is administered by our treasury department and is centralized in The Netherlands. This policy is reviewed annually and is designed to ensure that we have sufficient liquidity to support our business activities and meet future business requirements in the countries in which we operate. Counterparty limits are managed by our treasury department and based upon the counterparty credit rating; total exposure to any one counterparty is limited to specified amounts and signed off annually by the Chief Financial Officer.

We have historically met our working capital needs and capital expenditure requirements through a combination of cash flow from operations, proceeds from the divestiture of businesses, credit facilities and other borrowings, proceeds from the sale of property, plant and equipment, and proceeds from the redemption of investments. Seasonal fluctuations in working capital generally have not had a significant impact on our short-term or long-term liquidity. We anticipate that we will have sufficient funds to meet our planned working capital and other cash requirements for the next 12 months based on our existing cash balances and anticipated operating cash flows arising during the year. We anticipate that any cash requirements arising from the Amended FFA will be met from existing cash, unused committed facilities and anticipated future net operating cash flows.

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Excluding restricted cash, we had cash and cash equivalents of \$35.4 million as of March 31, 2008. At that date, we also had credit facilities totaling \$490.0 million, of which \$264.5 million was drawn. The credit facilities are all uncollateralized and consist of the following:

Description	At March 31, 2008		
	Effective Interest Rate	Total Facility (In millions)	Principal Drawn
US\$364-day facilities, can be drawn in US\$, variable interest rates based on LIBOR plus margin, can be repaid and redrawn until December 2008	3.61%	\$ 110.0	\$ 90.0
US\$ term facilities, can be drawn in US\$, variable interest rates based on LIBOR plus margin, can be repaid and redrawn until June 2010	3.64%	245.0	174.5
US\$ term facilities, can be drawn in US\$, variable interest rates based on LIBOR plus margin, can be repaid and redrawn until February 2011	—	45.0	—
US\$ term facilities, can be drawn in US\$, variable interest rates based on LIBOR plus margin, can be repaid and redrawn until February 2013	—	90.0	—
<b>Total</b>		<b>\$ 490.0</b>	<b>\$ 264.5</b>

At March 31, 2008 we had net debt of \$229.1 million, compared with net debt of \$153.9 million at March 31, 2007.

Our credit facilities as of March 31, 2008 consist of 364-day facilities in the amount of \$110.0 million, which as of March 31, 2008, mature in December 2008. We have requested extensions of the maturity date of such credit facilities to June 2009 and to date have received agreement to these extensions in the amount of \$55.0 million. We also have term facilities in the amount of \$245.0 million, \$45.0 million and \$90.0 million, which mature in June 2010, February 2011 and February 2013, respectively. The weighted average remaining term of the total credit facilities, \$490.0 million, at March 31, 2008 was 2.4 years. For all facilities, the interest rate is calculated two business days prior to the commencement of each draw-down period based on the US\$ London Interbank Offered Rate (which we refer to as LIBOR) plus the margins of individual lenders and is payable at the end of each draw-down period. During fiscal year 2008, the Company paid \$0.4 million in commitment fees. As of March 31, 2008, \$264.5 million was drawn under the combined facilities and \$225.5 million was available.

In March 2006, our wholly owned subsidiary RCI received an amended assessment from the ATO of A\$412.0 million. The assessment was subsequently amended to A\$368.0 million (\$337.5 million).

During fiscal year 2007, we agreed with the ATO that in accordance with the ATO Receivables Policy, we would pay 50% of the total amended assessment being A\$184.0 million (\$168.8 million) and provide a guarantee from JHI NV in favor of the ATO for the remaining unpaid 50% of the amended assessment, pending outcome of the appeal of the amended assessment. We also agreed to pay GIC accruing on the unpaid balance of the amended assessment in arrears on a quarterly basis. Up to March 31, 2008, we have paid A\$95.2 million (\$87.3 million) of GIC to the ATO. This amount includes GIC of A\$76.7 million (\$70.3 million) paid as part of the payment of A\$184.0 million (\$168.8 million) towards the amended assessment in fiscal year 2007. On April 15, 2008, we paid an additional A\$3.3 million (\$3.0 million) in GIC in respect of the quarter ended March 31, 2008.

On May 30, 2007, the ATO disallowed our objection to RCI's notice of amended assessment for RCI for the year ended March 31, 1999. On July 11, 2007, we filed an application appealing the Objection Decision with the Federal Court of Australia. The hearing date for RCI's appeal is presently scheduled to commence on December 8, 2008.

RCI strongly disputes the amended assessment and is pursuing all avenues of appeal to contest the ATO's position in this matter. We believe that RCI's view on its tax position will ultimately prevail in this matter. Accordingly, it is expected that any amounts paid would be recovered, with interest, by RCI at the time RCI is successful in its appeal against the amended assessment. However, if RCI is unsuccessful in its appeal, RCI will be required to pay the entire assessment. As of March 31, 2008, we had not recorded any liability for the amended assessment as we

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believe the requirements under FIN 48 for recording a liability have not been met. For more information, see Note 15 to our consolidated financial statements in Item 18 and Item 3, “Key Information — Risk Factors.”

If we are unable to extend our credit facilities, or are unable to renew our credit facilities on terms that are substantially similar to the ones we presently have, we may experience liquidity issues and will have to reduce our levels of planned capital expenditures, reduce or eliminate dividend payments, or take other measures to conserve cash in order to meet our future cash flow requirements. Nevertheless, we anticipate being able to meet our future payment obligations for the next 12 months from existing cash, unused committed facilities and anticipated future net operating cash flows.

At March 31, 2008, our management believes that we were in compliance with all restrictive covenants contained in our credit facility agreements. Under the most restrictive of these covenants, we (i) are required to maintain certain ratios of indebtedness to equity which do not exceed certain maximums, excluding assets, liabilities and other balance sheet items of the AICF, Amaba, Amaca, ABN 60 and Marlew Mining Pty Limited, (ii) must maintain a minimum level of net worth, excluding assets, liabilities and other balance sheet items of the AICF, (iii) must meet or exceed a minimum ratio of earnings before interest and taxes to net interest charges, excluding all income, expense and other profit and loss statement impacts of the AICF, Amaba, Amaca, ABN 60 and Marlew Mining Pty Limited and (iv) have limits on how much we can spend on an annual basis in relation to asbestos payments to the AICF. Such limits are consistent with the contractual liabilities of the Performing Subsidiary and us under the Amended FFA.

### ***Cash Flow — Year Ended March 31, 2008 compared to Year ended March 31, 2007***

Net operating cash increased from a cash outflow of \$67.1 million in fiscal year 2007 to a cash inflow of \$319.3 million in fiscal year 2008 primarily due to the ATO deposit payment and payments made to fund the AICF during the year ended March 31, 2007 totaling \$154.8 million and \$151.9 million, respectively, compared to payments of \$9.7 million and nil, respectively in the year ended March 31, 2008.

Net cash used in investing activities decreased from \$92.6 million in fiscal year 2007 to \$38.5 million in fiscal year 2008 as capital expenditures were reduced.

Net cash used in financing activities increased from \$136.4 million in fiscal year 2007 to \$254.4 million in fiscal year 2008 primarily due to treasury stock purchases of \$208.0 million in fiscal year 2008 and an increase in dividends paid from \$42.1 million in fiscal year 2007 to \$126.2 million in fiscal year 2008, partially offset by increased proceeds from debt facilities from net repayments of \$114.7 million in fiscal year 2007 to net borrowings of \$76.5 million in fiscal year 2008. See Item 16E, “Purchases of Equity Securities by the Issuer and Affiliated Purchasers.”

### ***Capital Requirements and Resources***

Our capital requirements consist of expansion, renovation and maintenance of our production facilities and construction of new facilities. Our working capital requirements, consisting primarily of inventory and accounts receivable and payables, fluctuate seasonally during months of the year when overall construction and renovation activity volumes increase.

During the fiscal year ended March 31, 2008, we met our capital expenditure requirements through a combination of internal cash and funds from our credit facilities. We expect to use cash primarily generated from our operations to fund capital expenditures and working capital. During fiscal year 2009, we expect to spend approximately \$40 million to \$60 million on capital expenditures, including facility upgrades and capital to implement new fiber cement technologies. We plan to fund any cash flow shortfalls that we may experience due to payments related to the Amended FFA and payments made to the ATO under the amended assessment, with future cash flow surpluses, cash on hand of \$35.4 million at March 31, 2008, and cash that we anticipate will be available to us under credit facilities.

Under the terms of the Amended FFA, we are required to fund the AICF on an annual basis. The initial funding payment of A\$184.3 million was made to the AICF in February 2007 and annual payments will be made each July. The amounts of these annual payments are dependent on several factors, including our free cash flow (defined as cash from operations in accordance with GAAP in force at the date of the Original FFA), actuarial estimations, actual claims paid, operating expenses of the AICF and the annual cash flow cap. As permitted under the Amended

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FFA, the Performing Subsidiary has elected to pay the annual funding payment of A\$114.7 million (\$109.2 million — converted at the June 24, 2008 exchange rate as prescribed in the Amended FFA) in four equal installments. As a result of this election to pay in installments, we are also required to pay interest compensation to the AICF. We expect to pay the AICF A\$3.3 million in interest compensation in fiscal year 2009.

We anticipate that our cash flows from operations, net of estimated payments under the Amended FFA, will be sufficient to fund our planned capital expenditure and working capital requirements in the short-term. If we do not generate sufficient cash from operations to fund our planned capital expenditures and working capital requirements, we believe the cash and cash equivalents of \$35.4 million at March 31, 2008, and the cash that we anticipate will be available to us under credit facilities, will be sufficient to meet any cash shortfalls during at least the next 12 months.

We expect to rely primarily on increased market penetration of our products and increased profitability from a more favorable product mix to generate cash to fund our long-term growth. Historically, our products have been well-accepted by the market and our product mix has changed towards higher-priced, differentiated products that generate higher margins.

We have historically reinvested a portion of the cash generated from our operations to fund additional capital expenditures, including research and development activities, which we believe have facilitated greater market penetration and increased profitability. Our ability to meet our long-term liquidity needs, including our long-term growth plan, is dependent on the continuation of this trend and other factors discussed here.

Currently, our dividend payment ratio policy is between 50% to 75% of net income before asbestos adjustments, subject to funding requirements.

We believe our business is affected by general economic conditions and interest rates in the United States and in other countries because these factors affect housing affordability and the level of housing prices. We believe that higher housing prices, which may affect available owner equity and household net worth, have been contributors to the renovation and remodel markets for our products. Over the past several years through mid-2006, favorable economic conditions and historically-reasonable mortgage interest rates in the United States helped sustain new housing starts and renovation and remodel expenditures. However, the ongoing sub-prime mortgage fallout and high current inventory of unsold homes may cause a further decrease in new housing starts before leveling off over the short-term. We expect that business derived from current U.S. forecasts of new housing starts and renovation and remodel expenditures will result in our operations generating cash flow sufficient to fund the majority of our planned capital expenditures. It is possible that a deeper than expected decline in new housing starts in the United States or in other countries in which we manufacture and sell our products would negatively impact our growth and our current levels of revenue and profitability and therefore decrease our liquidity and ability to generate sufficient cash from operations to meet our capital requirements. During calendar year 2005, U.S. home mortgage interest rates and housing prices increased, but thereafter the U.S. housing affordability index has decreased. We believe that these economic factors, along with others, may cause a slowdown in growth of U.S. new housing construction over the short-term, which may reduce demand for our products. See Item 3, “Key Information — Risk Factors.”

Pulp and cement are primary ingredients in our fiber cement formulation, which have been subject to price volatility, affecting our working capital requirements. See Item 3, “Key Information — Risk Factors.” We expect cement prices may continue to increase on a regional basis in fiscal year 2009 causing overall prices to remain high. Pulp prices are discounted from a global index, Northern Bleached Softwood Kraft, or NBSK, which based on information we receive from RISI and other sources, we predict to increase through fiscal year 2009 thus causing pulp prices to increase. To minimize additional working capital requirements caused by rising pulp prices, we have entered into contracts that discount pulp prices in relation to various pulp indices over a longer-term and purchase our pulp from several qualified suppliers in an attempt to mitigate price increases and supply interruptions.

We expect cement prices to remain relatively flat at fiscal year 2008 levels. We continue to look for opportunities to negotiate lower prices with our cement suppliers in some markets and continue to evaluate opportunities to increase our supplier base.

Freight costs increased in fiscal year 2008 due to higher fuel surcharges and decreased carrier availability. Based on data from the Energy Information Administration, we expect freight costs to continue to increase with the forecasted increase on fuel costs.

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The collective impact of the foregoing factors, and other factors, including those identified in Item 3, “Key Information — Risk Factors,” may materially adversely affect our ability to generate sufficient cash flows from operations to meet our short and longer-term capital requirements. We believe that we will be able to fund any cash shortfalls for at least the next 12 months with cash that we anticipate will be available under our credit facilities and that we will be able to maintain sufficient cash available under those facilities. Additionally, we could determine it necessary to reduce or eliminate dividend payments, scale back or postpone our expansion plans and/or take other measures to conserve cash to maintain sufficient capital resources over the short and longer-term.

### Capital Expenditures

Our total capital expenditures, including amounts accrued, for continuing operations for fiscal years 2008, 2007 and 2006 were \$38.5 million, \$92.1 million and \$162.8 million, respectively. The capital expenditures were primarily used to create additional low cost, high volume manufacturing capacity to meet increased demand for our fiber cement products and to create new manufacturing capacity for new fiber cement products.

Significant capital expenditures in fiscal year 2008 included (i) expenditures related to a new finishing capability on a new product line and (ii) expenditures related to the implementation of our new ERP software system. Significant capital expenditures in fiscal year 2007 included (i) the completion of construction on the second line at our new Pulaski, Virginia plant and (ii) the completion of construction of, and commencement of production on new ColorPlus® product lines at our Reno, Nevada and Pulaski, Virginia plants. Significant capital expenditures in fiscal year 2006 included (i) completion of construction of, and commencement of production on, the first line at our Pulaski, Virginia plant and (ii) the continued implementation of our ColorPlus<sup>a</sup> product strategy. This strategy includes constructing additional ColorPlus<sup>a</sup> coating capacity at our existing plants. In fiscal year 2006, we completed construction of, and commenced production on, a new ColorPlus<sup>a</sup> product line at our Blandon, Pennsylvania plant. In addition, we began construction on new ColorPlus<sup>a</sup> coating lines at our Reno, Nevada and Pulaski, Virginia plants. See Item 4, “Information on the Company — Capital Expenditures and Divestitures.”

### Contractual Obligations

The following table summarizes our contractual obligations at March 31, 2008:

(In millions)	Payments Due				
	Total	During Fiscal Year Ending March 31,			
		2009	2010 to 2011	2012 to 2013	Thereafter
Asbestos Liability (1)	\$ 1,576.5	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Long-Term Debt	174.5	—	174.5	—	—
Operating Leases	117.8	14.8	25.7	20.6	56.7
Purchase Obligations (2)	9.0	9.0	—	—	—
Total	<u>\$ 1,877.8</u>	<u>\$ 23.8</u>	<u>\$ 200.2</u>	<u>\$ 20.6</u>	<u>\$ 56.7</u>

- (1) The amount of the asbestos liability reflects the terms of the Amended FFA, which has been calculated by reference to (but is not exclusively based upon) the most recent actuarial estimate of the projected future asbestos-related cash flows prepared by KPMG Actuaries. The asbestos liability also includes an allowance for the future claims-handling costs of the AICF. The table above does not include a break down of payments due each year as such amounts are not reasonably estimable. See Item 3, “Key Information — Risk Factors,” Item 4, “Information on the Company — Commitment to Provide Funding on a Long-Term Basis in Respect of Asbestos-Related Liabilities of Former Subsidiaries” and Note 12 of our consolidated financial statements in Item 18 for further information regarding our future obligations under the Amended FFA.
- (2) Purchase Obligations are defined as agreements to purchase goods or services that are enforceable and legally-binding on us and that specify all significant terms, including: fixed or minimum quantities to be purchased; fixed, minimum or variable price provisions; and the approximate timing of the transactions.

See Notes 9 and 13 to our consolidated financial statements in Item 18 for further information regarding long-term debt and operating leases, respectively.

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### **Off-Balance Sheet Arrangements**

As of March 31, 2008 and 2007, we did not have any material off-balance sheet arrangements.

### **Inflation**

We do not believe that inflation has had a significant impact on our results of operations for the fiscal years ended March 31, 2008, 2007 or 2006.

### **Seasonality and Quarterly Variability**

Our earnings are seasonal and typically follow activity levels in the building and construction industry. In the United States, the calendar quarters ending December and March reflect reduced levels of building activity depending on weather conditions. In Australia and New Zealand, the calendar quarter ending March is usually affected by a slowdown due to summer holidays. In the Philippines, construction activity diminishes during the wet season from June to September and during the last half of December due to the slowdown in business activity over the holiday period. Also, general industry patterns can be affected by weather, economic conditions, industrial disputes and other factors.

### **Research and Development**

For fiscal years 2008, 2007 and 2006, our expenses for research and development were \$27.3 million, \$25.9 million and \$28.7 million, respectively.

We view research and development as key to sustaining our existing market leadership position and expect to continue to allocate significant funding to this endeavor. Through our investment in process technology, we aim to keep reducing our capital and operating costs, and find new ways to make existing and new products.

For more information on our research and development efforts, see Item 4, "Information on the Company — Research and Development."

### **Outlook**

In North America, factors such as high inventory levels of new homes for sale, an increased rate of foreclosures placing more existing properties on the market, weaker economic conditions and consumer sentiment, and tighter mortgage lending standards, all suggest that further weakness in the level of new housing construction activity is likely in the short-term.

To address the prospect of further market weakness, the USA Fiber Cement business underwent a further business reset in April 2008 to enable its cost base to better reflect expected market demand.

The USA Fiber Cement business remains committed to investing in key growth initiatives and expects to further increase market share at the expense of alternative materials and outperform the broader market. However, as a result of the severe decline in housing construction activity and the prospect of a further decline in the short-term, the business has increased its focus on initiatives that build operating income performance.

In Asia Pacific Fiber Cement, according to the Housing Industry Association of Australia and InfoMetrics New Zealand, the short-term outlook is for residential construction activity to be weakening in Australia, and weaker in New Zealand and the Philippines. The business expects to continue to grow primary demand for fiber cement and increase market shares through its range of differentiated products in Australia and New Zealand. Non-differentiated products are expected to remain subject to strong competition.

Changes to our asbestos liability to reflect changes in foreign exchange rates or updates to the actuarial estimate and the other matters referred to in Item 3, "Key Information — Forward-Looking Statements," may have a material impact on our consolidated financial statements.

## **Item 6. Directors, Senior Management and Employees**

### **Board Practices and Senior Management**

#### **Board Structure**

##### ***Three Boards***

We have a multi-tiered board structure, which is consistent with Dutch corporate law. This structure consists of a Joint Board, a Supervisory Board and a Managing Board (which we refer to collectively as the Boards). The Joint Board is comprised of all non-executive directors and our Chief Executive Officer and is therefore the equivalent of a full board of directors of a company in the United States.

The responsibilities of our Boards and Board Committees are formalized in charters. Our Articles of Association and these charters, which are publicly available on our website, reserve certain matters to one or more Boards and/or Board Committees. This division of duties enables the Supervisory and Joint Boards to provide strategic guidance to the Managing Board as well as to provide appropriate supervision of the Managing Board's activities. Apart from the matters specifically reserved to the Joint or Supervisory Board or one of the Board Committees, or any matters the Supervisory Board determines require its approval, the Managing Board has the authority to manage us. During fiscal year 2008, the Boards reviewed this division of duties with the assistance of an external advisor and made no changes.

In discharging its duties, each Board aims to take into account our interests, our enterprise (including the interests of our employees), our shareholders, other stakeholders and all other parties involved in or with us.

##### ***Managing Board***

The Managing Board includes only executive directors and must have at least two members, or such higher number as determined by the Supervisory Board. The Managing Board directors are appointed by our shareholders at our AGM. The Supervisory Board may appoint interim officers to the Managing Board if there is a vacancy on the Managing Board. The Supervisory Board and our shareholders may nominate candidates for the Managing Board.

The Supervisory Board appoints one Managing Board director as its Chairman and one member as its Chief Executive Officer. The Supervisory Board has appointed our current Chief Executive Officer to chair the Managing Board.

Managing Board directors may be dismissed by our shareholders at our AGM and may be suspended at any time by the Supervisory Board.

The Managing Board is accountable to the Supervisory Board, the Joint Board and to our AGM for the performance of its duties, and is responsible for our day-to-day management, including:

- administering our general affairs, operations and finance;
- preparing a strategic plan and budget setting out our operational and financial objectives, implementation strategy and parameters for us for the next three years, for approval by the Joint and Supervisory Boards;
- ensuring the implementation of our strategic plan;
- preparing quarterly and annual accounts, management reports and media releases;
- monitoring our compliance with all relevant legislation and regulations and managing the risks associated with our activities;
- reporting and discussing our internal risk management and control systems with the Supervisory Board and the Audit Committee; and
- representing, entering into and performing agreements on our behalf.



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### ***Supervisory Board***

The Supervisory Board includes only non-executive directors and must have at least two members, or a higher number as determined by the Supervisory Board. Supervisory Board directors are appointed by our shareholders at our AGM, or by the Supervisory Board if there is a vacancy. The Supervisory Board and our shareholders have the right to nominate candidates for the Supervisory Board. Supervisory Board directors may be dismissed by our shareholders at the AGM.

In discharging their duties, Supervisory Board directors are provided with direct access to senior executives and outside advisors and auditors. The Supervisory Board, Board Committees and individual directors may all seek independent professional advice at our expense for the proper performance of their duties.

The Supervisory Board supervises and provides advice to the Managing Board, and is responsible for, amongst other matters:

- nominating Managing Board directors for election by shareholders;
- appointing and removing the Chief Executive Officer and the Chairman of the Managing Board;
- approving Managing Board decisions relating to specified matters or above agreed thresholds;
- approving the strategic plan and annual budget proposed by the Managing Board;
- approving the annual financial accounts;
- supervising the policy and actions pursued by the Managing Board;
- supervising the general course of our affairs and the business enterprise we operate; and
- approving issues of new shares.

### ***Joint Board***

The Joint Board consists of between three and twelve members as determined by the Supervisory Board's Chairman, or a greater number as determined by our shareholders at the AGM. The Joint Board includes all of the Supervisory Board directors as well as our Chief Executive Officer.

The Joint Board is allocated specific tasks under our Articles of Association, but is primarily a forum for communications between the Managing Board and Supervisory Board. It is responsible for:

- supervising the general course of our affairs;
- approving declaration of dividends;
- approving any share buy-back programs and cancelling the shares bought back;
- approving issues of new shares;
- approving any significant changes in our identity or nature;
- approving the strategy set by the Managing Board;
- monitoring our performance; and
- maintaining effective external disclosure policies and procedures.

The core responsibility of the Joint Board is to oversee the general course of our affairs by exercising their business judgment in our and our stakeholders' best interests.

## **Operation of the Board**

### ***Board Meetings***

The Joint Board and Supervisory Board generally meet concurrently, at least five times a year or whenever the Chairman or two or more members have requested a meeting. Joint Board and Supervisory Board meetings are generally held at our offices in The Netherlands, but may be held elsewhere. At each physical meeting, the Supervisory Board meets in executive session without management present for at least part of the meeting. The Joint and Supervisory Boards may also pass resolutions by written consent.

The Managing Board generally meets at least monthly and the majority of its meetings are held at our offices in The Netherlands.

***Director Qualifications***

Directors have skills, qualifications, experience and expertise which assist the Boards to fulfill their responsibilities, and assist us to create shareholder value.

Directors must be able to devote a sufficient amount of time to prepare for, and effectively participate in, Board and Board Committee meetings. The Nominating and Governance Committee reviews the other commitments of Supervisory Board members each year.

***Succession Planning***

The Supervisory Board, together with the Nominating and Governance Committee, has developed, and periodically revises with our Chief Executive Officer, management succession plans, policies and procedures for our Chief Executive Officer and other senior executives.

Joint and Supervisory Board renewal has been a priority for the Supervisory Board and Nominating and Governance Committee during recent years. A number of new directors have been appointed since the finalization of the long-term asbestos compensation arrangements. These directors were appointed because they brought skills and experience to the Supervisory Board that the Nominating and Governance Committee believed were required to help achieve the desired profile for the Supervisory Board.

The desired profile of the Supervisory and Managing Boards is discussed regularly. The matters considered include the Supervisory Board's assessment of its needs and whether the current Board directors, and their current number, mix of skills, qualifications, experience, expertise and geographic location are appropriate to maximize the Supervisory Board's effectiveness.

During fiscal year 2008, the Supervisory Board determined that a smaller Supervisory Board was more appropriate to our operations and resolved to reduce the size of the Supervisory Board to seven members following the previously announced retirements of Messrs. John Barr, Loudon and DeFosset and the appointment of Mr. Harrison. The last of these changes will take effect on August 31, 2008 when Mr. DeFosset's retirement takes effect.

***Retirement and Tenure Policy***

We have adopted the recommendation of the Dutch Corporate Governance Code (which we refer to as the Dutch Code) limiting tenure of Supervisory Board directors to 12 years, unless the Supervisory Board determines that it would be in our best interests for the director to serve longer than this period. None of our current Supervisory Board directors has served for more than 12 years.

There is no tenure policy for Managing Board directors. However, the performance of Managing Board directors is assessed annually.

***Board Evaluation***

The Nominating and Governance Committee supervises the Board evaluation process and makes recommendations to the Supervisory Board.

During fiscal year 2008, a purpose-designed survey was used to assess the operation of the Supervisory Board and each Board Committee, and the results were reviewed and discussed by the Nominating and Governance Committee and the Supervisory Board. The Chairman discussed with each Supervisory Board director, and the Deputy Chairman discussed with the Chairman, his or her performance and contribution to the effectiveness of the Joint and Supervisory Boards. Every two to three years, the Joint and Supervisory Boards will engage an external facilitator to assist in this process to provide an outside perspective on their effectiveness. The next such review is scheduled for fiscal year 2009.

The Nominating and Governance Committee and the Supervisory Board annually discuss, without Managing Board directors present, the performance of the Chief Executive Officer, the other Managing Board directors and the Managing Board as a corporate body and the Chairman provides that feedback to the Chief Executive Officer. The Chief Executive Officer uses that feedback as part of the annual review of the other Managing Board directors.

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### ***Director Re-election***

No director (other than our Chief Executive Officer) shall hold office for a continuous period of more than three years, or past the end of the third AGM following his or her appointment, whichever is longer, without submitting him or herself for re-election. A person appointed to the Boards to fill a vacancy must submit him or herself for re-election at the next AGM.

Directors are not automatically nominated for re-election at the end of their three-year term. Nomination for re-election is based on their individual performance and our needs. The Nominating and Governance Committee and the Supervisory Board discuss in detail the performance of each director due to stand for re-election at the next AGM before deciding whether to recommend their re-election.

The Chief Executive Officer is not required to stand for re-election as a Managing Board director as long as the individual remains as the Chief Executive Officer. This is a departure from the Best Practice Provisions of the Dutch Code, but we believe it is appropriate as it supports the continuity of management performance.

### ***Independence***

We require the majority of directors on the Supervisory and Joint Boards and Board Committees, as well as the Chairman of the Joint and Supervisory Boards to be independent, unless a greater number is required to be independent under the rules and regulations of ASX, the NYSE or any other regulatory body.

Each year the Supervisory Board, together with the Nominating and Governance Committee, assesses each Supervisory Board director and their responses to a lengthy questionnaire containing matters relevant to his or her independence according to the rules and regulations of the Dutch Code, the NYSE and SEC as well as the ASX Corporate Governance Council recommendations. Following this assessment, the Supervisory Board has determined that each Supervisory Board director is independent.

All directors are expected to bring their independent views and judgment to the Boards and Board Committees and must declare any potential or actual conflicts of interest.

The Supervisory Board has not set materiality thresholds for assessing independence and considers all relationships on a case-by-case basis, considering the accounting standards' approach to materiality and the rules and regulations of the applicable exchange or regulatory body.

The Supervisory Board considered the following specific matters prior to determining that each Supervisory Board director was independent:

- Mr. Donald McGauchie is Chairman of Telstra, Australia's leading telecommunications company, from whom we purchase communications services;
- Mr. Brian Anderson is a director of Pulte Homes, a home builder in the United States. Pulte Homes does not buy any of our products directly from us, although it does buy our products through our customers; and
- Mr. Rudy van der Meer is a Member of the Supervisory Board of ING Bank Nederland N.V. and ING Verzekeringen (Insurance) Nederland N.V. Entities in the ING Group provide financial services to us. In each case those entities were providing these services to us at the same or lower volumes prior to Mr. van der Meer becoming a Supervisory Board director.

Any transactions mentioned above were in accordance with arms length and normal terms and conditions and were not material to us or any of the companies listed above. Each of these relationships were in existence and disclosed before the person in question became a Supervisory Board director. It is not considered that these directors had any influence over these transactions.

### ***Orientation***

We have an orientation program for new directors. The program includes an overview of our governance arrangements and directors' duties in The Netherlands, the United States and Australia; plant and market tours to impart relevant industry knowledge; briefings on our risk management and control framework, financial results and key risks and issues; and meeting our Chief Executive Officer and members of senior management. New directors are provided with orientation materials including relevant corporate documents and policies.

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### ***Board Continuing Development***

We operate within a complex geographical and regulatory framework. The Nominating and Governance Committee has adopted a yearly timetable for continuing development to build the Supervisory Board's understanding of our operations and regulatory environment, including updates on topical developments. The training is coordinated by our Company Secretary and time is set aside at each physical Joint and Supervisory Board meeting for continuing development.

### ***Letter of Appointment***

Each incoming director of the Supervisory and Managing Boards receives a letter of appointment setting out the key terms and conditions of his or her appointment and our expectations of them in that role.

### ***Chairman***

The Supervisory Board appoints one of its members as the Chairman and that person also becomes the Chairman of the Joint Board. The Chairman must be an independent, non-executive director. The Chairman appoints the Deputy Chairman.

The Chairman coordinates the Supervisory Board's duties and responsibilities and acts as the main contact with the Managing Board. The Chairman:

- provides leadership to the Joint and Supervisory Boards;
- chairs Joint and Supervisory Board and shareholder meetings;
- facilitates Joint and Supervisory Board discussion; and
- monitors, evaluates and assesses the performance of our Boards and Board Committees.

The Chairman may not be the Chairman of the Remuneration or Audit Committee. The Chairman also may not be the Chief Executive Officer, other than in exceptional circumstances and/or for a short period of time.

The current Chairman is Mr. Michael Hammes and the current Deputy Chairman is Mr. McGauchie.

### ***Indemnification***

Our Articles of Association provide for an indemnification of any person who is (or keep indemnified any person who was) a Board director or one of our employees, officers or agents, who suffers any loss as a result of any action in connection with their service to us, provided they acted in good faith in carrying out their duties and in a manner they reasonably believed to be in our interest. This indemnification will generally not be available if the person seeking indemnification acted with gross negligence or willful misconduct in performing their duties. A court in which an action is brought may, however, determine that indemnification is appropriate nonetheless.

We and some of our subsidiaries have provided Deeds of Access, Insurance and Indemnity to Board directors and senior executives who are officers or directors of the Company or our subsidiaries. The indemnities provided are consistent with our Articles of Association and relevant laws.

### ***Evaluation of Management***

At least once a year, the Chief Executive Officer, Remuneration Committee and the Supervisory Board review the performance of each member of our senior leadership team (which we refer to as the Senior Leadership Team) against agreed performance measures. This discussion is separate from and occurs at a meeting different from the discussion on management succession planning. Our Chief Executive Officer uses this feedback to assist him in the annual review of the Senior Leadership Team. This process was followed during fiscal year 2008.

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### ***Information for the Board***

Joint and Supervisory Board directors receive timely and necessary information to allow them to fulfill their duties, including access to senior executives if required. The Nominating and Governance Committee periodically reviews the format, timeliness and content of information provided to the Joint and Supervisory Boards.

The Joint and Supervisory Boards have regular discussions with the Managing Board on our strategy and performance, including two sessions every year where they spend an entire day discussing our strategy and progress. The Boards have also scheduled an annual calendar of topics to be covered to assist them to properly discharge all of their responsibilities.

The Supervisory Board receives and reviews the minutes of meetings of each Board Committee's deliberations and findings and the minutes of each Managing Board meeting, in addition to receiving oral reports from each Board Committee Chairman. Supervisory Board directors receive a copy of all Board Committee papers for physical meetings and all minutes for all Board Committee meetings and may attend any Board Committee meeting, whether or not they are members of the Board Committee.

### **Board Committees**

The Board Committees are all committees of the Supervisory Board and comprise of the Audit Committee, the Nominating and Governance Committee and the Remuneration Committee. Each Board Committee reviewed and updated its charter during fiscal year 2008. The Board Committee charters are available from the Investor Relations area of our website ([www.jameshardie.com](http://www.jameshardie.com)).

Each Board Committee meets at least quarterly and has scheduled an annual calendar of meeting and discussion topics to assist it to properly discharge all of its responsibilities.

The Supervisory Board may also form ad hoc committees from time to time. Over the course of the last fiscal year, a Special Matter Committee met once in relation to our response to the proceedings brought by ASIC.

### ***Audit Committee***

The Audit Committee oversees the adequacy and effectiveness of our accounting and financial policies and controls. The key aspects of the terms of reference followed by our Audit Committee are set out in this report. The Audit Committee meets at least quarterly in a separate executive session with the external and internal auditor.

Currently, the members of the Audit Committee are Messrs. Anderson (Chairman) and Loudon and Mrs. Catherine Walter. Mr. Hammes was a member until January 31, 2008 when he was appointed Chairman of the Joint and Supervisory Boards. It is expected that Mr. Harrison will join the Audit Committee in August 2008.

All members of the Audit Committee must be financially literate and must have sufficient business, industry and financial expertise to act effectively as members of the Audit Committee. At least one member of the Audit Committee shall be an "audit committee financial expert" as determined by the Nominating and Governance Committee and the Supervisory Board in accordance with the SEC rules. These may be the same person. The Nominating and Governance Committee and the Supervisory Board have determined that Messrs. Anderson and Loudon are "audit committee financial experts". It is expected that Mr. Harrison will also be nominated as an "audit committee financial expert," once he joins the Audit Committee in August 2008.

Under the NYSE listing standards that apply to U.S. companies, if a member of an audit committee simultaneously serves on the audit committees of more than three public companies, the listed company's board must determine that such simultaneous service will not impair the ability of this member to effectively serve on the listed company's audit committee. Although we are not bound by this provision, we follow it voluntarily. Mr. Anderson serves on the audit committees of three public companies in addition to our Audit Committee. The Supervisory Board has determined that such simultaneous service does not impair his ability to effectively serve on our Audit Committee.

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The Audit Committee provides advice and assistance to the Supervisory Board in fulfilling its responsibilities and, amongst other matters:

- overseeing our financial reporting process and reports on the results of its activities to the Supervisory Board;
- reviewing with management and our external auditor our annual and quarterly financial statements and reports to shareholders;
- discussing earnings releases as well as information and earnings guidance provided to analysts;
- reviewing and assessing our risk management policies and procedures;
- having general oversight of the appointment and provision of all our external audit services and our internal audit function;
- reviewing the adequacy and effectiveness of our internal compliance and control procedures;
- reviewing our compliance with legal and regulatory requirements; and
- establishing procedures for complaints regarding accounting, internal accounting controls and auditing matters, including any complaints from whistleblowers.

### Conflicts of Interest

The Audit Committee oversees our Code of Business Conduct and Ethics policy and other business-related conflict of interest issues as they arise.

### Reporting

The Audit Committee will inform the Supervisory Board of any general issues that arise with respect to the quality or integrity of our financial statements, our compliance with legal or regulatory requirements, our risk management systems, the performance and independence of the external auditor, or the performance of the internal audit function.

### ***Nominating and Governance Committee***

The Nominating and Governance Committee is responsible for:

- identifying individuals qualified to become Managing Board or Supervisory Board directors;
- recommending to the Supervisory Board candidates for the Managing Board or Supervisory Board (to be appointed by shareholders at the AGM);
- overseeing the evaluation of the Supervisory and Managing Boards and senior management;
- assessing the independence of each Supervisory Board director;
- operation of the AGM and Annual Information Meeting (which we refer to as AIM); and
- performing a leadership role in shaping our corporate governance policies.

The current members of the Nominating and Governance Committee are Mr. McGauchie (Chairman), Mr. van der Meer and Mr. David Andrews. Mr. Barr was a member of the Nominating and Governance Committee throughout the year, until his resignation as a director effective on March 31, 2008.

### ***Remuneration Committee***

The Remuneration Committee oversees our overall remuneration structure, policies and programs; assesses whether our remuneration structure establishes appropriate incentives for management and employees; and approves any significant changes in our remuneration structure, policies and programs. It also:

- administers and makes recommendations on our incentive compensation and equity-based remuneration plans;
- reviews the remuneration of Supervisory Board directors;
- reviews the remuneration policy for Managing Board directors; and
- makes recommendations to the Supervisory Board on our recruitment, retention and termination policies and procedures for senior management.

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Members of the Remuneration Committee must qualify as “non-employee directors” for the purposes of Rule 16b-3 under the Securities Exchange Act of 1934, as amended, and “outside directors” for the purposes of Section 162(m) of the Internal Revenue Code of 1986, as amended (which we refer to as the Code).

The current members of the Remuneration Committee are Mr. Andrews (Chairman), Mr. Loudon, Mr. Harrison and Mr. McGauchie. Mr. Barr was Chairman of the Remuneration Committee until February 1, 2008 and a member of the Remuneration Committee throughout fiscal year 2008, until his resignation as a director effective March 31, 2008.

### **Policies and Processes**

We have a number of policies that address key aspects of our corporate governance. Our key policies cover:

- Code of Business Conduct and Ethics;
- Ethics Hotline;
- Continuous Disclosure and Market Communication; and
- Insider Trading.

Copies of all these policies are available in the Investor Relations area of our website ([www.jameshardie.com](http://www.jameshardie.com)).

#### ***Code of Business Conduct and Ethics and Ethics Hotline***

See Item 16B, “Code of Business Conduct and Ethics.”

Our Code of Business Conduct and Ethics, as amended, is available from the Investor Relations area of our website, [www.jameshardie.com](http://www.jameshardie.com).

#### ***Continuous Disclosure and Market Communication***

We strive to comply with all relevant disclosure laws and listing rules in Australia (ASX and ASIC), the United States (SEC and NYSE) and The Netherlands (AFM).

Our Continuous Disclosure and Market Communication Policy aims to ensure that investors can easily understand our strategies, assess the quality of our management and examine our financial position and the strength of our growth prospects, and that we comply with all of our legal disclosure obligations.

The Managing Board is responsible for ensuring we comply with our continuous disclosure obligations. A Disclosure Committee comprised of the Managing Board and the Vice President Investor Relations is responsible for all decisions regarding our market disclosure obligations outside of our normal financial reporting calendar. For our quarterly and annual results releases, the Managing Board is supported by the Financial Statements Disclosure Committee, which provides assurance regarding our compliance with reporting processes and controls. The Managing Board discusses with the Audit Committee any issues arising out of meetings of the Financial Statements Disclosure Committee that impact the quarterly and annual results releases. The Nominating and Governance Committee reviewed and updated the Continuous Disclosure and Market Communication policy during fiscal year 2008.

#### ***Share Trading***

All of our employees and directors are subject to our Insider Trading Policy. Our employees and directors may only buy or sell our securities within four weeks beginning two days after the announcement of quarterly or full year results, provided they are not in possession of price sensitive information.

There are additional restrictions on trading for designated senior employees and directors, including a requirement that they receive prior clearance from our compliance officer before trading or pledging their shares by taking out a margin loan over them, and a general prohibition on hedging or selling for short-swing profit any shares or options. Our employees who are not designated employees may hedge vested options or shares, provided they notify us.

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The Managing Board recognizes that it is the individual responsibility of each of our directors and employees to ensure he or she complies with the spirit and the letter of insider trading laws and that notification to the compliance officer in no way implies approval of any transaction. The Nominating and Governance Committee reviewed and updated the Insider Trading Policy during fiscal year 2008.

### ***Share Buyback***

We conducted an on-market buyback during fiscal year 2008. The Nominating and Governance Committee adopted a set of disclosure protocols during the year to reinforce its existing disclosure policies while any on-market buyback is current.

## **Risk Management**

### ***Overall Responsibility***

The Audit Committee has oversight of our risk management policies, procedures and controls. The Audit Committee reviews, monitors and discusses these matters with the Managing Board. The Audit Committee and Managing Board report periodically to the Supervisory Board on our risk management policies, processes and controls.

The Audit Committee is supported in its oversight role by the policies put in place by the Managing Board to oversee and manage material business risks, as well as the roles played by the Risk Management Committee (described in detail below) and internal and external audit functions. The internal and external audit functions are separate from and independent of each other and each has a direct line of reporting to the Audit Committee.

### ***Objective***

We consider that a sound framework of risk management policies, procedures and controls produces a system of risk oversight, risk management and internal control that is fundamental to good corporate governance and creation of shareholder value. The objective of our risk management policies, procedures and controls is to ensure that:

- our risk management systems are effective;
- our principal strategic, operational and financial risks are identified;
- effective systems are in place to monitor and manage risks; and
- reporting systems, internal controls and arrangements for monitoring compliance with laws and regulations are adequate.

### ***Policies for Management of Material Business Risks***

Management has put in place a number of key policies, processes and independent controls to provide assurance as to the integrity of our systems of internal control and risk management. In addition to the measures described elsewhere in this report, a summary of the more significant policies, processes or controls we adopted for oversight and management of material business risks are:

- an Enterprise Risk Management process, which involves identifying and then developing contingency plans for the key risks we face and its assumptions in our three year strategic plans and beyond;
- a planning process involving the preparation of three-year strategic plans and a rolling 12 month forecast;
- annual budgeting and monthly reporting to monitor performance;
- maintaining an appropriate insurance program;
- maintaining policies and procedures in relation to treasury operations, including the use of financial derivatives;
- issuing and revising standards and procedures in relation to environmental and health and safety matters;
- implementing and maintaining training programs in relation to legal issues such as trade practices/antitrust, trade secrecy, and intellectual property protection;
- issuing procedures requiring significant capital and recurring expenditure to be approved at the appropriate levels; and



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- documenting detailed accounting policies, procedures and guidance for the group in a single group finance manual.

A summary of these policies, processes and controls is available in the Investor Relations area of our website ([www.jameshardie.com](http://www.jameshardie.com)).

During fiscal year 2008, the Audit Committee, and through it the Supervisory and Joint Boards, received a number of reports on the operation and effectiveness of these policies, processes and controls, including progress of the Enterprise Risk Management process and management's assessment of the effectiveness of that process in managing our material business risks.

### ***Risk Management Committee***

The Risk Management Committee, which reviews and monitors the risks we face, is our primary management forum for risk assessment and management. During fiscal year 2008, we formally documented the role of the Risk Management Committee in the Risk Management Committee charter. The Risk Management Committee comprises a cross-functional group of employees and reports both to the Managing Board and Audit Committee on the procedures in place for identifying, monitoring, managing and reporting on the principal strategic, operational and financial risks we face. The Risk Management Committee also oversees our Enterprise Risk Management process.

### ***Internal Audit***

During fiscal year 2008, we appointed a Director of Internal Audit to head an internal audit department. The Audit Committee approved an Internal Audit Charter setting out the independence of the internal audit department, its scope of work, responsibilities and audit plan. The internal audit department's workplan is approved annually by the Audit Committee. The Director of Internal Audit reports to the Chairman of the Audit Committee and meets with the Audit Committee and Supervisory Board in executive sessions on a quarterly basis.

### ***External Audit***

The external auditor reviews each quarterly and half-year results announcement and audits the full year results.

The external auditor attends each meeting of the Audit Committee, including an executive session where only members of the Audit Committee and Supervisory Board directors are present.

The Audit Committee has approved policies to ensure that all non-audit services performed by the external auditor, including the amount of fees payable for those services, receive prior approval.

On April 2, 2008, we announced the engagement of Ernst & Young LLP as external auditor for the Company for the fiscal year commencing April 1, 2008.

The selection of Ernst & Young LLP follows a decision of our Audit Committee and Supervisory Board in December 2007 to undertake a competitive tender process for the provision of external audit services to the Company. Following a comprehensive tender and review process of major accounting firms with the capabilities of undertaking our audit, overseen by the Audit Committee and a special committee of management, the Audit Committee made a recommendation to the Supervisory Board and Ernst & Young LLP was appointed as external auditor for the fiscal year commencing April 1, 2008. PricewaterhouseCoopers LLP, which had been our external auditor for over 30 years, has been responsible for the performance of the audit for the year ending March 31, 2008.

### **Shareholders' Participation**

#### ***Listing Information***

We are a public limited liability company (*naamloze vennootschap*) incorporated under Dutch law. Our securities trade as CUFS on the ASX and as ADRs on the NYSE.

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### ***Annual Information Meeting***

Recognizing that most shareholders will not be able to attend the AGM in The Netherlands, we conduct an AIM in Australia so shareholders can review items of business and other matters that will be considered and voted on at the AGM.

We distribute with the Notice of Meeting a question form which shareholders can use to submit questions in advance of the AIM. Shareholders can also ask questions relevant to the business of the meeting during the AIM.

For those shareholders unable to attend, the AIM is broadcast live over the internet in the Investor Relations area of the website at [www.jameshardie.com](http://www.jameshardie.com). The webcast remains on our website so it can be replayed later if required. Beginning with the 2008 AIM, shareholders will be able to appoint representatives to attend the AIM on their behalf and ask questions.

The external auditor attends the AIM by telephone and is available to answer questions.

### ***Annual General Meeting***

The AGM is held in The Netherlands within seven days of the AIM. Each shareholder (other than ADR holders) has the right to:

- attend the AGM either in person or by proxy;
- speak at the AGM; and
- exercise voting rights, subject to the provisions of our Articles of Association.

While ADR holders cannot vote directly, ADR holders can direct the voting of their underlying shares through the ADR depository.

### ***Communication***

We are committed to communicating effectively with our shareholders, through a program that includes:

- making management briefings and presentations accessible via a live webcast and/or teleconference following the release of quarterly and annual results;
- audio webcasts of other management briefings and webcasts of the shareholder Annual Information Meeting;
- a comprehensive Investor Relations website that displays all company announcements and notices as soon as they have been cleared by the ASX, as well as all major management and investor road show presentations;
- site visits and briefings on strategy for investment analysts;
- an e-mail alert service to advise shareholders and other interested parties of announcements and other events; and
- equality of access for shareholders and investment analysts to briefings, presentations and meetings and equality of media access to us, on a reasonable basis.

### ***Investor Website***

We have a dedicated section on corporate governance as part of the Investor Relations area of our website ([www.jameshardie.com](http://www.jameshardie.com)). Information on this section of the website is progressively updated and expanded to ensure it presents the most up-to-date information on our corporate governance structure. Except as expressly incorporated by reference herein, the contents of the website are not incorporated into this annual report on Form 20-F.

## **Compliance with Corporate Governance Requirements**

### ***NYSE Corporate Governance Rules***

In accordance with the NYSE corporate governance standards, listed companies that are foreign private issuers (which includes us) are permitted to follow home-country practice in lieu of the provisions of the corporate governance rules contained in Section 303A of the Listed Company Manual, except that foreign private issuers are required to comply with Section 303A.06, Section 303A.11 and Section 303A.12(b) and (c), each of which is discussed below.

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Section 303A.06 requires that all listed companies have an Audit Committee that satisfies the requirements of Rule 10A-3 under the Exchange Act.

Section 303A.11 provides that listed foreign private issuers must disclose any significant ways in which their corporate governance practices differ from those followed by U.S. companies under the NYSE listing standards.

Section 303A.12(b) provides that each listed company's Chief Executive Officer must promptly notify the NYSE in writing after any executive officer of the listed company becomes aware of any material non-compliance with any applicable provisions of this Section 303A. Section 303A.12(c) provides that each listed company must submit a written affirmation annually to the NYSE about its compliance with the NYSE's corporate governance listing standards and a written interim affirmation to the NYSE upon the occurrence of certain specified changes to the Audit Committee.

We presently comply with the mandatory NYSE listing standards and many of the non-compulsory standards including, for example, the requirement that a majority of our directors meet the independence requirements of the NYSE.

Two ways in which our corporate governance practices differ significantly from those followed by U.S. domestic companies under NYSE listing standards should be noted:

- In the United States, an audit committee of a public company is required to be directly responsible for appointing our independent registered public accounting firm. Under Dutch law, the independent registered public accounting firm is appointed by the shareholders or, in the absence of such an appointment, by the Supervisory Board and then the Managing Board; and
- NYSE rules require each issuer to have an audit committee, a compensation committee (equivalent to a remuneration committee) and a nominating committee composed entirely of independent directors. As a foreign private issuer, we do not have to comply with this requirement. In our case, the charters of our Board Committees reflect Australian and Dutch practices, in that we have a majority of independent directors on these committees, unless a higher number is mandatory. Notwithstanding this difference, our Supervisory Board has determined that all of the current members of our Audit Committee, Remuneration Committee and Nominating and Governance Committee presently qualify as independent in accordance with the rules and regulations of the SEC and the NYSE.

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### Current and Former Directors and Executive Officers

The current members of our Supervisory Board, Managing Board, Joint Board and our Senior Leadership Team, along with former directors and former Senior Leadership Team officers, are as follows:

Name	Age	Position	Term Expires
<b>Supervisory Board</b>			
Michael Hammes	66	Chairman of the Joint Board and the Supervisory Board	2009
Donald McGauchie AO	58	Deputy Chairman of the Joint Board and Deputy Chairman of the Supervisory Board	2009
Brian Anderson	57	Member of the Joint Board and the Supervisory Board	2009
David Andrews (1)	66	Member of the Joint Board and the Supervisory Board	2008
Donald DeFosset (2)	59	Member of the Joint Board and the Supervisory Board	2008
David Harrison (3)	61	Member of the Joint Board and the Supervisory Board	2008
James Loudon (4)	65	Member of the Joint Board and the Supervisory Board	2008
Rudy van der Meer	63	Member of the Joint Board and the Supervisory Board	2009
Catherine Walter AM (5)	55	Member of the Joint Board and the Supervisory Board	2010

### Managing Board

Louis Gries	54	Chief Executive Officer, Member of the Joint Board and Chairman of the Managing Board
Russell Chenu (6)	58	Chief Financial Officer and Member of the Managing Board
Robert Cox (6) (7)	54	General Counsel, Member of the Managing Board and Company Secretary

- (1) Mr. Andrews was appointed as a non-executive director effective September 1, 2007. As required by our Articles of Association, Mr. Andrews will stand for re-election at the AGM to be held in Amsterdam in August 2008.
- (2) Mr. DeFosset will be resigning from the Joint and Supervisory Boards effective August 31, 2008.
- (3) Mr. Harrison was appointed as a non-executive director effective May 19, 2008. As required by our Articles of Association, Mr. Harrison will stand for re-election at the AGM to be held in Amsterdam in August 2008.
- (4) Mr. Loudon will resign from the Joint and Supervisory Boards immediately after the 2008 AGM.
- (5) Mrs. Walter was appointed as a non-executive director effective July 1, 2007 and was re-elected by our shareholders at our Extraordinary General Meeting in August 2007.
- (6) Messrs. Chenu and Cox will stand for re-election at the AGM to be held in Amsterdam in August 2008.
- (7) Mr. Cox was appointed General Counsel on January 14, 2008. He became a member of the Managing Board and Company Secretary effective May 7, 2008.

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<b>Other Senior Leadership Team Officers</b>	<b>Age</b>	<b>Position</b>
Peter Baker	57	Executive Vice President — Asia Pacific
Mark Fisher	37	Vice President — Research and Development
Grant Gustafson	45	Vice President — Interiors and Business Development
Brian Holte	41	Vice President — General Manager Western Division
Nigel Rigby	41	Vice President — General Manager Northern Division
Joel Rood	50	Vice President — General Manager Southern Division

### **Former Directors and Senior Leadership Team Officers**

Steve Ashe (1)	48	Former Vice President — Investor Relations
John Barr (2)	61	Former Member of the Joint Board and the Supervisory Board
Benjamin Butterfield (3)	48	Former General Counsel, Member of the Managing Board and Company Secretary
James Chilcoff (4)	43	Former Vice President — Marketing and International Business
Robert Russell (5)	42	Former Vice President — Engineering and Process Development
Cathy Wallace (6)	52	Former Vice President — Global Human Resources

- (1) On May 23, 2008, Mr. Ashe separated from the Company.
- (2) On March 31, 2008, Mr. Barr resigned from our Joint and Supervisory Boards.
- (3) On October 1, 2007, Mr. Butterfield separated from the Company.
- (4) On February 25, 2008, Mr. Chilcoff separated from the Company.
- (5) On January 18, 2008, Mr. Russell separated from the Company.
- (6) On June 29, 2007, Ms. Wallace separated from the Company.

### **Directors**

**Michael Hammes** is Chairman of our Joint Board and Supervisory Board. Mr. Hammes was appointed as an independent non-executive director of JHI NV at the Extraordinary General Meeting in February 2007 and was appointed Chairman of the Joint and Supervisory Boards in January 2008. He has held a number of executive positions in the medical products, hardware and home improvement, and automobile sectors, including Chief Executive Officer and Chairman of Sunrise Medical, Inc., which designs, manufactures and markets home medical equipment worldwide (2000 to 2007). Mr. Hammes is currently a director of Navistar International Corporation (since 1996).

**Donald McGauchie** is Deputy Chairman of our Joint Board and Supervisory Board, Chairman of our Nominating and Governance Committee and a member of our Remuneration Committee. Mr. McGauchie joined JHI NV as an independent, non-executive director in August 2003. Mr. McGauchie was Acting Deputy Chairman of our Joint and Supervisory Boards from February to March 2007. In April 2007, Mr. McGauchie was appointed Deputy Chairman of our Joint and Supervisory Boards. Mr. McGauchie has wide commercial experience within the food processing, commodity trading, finance and telecommunication sectors. He also has extensive public policy experience, having previously held several high-level advisory positions to the Australian Government. Mr. McGauchie is currently a director of Telstra Corporation Limited (since 2004) and Nufarm Limited (since 2003). In 2003, he was awarded the Centenary Medal for service to Australian society through agriculture and business.

**Brian Anderson** is a member of our Joint Board and Supervisory Board and Chairman of our Audit Committee. Mr. Anderson was appointed as an independent, non-executive director on December 14, 2006 after joining JHI NV as a consultant to the Board in August 2006. He was reelected by our shareholders at our Extraordinary General Meeting in February 2007. Previously, Mr. Anderson was Executive Vice President and Chief Financial Officer of OfficeMax, Inc. from 2004 until 2005 and prior to that he held a variety of senior positions at Baxter International, Inc., including Corporate Vice President of Finance, Senior Vice President and Chief Financial Officer from 1997 until 2004. Mr. Anderson has been an accredited Certified Public Accountant since 1976. Mr. Anderson is currently a director of A.M. Castle & Co. (since July 2005), Pulte Homes Corporation (since September 2005) and W.W. Grainger (since 1999).

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**David Andrews** is a member of our Joint Board and Supervisory Board, Chairman of our Remuneration Committee and a member of our Nominating and Governance Committee. Mr. Andrews was elected as a non-executive director of JHI NV effective September 1, 2007. He will be up for re-election at our AGM in August 2008. From 2002 until 2005, Mr. Andrews was Secretary, General Counsel and Senior Vice President Government Affairs at PepsiCo Inc. Mr. Andrews has three decades of experience as a private practice lawyer. He was Chairman of the international law firm McCutchen, Doyle, Brown and Enersen. Mr. Andrews also served as the Legal Adviser (General Counsel) to the United States Department of State from 1997 to 2000. Mr. Andrews is currently a director of Pacific Gas and Electric Corporation (since 2000), Union Bank of California (since 2000), and James Campbell Company LLC (since 2007).

**Donald DeFosset** is a member of our Joint Board and Supervisory Board. Mr. DeFosset was appointed as an independent, non-executive director on December 14, 2006 after joining JHI NV as a consultant to the Board in November 2006. He was reelected by our shareholders at our Extraordinary General Meeting in February 2007. He was Chairman of the Joint and Supervisory Boards between April 2007 and January 2008. Mr. DeFosset will be resigning from our Joint and Supervisory Boards effective August 31, 2008. From 2000 until 2005, Mr. DeFosset was Chairman, President and Chief Executive Officer of Walter Industries, Inc. Mr. DeFosset is currently a director of EnPro Industries, Inc. (since June 2008), Regions Financial Corporation (since October 2005) and Terex Corporation (since 1999).

**David Harrison** is a member of our Joint Board and Supervisory Board and Remuneration Committee. Mr. Harrison was appointed as an independent non-executive director of JHI NV effective May 19, 2008. He will be up for re-election at our AGM in August 2008. Mr. Harrison is an experienced company director and has a distinguished finance background, having served with special expertise in corporate finance roles, international operations and information technology during his 22 years with General Electric Co. He is Managing Partner of the U.S. financial investor, HCI Inc. and previously spent ten years at Pentair, Inc., as Executive Vice President and Chief Financial Officer. Mr. Harrison is currently a director for National Oilwell Varco (since 2003) and Navistar International (since 2007).

**James Loudon** is a member of our Joint Board and Supervisory Board, Audit Committee, and Remuneration Committee. Mr. Loudon was elected as an independent, non-executive director in July 2002 after joining JHI NV as a consultant to the Board in March 2002. He was last elected by our shareholders at our 2005 AGM. He will resign from the Joint and Supervisory Boards immediately after the 2008 AGM. Mr. Loudon has held management positions in finance and investment banking and senior roles in the transport and construction industries. Mr. Loudon is currently a director of Caledonia Investments Plc (since 1995). He is Governor of the University of Greenwich and of several charitable organizations. Mr. Loudon received a Bachelor of Arts from Cambridge University and an MBA from the Stanford Graduate School of Business.

**Rudy van der Meer** is a member of our Joint Board and Supervisory Board and Nominating and Governance Committee. Mr. van der Meer was appointed as an independent non-executive director of JHI NV at the Extraordinary General Meeting in February 2007. During his 32 year association with Akzo Nobel N.V., he held a number of senior positions including Chief Executive Officer — Coatings from 2000 to 2005, Chief Executive Officer — Chemicals from 1993 to 2000, member of the five member Executive Board from 1993 to 2005, Division President — Akzo Salt & Base Chemicals from 1991 to 1993 and member of the Executive Board — Akzo Salt & Base Chemicals from 1989 to 1991. Mr. van der Meer is currently a director of Imtech N.V. (since 2005).

**Catherine Walter** is a member of our Joint Board and Supervisory Board and Audit Committee. Mrs. Walter was elected as a non-executive director of JHI NV effective July 2007 and reelected by our shareholders at our Extraordinary General Meeting in August 2007. Mrs. Walter practiced commercial law for 20 years including a term as Managing Partner of the Melbourne office of Clayton Utz. Mrs. Walter is currently a non-executive director of the Australian Foundation Investment Company Limited (since 2002) and Orica Limited (since 1998).

**Louis Gries** is our Chief Executive Officer and a member of the Joint Board and Chairman of the Managing Board. Mr. Gries was elected to the Managing Board by our shareholders at our 2005 AGM. Mr. Gries joined us as Manager of the Fontana fiber cement plant in California in February 1991 and has held a number of roles with us leading to his appointment as Executive Vice President — Operations in January 2003, responsible for operations, sales and marketing in our businesses in the Americas, Asia Pacific and Europe. In October 2004, Mr. Gries was appointed interim Chief Executive Officer and in February 2005, he was appointed Chief Executive Officer. He has held management positions with United States Gypsum Corporation, or USG. He has a Bachelor of Science in Mathematics from the University of Illinois and an MBA from California State University, Long Beach.

**Russell Chenu** is our Chief Financial Officer and a member of the Managing Board. Mr. Chenu joined us in October 2004 as Interim Chief Financial Officer and Executive Vice President, Australia. In February 2005, he was appointed Chief Financial Officer. Mr. Chenu was elected to our Managing Board by our shareholders at our 2005 AGM and will stand for re-election at our AGM in August 2008. From February 2001 to July 2004, Mr. Chenu served as Chief Financial Officer of Tab Limited, then a publicly traded entertainment and gambling company. Mr. Chenu previously worked for us for 13 years in a variety of capacities, ultimately as Group Banking Manager from 1982 to 1984. He has a Bachelor of Commerce from the University of Melbourne and an MBA from Macquarie Graduate School of Management in Australia.

**Robert Cox** is our General Counsel, Company Secretary and a member of the Managing Board. Mr. Cox joined us in January 2008 as General Counsel and became a member of the Managing Board and Company Secretary effective May 7, 2008. He will stand for re-election at our AGM in August 2008. Prior to joining us, Mr. Cox was Vice President, Deputy General Counsel and Assistant Secretary with PepsiCo Inc. for five years. His experience also includes 10 years as a partner of the international law firm Bingham McCutchen LLP, at their offices in Asia and California. Mr. Cox has a Bachelor of Arts from Wesleyan University in Connecticut; a Master of Arts from the John Hopkins School of Advanced International Studies in Washington, D.C. and a JD from the University of California, Berkeley, California.

#### **Senior Leadership Team Officers**

**Peter Baker** is our Executive Vice President — Asia Pacific. Mr. Baker joined us in October 2004 as General Manager External Affairs and became Executive Vice President — Australia in September 2005 and promoted to Executive Vice President — Asia Pacific in February 2008. He became Chairman of the Asbestos Injuries Compensation Fund Limited (Trustee of the AICF) in January 2006. He was involved in various aspects of the resolution of our asbestos compensation matters and in his current role oversees our operations in Australia, New Zealand and the Philippines. Mr. Baker is an experienced corporate executive who has held a number of senior positions in Australian public and private companies, including the MIA Group, the Tenix Group and TNT Ltd. Mr. Baker has a Bachelor of Science with first class honors from the University of Leicester, UK; a Master of Science in Operational Research with distinction from the London School of Economics, UK; and an MBA from the University of Chicago and is a Fellow of the Australian Institute of Company Directors.

**Mark Fisher** is our Vice President — Research and Development. Mr. Fisher joined us in 1993 as a Production Engineer and has held a variety of production, sales and management roles with us. In November 2004, Mr. Fisher became Vice President — Specialty Products. In December 2005, he was appointed as Vice President — Research and Development. In February 2008, his role was expanded to cover Engineering & Process Development. Before joining us, Mr. Fisher worked in engineering for Chevron Corporation. Mr. Fisher has a Bachelor of Science in Mechanical Engineering and an MBA from University of Southern California.

**Grant Gustafson** is our Vice President — Interiors and Business Development. Mr. Gustafson joined us in April 2006. In fiscal year 2008, his role was expanded to cover Marketing, Europe and IT. Prior to joining us, Mr. Gustafson held various consulting and consulting management positions, including serving as Managing Director of Arthur D. Little (Southeast Asia and Greater China) from 2000 to 2004, and as a consultant with Bain & Company from 1986 to 1988. In addition, Mr. Gustafson has held senior management positions in the commercial building products sector, including serving as Vice President of Marketing for American Buildings Company from 2005 to 2006, and Director of Marketing with Varco-Pruden from 1988 to 1993. He was also Senior Vice President of the investment firm Markmore Sdn Bhd of Malaysia from 2004 to 2005. He has a Bachelor of Arts from the University of California Santa Barbara and an MBA from the University of Chicago.

**Brian Holte** is our Vice President — General Manager Western Division. Mr. Holte joined us in March 2007. Before joining us, Mr. Holte spent 17 years at Rockwell Automation, a global leader in power, control and information solutions for the manufacturing and infrastructure business sectors. During his time at Rockwell Automation, Mr. Holte gained extensive experience in sales, industry marketing, business development, sales leadership and regional management. Mr. Holte has a Bachelor of Science in Industrial Technology from the University of Wisconsin, Stout and an MBA from University of Southern California.

**Nigel Rigby** is our Vice President — General Manager Northern Division. Mr. Rigby joined us in 1998 as a Planning Manager for our New Zealand business and has held a number of sales, marketing and product and business development roles with us. In November 2004, Mr. Rigby became Vice President — Emerging Markets. In 2006, he was named Vice President — General Manager Northern Division. Before joining us, Mr. Rigby held various management positions at Fletcher Challenge, a New Zealand based company involved in energy, pulp and paper, forestry and building materials.

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**Joel Rood** is our Vice President — General Manager Southern Division. Mr. Rood joined us in February 2007 and in February 2008 his role was expanded to cover Human Resources. He has over 20 years of sales, marketing and general management experience, the last nine with Hilti Corporation as Sales Vice President in the U.S., General Manager of Australia, and finally as Managing Director of the United Kingdom and Ireland. Prior to Hilti, Mr. Rood worked with MTS Systems Corporation, where he developed their successful seismic business in Asia. Mr. Rood has a Bachelor of Science in Civil Engineering from Princeton University, summa cum laude, and a Master of Science in Petroleum Engineering from the University of Texas in Austin. In addition, he attended Stanford University as a Sloan Fellow, earning a Master of Science in Management.

None of the persons above has any familial relationship with each other. In addition, none of the individuals listed above is party to any arrangement or understanding with a major shareholder, customer, supplier or other entity, pursuant to which any of the above was selected as a director or member of senior management.

### Employees

As of the end of each of the last three fiscal years, we employed the following number of people:

	Fiscal Years Ended March 31,		
	2008	2007	2006
Fiber Cement United States and Canada	1,809	1,868	2,150
Fiber Cement Australia	397	419	402
Fiber Cement New Zealand	188	164	170
Fiber Cement Philippines	167	170	202
Pipes (United States and Australia)	116	131	129
Fiber Cement Europe	46	41	58
Roofing (United States)	—	—	24
Research & Development, including Technology	111	101	118
General Corporate	48	50	50
<b>Total Employees</b>	<u>2,882</u>	<u>2,944</u>	<u>3,303</u>

As of the end of March 31, 2008, of the 2,882 people employed, approximately 260 were members of labor unions (approximately 155 in Australia<sup>3</sup> and 105 in New Zealand). Our management believes that we have a satisfactory relationship with these unions and its members and there are currently no ongoing labor disputes. We currently have no employees who are members of a union in the United States or the Philippines. Item 3, “Key Information — Risk Factors.”

<sup>3</sup> Under Australian law, we cannot keep records of union members. The number quoted is the number of people who work in our factories that have union participation and therefore may be represented by a union.



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**Compensation**

*Remuneration*

The aggregate amount of compensation that we paid to, or accrued with respect to, all persons serving as members of our Supervisory Board, Managing Board or our executive officers (22 persons in aggregate) during fiscal year 2008 was approximately \$13.0 million. This figure consists of base salaries, bonuses paid, accrued compensation relating to awards of shadow stock, superannuation and retirement benefits, stock options and severance.

The table below sets forth the compensation for those non-executive directors who served on the Board during the fiscal years ended March 31, 2008 and 2007:

Name	Primary Directors' Fees (1)	Equity JHI NV Stock (2)	Post- employment Superannua- tion (3)	Other Benefits (4)	Total
<b>Non-Executive Directors</b>					
<b>M. Hammes (5)</b>					
Fiscal year 2008	\$ 60,636	\$ 59,583	\$ —	\$ 3,192	\$ 123,411
Fiscal year 2007	16,247	—	—	2,888	19,135
<b>D. McGauchie (5)</b>					
Fiscal year 2008	136,000	50,000	—	3,192	189,192
Fiscal year 2007	96,071	—	9,402	2,888	108,361
<b>B. Anderson (5)</b>					
Fiscal year 2008	71,000	50,000	—	3,192	124,192
Fiscal year 2007	33,685	—	—	2,888	36,573
<b>D. Andrews (6)</b>					
Fiscal year 2008	30,782	29,167	—	3,192	63,141
Fiscal year 2007	N/A	N/A	N/A	N/A	N/A
<b>D. DeFosset</b>					
Fiscal year 2008	175,863	91,667	—	27,394	294,924
Fiscal year 2007	32,959	—	—	2,888	35,847
<b>J. Loudon (7)</b>					
Fiscal year 2008	101,000	—	—	3,192	104,192
Fiscal year 2007	87,584	—	—	2,888	90,472
<b>R. van der Meer</b>					
Fiscal year 2008	51,000	50,000	—	—	101,000
Fiscal year 2007	17,247	—	—	—	17,247
<b>C. Walter (8)</b>					
Fiscal year 2008	37,500	37,500	—	3,192	78,192
Fiscal year 2007	N/A	N/A	N/A	N/A	N/A
<b>Former Non-Executive Directors</b>					
<b>J. Barr (5)(9)</b>					
Fiscal year 2008	59,352	50,000	—	3,192	112,544
Fiscal year 2007	92,929	20,000	—	2,888	115,817
<b>Total Compensation for Non-Executive Directors</b>					
Fiscal year 2008	\$723,133	\$417,917	\$ —	\$ 49,738	\$1,190,788
Fiscal year 2007	\$376,722	\$ 20,000	\$ 9,402	\$ 17,328	\$ 423,452

(1) Amount includes base, Chairman, Deputy Chairman and Committee Chairman and Special Matter Committee attendance fees.

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- (2) The actual amount spent by each Supervisory Board member was determined after deducting applicable Dutch taxes from this amount as Dutch tax law does not allow acquisition of shares out of pre-tax income. The number of JHI NV shares acquired was determined by dividing the amount of participation in the Supervisory Board Share Plan 2006 (which we refer to as SBSP) by the market purchase price.
- (3) Mr. McGauchie ceased making voluntary superannuation contributions in the first quarter of fiscal year 2008.
- (4) Other Benefits includes the cost of non-executive directors' fiscal compliance in The Netherlands. For Mr. DeFosset, fiscal year 2008 also includes for the period he was Chairman of the Joint and Supervisory Boards, office costs, the personal use of a company laptop and PDA phone. Prior year amounts have been restated to conform with the current year presentation.
- (5) The Company pays for expenses related to Supervisory Board spousal travel to accompany them to up to one Board meeting per year. In fiscal year 2008, the Company paid \$15,984, \$16,331, \$21,865 and \$18,163 for spousal travel for Messrs. Hammes, McGauchie, Anderson and Barr, respectively. In fiscal year 2007, the Company paid \$9,493 related to spousal travel for Mr. McGauchie.
- (6) Mr. Andrews was appointed to the Company's Joint and Supervisory Boards effective September 1, 2007.
- (7) Mr. Loudon did not participate in the SBSP in fiscal year 2008. However, on March 14, 2008, he bought 6,300 JHI NV shares on market, which was equivalent to the value of JHI NV shares he would have received if he had participated in the SBSP.
- (8) Mrs. Walter was appointed to the Joint and Supervisory Boards effective July 1, 2007 and was re-elected for a three-year term on August 17, 2007.
- (9) Mr. Barr resigned from the Company's Joint and Supervisory Boards effective March 31, 2008.

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The table below sets forth the compensation for those executive directors who served on the Board during the fiscal years ended March 31, 2008 and 2007; and for our senior executives during the fiscal years ended March 31, 2008 and 2007:

Name	Primary		Post-employment	Equity	Other			Total
	Base Pay	Bonuses (1)	Noncash Benefits (2)	Superannuation and 401(k) Benefits	Stock Appreciation Rights and Options (3)	Relocation Allowances, Expatriate Benefits, and Other Non-recurring (4)	Severance	
<b>Current Executive Directors</b>								
L. Gries								
Fiscal year 2008	\$ 836,763	\$ 659,033	\$143,477	\$ 24,741	\$1,588,941	\$ 161,380	\$ —	\$3,414,335
Fiscal year 2007	786,612	1,738,430	72,317	14,287	755,110	121,498	—	3,488,254
R. Chenu								
Fiscal year 2008	712,430	238,851	44,032	63,238	223,959	133,451	—	1,415,961
Fiscal year 2007	596,181	200,161	57,628	57,776	101,282	79,849	—	1,092,877
<b>Former Executive Director</b>								
B. Butterfield (5)								
Fiscal year 2008	168,470	—	61,702	—	260,028	61,430	335,323	886,953
Fiscal year 2007	322,497	466,516	61,598	13,200	206,351	111,160	—	1,181,322
<b>Total Compensation for Executive Directors</b>								
Fiscal year 2008	\$1,717,663	\$ 897,884	\$249,211	\$ 87,979	\$2,072,928	\$ 356,261	\$335,323	\$5,717,249
Fiscal year 2007	\$1,705,290	\$2,405,107	\$191,543	\$ 85,263	\$1,062,743	\$ 312,507	\$ —	\$5,762,453
<b>Current Senior Executives</b>								
P. Baker (6)								
Fiscal year 2008	341,244	57,958	6,728	30,712	51,296	—	—	487,938
Fiscal year 2007	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
R. Cox (7)								
Fiscal year 2008	86,538	—	2,332	2,077	—	65,502	—	156,449
Fiscal year 2007	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
M. Fisher								
Fiscal year 2008	326,510	136,890	25,505	11,958	299,823	—	—	800,686
Fiscal year 2007	301,538	346,849	24,044	13,408	295,748	—	—	981,587
G. Gustafson								
Fiscal year 2008	313,077	82,811	29,446	12,681	164,951	29,655	—	632,621
Fiscal year 2007	254,808	142,914	18,896	11,619	55,046	104,913	—	588,196
B. Holte (6)								
Fiscal year 2008	315,000	88,191	36,387	10,177	192,783	71,072	—	713,610
Fiscal year 2007	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
N. Rigby								
Fiscal year 2008	326,510	136,890	34,307	—	299,823	12,418	—	809,948
Fiscal year 2007	301,538	350,488	22,673	—	282,435	—	—	957,134
J. Rood (6)								
Fiscal year 2008	315,000	69,300	37,827	—	190,408	3,879	—	616,414
Fiscal year 2007	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

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Name	Primary		Post-employment	Equity	Other			Total
	Base Pay	Bonuses (1)	Noncash Benefits (2)	Superannuation and 401(k) Benefits	Stock Appreciation Rights and Options (3)	Relocation Allowances, Expatriate Benefits, and Other Non-recurring (4)	Severance	
<b>Former Senior Executives</b>								
J. Chilcoff (8)								
Fiscal year 2008	299,646	—	41,966	9,611	290,804	42,586	—	684,613
Fiscal year 2007	310,961	373,192	44,136	12,842	277,998	—	—	1,019,129
R. Russell (9)								
Fiscal year 2008	258,929	—	50,935	13,298	286,294	75,778	83,635	768,869
Fiscal year 2007	301,538	359,235	48,159	13,408	295,748	6,058	—	1,024,146
<b>Total Compensation for Senior Executives</b>								
Fiscal year 2008	\$2,582,454	\$ 572,040	\$265,433	\$ 90,514	\$1,776,182	\$ 300,890	\$83,635	\$5,671,148
Fiscal year 2007	\$1,470,383	\$1,572,678	\$157,908	\$ 51,277	\$1,206,975	\$ 110,971	\$ —	\$4,570,192

- (1) Bonuses in respect of each fiscal year are paid in June of the following fiscal year. The amount in fiscal year 2008 includes all incentive amounts earned in respect of fiscal year 2008, pursuant to the terms of the applicable plans and the cash component of the Deferred Bonus Program.
- The amount in fiscal year 2007 includes all incentive amounts paid in respect to fiscal year 2007, including the portion of any incentive awarded for performance in fiscal year 2007, as well as, any performance incentive amount realized as a result of fiscal years 2006 and 2005's performance as a result of our achievement of predetermined financial targets pursuant to the terms of our Economic Profit Incentive Plan.
- See "Other Compensation: Economic Profit Incentive Plan" for a summary of the terms of our Economic Profit Incentive Plan and Deferred Bonus Program.
- (2) Includes the aggregate amount of all noncash benefits received by the executive in the year indicated. Examples of noncash benefits that may be received by our executives include medical and life insurance benefits, car allowances, membership in executive wellness programs, long service leave, and tax services.
- (3) Options are valued using either the Black-Scholes option-pricing model or the Monte Carlo option-pricing method, depending on the plan the options were issued under, and the fair value of options granted are included in compensation during the period in which the options vest. For the Black-Scholes model, the weighted average assumptions and weighted average fair value used for grants in fiscal year 2008 were as follows: 5.0% dividend yield; 30.0% expected volatility; 3.4% risk free interest rate; 4.4 years of expected life; and A\$1.13 weighted average fair value at grant date. For the Monte Carlo method, the weighted average assumptions and weighted average fair value used for grants in fiscal year 2008 were as follows: 5.0% dividend yield; 32.1% expected volatility; 4.2% risk free interest rate; and A\$3.14 weighted average fair value at grant date. The figures stated here for Mr. Gries include Stock Appreciation Rights. In December 2007, the remaining Stock Appreciation Rights vested and were exercised.
- (4) Other non-recurring includes cash paid in lieu of vacation accrued, as permitted under our U.S. vacation policy and California law.
- (5) Mr. Butterfield separated from the Company effective October 1, 2007. Severance amount includes lump sum cash payment of \$335,323. In addition, as part of his severance benefits, Mr. Butterfield entered into a 2 year consulting agreement, under which he will be paid a consulting fee equivalent to his current annual salary, at the time of his separation, on a monthly basis for up to a period of 24 months provided that the consulting agreement is not terminated earlier in accordance with its terms.
- (6) Messrs. Baker, Holte and Rood were not executives for whom the Company reported compensation for in fiscal year 2007.

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- (7) Mr. Cox joined the Company on January 14, 2008 and became a member of the Managing Board effective May 7, 2008.
- (8) Mr. Chilcoff separated from the Company effective February 25, 2008. Mr. Chilcoff entered into a 2 year consulting agreement, under which he will be paid a consulting fee equivalent to his current annual salary, at the time of his separation, on a monthly basis for up to a period of 24 months provided that the consulting agreement is not terminated earlier in accordance with its terms. Mr. Chilcoff received cash of \$36,304 as payment for his accrued vacation time and this is recorded as Other Non-Recurring in this table.
- (9) Mr. Russell separated from the Company effective January 18, 2008. Severance amount includes post-employment consulting fees and health insurance benefits paid in fiscal year 2008. As part of his separation benefits, Mr. Russell entered into a 2 year consulting agreement, under which he will be paid a consulting fee equivalent to his current annual salary, at the time of his separation, on a monthly basis for up to a period of 24 months provided that the consulting agreement is not terminated earlier in accordance with its terms. Mr. Russell will also receive health insurance benefits up to 18 months following his separation date. The exercise period for his vested options was extended until the end of his post-employment consulting agreement with the Company. Mr. Russell received cash of \$67,726 as payment for his accrued vacation time and this is recorded as Other Non-Recurring in this table.

On December 10, 2007, March 27, 2007, March 13, 2007, November 21, 2006, March 8, 2006, December 1, 2005, February 22, 2005 and December 14, 2004, we granted options to purchase 5,031,310 shares, 151,400 shares, 179,500 shares, 3,499,490 shares, 40,200 shares, 5,224,100 shares, 273,000 shares and 5,391,100 shares of our common stock, respectively, at fair market value to management and other employees under the 2001 Equity Incentive Plan. See the section below entitled "Option Ownership" and "Stock-Based Compensation" for further information about option awards and a description of our equity compensation plans. See also "Other Compensation" for a description of our non-equity based compensation plans.

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**Employment Contracts**

Remuneration and other terms of employment for the Chief Executive Officer, Chief Financial Officer and certain other senior executives are formalized in employment contracts. The main elements of these contracts are set out below.

**Chief Executive Officer**

Details of the terms of our Chief Executive Officer's employment contract are as follows:

<u>Components</u>	<u>Details</u>
Length of contract	Three year term, commencing February 10, 2005. Term is automatically extended on 9th day of each February for an additional one year unless either party notifies the other, 90 days in advance of the automatic renewal date, that it does not want the term to renew.
Base salary (1)	\$850,000 for current year. Salary reviewed annually in May by the Supervisory Board.
Short-term incentive	Annual short-term incentive target is 100% of annual base salary: — 80% of this incentive target is based on the Company meeting or exceeding pre-determined performance objectives; and — 20% of this incentive target is based on the Chief Executive Officer meeting or exceeding personal performance objectives.  The Remuneration Committee recommends the Company's and Chief Executive Officer's performance objectives, and the performance against these objectives, to the Supervisory Board for approval. The Chief Executive Officer's short-term incentive was calculated under the Economic Profit and Individual Performance Incentive Plan in fiscal year 2008, and will be calculated under the Executive Incentive Program and Individual Performance Plan in fiscal year 2009.
Long-term incentive	Upon the approval of the shareholders, stock options or other equity incentive will be granted each year. The recommended number of options or other form of equity to be granted will be appropriate for this level of executive in the United States.
Defined Contribution Plan	The Chief Executive Officer may participate in the U.S. 401(k) defined contribution plan up to the annual IRS limit. The Company will match the Chief Executive Officer's contributions into the plan up to the annual IRS limit.
Resignation	The Chief Executive Officer may cease employment with the Company by providing written notice.
Termination by James Hardie	The Company may terminate the Chief Executive Officer's employment for cause or not for cause. If the Company terminates the employment, not for cause, or the Chief Executive Officer terminates his employment "for good reason" the Company will pay the following: <ol style="list-style-type: none"><li>a. amount equivalent to 1.5 times the annual base salary at the time of termination; and</li><li>b. amount equivalent to 1.5 times the executive's average short-term incentive actually paid in up to the previous three fiscal years as Chief Executive Officer; and</li><li>c. continuation of health and medical benefits at the Company's expense for the remaining term of the agreement and consulting agreement referenced below.</li></ol>

Components	Details
Post-termination Consulting	The Company will request the Chief Executive Officer, and the Chief Executive Officer will agree, to consult to the Company upon termination for a minimum of two years, as long as the Chief Executive Officer maintains the Company's non-compete and confidentiality agreements and executes a release of claims following the effective date of termination. Under the consulting agreement, the Chief Executive Officer will receive the annual base salary and annual target incentive in exchange for this consulting and non-compete. Under the terms of equity incentive grants made to the Chief Executive Officer under the Managing Board Transitional Stock Option Plan and Long-Term Incentive Plan, the Chief Executive Officer's outstanding options will not expire during any post-termination consulting period.

(1) See actual salary paid for fiscal year 2008 in this section under "Compensation."

**Chief Financial Officer**

Details of our Chief Financial Officer's employment contract are as follows:

Components	Details
Length of contract	Fixed period of three years concluding October 5, 2010.
Base salary (1)	A\$816,000 for current year. Salary reviewed annually in May by the Supervisory Board.
Short-term incentive	Annual short-term incentive target is 33% of annual base salary based on the Chief Financial Officer meeting or exceeding personal performance objectives. The Chief Financial Officer does not participate in the Executive Incentive Program, but will in fiscal year 2009 to the extent that some of the Chief Financial Officer's long-term incentive target has been transferred to short-term incentive target under the Executive Incentive Program.
Long-term incentive	Upon the approval of the shareholders, stock options or other long-term equity with performance hurdles will be granted each year. The recommended value of equity to be granted will be equivalent to at least \$350,000. If the Chief Financial Officer ceases employment with the Company then a pro-rata amount of each tranche of the Chief Financial Officer's unvested options will expire on the date employment ceases, calculated based on the formula $D=Cx(A/B)$ , where A is the number of months from the date employment ceases to the first testing date, B is the number of months from the date of grant until the first testing date and C is the total number of options granted in the relevant tranche. The remaining unvested/unexercised options will continue as if the Chief Financial Officer remained employed by the Company until the first testing date, at which point any options that do not vest at that time will also lapse.
Superannuation	The Company will contribute 9% of gross salary to the Chief Financial Officer's nominated superannuation fund.
Resignation or Termination	The Company or Chief Financial Officer may cease the Chief Financial Officer's employment with the Company by providing three months' notice in writing.

<u>Components</u>	<u>Details</u>
Redundancy or diminution of role	If the position of Chief Financial Officer is determined to be redundant or subject to a material diminution in status, duties or responsibility, the Company or the Chief Financial Officer may terminate the Chief Financial Officer's employment. The Company will pay the Chief Financial Officer a severance payment equal to the greater of 12 months' pay or the remaining proportion of the term of the contract.

(1) See actual salary paid for fiscal year 2008 in this section under "Compensation."

***Benefits Contained in Contracts for Chief Executive Officer and Chief Financial Officer***

Employment contracts for each of our Chief Executive Officer and Chief Financial Officer also specify the following benefits:

<u>Components</u>	<u>Details</u>
International Assignment	The Managing Board directors receive additional benefits due to international assignment: housing allowance, expatriate Goods and Services allowance, moving and storage.
Other	<p><b>Tax Equalization:</b> The Company covers the extra personal tax burden for Managing Board directors based in The Netherlands.</p> <p><b>Tax Advice:</b> The Company will pay the costs of filing income tax returns to the required countries.</p> <p><b>Health, Welfare and Vacation Benefits:</b> Eligible to receive all health, welfare and vacation benefits offered to all U.S. employees or similar benefits. They are also eligible to participate in the Company's Executive Health and Wellness program.</p> <p><b>Business Expenses:</b> Entitled to receive reimbursement for all reasonable and necessary travel and other business expenses they incur or pay for in connection with the performance of their services under their employment agreements.</p> <p><b>Automobile:</b> The Company will either purchase or lease an automobile for business and personal use or, in the alternative, they will be entitled to an automobile equivalent to the level of vehicle they could receive in the United States.</p>



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### *Senior Executives' Employment Contracts*

Details of the employment contracts for senior executives (other than Brian Holte) are as follows:

<u>Components</u>	<u>Details</u>
Length of contract	Indefinite.
Base salary	Base salary is subject to Remuneration Committee approval and reviewed annually in May for increase effective July 1.
Short-term incentive	An annual short-term incentive target is set at a percentage of the senior executive's salary. The short-term target is between 65% and 25% depending on the individual; for U.S. senior executives, 80% of this short-term incentive target is based on the Company meeting or exceeding corporate performance objectives and 20% of this short-term incentive target is based on the U.S. senior executive meeting or exceeding personal performance objectives. For Australian senior executives, this split is 70% - 30%.
Long-term incentive	Upon the approval of the Supervisory Board, stock options have been granted each year under the JHI NV 2001 Equity Incentive Plan. It is anticipated that in the future senior executives will receive equity grants under the new plans proposed for fiscal year 2009.
Defined Contribution Plan/Superannuation	U.S. senior executives may participate in the U.S. 401(k) defined contribution plan up to the annual IRS limit. The Company will match the senior executive's contributions into the plan up to the annual IRS limit. For Australian senior executives, the Company will contribute 9% of gross salary to the senior executive's nominated superannuation fund.
Resignation	U.S. senior executives may cease employment with the Company by providing 30 days' written notice. For Australian senior executives, this period is three months.
Termination by James Hardie	The Company may terminate the senior executive's employment for cause or not for cause.
Post-termination Consulting	Depending on the U.S. senior executive's individual contract, and the reasons for termination, the Company may request the senior executive, and the senior executive will agree, to consult to the Company for two years upon termination, as long as they sign and comply with 1) a consulting agreement, which will require them to maintain non-compete and confidentiality obligations to the Company, and 2) a release of claims in a form acceptable to the Company. In exchange for the consulting agreement, the Company shall pay the senior executive's annual base salary as of the termination date for each year of consulting.
Other	<p><b>Health, Welfare and Vacation Benefits:</b> U.S. senior executives are eligible to receive all health, welfare and vacation benefits offered to all other U.S. employees. The U.S. senior executives are also eligible to participate in the Company's Executive Health and Wellness program.</p> <p><b>Business Expenses:</b> The senior executives are entitled to receive reimbursement for all reasonable and necessary travel and other business expenses incurred or paid in connection with the performance of services under their employment.</p> <p><b>Automobile:</b> For U.S. senior executives, the Company will either lease an automobile for business and personal use by the senior executive, or, in the alternative, the senior executive will be entitled to an automobile lease allowance not to exceed \$750 per month.</p>

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Components	Details
International Assignment	Senior executives who are on assignment in countries other than their own receive additional benefits which may include tax equalization payment and tax advice, a car in the country they are assigned to, and financial assistance with housing, moving and storage.

Brian Holte does not have such a written employment agreement, but receives short-term incentive, long-term incentive, defined contribution plan and other benefits as outlined above.

**Share Ownership**

As of May 31, 2008, the number of shares of our common stock beneficially owned by each person listed in the table under the heading “Compensation — Remuneration,” is set forth below.

Name	Number of Shares Beneficially Owned (1)	Percent of Class (2)
<b>Current Directors and Executive Officers</b>		
Michael Hammes (3)	15,859	*
Donald McGauchie (4)	15,372	*
Brian Anderson	6,124	*
David Andrews (5)	3,903	*
Donald DeFosset	25,877	*
David Harrison	5,000	*
James Loudon (6)	12,655	*
Rudy van der Meer	4,410	*
Catherine Walter (7)	11,407	*
Louis Gries	1,317,219	*
Russell Chenu	113,000	*
Robert Cox	—	—
Peter Baker	26,875	*
Mark Fisher	681,021	*
Grant Gustafson	39,625	*
Brian Holte	37,850	*
Nigel Rigby	394,628	*
Joel Rood	36,625	*
<b>Former Directors and Executive Officers</b>		
John Barr (8)	32,144	*
Benjamin Butterfield	—	—
James Chilcoff	—	—
Robert Russell	335,625	*

\* Indicates that the individual beneficially owns less than 1% of our shares of common stock.

(1) Since the Supervisory Board Share Plan, was approved at our 2002 AGM, four general allotments have been made to non-executive directors. The number of beneficial shares includes the following Supervisory Board Share Plan allotments:

Name	Shares Allotted under Supervisory Board Share Plan			
	November 22, 2005 (a)	December 3, 2004 (b)	August 22, 2003 (c)	August 27, 2002 (d)
James Loudon	758	2,117	1,839	1,641
Donald McGauchie	758	1,068	1,743	—
<b>Former Director</b>				
John Barr	758	1,068	—	—

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- (a) Each participant's November 22, 2005 mandatory participation of 758 shares was subject to a two-year escrow period ending November 22, 2007.
- (b) Each participant's December 3, 2004 mandatory participation of 1,068 shares was subject to a two-year escrow period until they were released on December 4, 2006.
- (c) Each participant's August 22, 2003 mandatory participation of 1,260 shares was subject to a two-year escrow period until they were released on August 22, 2005.
- (d) Each participant's August 27, 2002 mandatory participation of 1,641 shares was subject to a two-year escrow period until they were released on August 27, 2004.

At our AGM on September 25, 2006, our shareholders approved the replacement of our Supervisory Board Share Plan, with a new plan called the Supervisory Board Share Plan 2006 (which we refer to as the SBSP). Under the SBSP, Supervisory Board directors can elect to receive a percentage of his or her fees in the form of CUFS.

The number of beneficial shares includes the following shares acquired on market under the SBSP:

Name	Number of Shares	
	Fiscal years ended	
	2008	2007
Michael Hammes	6,859	—
Donald McGauchie	5,803	—
Brian Anderson	6,124	—
David Andrews	3,903	N/A
Donald DeFosset	10,377	—
David Harrison	N/A	N/A
James Loudon (6)	—	—
Rudy van der Meer	4,410	—
Catherine Walter	5,032	N/A
<b>Former Directors</b>		
John Barr	7,667	1,651

- (2) Based on 432,948,363 shares of common stock outstanding at May 31, 2008 (all of which are subject to CUFS).
- (3) As of May 31, 2008, 10,859 shares were held in the name of Mr. and Mrs. Hammes.
- (4) As of May 31, 2008, 6,000 shares were held for the McGauchie Superannuation Fund for which Mr. McGauchie is a trustee.
- (5) As of May 31, 2008, all shares were held in a trust, of which Mr. Andrews and his wife are trustees.
- (6) Mr. Loudon did not participate in the SBSP in fiscal year 2008. However, on March 14, 2008, he bought 6,300 JHI NV shares on market, which was equivalent to the value of JHI NV shares he would have received if he had participated in the SBSP. As of May 31, 2008, 6,300 shares are held by HSBC Nominees on behalf of Mr. Loudon.
- (7) As of May 31, 2008, 6,375 shares were held in the Walter Super Fund.
- (8) As of March 31, 2008, the date of Mr. Barr's resignation, 21,000 shares were held in a trust, of which Mr. Barr and his wife are trustees.

None of the shares held by any of the directors or executive officers has any special voting rights. Beneficial ownership of shares includes shares issuable upon exercise of options which are exercisable within 60 days of May 31, 2008.

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**Option Ownership**

The number of shares of our common stock that each person listed in the table under the heading “Compensation — Remuneration,” have an option to purchase as of May 31, 2008 was:

Name	Number of Shares Underlying Options Owned	Exercise Price	Expiration Date
<b>Current Executive Officers</b>			
Louis Gries	40,174(1, 2)	A\$3.1321/share (3, 4, 5)	November 2009
	175,023(1, 6)	A\$3.0921/share (3, 4, 5)	November 2010
	324,347(7)	A\$5.0586/share (4, 5)	December 2011
	325,000(8)	A\$6.4490/share (5)	December 2012
	325,000(9)	A\$7.05/share	December 2013
	1,000,000(10)	A\$8.53/share	November 2015
	381,000(15)	A\$8.40/share	November 2016
	415,000(15)	A\$8.40/share	November 2016
	437,000(15)	A\$7.83/share	August 2017
	445,000(15)	A\$7.83/share	August 2017
Russell Chenu	93,000(11)	A\$6.30/share	February 2015
	90,000(10)	A\$8.53/share	November 2015
	60,000(15)	A\$8.40/share	November 2016
	65,000(15)	A\$8.40/share	November 2016
	66,000(15)	A\$7.83/share	August 2017
	68,000(15)	A\$7.83/share	August 2017
Robert Cox	—		
Peter Baker	40,000(12)	A\$8.90/share	December 2015
	27,500(14)	A\$8.40/share	November 2016
	47,619(18)	A\$6.38/share	December 2017
Mark Fisher	92,113(1, 6)	A\$3.0921/share (3, 4, 5)	November 2010
	68,283(7)	A\$5.0586/share (4, 5)	December 2011
	74,000(8)	A\$6.4490/share (5)	December 2012
	132,000(9)	A\$7.05/share	December 2013
	180,000(13)	A\$5.99/share	December 2014
	190,000(12)	A\$8.90/share	December 2015
	158,500(14)	A\$8.40/share	November 2016
	277,778(18)	A\$6.38/share	December 2017
Grant Gustafson	158,500(14)	A\$8.40/share	November 2016
	222,222(18)	A\$6.38/share	December 2017
Brian Holte	151,400(17)	A\$8.35/share	March 2017
	250,000(18)	A\$6.38/share	December 2017
Nigel Rigby	20,003(7)	A\$5.0586/share (4, 5)	December 2011
	27,000(8)	A\$6.4490/share (5)	December 2012
	33,000(9)	A\$7.05/share	December 2013
	180,000(13)	A\$5.99/share	December 2014
	190,000(12)	A\$8.90/share	December 2015
	158,500(14)	A\$8.40/share	November 2016
	277,778(18)	A\$6.38/share	December 2017

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Name	Number of Shares Underlying Options Owned	Exercise Price	Expiration Date
Joel Rood	146,500(16)	A\$8.90/share	March 2017
	250,000(18)	A\$6.38/share	December 2017
<b>Former Executive Officers</b>			
Benjamin Butterfield	230,000(10)	A\$8.53/share	December 2009
	101,000(15)	A\$8.40/share	December 2009
	110,000(15)	A\$8.40/share	December 2009
James Chilcoff	—		
Robert Russell	66,000(9)	A\$7.05/share	January 2010
	135,000(13)	A\$5.99/share	January 2010
	95,000(12)	A\$8.90/share	January 2010
	39,625(14)	A\$8.40/share	January 2010

- (1) This nonqualified stock option to purchase shares of our common stock was granted on October 19, 2001 under our 2001 Equity Incentive Plan in exchange for the termination of an award of shadow stock covering an equal number of shares of JHIL common stock. See “Equity Plans — 2001 Equity Incentive Plan” under Item 6.
- (2) All options vested and became exercisable in November 2004.
- (3) The exercise price reflects an A\$0.0965 per share price reduction due to a capital return paid to shareholders in December 2001.
- (4) The exercise price reflects an A\$0.3804 per share price reduction due to a capital return paid to shareholders in November 2002.
- (5) The exercise price reflects an A\$0.2110 per share price reduction due to a capital return paid to shareholders in November 2003.
- (6) All options vested and became exercisable in November 2005.
- (7) Granted under the 2001 Equity Incentive Plan. All options vested and became exercisable in December 2004.
- (8) Granted under the 2001 Equity Incentive Plan. All options vested and became exercisable in December 2005.
- (9) Granted under the 2001 Equity Incentive Plan. All options vested and became exercisable in December 2006.
- (10) Granted under the Managing Board Transitional Stock Option Plan. Options vest and become exercisable on the first business day on or after November 22, 2008 if the following conditions are met: 50% vest if our total shareholder return, or TSR, is equal to or above the Median TSR and an additional 2% of the options shall vest for each 1% increment that the Company’s TSR is above the Median TSR. If any options remain unvested on the last business day of each six month period between November 22, 2008 and November 22, 2010, we will reapply the vesting criteria to those options on that business day.
- (11) Granted under the 2001 Equity Incentive Plan. All options vested and became exercisable in February 2008.
- (12) Granted under the 2001 Equity Incentive Plan. Options vest and become exercisable in three installments: 25% on December 1, 2006; 25% on December 1, 2007; and 50% on December 1, 2008.
- (13) Granted under the 2001 Equity Incentive Plan. All options vested and became exercisable in December 2007.
- (14) Granted under the 2001 Equity Incentive Plan. Options vest and become exercisable in three installments: 25% on November 21, 2007; 25% on November 21, 2008; and 50% on November 21, 2009.
- (15) Granted under the Long Term Incentive Plan. Option vesting is subject to ‘performance hurdles’ as outlined in the plan rules.
- (16) Granted under the 2001 Equity Incentive Plan. Options vest and become exercisable in three installments: 25% on March 13, 2008; 25% on March 13, 2009; and 50% on March 13, 2010.
- (17) Granted under the 2001 Equity Incentive Plan. Options vest and become exercisable in three installments: 25% on March 27, 2008; 25% on March 27, 2009; and 50% on March 27, 2010.
- (18) Granted under the 2001 Equity Incentive Plan. Options vest and become exercisable in three installments: 25% on December 10, 2008; 25% on December 10, 2009; and 50% on December 10, 2010.

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### **Stock-Based Compensation**

At March 31, 2008, the Company had the following stock-based compensation plans: the Executive Share Purchase Plan (which we refer to as the Plan); the 2001 Equity Incentive Plan; the Managing Board Transitional Stock Option Plan; the SBSP and the Long-Term Incentive Plan (which we refer to as LTIP).

#### ***Executive Share Purchase Plan***

Prior to July 1998, JHIL issued stock under the Plan. Under the terms of the Plan, eligible executives purchased JHIL shares at their market price when issued. Executives funded purchases of JHIL shares with non-recourse, interest-free loans provided by JHIL and collateralized by the shares. In such cases, the amount of indebtedness is reduced by any amounts payable by JHIL in respect of such shares, including dividends and capital returns. These loans are generally repayable within two years after termination of an executive's employment. Variable plan accounting under the provisions of Accounting Principles Board (which we refer to as APB) Opinion No. 25, "Accounting for Stock Issued to Employees," has been applied to Plan shares granted prior to April 1, 1995 and fair value accounting, pursuant to the requirements of SFAS No. 123R, "Accounting for Stock-Based Compensation," has been applied to shares granted after March 31, 1995. The Company recorded no compensation expense during the years ended March 31, 2008, 2007 and 2006. No shares were issued under this plan during years ended March 31, 2008, 2007 and 2006.

#### ***2001 Equity Incentive Plan***

Under our 2001 Equity Incentive Plan, our employees, including employees of our subsidiaries and officers who are employees, but not including any member of our Managing Board or Supervisory Board, are eligible to receive awards in the form of nonqualified stock options, performance awards, restricted stock grants, stock appreciation rights, dividend equivalent rights, phantom stock or other stock-based benefits. The 2001 Equity Incentive Plan is intended to promote our long-term financial interests by encouraging our management and other persons to acquire an ownership position in us, to align their interests with those of our shareholders and to encourage and reward their performance. The 2001 Equity Incentive Plan was approved by our shareholders and Joint Board subject to implementation of the consummation of our 2001 Reorganization.

An aggregate of 45,077,100 shares of common stock have been made available for issuance under the 2001 Equity Incentive Plan, provided that such number (and any awards granted) is subject to adjustment in the event of a stock split, stock dividend or other changes in our common stock or capital structure or our restructuring. Our ADSs evidenced by ADRs and our common stock in the form of CUFS will be equivalent to and interchangeable with our common stock for all purposes of the 2001 Equity Incentive Plan, provided that ADRs will be proportionately adjusted to account for the ratio of CUFS in relation to ADRs.

The following number of options to purchase shares of our common stock issued under this plan were as follows:

<b>Share Grant Date</b>	<b>Number of Options Granted</b>	<b>Options Outstanding as of May 31, 2008</b>
October 2001 (1)	5,468,829	510,342
December 2001	4,248,417	660,582
December 2002	4,037,000	886,000
December 2003	6,179,583	2,135,750
December 2004	5,391,100	2,488,125
February 2005	273,000	93,000
December 2005	5,224,100	3,206,300
March 2006	40,200	40,200
November 2006	3,499,490	2,151,510
March 2007	330,900	318,975
December 2007	5,031,310	4,094,440
<b>Total outstanding</b>		<b>16,585,224</b>

(1) Awarded to our employees on October 19, 2001 in exchange for the cancellation of JHIL shadow stock awards under the JHIL Key Management Equity Incentive Plan.

Our Remuneration Committee administers the 2001 Equity Incentive Plan. Subject to the provisions of the 2001 Equity Incentive Plan, our Joint Board or Remuneration Committee is authorized to determine who may participate

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in the 2001 Equity Incentive Plan, the number and types of awards made to each participant and the terms, conditions and limitations applicable to each award. In addition, our Joint Board or Remuneration Committee will have the exclusive power to interpret the 2001 Equity Incentive Plan and to adopt such rules and regulations as it deems necessary or appropriate for purposes of administering the 2001 Equity Incentive Plan. Subject to certain limitations, our Joint Board or Remuneration Committee will be authorized to amend, modify or terminate the 2001 Equity Incentive Plan to meet any changes in legal requirements or for any other purpose permitted by law.

The purchase or exercise price of any award granted under the 2001 Equity Incentive Plan may be paid in cash or other consideration at the discretion of our Joint Board or Remuneration Committee. Our Joint Board or Remuneration Committee, in its discretion and as allowed by applicable laws, may allow cashless exercises of awards or may permit us to assist in the exercise of options.

*Stock Options.* Under the 2001 Equity Incentive Plan, our Joint Board or Remuneration Committee is authorized to award nonqualified options to purchase shares of common stock as additional employment compensation. The 2001 Equity Incentive Plan does not allow us to grant options qualified as “incentive stock options” under Section 422 of the Code. Options are exercisable over such periods as may be determined by our Joint Board or Remuneration Committee, but no stock option may be exercised after 10 years from the date of grant. Options may be exercisable in installments and upon such other terms as determined by our Joint Board or Remuneration Committee. Options are evidenced by notices of option grants authorized by our Joint Board or Remuneration Committee. No option is transferable other than by will or by the laws of descent and distribution or pursuant to certain domestic relations orders.

*Performance Awards.* Our Joint Board or Remuneration Committee, in its discretion, may award performance awards to an eligible person contingent on the attainment of criteria specified by our Joint Board or Remuneration Committee. Performance awards are paid in the form of cash, shares of common stock or a combination of both. Our Joint Board or Remuneration Committee determines the total number of performance shares subject to an award, and the terms and the time at which the performance shares will be issued.

*Restricted Stock Awards.* Our Joint Board or Remuneration Committee may award restricted shares of common stock, which are subject to forfeiture under such conditions and for such periods of time as our Joint Board or Remuneration Committee may determine. Shares of restricted stock may not be sold, transferred, assigned, pledged or otherwise encumbered so long as such shares remain restricted. Our Joint Board or Remuneration Committee determines the conditions or restrictions of any restricted stock awards, which may include restrictions on requirements of continued employment, individual performance or our financial performance or other criteria.

*Stock Appreciation Rights.* Our Joint Board or Remuneration Committee also may award stock appreciation rights either in tandem with an option or alone. Stock appreciation rights granted in tandem with a stock option may be granted at the same time as the stock option or at a later time. A stock appreciation right entitles the participant to receive from us an amount payable in cash, in shares of common stock or in a combination of cash and common stock, equal to the positive difference between the fair market value of a share of common stock on the date of exercise and the grant price, or such lesser amount as our Joint Board or Remuneration Committee may determine.

*Dividend Equivalent Rights.* Dividend equivalent rights, defined as a right to receive payment with respect to all or some portion of the cash dividends that are or would be payable with respect to shares of common stock, may be awarded in tandem with stock options, stock appreciation rights or other awards under the 2001 Equity Incentive Plan. Our Joint Board or Remuneration Committee determines the terms and conditions of these rights. The rights may be paid in cash, shares of common stock or other awards.

*Other Stock-Based Benefits.* Our Joint Board or Remuneration Committee may award other benefits that, by their terms, might involve the issuance or sale of our common stock or other securities, or involve a benefit that is measured by the value, appreciation, dividend yield or other features attributable to a specified number of shares of our common stock or other securities, including but not limited to stock payments, stock bonuses and stock sales.

*Effect of Change in Control.* The 2001 Equity Incentive Plan provides for the automatic acceleration of certain benefits and the termination of the plan under certain circumstances in the event of a “change in control.” A change in control will be deemed to have occurred if either (1) any person or group acquires beneficial ownership equivalent to 30% of our voting securities, (2) individuals who are members of our Joint Board as of the effective date of the 2001 Equity Incentive Plan, or individuals who became members of our Joint Board after the effective date of the 2001 Equity Incentive Plan whose election or nomination for election was approved by at least a majority

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of such individuals (or, in the case of directors nominated by a person, entity or group with 20% of our voting securities, by two-thirds of such individuals) cease to constitute at least a majority of the members of our Joint Board, or (3) there occurs the consummation of certain mergers, the sale of substantially all of our assets or our complete liquidation or dissolution.

### ***Stock Appreciation Rights Plans***

On December 14, 2004, 527,000 stock appreciation rights were granted under the terms and conditions of the JHI NV Stock Appreciation Rights Incentive Plan (which we refer to as the Stock Appreciation Rights Plan) with an exercise price of A\$5.99. In April 2005, 27,000 stock appreciation rights were cancelled. In December 2006, 250,000 of these stock appreciation rights vested and were exercised at A\$8.99, the closing price of the Company's stock on the exercise day. In December 2007, the remaining 250,000 of these stock appreciation rights vested and were exercised at A\$6.52, the closing price of the Company's stock on the exercise day.

*Effect of Liquidation, Merger or Sale.* The JHI NV Stock Appreciation Rights Incentive Plan provides for the automatic vesting of certain benefits under the plan in the event (1) our stockholders have adopted a plan of complete liquidation, or (2) we have effectuated a merger, consolidation or other transaction constituting a reorganization with another corporation pursuant to which our shares of common stock will be surrendered in exchange for the stock of another corporation without provision being made in the agreement of reorganization for the continuation of the plan or a functionally equivalent plan.

### ***Supervisory Board Share Plan***

At our 2002 AGM our shareholders approved a Supervisory Board Share Plan, effective for a three-year period. This plan was renewed at our 2005 AGM. Under the plan, all non-executive directors on our Joint Board and Supervisory Board received shares of our common stock as payment for a portion of their director fees. The Supervisory Board Share Plan required that our directors take at least \$10,000 of their fees in shares and allowed directors to receive additional shares in lieu of fees in their discretion. Shares issued under the \$10,000 compulsory component of the plan were subject to a two-year escrow that required members of the Supervisory Board to retain those shares for at least two years following issue. The issue price for the shares is the average market closing price at which CUFS were quoted on the ASX during the five business days preceding the day of issue. No loans were entered into by us in relation to the grant of shares pursuant to the Supervisory Board Share Plan. During fiscal year 2007, this plan was replaced with the SBSP. All remaining shares issued under this plan were released from escrow in November 2007.

### ***Supervisory Board Share Plan 2006***

At the 2006 AGM, our shareholders approved the replacement of our Supervisory Board Share Plan with a new plan called the Supervisory Board Share Plan (which we refer to as the SBSP), and the participation of the Supervisory Board directors under the SBSP for a three-year period. The SBSP was last approved at the 2007 AGM for a period of three years.

Participation by members of the Supervisory Board in the SBSP is not mandatory. Under the SBSP, the Supervisory Board members can elect to receive some of their annual fees in ordinary shares/CUFS in the Company. This is different from the Supervisory Board Share Plan under which Supervisory Board members were required to contribute a portion of their annual fees in shares/CUFS. At March 31, 2008, 61,792 shares had been acquired under this plan.

Shares/CUFS received under the SBSP can be either issued or acquired on market. Where shares/CUFS are issued, the price is the average of the market closing prices at which CUFS were quoted to the ASX during the five business days preceding the day of issue. Where shares/CUFS are acquired on market, the price is the purchase price.

The SBSP does not include a performance condition because the amounts applied to acquire ordinary shares/CUFS under the SBSP are from the annual fees earned by the Supervisory Board directors.

In fiscal year 2008, the Supervisory Board reviewed and confirmed its Board policy that Supervisory Board directors should accumulate a minimum of 1.5 times (and two times for the Chairman) their total base remuneration (excluding Board Committee fees) in shares/CUFS (either personally, in the name of their spouse, or through a personal superannuation or pension plan) within the six year period from the later of August 2006 or their



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appointment. The policy had previously been described as requiring that Supervisory Board directors should accumulate three times their annual cash remuneration, although this was when each director had agreed to receive 50% of their director's fees in shares/CUFS under the SBSP. To eliminate inconsistency under the policy, for instance, if one Supervisory Board director elected to change the amount of directors' fees received in shares/CUFS, it was agreed that the policy should revert to its original formulation of 1.5 times (and two times for the Chairman) directors' total base remuneration (excluding Board Committee fees).

To recognize the potential for share price fluctuations to have an impact on the funds required to be committed and the different taxation positions of individual Supervisory Board directors, no Supervisory Board director will be required to apply more than 50% of the cash component of their fees, on a post-tax basis, over a six year period, toward satisfying this requirement.

### ***Managing Board Transitional Stock Option Plan***

The Managing Board Transitional Stock Option Plan provides an incentive to the members of the Managing Board. The maximum number of ordinary shares that may be issued and outstanding or subject to outstanding options under this plan shall not exceed 1,380,000 shares. At March 31, 2008 and 2007, there were 1,320,000 options outstanding under this plan.

On November 22, 2005, the Company granted options to purchase 1,320,000 shares of the Company's common stock at an exercise price per share equal to A\$8.53 to the Managing Directors under the Managing Board Transitional Stock Option Plan. As set out in the plan rules, the exercise price and the number of shares available on exercise may be adjusted on the occurrence of certain events, including new issues, share splits, rights issues and capital reconstructions. 50% of these options become exercisable on the first business day on or after November 22, 2008 if the total shareholder returns (which we refer to as TSR) (essentially its dividend yield and common stock performance) from November 22, 2005 to that date were at least equal to the median TSR for the companies comprising the Company's peer group, as set out in the plan. In addition, for each 1% increment that the Company's TSR is above the median TSR, an additional 2% of the options become exercisable. If any options remain unvested on the last business day of each six month period following November 22, 2008 and November 22, 2010, the Company will reapply the vesting criteria to those options on that business day.

*Effect of Change in Control.* The 2005 Managing Board Transitional Stock Option Plan provides for the automatic vesting of certain benefits under the plan under certain circumstances in the event of a "change in control." A "change in control" will be deemed to have occurred if either (1) a person obtains at least 30% of our voting shares pursuant to a takeover bid for all or a proportion of all of our voting shares which is or becomes unconditional, (2) a scheme of arrangement or other merger proposal becomes binding on the holders of all of our voting shares and by reason of such scheme or proposal a person obtains at least 30% of our voting shares, or (3) a person becomes the beneficial owner of at least 30% of our voting shares for any other reason.

### ***Long-Term Incentive Plan***

At our 2006 AGM, our shareholders approved the establishment of the LTIP to provide incentives to members of our Managing Board and to certain members of its management or Executives. The shareholders also approved, in accordance with certain LTIP rules, the issue of certain options or other rights over, or interest in, ordinary fully-paid shares in the Company (which we refer to as Shares), the issue and/or transfer of Shares under them, and the grant of cash awards to members of our Managing Board and Executives. In August 2007 and November 2006, 1,016,000 options and 1,132,000 options, respectively, were granted under the LTIP to our Managing Board. The vesting of these options are subject to "performance hurdles" as outlined in the LTIP rules. Unexercised options expire 10 years from the date of issue. As of March 31, 2008, there were 2,148,000 options outstanding under this plan.

*Effect of Change in Control, Takeover by Certain Organizations or Liquidation.* The LTIP provides for plan participants' early exercise of certain benefits or early payout under the plan in the event of a "change in control," takeover by certain organizations or liquidation. A "change in control" is deemed to have occurred if pursuant to a takeover bid or otherwise, any person together with their associates acquire Shares, which when aggregated with Shares already acquired by such person and their associates, comprise more than 30% of our issued Shares.

**Other Compensation**

***Economic Profit Incentive Plan***

During fiscal year 2008, we continued to maintain an Economic Profit and Individual Performance Incentive Plan (which we refer to as the EP/IP Plan). This plan is the variable pay plan for our executive directors, officers, key executives and other eligible employees. Employees who have limited direct influence on the Company's financial performance are only eligible for incentive payments based on his or her individual performance on certain mutually agreed upon personal objectives. Executive directors, officers and key executives' incentive payments are based on the Company's financial performance in addition to his or her individual performance on certain mutually agreed upon personal objectives. All participants are eligible to receive incentive payments based on individual performance achievements regardless of the Company's performance.

Individuals' who have incentive payments dependent on Company financial performance may have between 50% to 80% of their individual variable incentive pay tied to the Company achieving predetermined financial targets. The predetermined financial targets are set every three years by the Remuneration Committee working with independent advisors and the committee recommending targets to the Supervisory Board. The financial targets have been set as the amount the Company's Economic Profit (defined as net operating profit after tax minus capital charge) must increase in each of the succeeding three years to achieve a target bonus (which we refer to as the Target Bonus) and the amount by which the Company must exceed the target to realize incentives greater than the Target Bonus. The target expected improvement in Economic Profit for fiscal year 2007 to fiscal year 2009 was set in 2006. At the start of each EP/IP Plan year (year ending March 31), the Supervisory Board confirmed the target Economic Profit required to attain the Target Bonus.

For any Economic Profit bonus amounts realized in any one year in excess of the employee's Target Bonus:

- one-third of the excess is considered earned and paid in that year; and
- the remaining two-thirds is credited to the employee's bonus bank (which we refer to as "Bonus Bank") and subject to being paid out equally in the following two years, provided that the performance target was met and the employee continues to meet the eligibility standards for additional payments.

Targets for the Economic Profit component of the EP/IP Plan were set in 2006. The target setting did not anticipate the negative U.S. housing market growth in fiscal year 2008. Therefore, the Company did not achieve the target growth in Economic Profit in fiscal year 2008 and no payments were made under the Economic Profit component of the EP/IP Plan.

The Economic Profit component of the EP/IP Plan was specifically designed to reward progressive improvement in the drivers of shareholder value in an external growth environment that was predictable. The Supervisory Board and Remuneration Committee recognized that the Economic Profit component of the EP/IP Plan was not suitable in times of exceptional external market volatility and unpredictability and, on the advice of the Remuneration Committee, terminated this component for fiscal year 2009 and beyond. In lieu of the EP/IP plan, the Company has introduced the new Executive Incentive Program (which we refer to as EIP) and Individual Performance Plan (which we refer to as IP Plan). See below for details of the EIP and IP plan for fiscal year 2009 and beyond.

In addition, after carefully assessing the senior executives' response to and performance in the extreme market conditions facing the entire housing industry in the United States, the Supervisory Board concluded that executives' performance was of such a standard that in this instance, an exceptional discretionary bonus was justified, and implemented the Deferred Bonus Program, which is discussed below.

***Deferred Bonus Program***

For reasons discussed above under "Economic Profit Incentive Plan", the Supervisory Board implemented a one-off Deferred Bonus Program.

Payments under this plan comprised of a cash payment equal to one third of the total value (short-term incentive) and a grant of two year vesting restricted stock units (which we refer to as RSUs) equal to two thirds of the value (long-term incentive) in June 2008. The total value of cash and RSUs under the Deferred Bonus Program was 75%

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of the short-term incentive target in fiscal year 2008, which therefore included 75% of the Bonus Bank the senior executive had accumulated for the Company's good performance in fiscal years 2006 and 2007.

RSUs are unfunded and unsecured contractual entitlements for shares to be issued in the future. The RSUs granted in respect of the Deferred Bonus Program vest and convert into shares on a one-for-one basis in two years if the senior executive has maintained a satisfactory level of performance during this period, subject to exceptions based on the reasons for the recipient's departure and other specified corporate events.

The CEO is also a participant in this program and, subject to shareholder approval, will receive a grant of RSUs in August 2008.

### ***Executive Incentive Program and Individual Performance Plan***

As discussed above, in lieu of the EP/IP Plan, the Remuneration Committee recommended to our Supervisory Board that the Company maintain two variable pay plans effective April 1, 2008:

- an IP Plan, and
- an EIP

The IP Plan contains the same terms as the Individual Performance component of the EP/IP plan and is solely for eligible employees who have limited direct influence on the Company's financial performance. The IP Plan is based on the individual's performance on certain mutually agreed upon personal objectives.

The EIP will reward management based on performance against predetermined Earnings Before Interest and Taxes (which we refer to as EBIT) goals which are adopted at the start of each fiscal year. Participating employees will have different EBIT goals, depending on their function and location. All other strategic, financial and individual objectives will be measured under the IP Plan.

Pursuant to the terms of the EIP, participants may earn between 0% and 200% of their enlarged short-term incentive target, depending on performance. Payments will commence on a sliding scale paying nil at 70% of the EBIT goal; 100% of short-term incentive target if the EBIT goal is reached; and extra rewards for out-performance, capping out at 200% of short-term incentive target if 120% of the EBIT goal is achieved and based on a payout schedule.

### ***401(k) Plan***

We sponsor a U.S. defined contribution plan, the James Hardie Retirement and Profit Sharing Plan, for our employees in the United States and a defined benefit pension plan, the James Hardie Australia Superannuation Plan, for our employees in Australia. The U.S. defined contribution plan is a tax-qualified retirement and savings plan (which we refer to as the 401(k) Plan) covering all U.S. employees, subject to certain eligibility requirements. Participating employees may elect to reduce their current annual compensation by up to \$15,500 in calendar year 2008 and have the amount of such reduction contributed to the 401(k) Plan, with a maximum eligible compensation limit of \$230,000. In addition, we match employee contributions dollar for dollar up to a maximum of the first 6% of an employee's eligible compensation.

### ***James Hardie Australia Superannuation Plan***

The James Hardie Australia Superannuation Plan is funded based on statutory requirements in Australia and is based primarily on the contributions and income derived thereon held by the plan on behalf of the member, and to a lesser degree, on the participants' eligible compensation and years of credited service.

### ***Director Retirement Benefits***

In July 2002, the Company discontinued a retirement plan that entitled some of our former Supervisory Board directors to receive, upon their termination for any reason other than misconduct, an amount equal to a multiple of up to five times their average annual fees for the three year period prior to their retirement. Two of our former Supervisory Board director, Ms. Hellicar and Mr. Brown, were entitled to receive payments pursuant to this plan in the gross amounts of \$833,979 and \$307,658, respectively. These amounts were paid in fiscal year 2008. No other Supervisory Board directors retain any benefits under this plan.

**Item 7. Major Shareholders and Related Party Transactions**

**Major Shareholders**

As of May 31, 2008, all issued and outstanding shares of our common stock were listed on the ASX in the form of CHESS Units of Foreign Securities, or CUFS. CUFS represent beneficial ownership of our shares. CHESS Depository Nominees Pty Ltd is the registered owner of the shares represented by CUFS. Each of our CUFS represents one share of our common stock.

To our knowledge, the following table identifies those shareholders who beneficially owned 5% or more of our common stock based on the holdings reported by the shareholder in its last shareholder notice filed with the ASX (unless indicated otherwise below) and their percentage of shares outstanding based on the number of shares outstanding as of May 31, 2008 which was 432,948,363 shares.

Shareholder	Shares Beneficially Owned	Percentage of Shares Outstanding
Lazard Asset Management Pacific Co.	65,424,399	15.11%
The Capital Group Companies, Inc.	32,960,346	7.61%
Schroder Investment Management Australia Limited	31,024,755	7.17%
Suncorp-Metway Limited and its subsidiaries	29,696,066	6.86%
Concord Capital	28,585,361	6.60%
National Australia Bank Limited Group	28,198,184	6.51%
Baillie Gifford & Co and its affiliated companies	24,577,253	5.68%
Orion Asset Management Limited	22,659,318	5.23%
Vanguard Investments Australia Ltd.	22,097,739	5.10%

Lazard Asset Management Pacific Co became a substantial shareholder on April 1, 2004, with a holding of 24,505,916 shares in JHI NV. Through subsequent periodic purchases, Lazard Asset Management Pacific Co increased its holding in JHI NV on April 24, 2008 to 65,424,399 shares in the last notice received.

The Capital Group Companies, Inc. became a substantial shareholder on August 3, 2004, with a holding of 23,331,660 shares in JHI NV and increased its holding in JHI NV on March 17, 2006 to 32,960,346 shares in the last notice received.

Schroder Investment Management Australia Limited became a substantial shareholder on January 28, 2004, with a holding of 25,485,997 shares in JHI NV and, through subsequent purchases, increased its holding in JHI NV on April 6, 2004 to 39,835,741 shares. Schroder Investment Management Australia Limited reduced its holding in JHI NV to 31,024,755 shares on January 8, 2007 in the last notice received.

Suncorp-Metway Limited and its subsidiaries became a substantial shareholder on June 29, 2007, with a holding of 23,520,538 shares in JHI NV and increased its holding in JHI NV on August 14, 2007 to 29,696,066 shares in the last notice received.

Concord Capital became a substantial shareholder on June 18, 2004, with 24,499,832 shares in JHI NV. Their substantial holding status ceased on August 6, 2004 when their holding in JHI NV fell below 5%. On August 20, 2004, their holding increased to over 5% of our outstanding stock but their substantial holding status again ceased when their holding fell below 5% on April 8, 2005. On October 26, 2007, Concord Capital became a substantial shareholder again with a holding of 23,723,697 shares in JHI NV and on December 13, 2007 they increased their holding in JHI NV to 28,585,361 shares in the last notice received.

National Australia Bank Limited Group became a substantial shareholder on May 25, 2004, with 23,060,940 shares in JHI NV and increased its holding in JHI NV on June 16, 2004 to 28,198,184 shares in the last notice received.

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Baillie Gifford & Co and its affiliated companies became a substantial shareholder on December 24, 2007, with a holding of 24,577,253 shares in JHI NV.

Orion Asset Management Limited became a substantial shareholder on May 16, 2008, with a holding of 22,659,318 shares in JHI NV.

Vanguard Investments Australia Ltd became a substantial shareholder on April 3, 2008, with a holding of 22,097,739 shares in JHI NV.

Commonwealth Bank merged with Colonial First State Investments in June 2000, and their combined holdings as of March 22, 2001 exceeded 5% of JHIL's outstanding stock. Commonwealth Bank increased its percentage ownership of JHIL to approximately 13% in May 2001. Through subsequent periodic purchases, Commonwealth Bank gradually increased its interest in JHI NV to 17.03% in July 2003. Through subsequent transactions, Commonwealth Bank gradually decreased its interest in JHI NV. Based on information provided by Commonwealth Bank in its Form 13G filed with the SEC on October 4, 2007, it ceased to be a substantial holder when its holdings fell below 5%.

Perpetual Limited and its subsidiaries collectively became a substantial shareholder on December 13, 2006, with a 5.02% interest in JHI NV's outstanding shares. Their substantial holding status ceased on January 8, 2007 when their holding fell below 5%. On January 18, 2007, Perpetual Limited increased its holding in JHI NV to 5.04%. Through subsequent transactions, Perpetual Limited ceased to be a substantial holder when its holdings fell below 5% on March 19, 2008.

Each of the above shareholders has the same voting rights as all other holders of our common stock. To our knowledge, except for the major shareholders described above, we are not directly or indirectly owned or controlled by another corporation, by a foreign government or by any other natural or legal persons severally or jointly.

### **Other Security Ownership Information**

As of May 31, 2008, 0.44% of the outstanding shares of our common stock was held by 55 CUFS holders with registered addresses in the United States. In addition, as of May 31, 2008, 1.53% of our outstanding shares was represented by ADRs held by 73 holders, all of whom have registered addresses in the United States. A total of 1.97% of our outstanding capital stock was registered to 128 U.S. holders as of May 31, 2008.

### **Related Party Transactions**

#### ***Existing Loans to our Directors and Directors of our Subsidiaries***

At March 31, 2008, loans totaling \$29,267 were outstanding from certain executive directors or former directors of subsidiaries of JHI NV under the terms and conditions of the Plan. Loans under the Plan are interest free and repayable from dividend income earned by, or capital returns from, securities acquired under the Plan. The loans are collateralized by CUFS under the Plan. No new loans to Directors or executive officers of JHI NV, under the plan or otherwise, and no modifications to existing loans have been made since December 1997.

During fiscal year 2008, repayments totaling \$5,419 were received in respect of the Plan from Messrs. A. Kneeshaw and D. Salter. During fiscal year 2008, an executive director of a subsidiary resigned with loans outstanding of \$16,075. Under the terms of the Plan, this director has two years from the date of his resignation to repay such loan.

#### ***Payments Made to Directors and Director Related Entities of JHI NV during the Year***

Deputy Chairman Mr. McGauchie is a director of Telstra Corporation Limited from whom the Company purchases communications services. Supervisory Board director Mr. van der Meer is a Supervisory Board director of ING Bank Nederland N.V. and ING Verzekeringen (Insurance) Nederland N.V. Entities in the ING Group provide various financial services to the Company. All transactions were in accordance with normal commercial terms and conditions. It is not considered that these directors had significant influence over these transactions.

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### **Payments Made to Directors and Director Related Entities of Subsidiaries of JHI NV during the Year**

The Company has subsidiaries located in various countries, many of which require that at least one director be a local resident. All payments described below arise because of these requirements.

Payments totaling \$4,507 for the year ended March 31, 2008 were made to Grech, Vella, Tortell & Hyzler Advocates. Dr. Vella was a director of one of the Company's subsidiaries. The payments were in respect of legal services and were negotiated in accordance with usual commercial terms and conditions.

Payments totaling \$5,979 for the year ended March 31, 2008 were made to Bernaldo, Mirador and Directo Law Offices. R. Bernaldo is a director of a subsidiary of the Company. The payments were in respect of professional services and were negotiated in accordance with usual commercial terms and conditions.

### **Item 8. Financial Information**

See Item 4, Information on the Company — Legal Proceedings,” Item 4, “Information on the Company — Commitment to Provide Funding on a Long-Term Basis in Respect of Asbestos-Related Liabilities of Former Subsidiaries,” Item 18, “Financial Statements,” and pages F-1 through F-45. There has been no significant change to the financial statements included in this annual report since the date of such financial statements.

See Item 10, “Additional Information — Key Provisions of our Articles of Association — Dividends.”

### **Item 9. Listing Details**

#### **Price History**

The high and low trading prices of JHI NV CUFS on the ASX are as follows:

<b>Period</b>	<b>High</b>		<b>Low</b>	
	<b>(A\$)</b>	<b>(US\$)</b>	<b>(A\$)</b>	<b>(US\$)</b>
<b>Fiscal year ended:</b>				
March 31, 2008	9.65	8.39	5.34	4.64
March 31, 2007	10.24	7.84	6.31	4.83
March 31, 2006	9.81	7.38	5.49	4.13
March 31, 2005	7.23	5.35	4.95	3.66
March 31, 2004	8.04	5.58	5.84	4.05
<b>Fiscal quarter ended:</b>				
June 30, 2008	7.04	6.64	4.13	3.90
March 31, 2008	7.07	6.42	5.34	4.85
December 31, 2007	7.57	6.77	6.02	5.38
September 30, 2007	9.17	7.78	7.00	5.94
June 30, 2007	9.65	8.03	8.13	6.76
March 31, 2007	10.24	8.06	8.05	6.34
December 31, 2006	9.70	7.47	7.23	5.57
September 30, 2006	7.85	5.95	6.31	4.78
June 30, 2006	9.95	7.43	7.12	5.32
<b>Month ended:</b>				
June 30, 2008	5.57	5.30	4.13	3.93
May 31, 2008	6.09	5.78	5.36	5.09
April 30, 2008	7.04	6.55	5.86	5.45
March 31, 2008	6.40	5.93	5.51	5.11
February 28, 2008	7.07	6.47	5.66	5.18
January 31, 2008	6.58	5.81	5.34	4.72

The U.S. dollar prices set forth above were calculated using the weighted average exchange rate for the relevant period.

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The high and low trading prices of JHI NV ADRs on the NYSE are as follows:

<u>Period</u>	<u>High</u> <u>(US\$)</u>	<u>Low</u> <u>(US\$)</u>
Fiscal year ended:		
March 31, 2008	40.50	23.00
March 31, 2007	41.70	24.20
March 31, 2006	36.36	21.54
March 31, 2005	27.21	18.10
March 31, 2004	28.50	18.25
Fiscal quarter ended:		
June 30, 2008	31.55	20.15
March 31, 2008	30.57	23.00
December 31, 2007	34.34	25.18
September 30, 2007	39.60	27.80
June 30, 2007	40.50	33.30
March 31, 2007	41.70	32.70
December 31, 2006	37.88	26.98
September 30, 2006	28.85	24.20
June 30, 2006	36.80	25.90
Month ended:		
June 30, 2008	26.49	20.15
May 31, 2008	29.18	25.90
April 30, 2008	31.55	27.50
March 31, 2008	29.31	25.00
February 28, 2008	30.57	26.56
January 31, 2008	28.73	23.00

### Trading Markets

Our securities are listed and quoted on the following stock exchanges:

Common Stock (in the form of CUFS)	Australian Securities Exchange
ADRs	New York Stock Exchange

We cannot predict the prices at which our shares and ADRs will trade or the volume of trading for such securities, nor can we assure you that these securities will continue to meet the applicable listing requirements of these exchanges.

### Trading on the Australian Securities Exchange

The ASX is headquartered in Sydney, Australia, with branches located in each Australian state capital. Our CUFS trade on the ASX under the symbol "JHX." The ASX is a publicly listed company with trading being undertaken by brokers licensed under the Corporations Act. Trading principally takes place between the hours of 10:00 a.m. and 4:00 p.m. on each weekday (excluding Australian public holidays). Settlement of trades in uncertificated securities listed on the ASX is generally effected electronically on the third business day following the trade. This is undertaken through CHESS, which is the clearing and settlement system operated by the ASX.

### Trading on the New York Stock Exchange

In the United States, five JHI NV CUFS equal one JHI NV ADR. Our ADRs trade on the New York Stock Exchange under the symbol "JHX." Trading principally takes place between the hours of 9:30 a.m. and 4:00 p.m. on each weekday (excluding U.S. public holidays). All inquiries and correspondence regarding ADRs should be directed to The Bank of New York, depository for our ADRs, at The Bank of New York, ADR Department, 101 Barclay Street #22W, New York, New York 10286 or at its website located at [www.adrbny.com](http://www.adrbny.com) or contact: The Bank of New York, Investor Relations, P.O. Box 11258, Church Street Station, New York, NY 10286-1258, toll free telephone number for USA domestic callers: 1-888-BNY-ADRs, non-U.S. callers can call: 212-815-3700 or email: [shareowners@bankofny.com](mailto:shareowners@bankofny.com).

**Item 10. Additional Information**

**General**

We were originally incorporated in 1998 as a private company with limited liability, or “*besloten vennootschap met beperkte aansprakelijkheid*” (a “B.V.”). By notarial deed dated July 24, 2001, we changed our name to James Hardie Industries N.V. and by the same deed we changed our legal form into that of a “*naamloze vennootschap*” (an “N.V.”), a public limited liability company under Dutch law. Our Articles of Association were most recently amended on August 20, 2007.

Our corporate seat is in Amsterdam, The Netherlands and we have offices at The Atrium, 8<sup>h</sup> floor, Strawinskylaan 3077, 1077 ZX Amsterdam, The Netherlands. We are registered at the trade register of the Chamber of Commerce and Industry for Amsterdam, The Netherlands under number 34106455.

**Key Provisions of our Articles of Association**

***Purpose of the Company***

Our purposes, which are stated in Article 3 of our Articles of Association, are:

- to participate in, to take an interest in any other way in and to conduct the management of business enterprises of whatever nature;
- to raise funds through the issuance of debt or equity or in any other way and to finance third parties;
- to provide guarantees, including guarantees for the debts of third parties; and
- to perform all activities which are incidental to or which may be conducive to, or connected with, any of the foregoing.

***Provisions of our Articles of Association or Charter Related to Directors***

*Power to vote when director is materially interested.* Pursuant to the Company’s Articles of Association, and subject to limited exceptions, a member of the Managing Board who has a material personal interest in a matter that relates to the affairs of the Company must give all other members of the Managing Board notice of his or her interest. Furthermore, subject to limited exceptions, a member of the Managing Board who has a material personal interest in a matter that is being considered at a meeting of the Managing Board may neither be present while the matter is being considered at such meeting nor vote on the matter.

Subject to limited exceptions, a member of the Supervisory Board who has a material personal interest in a matter that relates to the affairs of the Company must give all other members of the Supervisory Board notice of his or her interest. Furthermore, subject to limited exceptions, a member of the Supervisory Board who has a material personal interest in a matter that is being considered at a meeting of the Supervisory Board may neither be present while the matter is being considered at such meeting nor vote on the matter.

If a member of the Managing Board has a conflict of interest with the Company (whether acting in his personal capacity by entering into an agreement with the Company, conducting any litigation against the Company or acting in any other capacity), he or she, will still have the power to represent the Company towards third parties when entering into transactions, unless a person is designated at the General Meeting of Shareholders for that purpose or the law provides the designation in a different manner.

*Power to vote compensation.* The maximum aggregate amount of remuneration of the members of the Supervisory Board is determined at the General Meeting of Shareholders.

The remuneration of the members of the Managing Board is determined by the Supervisory Board within the limits of the remuneration policy adopted at the General Meeting of Shareholders. The Supervisory Board will submit for approval by the General Meeting of Shareholders, a proposal regarding the arrangements for the remuneration of the members of the Managing Board in the form of shares or rights to acquire shares. This proposal includes at least



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how many shares or rights to acquire shares may be awarded to the Managing Board and which criteria apply to an award or a modification. Our Articles of Association do not include any provisions regarding the power of the members of the Managing Board, in the absence of an independent quorum, to vote compensation to themselves or any other members of the Managing Board.

*Borrowing Powers.* Our Articles of Association do not include any provisions regarding the borrowing powers of members of the Managing Board or the Supervisory Board. However, the provisions regarding conflicts of interest generally govern this issue.

*Age Limit Requirement for Retirement or Non-Retirement.* Our Articles of Association do not include any provisions regarding the mandatory retirement age of a member of the Managing Board or the Supervisory Board.

*Number of shares for director's qualification.* Our Articles of Association do not impose any obligation on the members of the Managing Board or the Supervisory Board to hold shares in the Company.

### ***Issuance of Shares; Preemptive Rights***

Pursuant to Dutch law and our Articles of Association, the authority to issue shares and to grant rights to subscribe for shares, such as options, and to limit or exclude preemptive rights is vested in our shareholders as a group, unless our shareholders have delegated this authority to another corporate body. Such delegation is valid for a maximum period of five years, but may be renewed at any time prior to its expiration.

At our August 22, 2005 AGM, our Supervisory Board has been delegated the authority to issue shares and to grant rights to subscribe for shares, such as options, and to limit or exclude preemptive rights until August 22, 2010. After August 22, 2010, shares and rights to subscribe for shares may be issued, and preemptive rights may be limited or excluded by our shareholders or by our Supervisory Board, provided it has again been delegated this authority by our shareholders (such delegation shall be for a maximum period of five years). We plan to ask our shareholders to delegate this authority to our Supervisory Board again prior to August 22, 2010. It is anticipated that our Supervisory Board will eliminate preemptive rights with respect to any and all issuances of shares of common stock during such period.

Shares of common stock must be issued for a subscription price at least equal to their nominal value and at least 25% of the nominal value must have been paid up at the time of issuance.

As a Dutch company that has listed securities in Australia and the United States, we are subject to applicable legislation regarding insider trading. Generally, Dutch law prohibits anyone, whether or not a director or employee of the issuer, from trading in or bringing about transactions in the securities of the issuer while in possession of inside, non-public information and from passing on inside information or recommending a transaction while in possession of inside information. Similar provisions apply under Australian law, where persons are prohibited from trading on the basis of information which is not generally available and which, if it were generally available, a reasonable person would expect to have a material effect on the price or value of securities. Similarly, in the United States, persons are prohibited from trading on the basis of material, non-public information. We have adopted an internal code on insider trading consistent with Dutch, Australian and U.S. laws and regulations.

### ***Repurchase of Shares***

Subject to the approval of our Joint Board, we may acquire shares in our own capital, subject to certain provisions of Dutch law and of our Articles of Association, if and insofar as (1) shareholders' equity, less the amount to be paid for the shares acquired, is not less than the sum of the paid and called up part of our issued share capital, plus any reserves required to be maintained by Dutch law or our Articles of Association, (2) the aggregate par value of the shares of our capital which we acquire, already hold or on which we hold a right of pledge, or which are held by one of our subsidiaries, amounts to no more than one-tenth of the aggregate par value of the issued share capital, and (3) our shareholders, as a group, have authorized our Managing Board to acquire such shares, which authorization shall be valid for no more than eighteen months. Neither we nor any of our subsidiaries may vote shares that are held by them or us.

At our August 17, 2007 Annual General Meeting, our Managing Board was authorized to cause JHI NV to acquire shares in JHI NV's capital for a period expiring on February 17, 2009. See "Item 16E. Purchases of Equity Securities by the Issuer and Affiliated Purchasers" for a description of shares we have repurchased pursuant to this

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program through March 31, 2008. After February 17, 2009, shares in JHI NV's capital may be acquired if our Managing Board has again been authorized to do so by our shareholders (such authorization may be for a maximum period of 18 months). We intend to ask our shareholders in our 2008 Annual General Meeting to renew the authorization of the Managing Board to cause JHI NV to acquire shares in JHI NV's capital, on terms substantially identical to the August 17, 2007 authorization.

### ***Reduction of Share Capital***

Upon the proposal of our Managing Board, our shareholders as a group have the power to effect a reduction of share capital by deciding to (i) cancel shares, or depositary receipts related to shares, acquired by us in our own share capital, or (ii) to reduce the nominal value of our shares, subject to applicable statutory provisions, with or without a partial repayment or release. The proposal of our Managing Board, as referred to in the preceding sentence, is subject to the approval of our Joint Board. In case of a partial repayment or release, these must be made *pro rata* to all shares. The *pro rata* requirements may be waived by agreement of all shareholders concerned.

### ***Shareholders Meetings and Voting Rights***

Each shareholder, person entitled to vote and CUFS holder (but not an ADR holder) has the right to attend general meetings of shareholders, either in person or by proxy, to address shareholder meetings and, in the case of shareholders and other persons entitled to vote (for instance, certain pledge holders), to exercise voting rights, subject to the provisions of our Articles of Association. As described in the paragraph below, although ADR holders cannot vote directly, they can direct the voting of their underlying shares through the ADR depository. Meetings of shareholders are held in The Netherlands at least annually, within six months after the close of each of our fiscal years. These meetings take place in either Amsterdam, The Hague, Rotterdam or Haarlemmermeer (Schiphol Airport). Additional meetings of shareholders may be held as often as our Managing Board or our Supervisory Board deems necessary or if called by (1) holders of shares of common stock jointly representing at least 5% of our issued share capital, or (2) at least 100 holders of shares of common stock or one shareholder representing at least 100 CUFS holders or any relevant combination thereof so that the request of at least 100 persons is taken into account. Our Articles of Association also provide that an information meeting of shareholders must be held in Australia prior to each general meeting.

We give notice of each meeting of shareholders by mail and by way of an announcement in a nationally distributed newspaper in The Netherlands. Such notice is given no later than the 28th day prior to the day of the meeting and includes or is accompanied by an agenda identifying the business to be considered at the meeting. We currently are exempt from the proxy rules under the Exchange Act. Holders of shares of common stock represented by CUFS are provided notice of general meetings of shareholders and other communications with shareholders by us, and the ADR depository, The Bank of New York, provides our ADR holders with such notices and communications. CHESSE Depository Nominees Pty Ltd, or CDN, or we on behalf of CDN, may deliver to CUFS holders instruction forms allowing the CUFS holders to instruct CDN how to vote at a meeting. Similarly, the ADR depository may deliver to ADR holders instruction forms allowing the ADR holders to direct the ADR depository on how to instruct CDN to vote at a meeting. In order for CUFS holders to attend general meetings of shareholders in person, such holders need not withdraw the shares of common stock represented by the CUFS, but must follow such rules and procedures as may be established by the CUFS Subregistrar and our share registry. CUFS holders may request CDN to appoint them as proxy for the purposes of voting the shares underlying their holding of CUFS on behalf of CDN. In order for ADR holders to attend general meetings of shareholders in person, such holders will have to convert their ADRs into CUFS and, in doing so, must follow the procedures set forth in the deposit agreement and such rules and procedures as may be established by the ADR depository.

Each share of common stock entitles the holder thereof to one vote on each matter to be voted upon by the shareholders. Holders of CUFS will be entitled to attend and to speak, but not vote, at our shareholders meetings. A CUFS holder may follow instructions set out in a relevant Notice of Meeting to have the registered shareholder, CDN, appoint the CUFS holder as a proxy of CDN to vote their CUFS holding at the relevant meeting of shareholders. Holders of ADRs are not entitled to attend or speak, nor vote, at our general meetings of shareholders, but, as described above, they can direct the voting of their underlying shares through the ADR depository.

Unless otherwise required by our Articles of Association or Dutch law, resolutions of the general meeting of shareholders will be validly adopted by an absolute majority of the votes cast at a meeting at which at least 5% of our issued share capital is present or represented. Except where expressly stated otherwise in this Form 20-F, all references here and elsewhere herein to actions by the shareholders, or shareholders as a group, are references to actions taken by way of such a resolution at a meeting of shareholders.

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Dutch law and our Articles of Association currently do not impose any limitations on the rights of persons who are not resident of The Netherlands to hold or vote shares of common stock, solely as a result of such non-resident status.

### ***Annual Report***

Our fiscal year runs from April 1 through March 31. Dutch law requires that within five months after the end of our fiscal year, unless the general meeting of shareholders has extended this period for a maximum of six months, our Managing Board must make available to our shareholders a report with respect to that fiscal year. This report must include the financial statements and a report of an independent accountant. The annual report must be submitted to the shareholders for adoption. The annual report, including the management report, is prepared in English and, in the case of the consolidated accounts of JHI NV and its wholly owned subsidiaries, according to U.S. GAAP, and in the case of JHI NV's accounts, according to Dutch GAAP.

### ***Indemnification***

Our Articles of Association provide for an indemnification of any person who is (or keep indemnified any person who was) a Board director or one of our employees, officers or agents, who suffers any loss as a result of any action in connection with their service to us, provided they acted in good faith in carrying out their duties and in a manner they reasonably believed to be in our interest. This indemnification will generally not be available if the person seeking indemnification acted with gross negligence or willful misconduct in performing their duties. A court in which an action is brought may, however, determine that indemnification is appropriate.

### ***Dividends***

All calculations to determine the amounts available for dividends or other distributions are based on our statutory accounts, which are, as a holding company, different from our consolidated accounts and which are prepared in accordance with Dutch GAAP because we are a Dutch company. Because we are a holding company and have limited operations of our own, we are largely dependent on dividends or other distributions from our subsidiaries to fund any cash dividends.

The profits of JHI NV in any financial year, if any, shall first be retained by way of a reserve in such amount as determined by our Supervisory Board. The remaining portion of the profits shall be at the disposal of our Managing Board for further allocation to our reserves or, if permitted by Dutch law and our Articles of Association, be made available for distribution as a dividend to the holders of shares of common stock, or a combination thereof. Our Managing Board, upon approval of our Joint Board, may also declare interim dividends as permitted by Dutch law and our Articles of Association.

We may not make any distribution, whether out of our profits as an interim dividend, out of our general share premium reserve or out of any other reserves that are available for shareholder distributions under Dutch law, if the distribution would reduce shareholders' equity to an amount less than the sum of the paid and called up part of our issued share capital, plus certain reserves that are required to be maintained by Dutch law and our Articles of Association. Distributions may, at the discretion of Managing Board, upon approval of our Joint Board, be made in cash or in shares or other securities, such as a stock dividend, provided that our shareholders as a group are authorized to make distributions in shares or other securities, if and so long as our Supervisory Board has not been delegated the authority to issue shares and rights to subscribe for shares. See "Issuance of Shares; Preemptive Rights."

Cash dividends and other distributions that have not been collected within five years and two days after the date on which they became due and payable will generally revert to us.

JHIL historically paid dividends to its shareholders. JHI NV's Managing Board, subject to the approval of the Joint Board, determines whether to declare a dividend and the amount of any such dividend. Our Managing Board also determines the record dates at which time registered holders of our shares, including the CHESSE Depository Nominee issuing CUFS to the ADR depository, will be entitled to dividends and sets the payment dates. Dividends are declared payable to our shareholders in U.S. dollars. The ADR Depository (Bank of New York) receives

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dividends in U.S. dollars directly from JHI NV on each CUFS dividend payment date and will distribute any dividend to holders of ADRs in U.S. dollars pursuant to the terms of the deposit agreement. Other CUFS holders registered at a dividend record date are paid their dividend on each CUFS dividend payment date in the equivalent amount of Australian dollars, as determined by the prevailing exchange rate shortly after the CUFS dividend record date.

### ***Amendment of Articles of Association***

Our Articles of Association may be amended by our shareholders by resolution approved by 75% of the votes cast at a general meeting of shareholders at which at least 5% of our issued share capital is present or represented.

### ***Liquidation Rights***

In the event of our dissolution and liquidation, and after we have paid all debts and liquidation expenses, all assets available for distribution shall be distributed to our holders of shares of common stock *pro rata* based on the nominal amount paid upon the shares of common stock held by such holders. As a holding company, our sole material assets are the capital stock of our subsidiaries. Therefore, in the event of a dissolution or liquidation, we will either distribute the capital stock of our subsidiaries or sell such stock and distribute the net proceeds thereof, or liquidate such subsidiaries and distribute the net proceeds thereof, after satisfying our liabilities.

### ***Limitations on Right to Hold Common Stock***

Subject to certain exceptions, our Articles of Association prohibit the holding of shares of our common stock if, because of an acquisition of a relevant interest (including in the form of shares of our common stock, CUFS or ADRs) in such shares: (1) the number of shares of our common stock in which any person, directly or indirectly, acquires or holds a relevant interest increases from 20% or below to over 20% or from a starting point that is above 20% and below 90% of the issued and outstanding share capital of JHI NV or (2) the voting rights which any person, directly or indirectly, is entitled to exercise at a general meeting of shareholders increase from 20% or below to over 20% or from a starting point that is above 20% and below 90% of the total number of such voting rights which may be exercised by any person at a general meeting of shareholders. The purpose of this prohibition is to ensure that the principles which underpin the Corporations Act takeover regime are complied with in a change of control, namely that: (1) the acquisition of control over the Company takes place in an efficient, competitive and informed market; (2) the holders of the shares of our common stock or CUFS and our Managing Board, Joint Board and Supervisory Board know the identity of any person who proposes to acquire a substantial interest in the Company, have a reasonable time to consider the proposal, and are given enough information to enable them to assess the merits of the proposal and (3) as far as practicable, the holders of the shares of our common stock or CUFS, among others, all have a reasonable and equal opportunity to participate in any benefits accruing to the holders through any proposal under which a person would acquire a substantial interest in the Company. The exceptions to this prohibition set forth in our Articles of Association generally include:

- acquisitions that result from acceptances under a takeover bid, which complies with the Articles of Association, including the principles set forth above;
- acquisitions which result in a person's voting power increasing by not more than 3% in a six-month period;
- acquisitions which are consistent with the principles set forth above, conform to the other takeover principles set out in the Articles of Association (adjusting those principles as appropriate to meet the particular circumstances of the acquisitions) and have received the prior approval of the Supervisory Board; and
- acquisitions approved at a general meeting of shareholders, subject to certain requirements being satisfied in relation to voting and the provision of information.

The prohibition does not apply to holdings by the CUFS depository, CDN, of our shares as custodian for the CUFS holders but will apply to CDN where another person acquires or holds a relevant interest in breach of the provisions. If a person acquires or holds a relevant interest in breach of the prohibition, JHI NV has several powers available to it under our Articles of Association. These include powers to require the disposal of our common stock, disregard the exercise of votes and suspend dividend rights. These powers will only extend to that number of shares of common stock which are acquired or held in breach of the prohibition.

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The Supervisory Board may cause JHI NV to exercise these powers if JHI NV has first obtained a judgment from a court of competent jurisdiction that a breach of the prohibition has occurred and is continuing. Alternatively, these powers may also be exercised without having recourse to the courts if certain procedures in relation to obtaining legal advice are followed. Our right to exercise these powers by complying with these procedures must be renewed by shareholder approval every five years or such powers will lapse. If renewed, confirmation of this renewal must be made by lodgment of a declaration by the Managing Board, on recommendation of the Joint Board, with the relevant authority in accordance with Dutch law.

Furthermore, if JHI NV becomes subject to the law of any jurisdiction, which applies so as to regulate the acquisition of control and the conduct of any takeover of the Company, JHI NV shall consult promptly with the ASX to determine whether, in the light of the application of such law:

- (i) ASX requires an amendment to the takeover provisions in our Articles of Association to comply with the ASX Listing Rules as then in force; or
- (ii) any waiver of the ASX Listing Rules permitting the inclusion of the takeovers provisions has ceased to have effect.

In either case, the Managing Board shall put to a general meeting of shareholders a proposal to amend our Articles of Association so as to make them, to the fullest extent permitted by law, consistent with the ASX Listing Rules.

Although these provisions of our Articles of Association may help to ensure that no person may acquire voting control of us without making an offer to all shareholders, these provisions may also have the effect of delaying or preventing a change in control of the Company.

### ***Disclosure of Holdings***

Pursuant to our Articles of Association, shareholders are required to notify us of acquisitions of 5% or more of our outstanding securities and of any further change in their holdings of 1% or more of our outstanding securities. In addition, pursuant to our Articles of Association, we have the power to require our shareholders and CUFS holders to provide to us information about the identity of persons who have relevant interests in our securities and the details of that interest. These provisions are intended to mirror the tracing of beneficial ownership provisions of the Corporations Act, which would not have applied statutorily to us as a Dutch company absent a specific provision in our Articles of Association.

Finally, shareholders are subject to beneficial ownership reporting disclosure requirements under U.S. securities laws, including the filing of beneficial ownership reports on Schedules 13D and 13G with the SEC. The SEC's rules require all persons who beneficially own more than 5% of a class of securities registered with the SEC to file either a Schedule 13D or 13G. This filing requirement applies to all holders of our shares of common stock, ADRs or CUFS because our securities have been registered with the SEC. The number of shares of common stock underlying ADRs and CUFS is used to determine whether a person beneficially owns more than 5% of the class of securities. This beneficial ownership-reporting requirement applies whether or not the holders are U.S. residents. The decision of whether to file a Schedule 13D or a Schedule 13G will depend primarily on the nature of the beneficial owner and the circumstances surrounding the person's beneficial ownership. A copy of the rules and regulations relating to the reporting of beneficial ownership with the SEC, as well as Schedules 13D and 13G, are available on the SEC's website at [www.sec.gov](http://www.sec.gov).

### **Material Contracts**

In addition to the other contracts that are described in this Annual Report on Form 20-F, including without limitation the Amended FFA and certain other related agreements described in Item 4, "Information on the Company — Commitment to Provide Funding on a Long-Term Basis in Respect of Asbestos-Related Liabilities of Former Subsidiaries," and any material contracts that have been entered into in the ordinary course of business, the following are the contracts we consider to be material to us. All contracts described below have been filed as an exhibit to this Annual Report on Form 20-F and are hereby incorporated by reference and the summary below is qualified in its entirety by such reference.

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*U.S. Dollar Cash Advance Facilities.* Our credit facilities currently consist of 364-day facilities in the amount of \$110.0 million, which as of March 31, 2008 all had a maturity date of December 2008. We have requested extensions of the maturity date of such credit facilities to June 2009 and to date have received agreement to these extensions in the amount of \$55.0 million. We also have term facilities in the amount of \$245.0 million, \$45.0 million and \$90.0 million, which mature in June 2010, February 2011 and February 2013, respectively. For all facilities, interest is calculated two business days prior to the commencement of each draw-down period based on LIBOR, plus the margins of individual lenders, and is payable at the end of each draw-down period. During the year ended March 31, 2008, we paid \$0.4 million in commitment fees. At March 31, 2008, there was \$264.5 million drawn under the combined facilities and \$225.5 million was available.

Under the most restrictive of these covenants, the Company (i) is required to maintain certain ratios of indebtedness to equity which do not exceed certain maximums, excluding assets, liabilities and other balance sheet items of the AICF, Amaba, Amaca, ABN 60 and Marlew Mining Pty Limited, (ii) must maintain a minimum level of net worth, excluding assets, liabilities and other balance sheet items of the AICF, (iii) must meet or exceed a minimum ratio of earnings before interest and taxes to net interest charges, excluding all income, expense and other profit and loss statement impacts of the AICF, Amaba, Amaca, ABN 60 and Marlew Mining Pty Limited and (iv) has limits on how much it can spend on an annual basis in relation to asbestos payments to the AICF. Such limits are consistent with the contractual liabilities of the Performing Subsidiary and the Company under Amendment FFA.

*Gypsum Indemnity.* We sold our gypsum wallboard manufacturing facilities in April 2002. Under the terms of the sale agreement with the buyer, BPB U.S. Holdings, Inc., we agreed to customary indemnification obligations which generally have expired. However, pursuant to the sale agreement, we agreed to indemnify the buyer for any future liabilities arising from asbestos-related injuries to persons or property arising from our former gypsum business. Although we are not aware of any asbestos-related claims arising from the gypsum business nor circumstances that would give rise to such claims, our obligation under the sale agreement to indemnify the buyer for liabilities arising from asbestos-related injuries arises only if such claims exceed \$5 million in the aggregate, is limited to \$250 million in the aggregate and will continue for 30 years after the closing date of our gypsum business.

Pursuant to the terms of our agreement to sell our gypsum business, we also retained responsibility for any losses incurred by the buyer resulting from environmental conditions at the Duwamish River in the State of Washington so long as notice of a claim is given within 10 years of closing. Our indemnification obligations in this regard are subject to a \$34.5 million limitation. The Seattle gypsum facility had previously been included on the "Confirmed and Suspected Contaminate Sites Report" released in 1987 due to the presence of metals in the groundwater. Because we believe the metals found emanated from an offsite source, we do not believe we are liable for, and have not been requested to conduct, any investigation or remediation relating to the metals in the groundwater. See Item 3, "Key Information — Risk Factors."

*ABN 60 Indemnities.* In connection with the separation of Amaca, Amaba and ABN 60 from the James Hardie Group, JHI NV agreed to indemnify ABN 60 Foundation for any non asbestos-related legal claims made against ABN 60. There is no maximum amount of the indemnity and the term of the indemnity is in perpetuity. We believe that the likelihood of any material non-asbestos-related claims occurring against ABN 60 is remote. As such, we have not recorded a liability for the indemnity. We have not pledged any assets as collateral for such indemnity.

### **Exchange Controls**

There are no legislative or other legal provisions currently in force in The Netherlands or arising under our Articles of Association restricting the import or export of capital, including the availability of cash and cash equivalents for use by JHI NV and its wholly owned subsidiaries, or remittances to our security holders not resident in The Netherlands. Cash dividends payable in U.S. dollars on our common stock may be officially transferred from The Netherlands and converted into any other convertible currency.

There are no limitations, either by Dutch law or in our Articles of Association, on the right of non-residents of The Netherlands to hold or vote our common stock.

### **Taxation**

The following summarizes the material Dutch and U.S. tax consequences of an investment in shares of our common stock. This summary does not address every aspect of taxation relevant to a particular investor subject to special treatment under any applicable law and is not intended to apply in all respects to all categories of investors. In

addition, except for the matters discussed under “Netherlands Taxation,” this summary does not consider the effect of other foreign tax laws or any state, local or other tax laws that may apply to an investment in shares of our common stock. This summary assumes that we will conduct our business in the manner described in this annual report. Changes in our organizational structure or the manner in which we conduct our business may invalidate all or parts of this summary. The laws on which this summary is based could change, perhaps with retroactive effect, and any law changes could invalidate all or parts of this summary. We will not update this summary for any law changes after the date of this annual report.

This discussion does not bind either the U.S. or Dutch tax authorities or the courts of those jurisdictions. We have not sought a ruling nor will we seek a ruling of the U.S. or Dutch tax authorities about matters in this summary (although, as noted in the risk factor in Item 3, “Key Information — Risk Factors” discussing the application of the U.S.-Netherlands income tax treaty, we have sought a determination from the IRS on a matter of internal company taxation). We cannot assure you that those tax authorities will concur with the views in this summary concerning the tax consequences of the purchase, ownership or disposition of our common stock or that any reviewing judicial body in the United States or The Netherlands would likewise concur.

**PROSPECTIVE INVESTORS SHOULD CONSULT THEIR TAX ADVISERS REGARDING THE PARTICULAR TAX CONSEQUENCES OF THEIR ACQUIRING, OWNING AND DISPOSING OF SHARES OF OUR COMMON STOCK, INCLUDING THE EFFECT OF ANY FOREIGN, STATE OR LOCAL TAXES.**

United States Taxation

The following is a summary of the material U.S. federal income tax consequences generally applicable to “U.S. Shareholders” (as defined below) who invest in shares of our common stock and hold the shares as capital assets. For purposes of this summary, a “U.S. Shareholder” means a beneficial owner of our common stock that is: (1) a citizen or individual resident of the United States (as defined for U.S. federal income tax purposes); (2) a corporation created or organized in or under the law of the United States or any of its political subdivisions; (3) an estate whose income is subject to U.S. federal income taxation regardless of its source or (4) a trust if (i) a court in the United States can exercise primary supervision over the administration of the trust, and one or more United States persons can control all of the substantial decisions of the trust, or (ii) the trust was in existence on August 20, 1996 and properly elected to continue to be treated as a United States person. If a partnership (including for this purpose any entity treated as a partnership for U.S. federal tax purposes) is a beneficial owner of a share of our common stock, the U.S. federal tax treatment of a partner in the partnership generally will depend on the status of the partner and the activities of the partnership. A holder of our common stock that is a partnership and partners in that partnership should consult their own tax advisers regarding the U.S. federal income tax consequences of holding and disposing of those shares.

This summary does not comprehensively describe all possible tax issues that could influence a current or prospective U.S. Shareholder’s decision to buy or sell shares of our common stock. In particular, this summary does not discuss: (1) the tax treatment of special classes of U.S. Shareholders, like financial institutions, life insurance companies, tax exempt organizations, tax-qualified employer plans and other tax-qualified or qualified accounts, investors liable for the alternative minimum tax, dealers in securities, shareholders who hold shares of our common stock as part of a hedge, straddle or other risk reduction arrangement, or shareholders whose functional currency is not the U.S. dollar; (2) the tax treatment of U.S. Shareholders who own (directly or indirectly by attribution through certain related parties) 10% or more of our voting stock; and (3) the application of other U.S. federal taxes, like the U.S. federal estate tax. The summary is based on the Code, applicable Treasury regulations, judicial decisions and administrative rulings and practice, all as of the date of this annual report.

*Treatment of ADRs.* For U.S. federal income tax purposes, a holder of an ADR is considered the owner of the shares of stock represented by the ADR. Accordingly, except as otherwise noted, references in this summary to ownership of shares of our common stock includes ownership of the shares of our common stock underlying the corresponding ADRs.

*Taxation of Distributions.* Subject to the passive foreign investment company rules discussed below, the tax treatment of a distribution on shares of our common stock held by a U.S. Shareholder depends on whether the distribution is from our current or accumulated earnings and profits (as determined under U.S. federal income tax principles). To the extent a distribution is from our current or accumulated earnings and profits, a U.S. Shareholder

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will include the amount of the distribution in gross income as a dividend. To the extent a distribution exceeds our current and accumulated earnings and profits, a U.S. Shareholder will treat the excess first as a non-taxable return of capital to the extent of the U.S. Shareholder's tax basis in those shares and thereafter as capital gain. See the discussion of "Capital Gain Rates" below. Notwithstanding the foregoing described treatment, we do not intend to maintain calculations of our current and accumulated earnings and profits. Dividends received on shares of our common stock will not qualify for the inter-corporate dividends received deduction.

Distributions to U.S. Shareholders that are treated as dividends may be subject to a reduced rate of tax under recently enacted U.S. tax laws. For taxable years beginning after December 31, 2002 and before January 1, 2011, "qualified dividend income" is subject to a maximum tax rate of 15%. "Qualified dividend income" includes dividends received from a "qualified foreign corporation." A "qualified foreign corporation" includes (1) a foreign corporation that is eligible for the benefits of a comprehensive income tax treaty with the United States that contains an exchange of information program and (2) a foreign corporation that pays dividends with respect to shares of its stock that are readily tradable on an established securities market in the United States. We believe that we are, and will continue to be, a "qualified foreign corporation" and that dividends we pay with respect to our shares will qualify as "qualified dividend income." To be eligible for the 15% tax rate, a U.S. Shareholder must hold our shares un-hedged for a minimum holding period (generally, 61 days during the 121-day period beginning on the date that is 60 days before the ex-dividend date of the distribution). Although we believe we presently are, and will continue to be, a "qualified foreign corporation," we cannot guarantee that we will so qualify. For example, we will not constitute a "qualified foreign corporation" if we are classified as a "passive foreign investment company" (discussed below) in either the taxable year of the distribution or the preceding taxable year.

Distributions to U.S. Shareholders that are treated as dividends are generally considered income from sources outside the United States and, for purposes of computing the limitations on foreign tax credits that apply separately to specific categories of income, foreign source "passive category" income or, in the case of certain holders, "general category" income. However, if United States persons own, directly or indirectly, 50% or more of our shares of common stock, then a portion of the dividends (based on the portion of our earnings and profits that is from U.S. sources) may be treated as sourced within the United States. This 50% ownership rule could potentially limit a U.S. Shareholder's ability to use foreign tax credits against the shareholder's U.S. tax liability. In addition, special rules will apply to determine a U.S. Shareholder's foreign tax credit limitation if a dividend distributed with respect to our shares constitutes "qualified dividend income" (as described above). See the discussion of "Credit of Foreign Taxes Withheld" below.

The amount of any distribution we make on shares of our common stock in foreign currency generally will equal the fair market value in U.S. dollars of that foreign currency on the date a U.S. Shareholder receives it. A U.S. Shareholder will have a tax basis in the foreign currency equal to its U.S. dollar value on the date of receipt and will recognize ordinary U.S. source gain or loss when it sells or exchanges the foreign currency. U.S. Shareholders who are individuals will not recognize gain upon selling or exchanging foreign currency if the gain does not exceed \$200 in a taxable year and the sale or exchange constitutes a "personal transaction" under the Code. The amount of any distribution we make with respect to shares of our common stock in property other than money will equal the fair market value of that property on the date of distribution.

*Credit of Foreign Taxes Withheld.* Under certain conditions, including a requirement to hold shares of our common stock un-hedged for a certain period, and subject to limitations, a U.S. Shareholder may claim a credit against the U.S. Shareholder's federal income tax liability for the foreign tax owed and withheld or paid with respect to distributions on our shares. Alternatively, a U.S. Shareholder may deduct the amount of withheld foreign taxes, but only for a year for which the U.S. Shareholder elects to deduct all foreign income taxes. Complex rules determine how and when the foreign tax credit applies, and U.S. Shareholders should consult their tax advisers to determine whether and to what extent they may claim foreign tax credits.

Under certain conditions, we may retain a portion of Netherlands taxes we withhold from dividends paid to our shareholders, rather than pay that portion of the withheld taxes to The Netherlands Tax Administration. Uncertainty exists whether a U.S. Shareholder can properly claim as a foreign tax credit any Netherlands withholding taxes we retain. As a result, U.S. Shareholders should consult their tax advisers regarding their ability to do so. If unable to claim a foreign tax credit for those taxes, a U.S. Shareholder still may deduct them for U.S. federal income tax purposes, but only in a year in which the U.S. Shareholder elects to deduct all foreign income taxes. The conditions under which we could retain Netherlands withholding taxes are unlikely to occur, but upon request, we will inform U.S. Shareholders whether we retained any Dutch tax withheld from distributions on shares of our common stock.



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*Sale or Other Disposition of Shares.* Subject to the passive foreign investment company rules discussed below, a U.S. Shareholder will recognize capital gain or loss on the sale or other taxable disposition of shares of our common stock, equal to the difference between the U.S. Shareholder's adjusted tax basis in the shares sold or disposed of and the amount realized on the sale or disposition. Individual U.S. Shareholders may benefit from lower marginal tax rates on capital gains recognized on shares sold, depending on the U.S. Shareholder's holding period for the shares. See the discussion of "Capital Gain Rates" below. Capital losses that do not offset capital gains are subject to limitations on deductibility. The gain or loss from the sale or other disposition of shares of our common stock generally will be treated as income from sources within the United States for foreign tax credit purposes, unless the U.S. Shareholder is a U.S. citizen residing outside the United States and certain other conditions are met.

*Capital Gain Rates.* For individual U.S. Shareholders, the tax rates applicable to capital gain and ordinary income may vary substantially. For calendar year 2007, the highest marginal income tax rate that could apply to the ordinary income of an individual U.S. Shareholder (disregarding the effect of limitations on deductions) was 35%. In contrast, a maximum rate of 15% applied to any net capital gain of an individual U.S. Shareholder if that gain was attributable to the sale or exchange of capital assets held more than one year. Gain attributable to the sale or exchange of capital assets held one year or less is short-term capital gain, taxable at the same rates as ordinary income. In addition, a maximum rate of 15% applies to "qualified dividend income" (as described above).

*Passive Foreign Investment Company Status.* Special U.S. federal income tax rules apply to U.S. Shareholders owning capital stock of a PFIC. A foreign corporation will be a PFIC for any taxable year in which 75% or more of its gross income is passive income or in which 50% or more of the average value of its assets is "passive assets" (generally assets that generate passive income or assets held for the production of passive income). For these purposes, passive income excludes certain interest, dividends or royalties from related parties.

If we were a PFIC, each U.S. Shareholder would likely face increased tax liabilities upon the sale or other disposition of shares of our common stock or upon receipt of "excess distributions," unless the U.S. Shareholder elects (1) to be taxed currently on its pro rata portion of our income, regardless of whether the income was distributed in the form of dividends or otherwise (provided we furnish certain information to our shareholders), or (2) to mark its shares to market by accounting for any difference between the shares' fair market value and adjusted basis at the end of the taxable year by either an inclusion in income or a deduction from income (provided our ADRs, CUFS or common shares satisfy a test for being regularly traded on a qualified exchange or other market). Because of the manner in which we operate our business, we are not, nor do we expect to become, a PFIC.

*Controlled Foreign Corporation Status.* If more than 50% of either the voting power of all classes of our voting stock or the total value of our stock is owned, directly or indirectly, by citizens or residents of the United States, United States domestic partnerships and corporations or estates or trusts other than foreign estates or trusts, each of which owns 10% or more of the total combined voting power of all classes of our stock entitled to vote, which we refer to as 10-Percent Shareholders, we could be treated as a CFC, under the Code. This classification would, among other consequences, require 10-Percent Shareholders to include in their gross income their pro rata shares of our "Subpart F income" (as specifically defined by the Code) and our earnings invested in U.S. property (as specifically defined by the Code).

In addition, gain from the sale or exchange of our common shares by a United States person who is or was a 10-Percent Shareholder at any time during the five-year period ending with the sale or exchange is treated as dividend income to the extent of the earnings and profits of the Company attributable to the stock sold or exchanged. Under certain circumstances, a corporate shareholder that directly owns 10% or more of our voting shares may be entitled to an indirect foreign tax credit for income taxes we paid in connection with amounts so characterized as dividends under the Code.

If we were classified as both a PFIC and a CFC, generally we would not be treated as a PFIC with respect to 10-Percent Shareholders. We believe that we are not and will not become a CFC.

*U.S. Federal Income Tax Provisions Applicable to Non-United States Holders.* A Non-U.S. Holder means a beneficial owner of our common stock that is (1) a nonresident alien as to the United States for U.S. federal income tax purposes; (2) a corporation created or organized in or under the law of a country, or any of its political subdivisions, other than the United States; or (3) an estate or trust that is not a U.S. Shareholder. A Non-U.S. Shareholder generally will not be subject to U.S. federal income taxes, including U.S. withholding taxes, on any dividends paid on our shares or on any gain realized on a sale, exchange or other disposition of the shares unless the dividends or gain is effectively connected with the conduct by the Non-U.S. Shareholder of trade or business in the

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United States (and is attributable to a permanent establishment or fixed base the Non-U.S. Shareholder maintains in the United States if an applicable income tax treaty so requires as a condition for the Non-U.S. Shareholder to be subject to U.S. taxation on a net income basis on income related to the common stock). A corporate Non-U.S. Shareholder under certain circumstances may also be subject to an additional “branch profits tax” on that type of income, the rate of which may be reduced pursuant to an applicable income tax treaty. In addition, gain recognized on a sale, exchange or other disposition of our shares by a Non-U.S. Shareholder who is an individual generally will be subject to U.S. federal income taxes if the Non-U.S. Shareholder is present in the United States for 183 days or more in the taxable year in which the sale, exchange or other disposition occurs and certain other conditions are met.

*U.S. Information Reporting and Backup Withholding.* Dividend payments on shares of our common stock and proceeds from the sale, exchange or redemption of shares of our common stock may be subject to information reporting to the Internal Revenue Service and possible U.S. backup withholding at a current rate of 28%. Backup withholding will not apply to a shareholder who furnishes a correct taxpayer identification number or certificate of foreign status and makes any other required certification or who is otherwise exempt from backup withholding. United States persons who are required to establish their exempt status generally must provide that certification on a properly completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification). Non-U.S. Shareholders generally will not be subject to U.S. information reporting or backup withholding. However, Non-U.S. Shareholders may be required to provide certification of non-U.S. status in connection with payments received in the United States or through certain U.S. related financial intermediaries.

Backup withholding is not an additional tax. Amounts withheld as backup withholding may be credited against a shareholder’s U.S. federal income tax liability, and a shareholder may obtain a refund of any excess amounts withheld under the backup withholding rules by filing the appropriate claim for refund with the Internal Revenue Service and furnishing any required information.

### Netherlands Taxation

The following is a summary of the material Dutch tax consequences generally applicable to an investment in shares of our common stock by a beneficial owner who is neither a citizen, resident nor deemed resident of The Netherlands. This summary does not comprehensively describe all possible tax issues that could influence a prospective shareholder’s decision to acquire shares of our common stock. For example, this summary omits from discussion Netherlands’ gift, estate and inheritance taxes. The summary is based on the Dutch tax legislation, published case law and other applicable regulations as at the date of this annual report, any of which may change possibly with retroactive effect.

*Treatment of ADRs.* In general, for Netherlands tax purposes, an owner of depositary receipts is considered the owner of the shares of stock represented by depositary receipts. Accordingly, except as otherwise noted, references in this section of the annual report to ownership of shares of our common stock includes ownership of the shares underlying the corresponding ADRs.

*Dutch Dividend Withholding Tax.* As from January 1, 2007, The Netherlands has unilaterally reduced its dividend withholding tax rate to 15% irrespective of whether the recipient is entitled to the benefits of a tax treaty concluded with The Netherlands. The term “dividends” for this purpose includes, but is not limited to:

- (1) direct or indirect distributions in cash or in kind, deemed or constructive distributions, and repayments of additional paid-in capital not recognized as such for Netherlands dividend withholding tax purposes;
- (2) liquidation proceeds, proceeds of redemption of shares of common stock or, generally, except if a certain specific exemption applies, consideration paid by us for the repurchase of shares of common stock in excess of the average paid-in capital recognized for Netherlands dividend withholding tax purposes;
- (3) the par value of shares of common stock issued to a holder of shares of common stock or an increase of the par value of shares of common stock, as the case may be, to the extent that no contribution to capital, recognized for Netherlands dividend withholding tax purposes, was made or will be made; and

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- (4) the partial repayment of paid-in capital, recognized for Netherlands dividend withholding tax purposes, if and to the extent that there are net profits, *overtuivere winst*, for dividend withholding tax purposes, unless the general meeting of our shareholders has previously resolved to make such repayment and provided that the par value of the shares of common stock concerned has been reduced by a corresponding amount by changing our Articles of Association. As a result of contributions in kind (i.e., in shares) to our paid-in capital made prior to the listing of our common shares, a portion of such paid-in capital may not be recognized for Dutch dividend withholding tax purposes.

If a double taxation convention is in effect between The Netherlands and the country of residence of a non-resident shareholder and depending on the terms of that double taxation convention, such non-resident shareholder may be eligible for a full or partial exemption resulting in a lower withholding tax rate than 15%.

For example, under the U.S.-NL Treaty, certain U.S. corporate shareholders owning directly at least 10% of our voting power, are eligible for a reduction to 5% with respect to dividends that we pay, unless the shares of common stock held by such residents form part of the business property of a business carried on through a permanent establishment in The Netherlands. The same exception applies if the beneficial owner of the shares, being a citizen or resident of the United States, performs independent personal services from a fixed base situated in The Netherlands and the holding of the shares of common stock in respect of which the dividends are paid pertains to such fixed base in The Netherlands. The U.S.-NL Treaty also exempts from tax dividends we pay to exempt pension organizations and exempt organizations, as defined under the treaty. A shareholder of our common stock, other than an individual, will be ineligible for the benefits of the U.S.-NL Treaty unless the shareholder satisfies certain tests under the limitation on benefits provisions of Article 26 of the U.S.-NL Treaty. To prevent so-called dividend stripping, Netherlands law generally denies the treaty benefit of a reduced dividend withholding tax rate for any dividend paid to a recipient who is not the “beneficial owner” of the dividend.

A qualified exempt pension organization may obtain a full exemption from the dividend withholding tax if, before the payment of the dividend, the organization gives us in duplicate a signed Form IB 96 USA, along with the requisite banker’s affidavit as described above, and includes IRS Form 6166 for the relevant year or a valid qualification certification issued by the competent Dutch tax office and complies with certain other requirements. Other qualifying exempt organizations are ineligible for relief from withholding at source but may claim a refund of the tax withheld by filing a Form IB 95 USA and complying with certain other formalities.

Holders of shares of our common stock through a depository will initially receive dividends subject to a withholding tax rate of 15%. Upon timely receipt of required documents concerning a holder’s eligibility for the reduced rate under the U.S.-NL Treaty, dependent on the status of the holder, the dividend-disbursing agent (via any nominee) will pay an amount equal to 10% of the dividend to the holder.

*Taxes on Income and Capital Gains.* A shareholder of shares of our common stock will not be subject to any Netherlands taxes on income or capital gains in respect of dividends distributed by the Company or in respect of capital gains realized on the disposition of shares of our common stock (other than the dividend withholding tax described above), provided that:

- (1) such shareholder is neither resident nor deemed to be resident in The Netherlands, nor has elected to be subject to the rules of the Dutch Income Tax Act 2001 that apply to residents of The Netherlands;
- (2) such shareholder does not have a business or an interest in a business that is, in whole or in part, carried on through a permanent establishment or a permanent representative in The Netherlands and to which business or part of a business, as the case may be, the shares of common stock are attributable;
- (3) such shareholder does not perform independent personal services in The Netherlands giving rise to a fixed base in The Netherlands to which the shares of common stock are attributable; and
- (4) the shares of common stock owned by such shareholder do not form part of a substantial interest or a deemed substantial interest, as defined below, in the share capital of the Company or, if such shares of common stock do form part of such an interest, they form part of the assets of a business other than a Netherlands business.

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Generally, a shareholder of our common stock will have a substantial interest in our shares only if the shareholder, the spouse of the shareholder, certain other relatives (including foster children), or certain persons in the household of the shareholder, alone or together, whether directly or indirectly, own or possess certain rights (e.g., the right of usufruct) in, shares of our stock representing 5% or more of the total issued and outstanding capital (or the issued and outstanding capital of any class of shares), or rights to acquire the shares, whether or not already issued, that represent at any time 5% or more of the total issued and outstanding capital (or the issued and outstanding capital of any class of shares) or the ownership of certain profit participating certificates that relate to 5% or more of the annual profit and/or to 5% or more of the liquidation proceeds. Shareholders of our common stock who do not hold a substantial interest themselves will also be subject to the “substantial interest” regime if their spouse and/or certain other relatives hold a substantial interest. A deemed substantial interest is present if a substantial interest or part of a substantial interest has been disposed of, or is deemed to have been disposed of, without recognition of a gain.

If a shareholder has a substantial interest in the shares of our common stock and is resident of a country with which The Netherlands has concluded a convention to avoid double taxation, such shareholder may, depending on the terms of such double taxation convention, be eligible for an exemption from Netherlands income tax on capital gains realized upon the disposition or deemed disposition of shares of our common stock, or to a full or partial exemption from Netherlands income tax on dividends we pay.

Under the U.S.-NL Treaty, capital gains realized by a shareholder that has a substantial interest in the shares of our common stock and is a resident of the United States (as defined in the U.S.-NL Treaty) upon the disposition of shares of our common stock, are, with certain exceptions, generally exempt from Netherlands tax.

As indicated above, a shareholder of shares of our common stock, other than an individual, will be ineligible for the benefits of the U.S.-NL Treaty if such shareholder does not satisfy the limitation on benefits provisions under Article 26 of the U.S.-NL Treaty.

*Other Taxes and Duties.* No other Netherlands registration tax, transfer tax, stamp duty or any similar documentary tax or duty will be payable by our investors in respect of or in connection with the subscription, issue, placement, allotment or transfer of shares of our common stock.

### **Documents Available for Review**

We are subject to the reporting requirements of the Exchange Act applicable to “foreign private issuers” and in accordance therewith file reports, including annual reports, and other information with the SEC. Such reports and other information have been filed electronically with the SEC since November 4, 2002. The SEC maintains a site on the Internet, at [www.sec.gov](http://www.sec.gov), which contains reports and other information regarding issuers that file electronically with the SEC. In addition, such reports may be obtained, upon written request, from our Company Secretary at Atrium, 8<sup>th</sup> floor, Strawinskylaan 3077, 1077 ZX Amsterdam, The Netherlands or our Company Secretary — Australia at Level 3, 22 Pitt Street, Sydney, NSW 2000. Such reports and other information filed with the SEC prior to November 2002 may be inspected and copied at prescribed rates at the public reference facilities maintained by the SEC at 100 F Street N.E., Washington, D.C. 20549, or obtained by written request to our Company Secretary. Although, as a foreign private issuer, we are exempt from the rules under the Exchange Act prescribing the furnishing and content of proxy statements and annual reports to shareholders and the quarterly reporting requirements of the Exchange Act, we:

- furnish our shareholders with annual reports containing consolidated financial statements examined by an independent registered public accounting firm; and
- furnish quarterly reports for the first three quarters of each fiscal year containing unaudited consolidated financial information in filings with the SEC under Form 6-K.

### **Item 11. *Quantitative and Qualitative Disclosures About Market Risk***

Cash and cash equivalents include amounts on deposit in banks and cash invested temporarily in various highly liquid financial instruments with original maturities of three month or less when acquired.

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We have operations in foreign countries and, as a result, are exposed to foreign currency exchange rate risk inherent in purchases, sales, assets and liabilities denominated in currencies other than the U.S. dollar. We also are exposed to interest rate risk associated with our long-term debt and to changes in prices of commodities we use in production.

Periodically, interest rate swaps, commodity swaps and forward exchange contracts are used to manage market risks and reduce exposure resulting from fluctuations in interest rates, commodity prices and foreign currency exchange rates. Our policy is to enter into derivative instruments solely to mitigate risks in our business and not for trading or speculative purposes.

### **Foreign Currency Exchange Rate Risk**

We have significant operations outside of the United States and, as a result, are exposed to changes in exchange rates which affect our financial position, results of operations and cash flow. In addition, payments to the AICF are required to be made in Australian dollars which, because the majority of our revenues is produced in U.S. dollars, exposes us to risks associated with fluctuations in the U.S. dollar/Australian dollar exchange rate. See Item 3, "Key Information — Risk Factors."

For our fiscal year ended March 31, 2008, the following currencies comprised the following percentages of our net sales, cost of goods sold, expenses and liabilities:

	<u>US\$</u>	<u>A\$</u>	<u>NZ\$</u>	<u>Other (1)</u>
Net sales	78.5%	13.5%	4.6%	3.4%
Cost of goods sold	78.7%	14.0%	3.9%	3.4%
Expenses (2)	43.1%	53.0%	1.5%	2.4%
Liabilities (excluding borrowings) (2)	21.2%	77.1%	—	1.7%

For our fiscal year ended March 31, 2007, the following currencies comprised the following percentages of our net sales, cost of goods sold, expenses and liabilities:

	<u>US\$</u>	<u>A\$</u>	<u>NZ\$</u>	<u>Other (1)</u>
Net sales	82.9%	11.0%	3.5%	2.6%
Cost of goods sold	83.0%	11.4%	3.2%	2.4%
Expenses (2)	25.7%	71.4%	0.7%	2.2%
Liabilities (excluding borrowings) (2)	11.9%	86.3%	1.1%	0.7%

(1) Comprises Philippine Pesos and Euros.

(2) Liabilities include A\$ denominated asbestos liability, which was initially recorded in the fourth quarter of fiscal year 2006. Expenses include adjustments to the liability. See Item 3, "Key Information — Risk Factors," Item 4, "Information on the Company — Commitment to Provide Funding on a Long-Term Basis in Respect of Asbestos-Related Liabilities of Former Subsidiaries," and Note 12 of our consolidated financial statements in Item 18 for further information regarding the asbestos liability.

We purchase raw materials and fixed assets and sell some finished product for amounts denominated in currencies other than the functional currency of the business in which the related transaction is generated. In order to protect against foreign exchange rate movements, we may enter into forward exchange contracts timed to mature when settlement of the underlying transaction is due to occur. As of March 31, 2008, there were no such material contracts outstanding.

### **Funding Under the Amended FFA**

The A\$ to \$ assets and liabilities rate moved unfavorably for us from 1.2395 at March 31, 2007 to 1.0903 at March 31, 2008, a 12.0% movement, resulting in a \$87.2 million unfavorable impact on our fiscal year 2008 net income. Assuming that our unfunded net Amended FFA liability in Australian dollars remains unchanged at A\$904.7 million and that we do not hedge this foreign exchange exposure, a 10% favorable or unfavorable movement in the A\$ to \$ exchange rate (at the March 31, 2008 exchange rate of 1.0903) would have approximately a \$75.4 million and \$92.1 million favorable and unfavorable impact, respectively, on our net income.

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### **Interest Rate Risk**

We have market risk from changes in interest rates, primarily related to our borrowings. As of March 31, 2008 and 2007, all of our borrowings were variable rate. From time to time, we may enter into interest rate swap contracts in an effort to mitigate interest rate risk. As of March 31, 2008, we had no material interest rate swap contracts outstanding.

An assumed 36 basis point move in the interest rates applicable to our borrowings (a 10 percent move against our weighted-average floating rate interest rates as of March 31, 2008) would have had a 2.3% change on our fiscal year 2008 loss before income taxes.

### **Commodity Price Risk**

We are exposed to changes in prices of commodities used in our operations, primarily associated with energy, fuel and raw materials such as pulp and cement. Pulp has historically demonstrated more price sensitivity than other raw materials that we use in our manufacturing process. In addition, energy, fuel and cement prices rose in fiscal year 2007 and continued to rise during fiscal year 2008. We expect that pulp, energy, fuel and cement prices will continue to fluctuate in the near future. To minimize the additional working capital requirements caused by rising prices related to these commodities, we have entered into contracts that discount pulp prices in relation to various pulp indices over a longer-term and purchase our pulp from several qualified suppliers in an attempt to mitigate price increases and supply interruptions. However, if such commodity prices do not continue to rise, our cost of sales may be negatively impacted due to fixed pricing over the longer-term. We have assessed the market risk for pulp and believe that, based on our most recent estimates, an \$80 per metric ton price movement in pulp prices, which represents approximately 10% of the average market pulp price in fiscal year 2008, would have had approximately a 1.2% change in cost of sales in fiscal year 2008.

We have also assessed the market risk for cement and believe that, based on our most recent estimates, a \$10 per metric ton price movement in cement prices, which represents approximately 10% of the average market cement price in fiscal year 2008, would have had approximately a 0.7% change in cost of sales in fiscal year 2008.

### **Item 12. Description of Securities Other Than Equity Securities**

Not Required.

## **PART II**

### **Item 13. Defaults, Dividend Arrearages and Delinquencies**

None.

### **Item 14. Material Modifications to the Rights of Security Holders and Use of Proceeds**

None.

### **Item 15. Controls and Procedures**

#### ***Evaluation of Disclosure Controls and Procedures***

We carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Exchange Act) as of the end of the period covered by this report. In designing and evaluating our disclosure controls and procedures, our management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives and are subject to certain limitations, including the exercise of judgment by individuals, the difficulty in identifying unlikely future events, and the difficulty in eliminating misconduct completely. Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that, our disclosure controls and procedures were effective at a reasonable assurance level as of March 31, 2008, to ensure the information required to be disclosed in the reports that we file or submit under the Exchange Act were recorded, processed, summarized and reported within the time periods specified in the rules and forms of the

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SEC and that such information was accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, to allow for timely decisions regarding required disclosures.

### ***Management's Report on Internal Control over Financial Reporting***

Our management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rule 13a-15(f) of the Exchange Act. Because of its inherent limitations, internal control over financial reporting may not prevent or detect all misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

We assessed the effectiveness of our internal control over financial reporting as of March 31, 2008. In making this assessment, we used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in *Internal Control — Integrated Framework*. Based on our assessment using those criteria, we concluded that our internal control over financial reporting was effective as of March 31, 2008.

The effectiveness of our internal control over financial reporting as of March 31, 2008 has been audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm, as stated in their report which appears on page F-2 of this annual report on Form 20-F.

### ***Changes in Internal Control over Financial Reporting***

During the second quarter of fiscal year 2008, we implemented several SAP ERP (which we refer to as SAP) modules in the United States. The implementation of these SAP modules and the related workflow capabilities resulted in changes to our controls over financial reporting in the United States. We have modified the design and documentation of internal controls over financial reporting in the United States as a result of this implementation. The implementation was undertaken to integrate systems and consolidate information, and was not undertaken in response to any actual or perceived deficiencies in our internal control over financial reporting.

### ***Item 16A. Audit Committee Financial Expert***

Our Joint Board has determined that Messrs. Anderson and Loudon are “audit committee financial experts,” as such term is defined by applicable SEC rules, and qualify as independent under the rules of the NYSE.

Under the NYSE listing standards applicable to U.S. companies, if a member of an audit committee simultaneously serves on the audit committees of more than three public companies, the listed company’s board must determine that such simultaneous service would not impair the ability of such member to effectively serve on the listed company’s audit committee. Mr. Anderson serves on the audit committees of three public companies in addition to our Audit Committee. The Joint Board has determined that such simultaneous service does not impair his ability to effectively serve on our Audit Committee.

### ***Item 16B. Code of Business Conduct and Ethics***

Our Code of Business Conduct and Ethics applies to all of our directors and employees, including our principal executive officer, principal financial officer, principal accounting officer or controller, and persons performing similar functions, in compliance with the relevant rules and regulations of the SEC and NYSE.

We seek to maintain high standards of integrity and are committed to ensuring that we conduct our business in accordance with high standards of ethical behavior.

We require our employees to comply with the spirit and the letter of all laws and other statutory requirements governing the conduct of our activities in each country in which we operate.

Our Code of Business Conduct and Ethics also covers many aspects of Company policy that govern compliance with legal and other responsibilities to stakeholders. All of our directors and employees worldwide are reminded annually of the existence of our Code of Business Conduct and Ethics and are requested to confirm that they have read it.

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Our Code of Business Conduct and Ethics also provides employees with instructions about whom they should contact if they have information or questions regarding violations of the policies in the Code of Business Conduct and Ethics. We have a telephone “Ethics Hotline” to allow employees in each jurisdiction in which we operate to report anonymously any concerns. All of our employees worldwide are reminded annually of the existence of the ethics hotline. During fiscal year 2008, any complaints made to the ethics hotline were reported directly to the Chairman of the Audit Committee and Supervisory Board as well as to appropriate senior management.

We have not granted any waivers from, or made any amendments to, the provisions of our Code of Business Conduct and Ethics during fiscal year 2008

Our complete Code of Business Conduct and Ethics is publicly available from the Investor Relations area of our website, [www.jameshardie.com](http://www.jameshardie.com).

### **Item 16C. Principal Accountant Fees and Services**

#### **Fees Paid to Our Independent Registered Public Accounting Firm**

Fees paid to our independent registered public accounting firm for services provided for fiscal years 2008, 2007 and 2006 were as follows:

(In millions)	Fiscal Years Ended March 31,		
	2008	2007	2006
Audit Fees (1)	\$ 4.2	\$ 2.1	\$ 1.6
Audit-Related Fees (2)	—	0.1	0.1
Tax Fees (3)	4.9	8.0	5.2
All Other Fees	—	—	—

- (1) Audit Fees include the aggregate fees for professional services rendered by our independent registered public accounting firm. Professional services include the audit of our annual financial statements and services that are normally provided in connection with statutory and regulatory filings. During fiscal year ended March 31, 2008, total audit fees includes fees for Sarbanes-Oxley compliance testing of \$2.0 million, \$0.8 million of which related to Sarbanes-Oxley compliance testing performed for fiscal year 2007, but paid in fiscal year 2008. In addition, during fiscal year ended March 31, 2008, total audit fees includes fees for statutory reporting of \$0.8 million, \$0.4 million of which related to statutory reporting fees performed for fiscal year 2007, but paid in fiscal year 2008.
- (2) Audit-Related Fees include the aggregate fees billed for assurance and related services rendered by our independent registered public accounting firm. Our independent registered public accounting firm did not engage any temporary employees to conduct any portion of the audit of our financial statements for the fiscal year ended March 31, 2008.
- (3) Tax Fees include the aggregate fees billed for tax compliance, tax advice and tax planning services rendered by our independent registered public accounting firm.

#### **Audit Committee Pre-Approval Policies and Procedures**

In accordance with our Audit Committee’s policy and the requirements of the law, all services provided by our independent registered public accounting firm are pre-approved annually by the Audit Committee. Pre-approval includes a list of specific audit and non-audit services in the following categories: audit services, audit-related services, tax services and other services. Any additional services that we may ask our independent registered public accounting firm to perform will be set forth in a separate document requesting Audit Committee approval in advance of the service being performed.

All of the services pre-approved by the Audit Committee are permissible under the SEC’s auditor independence rules. To avoid potential conflicts of interest, the law prohibits a publicly traded company from obtaining certain non-audit services from its independent registered public accounting firm. We obtain these services from other service providers as needed.

### **Item 16D. Exemptions from the Listing Standards for Audit Committees**

Not Applicable.



**Item 16E. Purchases of Equity Securities by the Issuer and Affiliated Purchasers**

(Number of shares in millions)

<u>Period</u>	<u>Total Number of Shares (or Units) Purchased</u>	<u>Average Price Paid per Share (or Unit)</u>	<u>Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs (1)</u>	<u>Maximum Number of Shares that May Yet be Purchased Under the Plans or Programs (1)</u>
From September 1, 2007 through September 30, 2007	7.5	\$ 6.27	7.5	39.3
From October 1, through October 31, 2007	4.2	\$ 6.62	4.2	35.1
From November 1, 2007 through November 30, 2007	7.2	\$ 5.47	7.2	27.9
From December 1, 2007 through December 31, 2007	14.6	\$ 5.62	14.6	13.3
From January 1, 2008 through January 31, 2008	—	—	—	13.3
From February 1, 2008 through February 29, 2008	—	—	—	13.3
From March 1, 2008 through March 31, 2008	2.2	\$ 5.32	2.2	11.1

(1) Pursuant to a share repurchase program originally announced on August 15, 2007 of up to 10% of our issued capital (approximately 46.8 million shares), we repurchased approximately 35.7 million shares at a cost of \$208.0 million in fiscal year 2008 as part of this plan. The program has no expiration date.

**Item 17. Financial Statements**

Not Applicable.

**PART III**

**Item 18. Financial Statements**

See pages F-1 through F-45 included at the end of this annual report.

**Item 19. Exhibits**

Documents filed as exhibits to this annual report:

<b>Exhibit Number</b>	<b>Description of Exhibits</b>
1.1	Articles of Association, as amended on August 20, 2007 of James Hardie Industries N.V. (English Translation)
2.1	Letter Agreement of September 6, 2001 by and between James Hardie Industries N.V. and CHESSE Depository Nominees Pty Limited, as the depository for CHESSE Units of Foreign Securities (2)
2.2	Deposit Agreement dated as of September 24, 2001 between The Bank of New York, as depository, and James Hardie Industries N.V. (2)
2.3	Common Terms Deed Poll amended and restated February 20, 2008 among James Hardie International Finance B.V., James Hardie Building Products, Inc. and James Hardie Industries N.V.
2.4	Form of Term Facility Agreement between James Hardie International Finance B.V. and Financier (2)
2.5	Form of Term Facility Agreement — Occurrence of Extension Event among James Hardie International Finance B.V., James Hardie Building Products, Inc. and Financier (5)
2.6	Form of 3 Year Term (Bullet) Facility Agreement dated February 21, 2008 among James Hardie International Finance B.V., James Hardie Building Products, Inc. and Financier
2.7	Form of 5 Year Term (Bullet) Facility Agreement dated February 21, 2008 among James Hardie International Finance B.V., James Hardie Building Products, Inc. and Financier
2.8	Form of 364-day Facility Agreement between James Hardie International Finance B.V. and Financier (2)
2.9	Form of Schedule 3 — Extension Request to December 2008 for 364-day Facility Agreement between James Hardie International Finance B.V. and Financier
2.10	Form of Schedule 3 — Extension Request to June 2009 for 364-day Facility Agreement between James Hardie International Finance B.V. and Financier
2.11	Form of Extension Request to June 2009 for 364-day Facility Agreement between James Hardie International Finance B.V. and Financier
2.12	Form of Guarantee Deed between James Hardie Industries N.V. and Financier (2)
4.1	James Hardie Industries N.V. 2001 Equity Incentive Plan (2)
4.2	Economic Profit and Individual Performance Incentive Plans (2)
4.3	JHI NV Stock Appreciation Rights Incentive Plan (2)
4.4	Supervisory Board Share Plan 2006 (3)
4.5	James Hardie Industries N.V. Long Term Incentive Plan 2006 (3)
4.6	2005 Managing Board Transitional Stock Option Plan (3)
4.7	Form of Joint and Several Indemnity Agreement among James Hardie N.V., James Hardie (USA) Inc. and certain former executive officers and Managing Board directors thereto (2)
4.8	Form of Joint and Several Indemnity Agreement among James Hardie Industries N.V., James Hardie Inc. and certain former Supervisory Board and Managing Board directors thereto (2)
4.9	Form of Deed of Access, Insurance and Indemnity between James Hardie Industries N.V. and Supervisory Board directors and Managing Board directors
4.10	Form of Indemnity Agreement between James Hardie Building Products, Inc. and Supervisory Board directors, Managing Board directors and certain executive officers

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<b>Exhibit Number</b>	<b>Description of Exhibits</b>
4.11	Lease Amendment, dated March 23, 2004, among Amaca Pty Limited (f/k/a/ James Hardie & Coy Pty Limited), James Hardie Australia Pty Limited and James Hardie Industries N.V. re premises at the corner of Cobalt & Silica Street, Carole Park, Queensland, Australia (1)
4.12	Variation of Lease dated March 23, 2004, among Amaca Pty Limited (f/k/a/ James Hardie & Coy Pty Limited), James Hardie Australia Pty Limited and James Hardie Industries N.V. re premises at the corner of Colquhoun & Devon Streets, Rosehill, New South Wales, Australia (1)
4.13	Extension of Lease dated March 23, 2004, among Amaca Pty Limited (f/k/a/ James Hardie & Coy Pty Limited), James Hardie Australia Pty Limited and James Hardie Industries N.V. re premises at Rutland, Avenue, Welshpool, Western Australia, Australia (1)
4.14	Lease Amendment dated March 23, 2004, among Amaca Pty Limited (f/k/a/ James Hardie & Coy Pty Limited), James Hardie Australia Pty Limited and James Hardie Industries N.V. re premises at 46 Randle Road, Meeandah, Queensland, Australia (1)
4.15	Lease Agreement dated March 23, 2004 among Studorp Limited, James Hardie New Zealand Limited and James Hardie Industries N.V. re premises at the corner of O'Rorke and Station Roads, Penrose, Auckland, New Zealand (1)
4.16	Lease Agreement dated March 23, 2004 among Studorp Limited, James Hardie New Zealand Limited and James Hardie Industries N.V. re premises at 44-74 O'Rorke Road, Penrose, Auckland, New Zealand (1)
4.17	Ownership transfer related to corner of O'Rorke and Station Roads, Penrose, Auckland, New Zealand and 44-74 O'Rorke Road, Penrose, Auckland, New Zealand effective June 30, 2005 (3)
4.18	Industrial Building Lease Agreement, effective October 6, 2000, between James Hardie Building Products, Inc. and Fortra Fiber-Cement L.L.C., re premises at Waxahachie, Ellis County, Texas (2)
4.19	Asset Purchase Agreement by and between James Hardie Building Products, Inc. and Cemplank, Inc. dated as of December 12, 2001 (2)
4.20	Amended and Restated Stock Purchase Agreement dated March 12, 2002, between BPB U.S. Holdings, Inc. and James Hardie Inc. (2)
4.21	Amended and Restated Final Funding Agreement dated November 21, 2006 (4)
4.22	Amended FFA Amendment dated August 6, 2007
4.23	Amended FFA Amendment dated November 8, 2007
4.24	Amended FFA Amendment dated June 11, 2008
4.25	Address for Service of Notice on Trustee dated June 13, 2008
4.26	Asbestos Injuries Compensation Fund Amended and Restated Trust Deed by and between James Hardie Industries N.V. and Asbestos Injuries Compensation Fund Limited dated December 14, 2006 (5)
4.27	Deed Poll dated June, 11, 2008 — amendment of the Asbestos Injuries Compensation Fund Amended and Restated Trust Deed
4.28	Deed of Release by and among James Hardie Industries N.V., Australian Council of Trade Unions, Unions New South Wales, and Bernard Douglas Banton dated December 21, 2005 (3)
4.29	Parent Guarantee by and among Asbestos Injuries Compensation Fund Limited, The State of New South Wales, and James Hardie Industries N.V. dated December 14, 2006 (5)
4.30	Deed of Release by and between James Hardie Industries N.V. and The State of New South Wales dated June 22, 2006 (3)
4.31	Second Irrevocable Power of Attorney by and between Asbestos Injuries Compensation Fund Limited and The State of New South Wales dated December 14, 2006 (5)
4.32	Deed of Accession by and among Asbestos Injuries Compensation Fund Limited, James Hardie Industries N.V., James Hardie 117 Pty Limited, and The State of New South Wales dated December 14, 2006 (5)
8.1	List of significant subsidiaries of James Hardie Industries N.V.
12.1	Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
12.2	Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

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<b>Exhibit Number</b>	<b>Description of Exhibits</b>
13.1	Certification of the Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
15.1	Consent of independent registered public accounting firm
15.2	Consent of KPMG Actuaries Pty Ltd
99.1	Excerpts of the ASX Settlement and Transfer Corporation Pty Ltd as of March 31, 2008
99.2	Excerpts of the Financial Services Reform Act 2001, as of March 11, 2002 (2)
99.3	ASIC Class Order 02/311, dated November 3, 2002 (2)
99.4	ASIC Modification, dated March 7, 2002 (2)
99.5	ASIC Modification, dated February 26, 2004 (3)

- 
- (1) Previously filed as an exhibit to our Annual Report on Form 20-F dated November 22, 2004 and incorporated herein by reference.
  - (2) Previously filed as an exhibit to our Annual Report on Form 20-F dated July 7, 2005 and incorporated herein by reference.
  - (3) Previously filed as an exhibit to our Annual Report on Form 20-F dated September 29, 2006 and incorporated herein by reference.
  - (4) Previously filed as an exhibit to our Current Report on Form 6-K dated January 5, 2007 and incorporated herein by reference.
  - (5) Previously filed as an exhibit to our Annual Report on form 20-F dated July 6, 2007.

**SIGNATURES**

The registrant hereby certifies that it meets all of the requirements for filing on Form 20-F and that it has duly caused and authorized the undersigned to sign this annual report on its behalf.

JAMES HARDIE INDUSTRIES N.V.

By: \_\_\_\_\_ /s/ Louis Gries  
Louis Gries  
*Chief Executive Officer*

Date: July 8, 2008

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**JAMES HARDIE INDUSTRIES N.V.**  
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**Report of Independent Registered Public Accounting Firm**

To the Board of Directors and Shareholders of  
James Hardie Industries N.V.:

In our opinion, the accompanying consolidated balance sheets and the related consolidated statements of operations, cash flows and changes in shareholders' equity present fairly, in all material respects, the financial position of James Hardie Industries N.V. and its subsidiaries at March 31, 2008 and March 31, 2007, and the results of their operations and their cash flows for each of the three years in the period ended March 31, 2008 in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of March 31, 2008, based on criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for these financial statements, for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in Management's Report on Internal Control over Financial Reporting appearing in Item 15. Our responsibility is to express opinions on these financial statements and on the Company's internal control over financial reporting based on our audits (which were integrated audits in 2008 and 2007). We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement and whether effective internal control over financial reporting was maintained in all material respects. Our audits of the financial statements included examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

As discussed in Note 14 to the consolidated financial statements, during the year ended March 31, 2008, the Company changed the manner in which it accounts for uncertain tax positions. Also, as discussed in Note 2 to the consolidated financial statements, during the year ended March 31, 2007, the Company changed its method of accounting for stock-based compensation and defined benefit pension plans.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ PricewaterhouseCoopers LLP

PricewaterhouseCoopers LLP  
Los Angeles, California  
June 27, 2008

James Hardie Industries N.V. and Subsidiaries

Consolidated Balance Sheets

	Notes	(Millions of US dollars)	
		March 31 2008	March 31 2007
<b>Assets</b>			
Current assets:			
Cash and cash equivalents	3	\$ 35.4	\$ 34.1
Restricted cash and cash equivalents	4	5.0	5.0
Restricted cash and cash equivalents — Asbestos	12	37.4	146.9
Restricted short-term investments — Asbestos	12	77.7	—
Accounts and notes receivable, net of allowance for doubtful accounts of \$2.0 million and \$1.5 million as of March 31, 2008 and March 31, 2007, respectively	5	131.4	163.4
Inventories	6	179.7	147.6
Prepaid expenses and other current assets		28.0	32.4
Insurance receivable — Asbestos	12	14.1	9.4
Workers' compensation — Asbestos	12	6.9	2.7
Deferred income taxes	14	8.2	27.3
Deferred income taxes — Asbestos	12	9.1	7.8
Total current assets		<u>532.9</u>	576.6
Property, plant and equipment, net	7	756.4	827.7
Insurance receivable — Asbestos	12	194.3	165.1
Workers' compensation — Asbestos	12	78.5	76.5
Deferred income taxes	14	13.2	6.9
Deferred income taxes — Asbestos	12	397.1	318.2
Deposit with Australian Taxation Office	15	205.8	154.8
Other assets		1.7	2.3
Total assets		<u>\$ 2,179.9</u>	<u>\$ 2,128.1</u>
<b>Liabilities and Shareholders' Equity</b>			
Current liabilities:			
Accounts payable and accrued liabilities	8	\$ 107.6	\$ 100.8
Short-term debt	9	90.0	83.0
Accrued payroll and employee benefits		37.0	42.0
Accrued product warranties	11	6.9	5.7
Income taxes payable	14	13.0	10.6
Asbestos liability	12	78.7	63.5
Workers' compensation — Asbestos	12	6.9	2.7
Other liabilities		9.1	9.3
Total current liabilities		<u>349.2</u>	317.6
Long-term debt	9	174.5	105.0
Deferred income taxes	14	84.2	93.8
Accrued product warranties	11	10.8	9.5
Asbestos liability	12	1,497.8	1,225.8
Workers' compensation — Asbestos	12	78.5	76.5
Other liabilities	10	187.5	41.2
Total liabilities		<u>2,382.5</u>	1,869.4
Commitments and contingencies	13		
Shareholders' equity:			
Common stock, Euro 0.59 par value, 2.0 billion shares authorised; 432,214,668 shares issued at March 31, 2008 and 467,295,391 shares issued at March 31, 2007		219.7	251.8
Additional paid-in capital		19.3	180.2
Accumulated deficit		(454.5)	(178.7)
Common stock in treasury, at cost, 708,695 shares and nil shares at March 31, 2008 and March 31, 2007, respectively		(4.0)	—
Accumulated other comprehensive income	20	16.9	5.4
Total shareholders' (deficit) equity		<u>(202.6)</u>	258.7
Total liabilities and shareholders' equity		<u>\$ 2,179.9</u>	<u>\$ 2,128.1</u>

The accompanying notes are an integral part of these consolidated financial statements.



James Hardie Industries N.V. and Subsidiaries

Consolidated Statements of Operations

(Millions of US dollars, except per share data)	Notes	2008	Years Ended March 31	
			2007	2006
Net sales	19	\$ 1,468.8	\$ 1,542.9	\$ 1,488.5
Cost of goods sold		(938.8)	(969.9)	(937.7)
Gross profit		530.0	573.0	550.8
Selling, general and administrative expenses		(228.2)	(214.6)	(209.8)
Research and development expenses		(27.3)	(25.9)	(28.7)
Impairment charges	7	(71.0)	—	(13.4)
SCI and other related expenses		—	(13.6)	(17.4)
Asbestos adjustments	12	(240.1)	(405.5)	(715.6)
Other operating expense		—	—	(0.8)
Operating loss		(36.6)	(86.6)	(434.9)
Interest expense		(11.1)	(12.0)	(7.2)
Interest income		12.2	5.5	7.0
Loss before income taxes	19	(35.5)	(93.1)	(435.1)
Income tax (expense) benefit	14	(36.1)	243.9	(71.6)
(Loss) income before cumulative effect of change in accounting principle		(71.6)	150.8	(506.7)
Cumulative effect of change in accounting principle for stock-based compensation, net of income tax expense of nil, \$0.4 million and nil, respectively		—	0.9	—
Net (loss) income		\$ (71.6)	\$ 151.7	\$ (506.7)
Net (loss) income per share — basic		\$ (0.16)	\$ 0.33	\$ (1.10)
Net (loss) income per share — diluted		\$ (0.16)	\$ 0.33	\$ (1.10)
Weighted average common shares outstanding (Millions):				
Basic	2	455.0	464.6	461.7
Diluted	2	455.0	466.4	461.7

The accompanying notes are an integral part of these consolidated financial statements.

James Hardie Industries N.V. and Subsidiaries

Consolidated Statements of Cash Flows

(Millions of US dollars)	Years Ended March 31		
	2008	2007	2006
<b>Cash Flows From Operating Activities</b>			
Net (loss) income	\$ (71.6)	\$ 151.7	\$ (506.7)
Adjustments to reconcile net (loss) income to net cash provided by (used in) operating activities:			
Depreciation	56.5	50.7	45.3
Deferred income taxes	(54.0)	(310.4)	4.3
Prepaid pension cost	1.0	(0.4)	2.9
Stock-based compensation	7.7	4.5	5.9
Asbestos adjustments	240.1	405.5	715.6
Cumulative effect of change in accounting principle	—	(0.9)	—
Impairment charges	71.0	—	13.4
Other	(3.4)	1.3	1.7
Changes in operating assets and liabilities:			
Restricted cash and cash equivalents	44.7	(151.9)	—
Accounts and notes receivable	39.6	(4.8)	(24.0)
Inventories	(26.6)	(19.5)	(26.6)
Prepaid expenses and other current assets	4.9	(0.1)	(24.8)
Insurance receivable — Asbestos	16.7	—	—
Accounts payable and accrued liabilities	2.6	(18.4)	24.4
Asbestos liability	(67.0)	—	—
Deposit with Australian Taxation Office	(9.7)	(154.8)	—
Other accrued liabilities and other liabilities	66.8	(19.6)	7.0
<b>Net cash provided by (used in) operating activities</b>	<b>319.3</b>	<b>(67.1)</b>	<b>238.4</b>
<b>Cash Flows From Investing Activities</b>			
Purchases of property, plant and equipment	(38.5)	(92.6)	(162.0)
Proceeds from disposal of subsidiaries and businesses, net of cash divested	—	—	8.0
<b>Net cash used in investing activities</b>	<b>(38.5)</b>	<b>(92.6)</b>	<b>(154.0)</b>
<b>Cash Flows From Financing Activities</b>			
Proceeds from short-term borrowings	7.0	—	181.0
Repayments of short-term borrowings	—	(98.0)	—
Proceeds from long-term borrowings	69.5	105.0	—
Repayments of long-term borrowings	—	(121.7)	(37.6)
Proceeds from issuance of shares	3.3	18.5	18.7
Tax benefit from stock options exercised	—	1.8	2.2
Treasury stock purchased	(208.0)	—	—
Dividends paid	(126.2)	(42.1)	(45.9)
Collections on loans receivable	—	0.1	0.3
<b>Net cash (used in) provided by financing activities</b>	<b>(254.4)</b>	<b>(136.4)</b>	<b>118.7</b>
Effects of exchange rate changes on cash	(25.1)	15.1	(1.5)
Net increase (decrease) in cash and cash equivalents	1.3	(281.0)	201.6
Cash and cash equivalents at beginning of period	34.1	315.1	113.5
<b>Cash and cash equivalents at end of period</b>	<b>\$ 35.4</b>	<b>\$ 34.1</b>	<b>\$ 315.1</b>
<b>Components of Cash and Cash Equivalents</b>			
Cash at bank and on hand	\$ 21.6	\$ 26.1	\$ 24.9
Short-term deposits	13.8	8.0	290.2
Cash and cash equivalents at end of period	<b>\$ 35.4</b>	<b>\$ 34.1</b>	<b>\$ 315.1</b>
<b>Supplemental Disclosure of Cash Flow Activities</b>			
Cash paid during the year for interest, net of amounts capitalized	\$ 12.8	\$ 3.9	\$ 3.5
Cash paid during the year for income taxes, net	\$ 70.4	\$ 80.8	\$ 93.4

The accompanying notes are an integral part of these consolidated financial statements.

James Hardie Industries N.V. and Subsidiaries

Consolidated Statements of Changes in Shareholders' Equity

(Millions of US dollars)	Common Stock	Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive (Loss) Income	Treasury Stock	Total
<b>Balances as of March 31, 2005</b>	<b>\$ 245.8</b>	<b>\$ 138.7</b>	<b>\$ 264.3</b>	<b>\$ (24.1)</b>	<b>\$ —</b>	<b>\$ 624.7</b>
Comprehensive income (loss):						
Net loss	—	—	(506.7)	—	—	(506.7)
Amortization of unrealized transition gain on derivative instruments	—	—	—	0.5	—	0.5
Foreign currency translation loss	—	—	—	(4.8)	—	(4.8)
Other comprehensive loss	—	—	—	(4.3)	—	(4.3)
Total comprehensive loss						(511.0)
Stock-based compensation	—	5.9	—	—	—	5.9
Tax benefit from stock options exercised	—	2.2	—	—	—	2.2
Employee loans repaid	—	0.3	—	—	—	0.3
Stock options exercised	7.4	11.3	—	—	—	18.7
Dividends paid	—	—	(45.9)	—	—	(45.9)
<b>Balances as of March 31, 2006</b>	<b>\$ 253.2</b>	<b>\$ 158.4</b>	<b>\$ (288.3)</b>	<b>\$ (28.4)</b>	<b>\$ —</b>	<b>\$ 94.9</b>
Comprehensive income (loss):						
Net income	—	—	151.7	—	—	151.7
Foreign currency translation gain	—	—	—	36.5	—	36.5
Other comprehensive income	—	—	—	36.5	—	36.5
Total comprehensive income						188.2
Adoption of FAS 158, net of tax	—	—	—	(2.7)	—	(2.7)
Stock-based compensation	—	4.5	—	—	—	4.5
Tax benefit from stock options exercised	—	1.8	—	—	—	1.8
Employee loans repaid	—	0.1	—	—	—	0.1
Stock options exercised	3.1	15.4	—	—	—	18.5
Dividends paid	—	—	(42.1)	—	—	(42.1)
Other	(4.5)	—	—	—	—	(4.5)
<b>Balances as of March 31, 2007</b>	<b>\$ 251.8</b>	<b>\$ 180.2</b>	<b>\$ (178.7)</b>	<b>\$ 5.4</b>	<b>\$ —</b>	<b>\$ 258.7</b>
Comprehensive income (loss)						
Net loss	—	—	(71.6)	—	—	(71.6)
Pension and post-retirement benefit adjustments	—	—	—	0.6	—	0.6
Unrealized loss on investments	—	—	—	(4.4)	—	(4.4)
Foreign currency translation gain	—	—	—	15.3	—	15.3
Other comprehensive income	—	—	—	11.5	—	11.5
Total comprehensive loss						(60.1)
Adoption of FIN 48	—	—	(78.0)	—	—	(78.0)
Stock-based compensation	—	7.7	—	—	—	7.7
Stock options exercised	0.5	2.8	—	—	—	3.3
Dividends paid	—	—	(126.2)	—	—	(126.2)
Treasury stock purchased	—	—	—	—	(208.0)	(208.0)
Treasury stock retired	(32.6)	(171.4)	—	—	204.0	—
<b>Balances as of March 31, 2008</b>	<b>\$ 219.7</b>	<b>\$ 19.3</b>	<b>\$ (454.5)</b>	<b>\$ 16.9</b>	<b>\$ (4.0)</b>	<b>\$ (202.6)</b>

The accompanying notes are an integral part of these consolidated financial statements.

**James Hardie Industries N.V. and Subsidiaries**

**Notes to Consolidated Financial Statements**

**1. Background and Basis of Presentation**

*Nature of Operations*

The Company manufactures and sells fiber cement building products for interior and exterior building construction applications primarily in the United States, Australia, New Zealand, Philippines and Europe.

*Background*

On July 2, 1998, ABN 60 000 009 263 Pty Ltd, formerly James Hardie Industries Limited (“JHIL”), then a public company organized under the laws of Australia and listed on the Australian Stock Exchange, announced a plan of reorganization and capital restructuring (the “1998 Reorganization”). James Hardie N.V. (“JHNV”) was incorporated in August 1998, as an intermediary holding company, with all of its common stock owned by indirect subsidiaries of JHIL. On October 16, 1998, JHIL’s shareholders approved the 1998 Reorganization. Effective as of November 1, 1998, JHIL contributed its fiber cement businesses, its U.S. gypsum wallboard business, its Australian and New Zealand building systems businesses and its Australian windows business (collectively, the “Transferred Businesses”) to JHNV and its subsidiaries. In connection with the 1998 Reorganization, JHIL and its non-transferring subsidiaries retained certain unrelated assets and liabilities.

On July 24, 2001, JHIL announced a further plan of reorganization and capital restructuring (the “2001 Reorganization”). Completion of the 2001 Reorganization occurred on October 19, 2001. In connection with the 2001 Reorganization, James Hardie Industries N.V. (“JHI NV”), formerly RCI Netherlands Holdings B.V., issued common shares represented by CHESS Units of Foreign Securities (“CUFS”) on a one for one basis to existing JHIL shareholders in exchange for their shares in JHIL such that JHI NV became the new ultimate holding company for JHIL and JHNV.

Following the 2001 Reorganization, JHI NV controls the same assets and liabilities as JHIL controlled immediately prior to the 2001 Reorganization.

Previously deconsolidated entities have been consolidated beginning March 31, 2007 as part of the accounting for the asbestos liability. Upon approval of the Restated and Amended Final Funding Agreement on February 7, 2007 (the “Amended FFA”), the Asbestos Injuries Compensation Fund (the “AICF”) was deemed a special purpose entity and, as such, it was consolidated with the results for JHI NV. See Note 2 and Note 12 for additional information.

*Basis of Presentation*

The consolidated financial statements represent the financial position, results of operations and cash flows of JHI NV and its current wholly owned subsidiaries and special purpose entities, collectively referred to as either the “Company” or “James Hardie” and JHI NV together with its subsidiaries as of the time relevant to the applicable reference, the “James Hardie Group,” unless the context indicates otherwise. Operating loss for the twelve months ended March 31, 2008 includes a charge of \$2.7 million relating to prior period lease costs. The impact of this adjustment on prior periods’ financial statements is not material.

**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

**2. Summary of Significant Accounting Policies**

***Accounting Principles***

The consolidated financial statements are prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP"). The U.S. dollar is used as the reporting currency. All subsidiaries and special purpose entities are consolidated and all significant intercompany transactions and balances are eliminated.

***Use of Estimates***

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions. These estimates and assumptions affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from these estimates.

***Reclassifications***

Certain prior year balances have been reclassified to conform with the current year presentation. The reclassifications do not impact shareholders' equity.

***Foreign Currency Translation***

All assets and liabilities are translated into U.S. dollars at current exchange rates while revenues and expenses are translated at average exchange rates in effect for the period. The effects of foreign currency translation adjustments are included directly in other comprehensive income in shareholders' equity. Gains and losses arising from foreign currency transactions are recognized in income currently.

***Cash and Cash Equivalents***

Cash and cash equivalents include amounts on deposit in banks and cash invested temporarily in various highly liquid financial instruments with original maturities of three months or less when acquired.

***Restricted Cash and Cash Equivalents***

Restricted cash and cash equivalents include amounts on deposit with insurance companies.

***Accounts Receivable***

The Company reviews trade receivables and estimates of the allowance for doubtful accounts each period. The allowance is determined by analyzing specific customer accounts and assessing the risk of uncollectability based on insolvency, disputes or other collection issues.

***Inventories***

Inventories are valued at the lower of cost or market. Cost is generally determined under the first-in, first-out method, except that the cost of raw materials and supplies is determined using actual or average costs. Cost includes the costs of materials, labor and applied factory overhead. On a regular basis, the Company evaluates its inventory balances for excess quantities and obsolescence by analyzing demand, inventory on hand, sales levels and other information. Based on these evaluations, inventory balances are written down, if necessary.

***Property, Plant and Equipment***

Property, plant and equipment are stated at cost. Property, plant and equipment of businesses acquired are recorded at their estimated cost based on fair value at the date of acquisition. Depreciation of property, plant and equipment is computed using the straight-line method over the following estimated useful lives:

**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

	Years
Buildings	40
Building improvements	5 to 10
Manufacturing machinery	20
General equipment	5 to 10
Computer equipment, software and software development	3 to 7
Office furniture and equipment	3 to 10

The costs of additions and improvements are capitalized, while maintenance and repair costs are expensed as incurred. Interest is capitalized in connection with the construction of major facilities. Capitalized interest is recorded as part of the asset to which it relates and is amortized over the asset's estimated useful life. Retirements, sales and disposals of assets are recorded by removing the cost and accumulated depreciation amounts with any resulting gain or loss reflected in the consolidated statements of operations.

In accordance with Statement of Financial Accounting Standards ("SFAS") No. 143, "Accounting for Asset Retirement Obligations," the Company accrues for all asset retirement obligations in the period in which the liability is incurred. The initial measurement of an asset retirement obligation is based upon the present value of estimated cost and a related long-lived asset retirement cost is capitalized as part of the asset's carrying value and allocated to expense over the asset's useful life.

#### ***Impairment of Long-Lived Assets***

In accordance with SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets," long-lived assets, such as property, plant and equipment, and purchased intangibles subject to amortization are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of the asset exceeds its estimated future cash flows, an impairment charge is recognized by the amount by which the carrying amount of the asset exceeds the fair value of the assets.

#### ***Environmental***

Environmental remediation expenditures that relate to current operations are expensed or capitalized, as appropriate. Expenditures that relate to an existing condition caused by past operations, and which do not contribute to current or future revenue generation, are expensed. Liabilities are recorded when environmental assessments and/or remedial efforts are probable and the costs can be reasonably estimated. Estimated liabilities are not discounted to present value. Generally, the timing of these accruals coincides with completion of a feasibility study or the Company's commitment to a formal plan of action.

#### ***Revenue Recognition***

The Company recognizes revenue when the risks and obligations of ownership have been transferred to the customer, which generally occurs at the time of delivery to the customer. The Company records estimated reductions to sales for customer rebates and discounts including volume, promotional, cash and other discounts. Rebates and discounts are recorded based on management's best estimate when products are sold. The estimates are based on historical experience for similar programs and products. Management reviews these rebates and discounts on an ongoing basis and the related accruals are adjusted, if necessary, as additional information becomes available.

#### ***Cost of Goods Sold***

Cost of goods sold is primarily comprised of cost of materials, labor and manufacturing. Cost of goods sold also includes the cost of inbound freight charges, purchasing and receiving costs, inspection costs, warehousing costs, internal transfer costs and shipping and handling costs.

**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

***Shipping and Handling***

Shipping and handling costs are charged to cost of goods sold as incurred. Recovery of these costs is incorporated in the Company's sales price per unit and is therefore classified as part of net sales.

***Selling, General and Administrative***

Selling, general and administrative expenses primarily include costs related to advertising, marketing, selling, information technology and other general corporate functions. Selling, general and administrative expenses also include certain transportation and logistics expenses associated with the Company's distribution network.

***Advertising***

The Company expenses the production costs of advertising the first time the advertising takes place. Advertising expense was \$11.9 million, \$17.0 million and \$19.1 million during the years ended March 31, 2008, 2007 and 2006, respectively.

***Research and Development***

Research and development costs are charged to expense when incurred.

***Accrued Product Warranties***

An accrual for estimated future warranty costs is recorded based on an analysis by the Company, including the historical relationship of warranty costs to sales.

***Income Taxes***

The Company accounts for income taxes under the asset and liability method. Under this method, deferred income taxes are recognized by applying enacted statutory rates applicable to future years to differences between the tax bases and financial reporting amounts of existing assets and liabilities. The effect on deferred taxes of a change in tax rates is recognized in income in the period that includes the enactment date. A valuation allowance is provided when it is more likely than not that all or some portion of deferred tax assets will not be realized. Interest and penalties related to uncertain tax positions are recognized in income tax expense.

***Financial Instruments***

To meet the reporting requirements of SFAS No. 107, "Disclosures About Fair Value of Financial Instruments," the Company calculates the fair value of financial instruments and includes this additional information in the notes to the consolidated financial statements when the fair value is different than the carrying value of those financial instruments. When the fair value reasonably approximates the carrying value, no additional disclosure is made. The estimated fair value amounts have been determined by the Company using available market information and appropriate valuation methodologies. However, considerable judgment is required in interpreting market data to develop the estimates of fair value. Accordingly, the estimates presented herein are not necessarily indicative of the amounts that the Company could realize in a current market exchange. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated fair value amounts.

Periodically, interest rate swaps, commodity swaps and forward exchange contracts are used to manage market risks and reduce exposure resulting from fluctuations in interest rates, commodity prices and foreign currency exchange rates. Where such contracts are designated as, and are effective as, a hedge, gains and losses arising on such contracts are accounted for in accordance with SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities," as amended. Specifically, changes in the fair value of derivative instruments designated as cash flow hedges are deferred and recorded in other comprehensive income. These deferred gains or losses are recognized in income when the transactions being hedged are recognized. The ineffective portion of these hedges is recognized in income currently. Changes in the fair value of derivative instruments designated as fair value hedges are recognized in income, as are changes in the fair value of the hedged item. Changes in the fair value of derivative instruments that are not designated as hedges for accounting purposes are recognized in income. The Company does not use derivatives for trading purposes.

**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

***Stock-based Compensation***

The Company recognized stock-based compensation expense (included in selling, general and administrative expense) of \$7.7 million, \$5.8 million and \$5.9 million for the years ended March 31, 2008, 2007 and 2006, respectively.

Upon adoption of SFAS No. 123R, "Accounting for Stock-Based Compensation," at the beginning of fiscal year 2007, the Company analyzed forfeiture rates on all of its 2001 Stock Option Plan grants for which vesting was complete, resulting in an estimated weighted average forfeiture rate of 30.7%. Based on this estimated rate, a cumulative adjustment to stock-based compensation expense of \$1.3 million net of an income tax benefit of \$0.4 million was recorded effective April 1, 2006. The adjustment is presented on the consolidation statements of operations as a cumulative effect of change in accounting principle (net of income tax). The portion of the cumulative adjustment that relates to USA-based employees caused a reduction in the deferred tax asset previously recorded. For the twelve months ended March 31, 2007, the amount of the cumulative adjustment related to USA-based employees was \$1.0 million for which the related USA income tax adjustment was \$0.4 million.

***Employee Benefit Plans***

In fiscal year 2007, the Company implemented the provisions of SFAS No. 158, "Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans." Adopting this standard resulted in the recognition of an increase in non-current liabilities of \$3.9 million and a reduction in shareholders' equity of \$2.7 million, at March 31, 2007.

The Company sponsors both defined benefit and defined contribution retirement plans for its employees. Employer contributions to the defined contribution plans are recognized as periodic pension expense in the period that the employees' salaries or wages are earned. The defined benefit plan covers all eligible employees and takes into consideration the following components to calculate net periodic pension expense: (a) service cost; (b) interest cost; (c) expected return on plan assets; (d) amortization of unrecognized prior service cost; (e) recognition of net actuarial gains or losses; and (f) amortization of any unrecognized net transition asset. If the amount of the Company's total contribution to its pension plan for the period is not equal to the amount of net periodic pension cost, the Company recognizes the difference either as a prepaid or accrued pension cost.

***Dividends***

Dividends are recorded as a liability on the date the Board of Directors formally declares the dividend.

***Earnings Per Share***

The Company is required to disclose basic and diluted earnings per share ("EPS"). Basic EPS is calculated using net income divided by the weighted average number of common shares outstanding during the period. Diluted EPS is similar to basic EPS except that the weighted average number of common shares outstanding is increased to include the number of additional common shares calculated using the treasury method that would have been outstanding if the dilutive potential common shares, such as options, had been issued. Accordingly, basic and dilutive common shares outstanding used in determining net (loss) income per share are as follows:



**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

(Millions of shares)	Years Ended March 31		
	2008	2007	2006
Basic common shares outstanding	455.0	464.6	461.7
Dilutive effect of stock options	—	1.8	—
Diluted common shares outstanding	<u>455.0</u>	<u>466.4</u>	<u>461.7</u>
<hr/>			
(US dollars)	2008	2007	2006
Net (loss) income per share — basic	<b>\$(0.16)</b>	\$ 0.33	\$(1.10)
Net (loss) income per share — diluted	<b>\$(0.16)</b>	\$ 0.33	\$(1.10)

Potential common shares of 10.4 million, 7.7 million and 6.6 million for the years ended March 31, 2008, 2007 and 2006, respectively, have been excluded from the calculation of diluted common shares outstanding because the effect of their inclusion would be anti-dilutive. Due to the net loss for the years ended March 31, 2008 and 2006, the assumed net exercise of stock options was excluded, as the effect would have been anti-dilutive.

***Repurchased Common Stock***

The Company accounts for repurchased common stock under the cost method and includes such treasury stock as a component of shareholders' equity. Retirement of treasury stock is recorded as a reduction of common stock and additional paid-in capital, as applicable.

***Accumulated Other Comprehensive Income***

Accumulated other comprehensive income includes foreign currency translation gains and losses, unrealized losses on investments and unrecognized pension costs, and is presented as a separate component of shareholders' equity.

***Asbestos***

At March 31, 2006, the Company recorded an asbestos provision based on the estimated economic reality of the Original Final Funding Agreement ("Original FFA") entered into on December 1, 2005. The amount of the asbestos provision of \$715.6 million was based on the terms of the Original FFA, which included an actuarial estimate prepared by KPMG Actuaries as of March 31, 2006 of the projected future cash outflows, undiscounted and uninflated, and the anticipated tax deduction arising from Australian legislation which came into force on April 6, 2006. The amount represented the net economic impact that the Company was prepared to assume as a result of its voluntary funding of the asbestos liability which was under negotiation with various parties.

In February 2007, the shareholders approved the Amended FFA entered into on November 21, 2006 to provide long-term funding to the AICF, a special purpose fund that provides compensation for Australian-related personal injuries for which certain former subsidiary companies of James Hardie in Australia (being Amaca Pty Ltd ("Amaca"), Amaba Pty Ltd ("Amaba") and ABN 60 Pty Limited ("ABN 60") (collectively, the "Liable Entities")) are found liable.

Upon shareholder approval of the Amended FFA, in accordance with Financial Accounting Standards Board ("FASB") Interpretation No. 46R, the Company consolidated the AICF with the Company resulting in a separate recognition of the asbestos liability and certain other items including the related Australian income tax benefit. Among other items, the Company recorded a deferred tax asset for the anticipated tax benefit related to asbestos liabilities and a corresponding increase in the asbestos liability. As stated in "Deferred Income Taxes" below, the Company's Performing Subsidiary will be able to claim a taxable deduction for contributions to the asbestos fund. For the year ended March 31, 2007, the Company classified the expense related to the increase of the asbestos liability as asbestos adjustments and the Company classified the benefit related to the recording of the related deferred tax asset as an income tax benefit (expense) on its consolidated statements of operations.

Amaca and Amaba separated from the James Hardie Group in February 2001. ABN 60 separated from the James Hardie Group in March 2003. Upon shareholder approval of the Amended FFA in February 2007, shares in the Liable Entities were transferred to the AICF. The Company appoints three of the AICF directors and the NSW state government appoints two of the AICF directors. The AICF manages Australian asbestos-related personal injury claims made against the Liable Entities, and makes compensation payments in respect of those proven claims.

**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

*AICF*

Under the terms of the Amended FFA, James Hardie 117 Pty Ltd (the “Performing Subsidiary”) has a contractual liability to make payments to the AICF. This funding to the AICF results in the Company having a pecuniary interest in the AICF. The interest is considered variable because the potential impact on the Company will vary based upon the annual actuarial assessments obtained by the AICF with respect to asbestos-related personal injury claims against the Liable Entities. Due to the Company’s variable interest in the AICF, it consolidates the AICF in accordance with FASB, Interpretation No. 46R, “Consolidation of Variable Interest Entities.”

The AICF has operating costs that are claims related and non-claims related. Claims related costs incurred by the AICF are treated as reductions to the accrued asbestos liability balances previously reflected in the consolidated balance sheets. Non-claims related operating costs incurred by the AICF are expensed as incurred in the line item *Selling, general and administrative expenses* in the consolidated statements of operations. The AICF earns interest on its cash and cash equivalents and on its short-term investments; these amounts are included in the line item *Interest income* in the consolidated statements of operations.

*Asbestos-Related Assets and Liabilities*

The Company has recorded on its consolidated balance sheets certain assets and liabilities under the terms of the Amended FFA. These items are Australian dollar-denominated and are subject to translation into U.S. dollars at each reporting date. These assets and liabilities are commonly referred to by the Company as *Asbestos-Related Assets and Liabilities* and include:

Asbestos Liability

The amount of the asbestos liability reflects the terms of the Amended FFA, which has been calculated by reference to (but is not exclusively based upon) the most recent actuarial estimate of projected future cash flows prepared by KPMG Actuaries. Based on KPMG Actuaries’ assumptions, KPMG Actuaries arrived at a range of possible total cash flows and proposed a central estimate which is intended to reflect an expected outcome. The Company views the central estimate as the basis for recording the asbestos liability in the Company’s financial statements, which under U.S. GAAP, it considers the best estimate under SFAS No. 5. The asbestos liability includes these cash flows as undiscounted and uninflated on the basis that it is inappropriate to discount or inflate future cash flows when the timing and amounts of such cash flows is not fixed or readily determinable.

Adjustments in the asbestos liability due to changes in the actuarial estimate of projected future cash flows and changes in the estimate of future operating costs of the AICF are reflected in the consolidated statements of operations during the period in which they occur. Claims paid by the AICF and claims-handling costs incurred by the AICF are treated as reductions in the accrued balances previously reflected in the consolidated balance sheets.

Insurance Receivable

There are various insurance policies and insurance companies with exposure to the asbestos claims. The insurance receivable determined by KPMG Actuaries reflects the recoveries expected from all such policies based on the expected pattern of claims against such policies less an allowance for credit risk based on credit agency ratings. The insurance receivable generally includes these cash flows as undiscounted and uninflated on the basis that it is inappropriate to discount or inflate future cash flows when the timing and amounts of such cash flows are not fixed or readily determinable. The Company only records insurance receivables that it deems to be probable.

Included in insurance receivable is \$16.2 million recorded on a discounted basis because the timing of the recoveries has been agreed with the insurer.

Adjustments in insurance receivable due to changes in the actuarial estimate, or changes in the Company’s assessment of recoverability are reflected in the consolidated statements of operations during the period in which they occur. Insurance recoveries are treated as a reduction in the insurance receivable balance.

**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

Workers' Compensation

Workers' compensation claims are claims made by former employees of the Liable Entities. Such past, current and future reported claims were insured with various insurance companies and the various Australian State-based workers' compensation schemes (collectively "workers' compensation schemes or policies"). An estimate of the liability related to workers' compensation claims is prepared by KPMG Actuaries as part of the annual actuarial assessment. This estimate contains two components, amounts that will be met by a workers' compensation scheme or policy, and amounts that will be met by the Liable Entities.

The portion of the KPMG Actuaries estimate that is expected to be met by the Liable Entities is included as part of the *Asbestos Liability*. Adjustments to this estimate are reflected in the consolidated statements of operations during the period in which they occur.

The portion of the KPMG Actuaries estimate that is expected to be met by the workers' compensation schemes or policies of the Liable Entities is recorded by the Company as a workers' compensation liability. Since these amounts are expected to be paid by the workers' compensation schemes or policies, the Company records an equivalent workers' compensation receivable.

Adjustments to the workers' compensation liability result in an equal adjustment in the workers' compensation receivable recorded by the Company and have no effect on the consolidated statements of operations.

Asbestos-Related Research and Education Contributions

The Company agreed to fund asbestos-related research and education initiatives for a period of 10 years, beginning in fiscal year 2007. The liabilities related to these agreements are included in "Other Liabilities" on the consolidated balance sheets.

Restricted Cash and Cash Equivalents

Cash and cash equivalents of the AICF are reflected as restricted assets, as the use of these assets is restricted to the settlement of asbestos claims and payment of the operating costs of the AICF.

Restricted Short-Term Investments

Short-term investments consist of highly liquid investments held in the custody of major financial institutions. All short-term investments are classified as available for sale and are recorded at market value using the specific identification method. Unrealized gains and losses on the market value of these investments are included as a separate component of accumulated other comprehensive income.

AICF — Other Assets and Liabilities

Other assets and liabilities of the AICF, including fixed assets, trade receivables and payables are included on the consolidated balance sheets under the appropriate captions and their use is restricted to the operations of the AICF.

Deferred Income Taxes

The Performing Subsidiary is able to claim a taxation deduction for its contributions to the AICF over a five-year period from the date of contribution. Consequently, a deferred tax asset has been recognized equivalent to the anticipated tax benefit over the life of the Amended FFA. Adjustments are made to the deferred income tax asset as adjustments to the asbestos-related assets and liabilities are recorded.

Foreign Currency Translation

The asbestos-related assets and liabilities are denominated in Australian dollars and thus the reported values of these asbestos-related assets and liabilities in the Company's consolidated balance sheets in U.S. dollars are subject to adjustment depending on the closing exchange rate between the two currencies at the balance sheet date. The effect of foreign exchange rate movements between these currencies is included in *Asbestos Adjustments* in the consolidated statements of operations.

**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

***Recent Accounting Pronouncements***

*Fair Value Measurements*

In September 2006, the FASB issued Statement No. 157, “Fair Value Measurements” (“SFAS No. 157”), which defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles (“GAAP”) and expands disclosures about fair value measurements. The expanded disclosures in this statement about the use of fair value to measure assets and liabilities should provide users of financial statements with better information about the extent to which fair value is used to measure recognized assets and liabilities, the inputs used to develop the measurements, and the effect of certain measurements on earnings (or changes in net assets) for the period. Certain provisions of SFAS No. 157 are effective for the Company on April 1, 2008 and it is currently evaluating the impact on its financial statements of adopting SFAS No. 157.

*Fair Value Option for Financial Assets and Financial Liabilities*

In February 2007, the FASB issued Statement No. 159, “The Fair Value Option for Financial Assets and Financial Liabilities” (“SFAS No. 159”), which allows for voluntary measurement of financial assets and liabilities as well as certain other items at fair value. Unrealized gains and losses on financial instruments for which the fair value option has been elected are reported in earnings. The provisions of SFAS No. 159 are effective for the Company on April 1, 2008 and it is currently evaluating the impact on its financial statements of adopting SFAS No. 159.

*Business Combinations*

In December 2007, the FASB issued SFAS No. 141 (revised 2007), “Business Combinations (“SFAS No. 141R”),” which replaces SFAS No. 141. The statement establishes principles and requirements for how the acquirer in a business combination recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, and any controlling interest; recognizes and measures the goodwill acquired in the business combination or a gain from a bargain purchase; and determines what information to disclose to enable users of the financial statements to evaluate the nature and financial effects of the business combination. The provisions of SFAS No. 141R are effective for business combinations for which the acquisition date is on or after April 1, 2009.

*Noncontrolling Interests in Consolidated Financial Statements — an amendment to ARB No. 51*

In December 2007, the FASB approved the issuance of SFAS No. 160 “Noncontrolling Interests in Consolidated Financial Statements — an amendment to ARB No. 51” (“SFAS No. 160”). SFAS No. 160 establishes accounting and reporting standards that require the ownership interest in subsidiaries held by parties other than the entity be clearly identified and presented in the Consolidated Balance Sheets within equity, but separate from the entity’s equity; the amount of consolidated net income attributable to the entity and the noncontrolling interest be clearly identified and presented on the face of the Consolidated Statement of Earnings; and changes in the entity’s ownership interest while the entity retains its controlling financial interest in its subsidiary be accounted for consistently. The provisions of SFAS No. 160 are effective for the Company on April 1, 2009, and it is currently evaluating the impact on its financial statements of adopting SFAS No. 160.

*Disclosures about Derivative Instruments and Hedging Activities*

In March 2008, the FASB issued SFAS No. 161, “Disclosures about Derivative Instruments and Hedging Activities” (“SFAS No. 161”). SFAS No. 161 is intended to improve financial reporting of derivative instruments and hedging activities by requiring enhanced disclosures to enable investors to better understand their effects on an entity’s financial position, financial performance, and cash flows. SFAS No. 161 is effective for the Company April 1, 2009 and it is currently evaluating the impact on its financial statements of adopting SFAS No. 161.

*Hierarchy of Generally Accepted Accounting Principles*

In May 2008, the FASB issued SFAS No. 162 “The Hierarchy of Generally Accepted Accounting Principles” (“SFAS No. 162”) SFAS No. 162 identifies the sources of accounting principles and the framework for selecting the principles used in the preparation of financial statements of nongovernmental entities that are presented in conformity with U.S. GAAP. This statement shall be effective 60 days following the Securities Exchange and Commission’s approval of the Public Company Accounting Oversight Board amendments to AU Section 411, “The Meaning of Present Fairly in Conformity With Generally Accepted Accounting Principles.” The Company does not expect its adoption will have a material impact on its consolidated financial statements.

**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

**3. Cash and Cash Equivalents**

Cash and cash equivalents include amounts on deposit in banks and cash invested temporarily in various highly liquid financial instruments with original maturities of three months or less.

Cash and cash equivalents consist of the following components:

(Millions of US dollars)	2008	March 31 2007
Cash at bank and on hand	\$ 21.6	\$ 26.1
Short-term deposits	<u>13.8</u>	<u>8.0</u>
Total cash and cash equivalents	<u>\$ 35.4</u>	<u>\$ 34.1</u>

Short-term deposits are placed at floating interest rates varying between 2.14% to 2.93% and 4.85% to 5.25% as of March 31, 2008 and 2007, respectively.

**4. Restricted Cash and Cash Equivalents**

Included in restricted cash is \$5.0 million related to an insurance policy as of March 31, 2008 and 2007.

**5. Accounts and Notes Receivable**

Accounts and notes receivable consist of the following components:

(Millions of US dollars)	2008	March 31 2007
Trade receivables	\$ 122.7	\$ 152.4
Other receivables and advances	10.7	12.5
Allowance for doubtful accounts	<u>(2.0)</u>	<u>(1.5)</u>
Total accounts and notes receivable	<u>\$ 131.4</u>	<u>\$ 163.4</u>

The collectability of accounts receivable, consisting mainly of trade receivables, is reviewed on an ongoing basis and an allowance for doubtful accounts is provided for known and estimated bad debts. The following are changes in the allowance for doubtful accounts:

(Millions of US dollars)	2008	March 31 2007
Balance at beginning of period	\$ 1.5	\$ 1.3
Charged to expense	0.6	0.5
Costs and deductions	<u>(0.1)</u>	<u>(0.3)</u>
Balance at end of period	<u>\$ 2.0</u>	<u>\$ 1.5</u>

**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

**6. Inventories**

Inventories consist of the following components:

(Millions of US dollars)	March 31	
	2008	2007
Finished goods	\$ 127.4	\$ 101.5
Work-in-process	8.4	12.3
Raw materials and supplies	51.0	37.8
Provision for obsolete finished goods and raw materials	(7.1)	(4.0)
<b>Total inventories</b>	<b>\$ 179.7</b>	<b>\$ 147.6</b>

**7. Property, Plant and Equipment**

Property, plant and equipment consist of the following components:

(Millions of US dollars)	Land	Buildings	Machinery and Equipment	Construction in Progress	Total
<b>Balance at March 31, 2006:</b>					
Cost	\$ 15.6	\$ 147.5	\$ 669.8	\$ 228.1	\$ 1,061.0
Accumulated depreciation	—	(31.7)	(253.7)	—	(285.4)
Net book value	15.6	115.8	416.1	228.1	775.6
<b>Changes in net book value:</b>					
Capital expenditures	1.3	70.8	131.3	(110.8)	92.6
Retirements and sales	—	—	(0.6)	—	(0.6)
Depreciation	—	(8.3)	(42.4)	—	(50.7)
Other movements	—	—	0.6	—	0.6
Foreign currency translation adjustments	—	—	10.2	—	10.2
Total changes	1.3	62.5	99.1	(110.8)	52.1
<b>Balance at March 31, 2007:</b>					
Cost	16.9	218.3	811.3	117.3	1,163.8
Accumulated depreciation	—	(40.0)	(296.1)	—	(336.1)
Net book value	\$ 16.9	\$ 178.3	\$ 515.2	\$ 117.3	\$ 827.7
<b>Changes in net book value:</b>					
Capital expenditures	0.3	7.3	65.8	(34.9)	38.5
Retirements and sales	—	—	(1.2)	—	(1.2)
Depreciation	—	(12.0)	(44.5)	—	(56.5)
Impairment	—	(16.7)	(54.3)	—	(71.0)
Other movements	—	—	5.2	—	5.2
Foreign currency translation adjustments	—	—	13.7	—	13.7
Total changes	0.3	(21.4)	(15.3)	(34.9)	(71.3)
<b>Balance at March 31, 2008:</b>					
Cost	17.2	208.9	840.5	82.4	1,149.0
Accumulated depreciation	—	(52.0)	(340.6)	—	(392.6)
Net book value	\$ 17.2	\$ 156.9	\$ 499.9	\$ 82.4	\$ 756.4

Construction in progress consists of plant expansions and upgrades.

Interest related to the construction of major facilities is capitalized and included in the cost of the asset to which it relates. Interest capitalized was \$0.6 million, \$5.3 million and \$5.7 million for the years ended March 31, 2008, 2007 and 2006, respectively. Depreciation expense for continuing operations was \$56.5 million, \$50.7 million and \$45.3 million for the years ended March 31, 2008, 2007 and 2006, respectively.

**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

Included in property, plant and equipment are restricted assets of the AICF with a net book value of \$0.6 million and \$0.4 million as of March 31, 2008 and 2007, respectively.

**Asset Impairments**

The Company recorded an asset impairment charge of \$13.4 million for the year ended March 31, 2006 related to the closure of its pilot roofing plant. This asset impairment charge was recorded in the Company's Other segment. The impaired assets include buildings and machinery, which were reduced to their estimated fair value based on valuation methods including quoted market prices and discounted future cash flows.

On October 31, 2007, the Company announced plans to suspend production at its Blandon, Pennsylvania plant in the U.S. The Company recorded an asset impairment charge of \$32.4 million in the year ended March 31, 2008 in its USA Fiber Cement segment. The impaired assets include buildings and machinery, which were reduced to their estimated fair value based on valuation methods including quoted market prices and discounted future cash flows. These assets are being held for use by the Company. Since the date of the announcement through March 31, 2008, the Company has incurred \$1.4 million of closure related costs. The closure related costs are not included in the asset impairment charge of \$32.4 million and have been included in cost of goods sold and selling, general and administrative expenses in the period incurred.

The Company recorded an asset impairment charge of \$25.4 million in the year ended March 31, 2008 in its Other segment, related to the closure of its Plant City, Florida Hardie Pipe plant. The impaired assets include buildings and machinery, which were reduced to their estimated fair value based on valuation methods including quoted market prices and discounted future cash flows. These assets are being held for use by the Company.

The Company recorded an asset impairment charge of \$13.2 million in the year ended March 31, 2008 related to buildings and machinery utilized to produce materials for the Company's products. This asset impairment was recorded in its USA Fiber Cement segment. The impaired assets were reduced to their estimated fair value based on valuation methods including quoted market prices and discounted future cash flows. These assets are being held for use by the Company.

**8. Accounts Payable and Accrued Liabilities**

Accounts payable and accrued liabilities consist of the following components:

(Millions of US dollars)	March 31	
	2008	2007
Trade creditors	\$ 73.7	\$ 57.7
Other creditors and accruals	33.9	43.1
<b>Total accounts payable and accrued liabilities</b>	<b>\$ 107.6</b>	<b>\$ 100.8</b>

**9. Short and Long-Term Debt**

Debt consists of the following components:

(Millions of US dollars)	March 31	
	2008	2007
Short-term debt	\$ 90.0	\$ 83.0
Long-term debt	174.5	105.0
<b>Total debt (1)</b>	<b>\$ 264.5</b>	<b>\$ 188.0</b>

(1) Total debt at 3.63% and 5.91% weighted average rates at March 31, 2008 and 2007, respectively.

**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

At March 31, 2008, the Company's credit facilities currently consist of:

Description	Total Facility	Principal Drawn
(US\$ millions)		
364-day facilities, can be drawn in US\$, variable interest rates based on LIBOR plus margin, can be repaid and redrawn until December 2008	\$110.0	\$ 90.0
Term facilities, can be drawn in US\$, variable interest rates based on LIBOR plus margin, can be repaid and redrawn until June 2010	245.0	174.5
Term facilities, can be drawn in US\$, variable interest rates based on LIBOR plus margin, can be repaid and redrawn until February 2011	45.0	—
Term facilities, can be drawn in US\$, variable interest rates based on LIBOR plus margin, can be repaid and redrawn until February 2013	90.0	—
<b>Total</b>	<b>\$490.0</b>	<b>\$ 264.5</b>

For all facilities, the interest rate is calculated two business days prior to the commencement of each draw-down period based on the US\$ London Interbank Offered Rate ("LIBOR") plus the margins of individual lenders and is payable at the end of each drawn-down period. The Company paid commitment fees in the amount of \$0.4 million and \$0.7 million, respectively for the years ended March 31, 2008 and 2007. At March 31, 2008, there was \$264.5 million drawn under the combined facilities and \$225.5 million was available.

Short-term debt at March 31, 2008 and March 31, 2007 comprised \$90.0 million and \$83.0 million, respectively, drawn under the 364-day facilities. Long-term debt at March 31, 2008 and March 31, 2007 comprised \$174.5 million and \$105.0 million, respectively, drawn under the term facilities.

At March 31, 2008, management believes that the Company was in compliance with all restrictive covenants contained in its credit facility agreements. Under the most restrictive of these covenants, the Company (i) is required to maintain certain ratios of indebtedness to equity which do not exceed certain maximums, excluding assets, liabilities and other balance sheet items of the AICF, Amaba Pty Limited, Amaca Pty Limited, ABN 60 Pty Limited and Marlew Mining Pty Limited, (ii) must maintain a minimum level of net worth, excluding assets, liabilities and other balance sheet items of the AICF, (iii) must meet or exceed a minimum ratio of earnings before interest and taxes to net interest charges, excluding all income, expense and other profit and loss statement impacts of the AICF, Amaba Pty Limited, Amaca Pty Limited, ABN 60 Pty Limited and Marlew Mining Pty Limited and (iv) has limits on how much it can spend on an annual basis in relation to asbestos payments to the AICF. Such limits are consistent with the contractual liabilities of the Performing Subsidiary and the Company under Amendment FFA.

The Company anticipates being able to meet its future payment obligations for the next 12 months from existing cash, unutilized committed facilities and anticipated future net operating cash flows.



**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

**10. Non-Current Other Liabilities**

Non-current other liabilities consist of the following components:

(Millions of US dollars)	March 31	
	2008	2007
Employee entitlements	\$ 6.4	\$ 11.9
Uncertain tax positions	123.7	0.7
Other	57.4	28.6
Total non-current other liabilities	<u>\$ 187.5</u>	<u>\$ 41.2</u>

**11. Product Warranties**

The Company offers various warranties on its products, including a 50-year limited warranty on certain of its fiber cement siding products in the United States. A typical warranty program requires the Company to replace defective products within a specified time period from the date of sale. The Company records an estimate for future warranty related costs based on an analysis of actual historical warranty costs as they relate to sales. Based on this analysis and other factors, the adequacy of the Company's warranty provisions are adjusted as necessary. While the Company's warranty costs have historically been within its calculated estimates, it is possible that future warranty costs could differ from those estimates.

Additionally, the Company includes in its accrual for product warranties amounts for a Class Action Settlement Agreement (the "Settlement Agreement") related to its previous roofing products, which are no longer manufactured in the United States. On February 14, 2002, the Company signed the Settlement Agreement for all product, warranty and property related liability claims associated with these previously manufactured roofing products. These products were removed from the marketplace between 1995 and 1998 in areas where there had been any alleged problems. The total amount included in the product warranty provision relating to the Settlement Agreement is \$2.7 million and \$3.5 million as of March 31, 2008 and 2007, respectively.

The following are the changes in the product warranty provision:

(Millions of US dollars)	Years Ended March 31	
	2008	2007
Balance at beginning of period	\$ 15.2	\$ 15.5
Accruals for product warranties	10.2	4.4
Settlements made in cash or in kind	(7.9)	(4.9)
Foreign currency translation adjustments	0.2	0.2
Balance at end of period	<u>\$ 17.7</u>	<u>\$ 15.2</u>

The "Accruals for product warranties" line item above includes a reduction in the accrual of \$0.5 million and an additional accrual of \$2.0 million for the years ended March 31, 2008 and 2007, respectively, related to the Settlement Agreement. The "Settlements made in cash or in kind" line item above includes settlements related to the Settlement Agreement of \$0.3 million and \$0.2 million for the years ended March 31, 2008 and 2007, respectively.

**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

**12. Asbestos**

The Amended FFA to provide long-term funding to the AICF was approved by shareholders in February 2007. The accounting policies utilized by the Company to account for the Amended FFA are described in Note 2, *Summary of Significant Accounting Policies*.

**Asbestos Adjustments**

The asbestos adjustments included in the consolidated statements of operations comprise the following:

(Millions of US dollars)	2008	Years Ended March 31 2007	2006
<b>Change in estimates:</b>			
Change in actuarial estimate — asbestos liability	\$ (175.0)	\$ 50.3	\$ —
Change in actuarial estimate — insurance receivable	27.4	(22.6)	—
Change in estimate — AICF claims-handling costs	(6.5)	0.8	—
Change in estimate — other	1.2	—	—
Subtotal — Change in estimates	<u>(152.9)</u>	<u>28.5</u>	<u>—</u>
Effect of foreign exchange	(87.2)	(94.5)	—
Tax impact related to the implementation of the Amended FFA	—	(335.0)	—
Initial recording of provision at March 31, 2006	—	—	(715.6)
Other adjustments	—	(4.5)	—
<b>Total Asbestos Adjustments</b>	<b><u>\$ (240.1)</u></b>	<b><u>\$ (405.5)</u></b>	<b><u>\$ (715.6)</u></b>

**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

*Asbestos-Related Assets and Liabilities*

Under the terms of the Amended FFA, the Company has included on its consolidated balance sheets certain asbestos-related assets and liabilities. These amounts are detailed in the table below, and the net total of these asbestos-related assets and liabilities is commonly referred to by the Company as the “Net Amended FFA Liability.”

(Millions of US dollars)	March 31	
	2008	2007
Asbestos liability — current	\$ (78.7)	\$ (63.5)
Asbestos liability — non-current	(1,497.8)	(1,225.8)
Asbestos liability — Total	(1,576.5)	(1,289.3)
Insurance receivable — current	14.1	9.4
Insurance receivable — non-current	194.3	165.1
Insurance receivable — Total	208.4	174.5
Workers’ compensation asset — current	6.9	2.7
Workers’ compensation asset — non-current	78.5	76.5
Workers’ compensation liability — current	(6.9)	(2.7)
Workers’ compensation liability — non-current	(78.5)	(76.5)
Workers’ compensation — Total	—	—
Deferred income taxes — current	9.1	7.8
Deferred income taxes — non-current	397.1	318.2
Deferred income taxes — Total	406.2	326.0
Income tax payable (reduction in income tax payable)	20.4	9.0
Other net liabilities	(3.4)	(6.3)
<b>Net Amended FFA liability</b>	<b>(944.9)</b>	<b>(786.1)</b>
Restricted cash and cash equivalents and restricted short-term investment assets of the AICF	115.1	146.9
<b>Unfunded Net Amended FFA liability</b>	<b>\$ (829.8)</b>	<b>\$ (639.2)</b>

*Asbestos Liability*

The amount of the asbestos liability reflects the terms of the Amended FFA, which has been calculated by reference to (but is not exclusively based upon) the most recent actuarial estimate of the projected future asbestos-related cash flows prepared by KPMG Actuaries. The asbestos liability also includes an allowance for the future claims-handling costs of the AICF. The Company will receive an updated actuarial estimate as of March 31 each year. The last actuarial assessment was performed as of March 31, 2008.

**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

The changes in the asbestos liability for the year ended March 31, 2008 are detailed in the table below:

	AS Millions	AS to US\$ rate	US\$ Millions
Asbestos liability — March 31, 2007	A\$(1,598.1)	1.2395	\$ (1,289.3)
Asbestos claims paid (1)	74.3	1.1503	64.6
AICF claims-handling costs incurred (1)	2.8	1.1503	2.4
Change in actuarial estimate (2)	(190.8)	1.0903	(175.0)
Change in estimate of AICF claims-handling costs (2)	(7.1)	1.0903	(6.5)
Effect of foreign exchange			(172.7)
<b>Asbestos liability — March 31, 2008</b>	<b><u>A\$(1,718.9)</u></b>	1.0903	<b><u>\$ (1,576.5)</u></b>

*Insurance Receivable — Asbestos*

The changes in the insurance receivable for the year ended March 31, 2008 are detailed in the table below:

	AS Millions	AS to US\$ rate	US\$ Millions
Insurance receivable — March 31, 2007	A\$216.3	1.2395	\$ 174.5
Insurance recoveries (1)	(19.2)	1.1503	(16.7)
Change in estimate (3)	0.2	1.1782	0.2
Change in actuarial estimate (2)	29.9	1.0903	27.4
Effect of foreign exchange			23.0
<b>Insurance receivable — March 31, 2008</b>	<b><u>A\$227.2</u></b>	1.0903	<b><u>\$ 208.4</u></b>

*Deferred Income Taxes — Asbestos*

The changes in the deferred income taxes — asbestos for the year ended March 31, 2008 are detailed in the table below:

	AS Millions	AS to US\$ rate	US\$ Millions
Deferred tax assets — March 31, 2007	A\$404.1	1.2395	\$ 326.0
Amounts offset against income tax payable (1)	(11.1)	1.1503	(9.6)
Impact of change in actuarial estimates (2)	50.4	1.0903	46.2
Impact of other asbestos adjustments (1)	(0.5)	1.1503	(0.4)
Effect of foreign exchange			44.0
<b>Deferred tax assets — March 31, 2008</b>	<b><u>A\$442.9</u></b>	1.0903	<b><u>\$ 406.2</u></b>

- (1) The average exchange rate for the period is used to convert the Australian dollar amount to U.S. dollars based on the assumption that these transactions occurred evenly throughout the period.
- (2) The spot exchange rate at March 31, 2008 is used to convert the Australian dollar amount to U.S. dollars as the adjustment to the estimate was made on that date.
- (3) The spot exchange rate at June 30, 2007 is used to convert the Australian dollar amount to U.S. dollars as the adjustment to the estimate was made on that date.

**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

*Income Tax Payable*

A portion of the deferred income tax asset is applied against the Company's income tax payable. At March 31, 2008 and 2007, this amount was \$20.4 million and \$9.0 million, respectively. During the year ended March 31, 2008, there was a \$1.7 million favorable effect of foreign exchange.

*Other Net Liabilities*

Other net liabilities include a provision for asbestos-related education and medical research contributions of \$3.3 million and \$4.6 million at March 31, 2008 and 2007, respectively. Also included in other net liabilities are the other assets and liabilities of the AICF including trade receivables, prepayments, fixed assets, trade payables and accruals. These other assets and liabilities of the AICF were a net liability of \$0.1 million and \$1.7 million at March 31, 2008 and 2007, respectively. During the year ended March 31, 2008, there was a \$1.0 million favorable adjustment related to changes in estimates of the other net liabilities and a \$0.5 million unfavorable effect of foreign exchange.

*Restricted Cash and Short-term Investment Assets of the AICF*

Cash and cash equivalents and short-term investments of the AICF are reflected as restricted assets as these assets are restricted for use in the settlement of asbestos claims and payment of the operating costs of the AICF. During the year ended March 31, 2008, no short-term investments were purchased or sold.

The changes in the restricted cash and cash equivalents and restricted short-term investment assets of the AICF for the year ended March 31, 2008 are detailed in the table below:

	AS Millions	A\$ to US\$ rate	US\$ Millions
Restricted cash and cash equivalents and restricted short-term investment assets — March 31, 2007	A\$ 182.1	1.2395	\$ 146.9
Asbestos claims paid (1)	(74.3)	1.1503	(64.6)
AICF operating costs paid — claims-handling (1)	(2.8)	1.1503	(2.4)
AICF operating costs paid — non claims-handling (1)	(4.6)	1.1503	(4.0)
Insurance recoveries (1)	19.2	1.1503	16.7
Interest and investment income (1)	10.8	1.1503	9.4
Unrealized loss on investments (1)	(5.1)	1.1503	(4.4)
Other (1)	0.2	1.1503	0.2
Effect of foreign exchange			17.3
<b>Restricted cash and cash equivalents and restricted short-term investment assets — March 31, 2008</b>	<b><u>A\$ 125.5</u></b>	1.0903	<b><u>\$ 115.1</u></b>

(1) The average exchange rate for the period is used to convert the Australian dollar amount to U.S. dollars based on the assumption that these transactions occurred evenly throughout the period.

*Actuarial Study; Claims Estimate*

The AICF commissioned an updated actuarial study of potential asbestos-related liabilities as of March 31, 2008. Based on KPMG Actuaries' assumptions, KPMG Actuaries arrived at a range of possible total cash flows and proposed a central estimate which is intended to reflect an expected outcome. The Company views the central estimate as the basis for recording the asbestos liability in the Company's financial statements, which under U.S. GAAP, it considers the best estimate under SFAS No. 5. Based on the results of these studies, it is estimated that the discounted (but inflated) value of the central estimate for claims against the Former James Hardie Companies was approximately A\$1.4 billion (\$1.3 billion). The undiscounted (but inflated) value of the central estimate of the asbestos-related liabilities of Amaca and Amaba as determined by KPMG Actuaries was approximately A\$3.0 billion (\$2.8 billion). Actual liabilities of those companies for such claims could vary, perhaps materially, from the central estimate described above. The asbestos liability includes projected future cash flows as undiscounted and uninflated on the basis that it is inappropriate to discount or inflate future cash flows when the timing and amounts of such cash flows is not fixed or readily determinable.

**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

The asbestos liability has been revised to reflect the most recent actuarial estimate prepared by KPMG Actuaries as of March 31, 2008 and to adjust for payments made to claimants during the year then ended.

In estimating the potential financial exposure, KPMG Actuaries made assumptions related to the total number of claims which were reasonably estimated to be asserted through 2071, the typical cost of settlement (which is sensitive to, among other factors, the industry in which a plaintiff claims exposure, the alleged disease type and the jurisdiction in which the action is brought), the legal costs incurred in the litigation of such claims, the rate of receipt of claims, the settlement strategy in dealing with outstanding claims and the timing of settlements.

Further, KPMG Actuaries relied on the data and information provided by the AICF and assumed that it is accurate and complete in all material respects. The actuaries tested the data for reasonableness and consistency but have not verified the information independently nor established the accuracy or completeness of the data and information provided or used for the preparation of the report.

Due to inherent uncertainties in the legal and medical environment, the number and timing of future claim notifications and settlements, the recoverability of claims against insurance contracts, and estimates of future trends in average claim awards, as well as the extent to which the above named entities will contribute to the overall settlements, the actual amount of liability could differ materially from that which is currently projected.

A sensitivity analysis has been performed to determine how the actuarial estimates would change if certain assumptions (i.e., the rate of inflation and superimposed inflation, the average costs of claims and legal fees, and the projected numbers of claims) were different from the assumptions used to determine the central estimates. This analysis shows that the discounted (but inflated) central estimates could be in a range of A\$1.0 billion (\$0.9 billion) to A\$2.1 billion (\$1.9 billion) (undiscounted, but inflated, estimates of A\$1.9 billion (\$1.7 billion) to A\$5.4 billion (\$5.0 billion)), as of March 31, 2008. It should be noted that the actual cost of the liabilities could be outside of that range depending on the results of actual experience relative to the assumptions made.

The potential range of costs as estimated by KPMG Actuaries is affected by a number of variables such as nil settlement rates (where no settlement is payable by the Former James Hardie Companies because the claim settlement is borne by other asbestos defendants (other than the former James Hardie subsidiaries) which are held liable), peak year of claims, past history of claims numbers, average settlement rates, past history of Australian asbestos-related medical injuries, current number of claims, average defense and plaintiff legal costs, base wage inflation and superimposed inflation. The potential range of losses disclosed includes both asserted and unasserted claims. While no assurances can be provided, the Company believes that it is likely to be able to partially recover losses from various insurance carriers. As of March 31, 2008, KPMG Actuaries' undiscounted central estimate of asbestos-related liabilities was A\$3.0 billion (\$2.8 billion). This undiscounted (but inflated) central estimate is net of expected insurance recoveries of A\$497.8 million (\$456.6 million) after making a general credit risk allowance for bad debt insurance carriers and an allowance for A\$72.7 million (\$66.7 million) of "by claim" or subrogation recoveries from other third parties. In accordance with FIN 39, the Company has not netted the insurance receivable against the asbestos liability on its consolidated balance sheets.

***Claims Data***

The AICF provides compensation payments for Australian asbestos-related personal injury claims against the Liable Entities. The claims data in this section are only reflective of these Australian asbestos-related personal injury claims against the Liable Entities.

**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

For the years ended March 31, 2008, 2007 and 2006, the following table, provided by KPMG Actuaries, shows the claims filed, the number of claims dismissed, settled or otherwise resolved for each period and the average settlement amount per claim:

	2008	Years Ended March 31 2007	2006 (1)
Number of claims filed	552	463	346
Number of claims dismissed	74	121	97
Number of claims settled or otherwise resolved	445	416	405
Average settlement amount per settled claim	A\$ 147,349	A\$ 166,164	A\$ 151,883
Average settlement amount per settled claim	\$ 128,096	\$ 127,165	\$ 114,322

The following table, provided by KPMG Actuaries, shows the activity related to the numbers of open claims, new claims and closed claims during each of the past five years and the average settlement per settled claim and case closed:

	2008	2007	Years Ended March 31 2006 (1)	2005	2004
Number of open claims at beginning of period	490	564	712	687	743
Number of new claims	552	463	346	489	379
Number of closed claims	519	537	502	464	435
Number of open claims at end of period	523	490	556	712	687
Average settlement amount per settled claim	A\$ 147,349	A\$ 166,164	A\$ 151,883	A\$ 157,594	A\$ 167,450
Average settlement amount per case closed	A\$ 126,340	A\$ 128,723	A\$ 122,535	A\$ 136,536	A\$ 121,642
Average settlement amount per settled claim	\$ 128,096	\$ 127,163	\$ 114,318	\$ 116,572	\$ 116,123
Average settlement amount per case closed	\$ 109,832	\$ 98,510	\$ 92,229	\$ 100,996	\$ 84,356

(1) Information includes claims data for only 11 months ended February 28, 2006. Claims data for the 12 months ended March 31, 2006 were not available at the time the Company's financial statements were prepared.

Under the terms of the Amended FFA, the Company has obtained rights of access to actuarial information produced for the AICF by the actuary appointed by the AICF (the "Approved Actuary"). The Company's future disclosures with respect to claims statistics are subject to it obtaining such information from the Approved Actuary. The Company has had no general right (and has not obtained any right under the Amended FFA) to audit or otherwise require independent verification of such information or the methodologies to be adopted by the Approved Actuary. As such, the Company will need to rely on the accuracy and completeness of the information and analysis of the Approved Actuary when making future disclosures with respect to claims statistics.

**13. Commitment and Contingencies**

*ASIC Proceedings*

In February 2007, the Australian Securities and Investments Commission ("ASIC") commenced civil proceedings in the Supreme Court of New South Wales (the "Court") against the Company, ABN 60 and ten then-present or former officers and directors of the James Hardie Group. While the subject matter of the allegations varies between individual defendants, the allegations against the Company are confined to alleged contraventions of provisions of the Australian Corporations Act/Law relating to continuous disclosure, a director's duty of care and diligence, and engaging in misleading or deceptive conduct in respect of a security.

**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

In the proceedings, ASIC seeks:

- declarations regarding the alleged contraventions;
- orders for pecuniary penalties in such amount as the Court thinks fit up to the limits specified in the Corporations Act;
- orders that former James Hardie group directors or officers Michael Brown, Michael Gillfillan, Meredith Hellicar, Martin Koffel, Peter Macdonald, Philip Morley, Geoffrey O'Brien, Peter Shafroff, Gregory Terry and Peter Willcox be prohibited from managing an Australian corporation for such period as the Court thinks fit;
- an order that the Company execute a deed of indemnity in favor of ABN 60 providing that the Company indemnify ABN 60 for an amount up to a maximum of AS\$1.9 billion, for such amount as ABN 60, or its directors, consider, after giving careful consideration, is necessary to ensure that ABN 60 is able to pay its debts, as and when they fall due, and for such amount as ABN 60, or its directors, reasonably believe is necessary to ensure that ABN 60 remains solvent; and
- its costs of the proceedings.

The Company is defending each of the allegations made by ASIC and the orders sought against it in the proceedings, as are the other former directors and officers.

ASIC has indicated that its investigations into other related matters continue and may result in further actions, both civil and criminal. However, it has not indicated the possible defendants to any such actions.

The Company has entered into deeds of indemnity with certain of its directors and officers, as is common practice for publicly listed companies. The Company's articles of association also contain an indemnity for directors and officers and the Company has granted indemnities to certain of its former related corporate bodies which may require the Company to indemnify those entities against indemnities they have granted their directors and officers. To date, claims for payments of expenses incurred have been received from certain former directors and officers in relation to the ASIC investigation, and in relation to the examination of these persons by ASIC delegates. Now that proceedings have been brought against former directors and officers of the James Hardie Group, the Company has and will continue to incur further costs under these indemnities which may be significant. Initially, the Company has obligations, or has offered, to advance funds in respect of defense costs and such advances have been and will continue to be made. Currently, a portion of the defense costs of former directors are being advanced by third parties, with the Company paying the balance. Based upon the information available to it presently, the Company expects this to continue absent any finding of dishonesty against any former director or officer. The Company notes that other recoveries may be available, depending upon the outcome of the ASIC proceedings, including either as a result of a costs order being made against ASIC or, if ASIC is successful in securing civil penalty declarations, as a result of repayments by former directors and officers in accordance with the terms of their indemnities. It is the Company's policy to expense legal costs as incurred.

There remains considerable uncertainty surrounding the likely outcome of the ASIC proceedings in the longer term and there is a possibility that the Company could become responsible for other amounts in addition to the defense costs. However, at this stage, the Company believes that although such amounts are reasonably possible, the amount or range of such amounts are not estimable.

***Environmental and Legal***

The operations of the Company, like those of other companies engaged in similar businesses, are subject to a number of federal, state and local laws and regulations on air and water quality, waste handling and disposal. The Company's policy is to accrue for environmental costs when it is determined that it is probable that an obligation exists and the amount can be reasonably estimated. In the opinion of management, based on information presently known except as set forth above, the ultimate liability for such matters should not have a material adverse effect on either the Company's consolidated financial position, results of operations or cash flows.

The Company is involved from time to time in various legal proceedings and administrative actions incidental or related to the normal conduct of its business. Although it is impossible to predict the outcome of any pending legal



**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

proceeding, management believes that such proceedings and actions should not, except those items specifically described within these consolidated financial statements, individually or in the aggregate, have a material adverse effect on its consolidated financial position, results of operations or cash flows.

**Operating Leases**

As the lessee, the Company principally enters into property, building and equipment leases. The following are future minimum lease payments for non-cancellable operating leases having a remaining term in excess of one year at March 31, 2008:

Years ending March 31:	(Millions of US dollars)
2009	\$ 14.8
2010	13.3
2011	12.4
2012	12.0
2013	8.6
Thereafter	56.7
<b>Total</b>	<b>\$ 117.8</b>

Rental expense amounted to \$10.2 million, \$12.1 million and \$12.5 million for the years ended March 31, 2008, 2007 and 2006, respectively.

**Capital Commitments**

Commitments for the acquisition of plant and equipment and other purchase obligations, primarily in the United States, contracted for but not recognized as liabilities and generally payable within one year, were \$9.0 million at March 31, 2008.

Readers are referred to Note 12 *Asbestos* and Note 15 *Amended ATO Assessment* for additional disclosures of commitments and contingencies.

**14. Income Taxes**

Income tax expense includes income taxes currently payable and those deferred because of temporary differences between the financial statement and tax bases of assets and liabilities. Income tax (expense) benefit for continuing operations consists of the following components:

(Millions of US dollars)	2008	Years Ended March 31 2007	2006
(Loss) income from continuing operations before income taxes:			
Domestic (1)	\$ 80.1	\$ 110.9	\$ 113.7
Foreign	(115.6)	(204.0)	(548.8)
(Loss) income from continuing operations before income taxes	<u>\$ (35.5)</u>	<u>\$ (93.1)</u>	<u>\$ (435.1)</u>
Income tax (expense) benefit:			
Current:			
Domestic (1)	\$ (7.1)	\$ 0.4	\$ (9.0)
Foreign	(102.1)	(63.7)	(91.5)
Current income tax expense	<u>(109.2)</u>	<u>(63.3)</u>	<u>(100.5)</u>
Deferred:			
Domestic (1)	(0.2)	0.1	(0.3)
Foreign	73.3	307.1	29.2
Deferred income tax benefit	<u>73.1</u>	<u>307.2</u>	<u>28.9</u>
Total income tax (expense) benefit for continuing operations	<u>\$ (36.1)</u>	<u>\$ 243.9</u>	<u>\$ (71.6)</u>

**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

(1) Since JHI NV is the Dutch parent holding company, domestic represents The Netherlands.

Income tax (expense) benefit computed at the statutory rates represents taxes on income applicable to all jurisdictions in which the Company conducts business, calculated as the statutory income tax rate in each jurisdiction multiplied by the pre-tax income attributable to that jurisdiction. Income tax (expense) benefit from continuing operations is reconciled to the tax at the statutory rates as follows:

(Millions of US dollars)	2008	Years Ended March 31	
		2007	2006
Income tax benefit computed at statutory tax rates	\$ 7.8	\$ 16.2	\$ 121.0
U.S. state income taxes, net of the federal benefit	(1.9)	(6.5)	(7.1)
Asbestos provision	—	242.0	(214.7)
Asbestos — effect of foreign exchange	(27.5)	(24.1)	—
Benefit from Dutch financial risk reserve regime	7.3	8.1	12.7
Expenses not deductible	(3.2)	(1.7)	(3.4)
Non-assessable items	2.7	1.8	1.4
Losses not available for carryforward	(1.4)	(3.2)	(2.6)
Change in reserves	(18.5)	10.4	—
Result of tax audits	—	—	20.7
Change in tax law	—	3.0	—
Other items	(1.4)	(2.1)	0.4
<b>Total income tax (expense) benefit</b>	<b>\$ (36.1)</b>	<b>\$ 243.9</b>	<b>\$ (71.6)</b>
Effective tax rate	<b>101.7%</b>	<b>262.0%</b>	<b>16.5%</b>

Deferred tax balances consist of the following components:

(Millions of US dollars)	March 31	
	2008	2007
<b>Deferred tax assets:</b>		
Asbestos liability	\$ 406.2	\$ 326.0
Other provisions and accruals	27.0	33.3
Net operating loss carryforwards	6.3	7.8
Capital loss carryforwards	40.0	35.2
Taxes on intellectual property transfer	6.5	6.5
Prepayments	2.9	7.5
Other	0.8	—
<b>Total deferred tax assets</b>	<b>489.7</b>	<b>416.3</b>
Valuation allowance	(45.1)	(39.7)
<b>Total deferred tax assets, net of valuation allowance</b>	<b>444.6</b>	<b>376.6</b>
<b>Deferred tax liabilities:</b>		
Property, plant and equipment	(93.4)	(108.4)
Foreign currency movements	(15.2)	(5.2)
Other	—	(0.1)
<b>Total deferred tax liabilities</b>	<b>(108.6)</b>	<b>(113.7)</b>
<b>Net deferred tax liabilities</b>	<b>\$ 336.0</b>	<b>\$ 262.9</b>

Under SFAS No. 109, "Accounting for Income Taxes," the Company establishes a valuation allowance against a deferred tax asset if it is more likely than not that some portion or all of the deferred tax asset will not be realized. The Company has established a valuation allowance pertaining to all of its Australian net operating loss carryforwards and all of its Australian capital loss carryforwards. The valuation allowance increased by \$5.4 million during the fiscal year 2008 due to foreign currency movements.

**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

At March 31, 2008, the Company had Australian tax loss carryforwards of approximately \$17.7 million that will never expire. At March 31, 2008, the Company had a 100% valuation allowance against the Australian tax loss carryforwards.

At March 31, 2008, the Company had \$133.2 million in Australian capital loss carryforwards which will never expire. At March 31, 2008, the Company had a 100% valuation allowance against the Australian capital loss carryforwards.

At March 31, 2008, the undistributed earnings of non-Dutch subsidiaries approximated \$744.7 million. The Company intends to indefinitely reinvest these earnings, and accordingly, has not provided for taxes that would be payable upon remittance of those earnings. The amount of the potential deferred tax liability related to undistributed earnings is impracticable to determine at this time.

Due to the size of the Company and the nature of its business, the Company is subject to ongoing reviews by taxing jurisdictions on various tax matters, including challenges to various positions the Company asserts on its income tax returns. The Company accrues for tax contingencies based upon its best estimate of the taxes ultimately expected to be paid, which it updates over time as more information becomes available. Such amounts are included in taxes payable or other non-current liabilities, as appropriate. If the Company ultimately determines that payment of these amounts is unnecessary, the Company reverses the liability and recognizes a tax benefit during the period in which the Company determines that the liability is no longer necessary. The Company records additional tax expense in the period in which it determines that the recorded tax liability is less than the ultimate assessment it expects.

In fiscal years 2008, 2007 and 2006, the Company recorded income tax benefit of nil, \$10.4 million and \$20.7 million, respectively, as a result of the finalization of certain tax audits (whereby certain matters were settled), the expiration of the statute related to certain tax positions and adjustments to income tax balances based on the filing of amended income tax returns, which give rise to the benefit recorded by the Company.

The Company or one of its subsidiaries files income tax returns in the U.S. federal jurisdiction, and various states and foreign jurisdictions including Australia and The Netherlands. The Company is no longer subject to U.S. federal examinations by U.S. Internal Revenue Service ("IRS") for tax years prior to and including tax year 2004. The Company is no longer subject to examinations by The Netherlands tax authority, for tax years prior to tax year 2002. With certain limited exceptions, the Company is no longer subject to Australian federal examinations by the Australian Taxation Office ("ATO") for tax years prior to tax year 2000. The Company is currently subject to audit and review in a number of jurisdictions in which it operates and has been advised that further audits will commence in the next 12 months. In particular, the IRS is currently conducting an audit to determine whether the Company is in compliance with the revised U.S. — Netherlands Tax Treaty ("New U.S.-N.L. Treaty") Limitations on Benefits ("LOB") provision that entitles it to beneficial withholding tax rates on payments from the U.S. to The Netherlands.

On June 23, 2008, the Company announced that the IRS had issued it with a Notice of Proposed Adjustment ("NOPA") that concludes that the Company does not satisfy the LOB provision of the New U.S.-N.L. Treaty and that accordingly it is not entitled to beneficial withholding tax rates on payments from the Company's United States subsidiaries to its Netherlands companies. The Company does not agree with the conclusions reached by the IRS, and the Company intends to contest the IRS' findings through the continuing audit process and, if necessary, through subsequent administrative appeals and possibly litigation. If the IRS position ultimately were to prevail, the Company would be liable for a 30% withholding tax on dividend, interest and royalty payments made any time on or after February 1, 2006 by the Company's U.S. subsidiaries to JHI NV or the Company's Dutch finance subsidiary. In that event, the Company estimates that it would owe approximately \$37.0 million in additional tax for calendar years 2006 and 2007 plus, as of June 30, 2008, \$3.0 million in interest and \$7.0 million in penalties related to that tax. Interest will continue to accrue and compound daily at the published monthly Federal short term rate plus 3% until the issue is resolved or a deposit of the full amount of the tax, interest and penalties is made with the IRS or a bond for such amounts is posted. Penalties for calendar years 2006 and 2007 will continue to accrue at the rate of one-half percent per month up to a maximum of 25%. The \$7.0 million accrued penalty through June 30, 2008 could continue to accrue to a maximum total of \$13.0 million. Additional tax, interest and penalties would be payable for

**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

later calendar years and such amounts could be significantly more per year in later years than the amounts indicated in the NOPA for calendar years 2006 and 2007.

In addition, the ATO is auditing the Company's Australian income tax returns for the years ended March 31, 2002 and March 31, 2004 through March 31, 2006. On June 18, 2008, the ATO commenced proceedings in the Federal Court of Australia ("Federal Court") seeking the reinstatement of the Company's former wholly-owned subsidiary James Hardie Australia Finance Pty Limited ("JHAF"). The Federal Court will further consider the reinstatement of JHAF on July 18, 2008. JHAF was deregistered on August 23, 2005 following a subsidiary's voluntary winding up. The Company understands that the reinstatement of JHAF is a necessary pre-requisite to the ATO issuing an amended assessment in respect of one of the issues that has been the focus of the ATO's inquiries during the tax audit of fiscal year 2002. The Company understands that it is the view of the ATO that an amended assessment issued to JHAF would comprise primary tax of A\$101.5 million (\$93.1 million), estimated penalties of A\$50.8 million (\$46.6 million) and as of June 30, 2008 estimated GIC charges of A\$88.0 million (\$80.7 million). GIC will continue to accrue until the issue is resolved or a bond is posted. Any reinstatement of JHAF would be likely to involve the appointment of a new liquidator, who would need to determine, among other things, whether and to what extent JHAF was able to put itself in a position to meet any ultimate tax liability assessed in respect of it. The Company is considering its position with respect to the ATO proceedings, the merits of the potential amended assessment and any obligations of JHAF to the ATO given its prior winding up.

It is anticipated that the audits and reviews currently being conducted will be completed within the next 24 months. Of the audits currently being conducted, none have progressed sufficiently to predict their ultimate outcome. The Company accrues income tax liabilities for these audits based upon knowledge of all relevant facts and circumstances, taking into account existing tax laws, its experience with previous audits and settlements, the status of current tax examinations and how the tax authorities view certain issues.

The Company currently derives significant tax benefits under the U.S.-Netherlands tax treaty. The treaty was amended during fiscal year 2005 and became effective for the Company on February 1, 2006. The amended treaty provides, among other things, new requirements that the Company must meet for the Company to continue to qualify for treaty benefits and its effective income tax rate. During fiscal year 2006, the Company made changes to its organizational and operational structure to satisfy the requirements of the amended treaty and believes that it is in compliance and should continue qualifying for treaty benefits. However, if during a subsequent tax audit or related process, the Internal Revenue Service ("IRS") determines that these changes do not meet the new requirements, the Company may not qualify for treaty benefits, its effective income tax rate could significantly increase beginning in the fiscal year that such determination is made and it could be liable for taxes owed from the effective date of the amended treaty provisions.

In June 2006, the FASB issued FASB Interpretation No. 48 ("FIN 48"), "Accounting for Uncertainty in Income Taxes, an interpretation of SFAS No. 109 Accounting for Income Taxes." FIN 48 clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with SFAS No. 109. Unlike SFAS No. 109, FIN 48 prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. Additionally, FIN 48 provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure and transition.

The Company adopted FIN 48 on April 1, 2007. The adoption of FIN 48 resulted in the reduction of the Company's consolidated beginning retained earnings of \$78.0 million. As of the adoption date, the Company had \$39.0 million of gross unrecognized tax benefits that, if recognized, would affect the effective tax rate. As of the adoption date, the Company's opening accrual for interest and penalties is \$39.7 million.

**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

During the fourth quarter of fiscal 2008, the Company identified an error in the FIN 48 liability presented in its consolidated financial statements for the quarterly periods ended June 30, 2007, September 30, 2007 and December 31, 2007. The Company incorrectly recorded the interest expense associated with the potential tax liability at the gross amount rather than net of tax. The impacted financial statement line items were correctly stated for the year ended March 31, 2008. Management has concluded that the errors are not material to the financial statements for those periods and that the quarterly financial statement filings for those periods can continue to be relied upon. A summary of the revisions are as follows:

(Millions of US dollars)	First Quarter Ended June 30, 2007		Second Quarter Ended September 30, 2007		Third Quarter Ended December 31, 2007	
	Previously Reported	Revised	Previously Reported	Revised	Previously Reported	Revised
Income tax expense	\$ (36.4)	\$ (35.6)	\$ (27.6)	\$ (26.8)	\$ (8.9)	\$ (8.0)
Net income	39.1	39.9	19.1	19.9	17.1	18.0
Total liabilities	2,070.1	2,056.2	2,085.5	2,070.2	2,208.5	2,192.3
Total other comprehensive income	46.2	47.7	10.2	12.3	33.9	36.0
Shareholders' equity (deficit)	147.7	161.6	112.4	127.7	(52.6)	(36.4)

A reconciliation of the beginning and ending amount of unrecognized tax benefits is as follows:

	(Millions of US dollars)
Unrecognized tax benefits at April 1, 2007	\$ 39.0
Additions for tax positions of the current year	1.3
Additions for tax positions of prior year	16.0
Foreign translation adjustment	5.6
Unrecognized tax benefits at March 31, 2008	<u>\$ 61.9</u>

The Company recognizes penalties and interest accrued related to unrecognized tax benefits in income tax expense. During 2008, the total amount of interest and penalties recognized in tax expense was \$7.3 million.

As of March 31, 2008 the total amount of unrecognized tax benefits and the total amount of interest and penalties accrued related to unrecognized tax benefits that, if recognized, would affect the effective tax rate is \$61.9 million and \$47.0 million, respectively.

A number of years may elapse before an uncertain tax position is audited and ultimately settled. It is difficult to predict the ultimate outcome or the timing of resolution for uncertain tax positions. It is reasonably possible that the amount of unrecognized tax benefits could significantly increase or decrease within the next twelve months. These changes could result from the settlement of ongoing litigation, the completion of ongoing examinations, the expiration of the statute of limitations, or other circumstances. At this time, an estimate of the range of the reasonably possible change cannot be made.

**15. Amended ATO Assessment**

In March 2006, RCI Pty Ltd ("RCI"), a wholly owned subsidiary of the Company, received an amended assessment from the ATO in respect of RCI's income tax return for the year ended March 31, 1999. The amended assessment relates to the amount of net capital gains arising as a result of an internal corporate restructure carried out in 1998 and has been issued pursuant to the discretion granted to the Commissioner of

**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

Taxation under Part IVA of the Australian Income Tax Assessment Act 1936. The original amended assessment issued to RCI was for a total of A\$412.0 million. However, after two remissions of general interest charges (“GIC”) made by the ATO during fiscal year 2007, the total was revised to A\$368.0 million and is comprised of the following as of March 31, 2008:

(Millions of dollars)	US\$ (1)	A\$
Primary tax after allowable credits	\$ 157.8	A\$172.0
Penalties (2)	39.4	43.0
General interest charges	140.3	153.0
Total amended assessment	<u>\$ 337.5</u>	<u>A\$368.0</u>

(1) US\$ amounts calculated using the A\$/US\$ foreign exchange spot rate at March 31, 2008.

(2) Represents 25% of primary tax.

During fiscal year 2007, the Company agreed with the ATO that in accordance with the ATO Receivable Policy, the Company would pay 50% of the total amended assessment being A\$184.0 million (\$168.8 million), and provide a guarantee from James Hardie Industries N.V. in favor of the ATO for the remaining unpaid 50% of the amended assessment, pending outcome of the appeal of the amended assessment. The Company also agreed to pay GIC accruing on the unpaid balance of the amended assessment in arrears on a quarterly basis. Up to March 31, 2008, GIC totaling A\$95.2 million has been paid to the ATO. On April 15, 2008, the Company paid A\$3.3 million in GIC in respect of the quarter ended March 31, 2008.

On May 30, 2007, the ATO issued a Notice of Decision disallowing the Company’s objection to the amended assessment. On July 11, 2007, the Company filed an application appealing the Objection Decision with the Federal Court of Australia. The hearing date for RCI’s trial is presently scheduled for December 8, 2008.

RCI strongly disputes the amended assessment and is pursuing all avenues of appeal to contest the ATO’s position in this matter. The ATO has confirmed that RCI has a reasonably arguable position that the amount of net capital gains arising as a result of the corporate restructure carried out in 1998 has been reported correctly in the fiscal year 1999 tax return and that Part IVA does not apply. As a result, the ATO reduced the amount of penalty from an automatic 50% of primary tax that would otherwise apply in these circumstances, to 25% of primary tax. In Australia, a reasonably arguable position means that the tax position is about as likely to be correct as it is not correct. The Company and RCI received legal and tax advice at the time of the transaction, during the ATO inquiries and following receipt of the amended assessment. The Company believes that it is more likely than not that the tax position reported in RCI’s tax return for the 1999 fiscal year will be upheld on appeal. Therefore, the Company believes that the requirements under FIN 48 for recording a liability have not been met and therefore it has not recorded any liability at March 31, 2008 for the amended assessment.

The Company expects that amounts paid in respect of the amended assessment will be recovered by RCI (with interest) at the time RCI is successful in its appeal against the amended assessment. As a result, the Company has treated all payments in respect of the amended assessment that have been made up to March 31, 2008 as a deposit and it is the Company’s intention to treat any payments to be made at a later date as a deposit.

**16. Stock-Based Compensation**

At March 31, 2008, the Company had the following stock-based compensation plans: the Executive Share Purchase Plan; the Managing Board Transitional Stock Option Plan; the JHI NV 2001 Equity Incentive Plan; the Supervisory Board Share Plan 2006 and the Long-Term Incentive Plan.

**Executive Share Purchase Plan**

Prior to July 1998, James Hardie Industries Limited (“JHIL”) issued stock under an Executive Share Purchase Plan (the “Plan”). Under the terms of the Plan, eligible executives purchased JHIL shares at their market price when issued. Executives funded purchases of JHIL shares with non-recourse, interest-free loans provided by JHIL and collateralized by the shares. In such cases, the amount of indebtedness is reduced by any amounts payable by JHIL in respect of such shares, including dividends and capital returns. These loans are generally repayable within two years after termination of an executive’s employment. Variable plan accounting under the provisions of Accounting Principles Board (“APB”) Opinion No. 25, “Accounting for Stock Issued to Employees,” has been applied to the Executive Share Purchase Plan shares granted prior to April 1, 1995 and fair value accounting, pursuant to the requirements of SFAS No. 123R, has been applied to shares granted after March 31, 1995. The Company recorded no compensation expense during the years ended March 31, 2008, 2007 and 2006. No shares were issued under this plan during years ended March 31, 2008, 2007 and 2006.

**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

**Managing Board Transitional Stock Option Plan**

The Managing Board Transitional Stock Option Plan provides an incentive to the members of the Managing Board. The maximum number of ordinary shares that may be issued and outstanding or subject to outstanding options under this plan shall not exceed 1,380,000 shares. At March 31, 2008 and 2007, there were 1,320,000 options outstanding under this plan.

On November 22, 2005, the Company granted options to purchase 1,320,000 shares of the Company's common stock at an exercise price per share equal to A\$8.53 to the Managing Directors under the Managing Board Transitional Stock Option Plan. As set out in the plan rules, the exercise price and the number of shares available on exercise may be adjusted on the occurrence of certain events, including new issues, share splits, rights issues and capital reconstructions. 50% of these options become exercisable on the first business day on or after November 22, 2008 if the total shareholder returns ("TSR") (essentially its dividend yield and common stock performance) from November 22, 2005 to that date were at least equal to the median TSR for the companies comprising the Company's peer group, as set out in the plan. In addition, for each 1% increment that the Company's TSR is above the median TSR, an additional 2% of the options become exercisable. If any options remain unvested on the last business day of each six month period following November 22, 2008 and November 22, 2010, the Company will reapply the vesting criteria to those options on that business day.

**JHI NV 2001 Equity Incentive Plan**

On October 19, 2001 (the grant date), JHI NV granted options to purchase 5,468,829 shares of the Company's common stock under the JHI NV 2001 Equity Incentive Plan (the "2001 Equity Incentive Plan") to key U.S. executives in exchange for their previously granted Key Management Equity Incentive Plan ("KMEIP") shadow shares that were originally granted in November 2000 and 1999 by JHIL. These options may be exercised in five equal tranches (20% each year) starting with the first anniversary of the original shadow share grant.

Original Shadow Share Grant Date	Original Exercise Price	October 2001 Number of Options Granted	Option Expiration Date
November 1999	A\$3.82	1,968,544	November 2009
November 2000	A\$3.78	3,500,285	November 2010

As set out in the plan rules, the exercise prices and the number of shares available on exercise are adjusted on the occurrence of certain events, including new issues, share splits, rights issues and capital reconstructions. Consequently, the exercise prices were reduced by A\$0.21, A\$0.38 and A\$0.10 for the November 2003, November 2002 and December 2001 returns of capital, respectively.

Under the 2001 Equity Incentive Plan, additional grants have been made at fair market value to management and other employees of the Company. Each option confers the right to subscribe for one ordinary share in the capital of JHI NV. The options may be exercised as follows: 25% after the first year; 25% after the second year; and 50% after the third year. All unexercised options expire 10 years from the date of issue or 90 days after the employee ceases to be employed by the Company.

**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

The following table summarizes the additional option grants:

Share Grant Date	Original Exercise Price	Number of Options Granted	Option Expiration Date
December 2001	A\$5.65	4,248,417	December 2011
December 2002	A\$6.66	4,037,000	December 2012
December 2003	A\$7.05	6,179,583	December 2013
December 2004	A\$5.99	5,391,100	December 2014
February 2005	A\$6.30	273,000	February 2015
December 2005	A\$8.90	5,224,100	December 2015
March 2006	A\$9.50	40,200	March 2016
November 2006	A\$8.40	3,499,490	November 2016
March 2007	A\$8.90	179,500	March 2017
March 2007	A\$8.35	151,400	March 2017
December 2007	A\$6.38	5,031,310	December 2017

As set out in the plan rules, the exercise prices and the number of shares available on exercise may be adjusted on the occurrence of certain events, including new issues, share splits, rights issues and capital reconstructions. Consequently, the exercise prices on the December 2002 and December 2001 option grants were reduced by A\$0.21 for the November 2003 return of capital and the December 2001 option grant was reduced by A\$0.38 for the November 2002 return of capital.

The Company is authorized to issue 45,077,100 shares under the 2001 Equity Incentive Plan.

***JHI NV Stock Appreciation Rights Incentive Plan***

On December 14, 2004, 527,000 stock appreciation rights were granted under the terms and conditions of the JHI NV Stock Appreciation Rights Incentive Plan (“Stock Appreciation Rights Plan”) with an exercise price of A\$5.99. In April 2005, 27,000 stock appreciation rights were cancelled. In December 2006, 250,000 of these stock appreciation rights vested and were exercised at A\$8.99, the closing price of the Company’s stock on the exercise day. In December 2007, the remaining 250,000 of these stock appreciation rights vested and were exercised at A\$6.52, the closing price of the Company’s stock on the exercise day. These rights are accounted for as stock appreciation rights under SFAS No. 123R and, accordingly, compensation expense of \$0.1 million, \$0.5 million and \$0.5 million was recognized in the years ended March 31, 2008, 2007 and 2006, respectively.

***Supervisory Board Share Plan***

At the 2002 Annual General Meeting, the Company’s shareholders approved a Supervisory Board Share Plan (“SBSP”), which required that all non-executive directors on the Joint Board and Supervisory Board receive shares of the Company’s common stock as payment for a portion of their director fees. The SBSP required that the directors take at least \$10,000 of their fees in shares and allowed directors to receive additional shares in lieu of fees at their discretion. Shares issued under the \$10,000 compulsory component of the SBSP were subject to a two-year escrow that required members of the Supervisory Board to retain those shares for at least two years following issue. The issue price for the shares is the market value at the time of issue. No loans were entered into by the Company in relation to the grant of shares pursuant to the SBSP. During fiscal year 2007, this plan was replaced with the Supervisory Board Share Plan 2006. All remaining shares issued under the SBSP were released from escrow in November 2007.

***Supervisory Board Share Plan 2006***

At the 2006 Annual General Meeting, the Company’s shareholders approved the replacement of its SBSP with a new plan called the Supervisory Board Share Plan 2006 (“SBSP 2006”). Participation by members of the Supervisory Board in the SBSP 2006 is not mandatory. The SBSP 2006 allows the Company to issue new shares or acquire shares on the market on behalf of the participant. The total remuneration of a Supervisory Board member will take into account any participation in the SBSP 2006 and shares under the SBSP 2006. At March 31, 2008, 61,792 shares had been acquired under this plan.



**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

**Long-Term Incentive Plan**

At the 2006 Annual General Meeting, the Company's shareholders approved the establishment of a Long-Term Incentive Plan ("LTIP") to provide incentives to members of the Company's Managing Board and to certain members of its management ("Executives"). The shareholders also approved, in accordance with certain LTIP rules, the issue of options in the Company to members of the Company's Managing Board and to Executives. In November 2006, 1,132,000 options were granted under the LTIP to the Managing Board. In August 2007 an additional 1,016,000 options were granted to the Managing Board under the LTIP. The vesting of these options are subject to "performance hurdles" as outlined in the LTIP rules. Unexercised options expire 10 years from the date of issue. At March 31, 2008, there were 2,148,000 options outstanding under this plan.

**Valuation and Expense Information Under SFAS No. 123R**

The Company accounts for stock options in accordance with the fair value provisions of SFAS No. 123R, which requires the Company to estimate the value of stock options issued based upon an option-pricing model and recognize this estimated value as compensation expense over the periods in which the options vest.

The Company estimates the fair value of each option grant on the date of grant using either the Black-Scholes option-pricing model or a lattice model that incorporates a Monte Carlo Simulation (the "Monte Carlo method"). Options granted under the 2001 Equity Incentive Plan and the Managing Board Transitional Stock Option Plan are valued using the Black-Scholes option-pricing model since the vesting of these options is based solely on a requisite service condition. Options granted under the LTIP were valued using the Monte Carlo method since vesting of these options requires that certain target "performance hurdles" are achieved.

The determination of the fair value of stock-based payment awards on the date of grant using an option-pricing model is affected by our stock price as well as assumptions regarding a number of complex and subjective variables. These variables include our expected stock price volatility over the term of the awards, actual and projected employee stock option exercise behaviors, risk-free rate and expected dividends. We estimate the expected term of options granted by calculating the average term from our historical stock option exercise experience. We estimate the volatility of our common stock based on historical daily stock price volatility. We base the risk-free interest rate on U.S. Treasury notes with terms similar to the expected term of the options. We calculate dividend yield using the current management dividend policy at the time of option grant.

The following table includes the weighted average assumptions and weighted average fair values used for grants valued using the Black-Scholes option-pricing model during the year ended March 31:

	2008	2007	2006
Dividend yield	5.0%	1.5%	0.9%
Expected volatility	30.0%	28.1%	27.9%
Risk free interest rate	3.4%	4.6%	4.5%
Expected life in years	4.4	5.1	5.6
Weighted average fair value at grant date	A\$ 1.13	A\$ 2.40	A\$ 2.78
Number of stock options	5,031,310	3,830,390	6,584,300

The following table includes the weighted average assumptions and weighted average fair values used for grants valued using the Monte Carlo method during the year ended March 31:

	2008	2007	2006
Dividend yield	5.0%	1.6%	N/A
Expected volatility	32.1%	28.1%	N/A
Risk free interest rate	4.2%	4.6%	N/A
Weighted average fair value at grant date	A\$ 3.14	A\$ 3.30	N/A
Number of stock options	1,016,000	1,132,000	N/A

**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

Compensation expense arising from stock option grants as estimated using option-pricing models was \$7.7 million, \$5.8 million and \$5.9 million for the years ended March 31, 2008, 2007 and 2006, respectively. As of March 31, 2008, the unrecorded deferred stock-based compensation balance related to stock options was \$9.6 million after estimated forfeitures and will be recognized over an estimated weighted average amortization period of 1.5 years.

**General Share-Based Award Information**

The following table summarizes all of the Company's shares available for grant and the movement in all of the Company's outstanding options:

	Shares Available for Grant	Outstanding Options	
		Number	Weighted Average Exercise Price
Balance at March 31, 2006	19,836,233	19,513,257	A\$6.99
Newly Authorized	3,000,000	—	
Granted	(4,962,390)	4,962,390	A\$8.42
Exercised	—	(3,988,880)	A\$5.96
Forfeited	1,546,950	(1,546,950)	A\$7.70
Balance at March 31, 2007	<u>19,420,793</u>	<u>18,939,817</u>	A\$7.52
Newly Authorized	—	—	
Granted	(6,047,310)	6,047,310	A\$6.62
Exercised	—	(606,079)	A\$6.33
Forfeited	2,190,811	(2,190,811)	A\$7.79
<b>Balance at March 31, 2008</b>	<b><u>15,564,294</u></b>	<b><u>22,190,237</u></b>	<b>A\$7.29</b>

The total intrinsic value of stock options exercised was A\$1.2 million, A\$10.3 million and A\$11.5 million for the years ended March 31, 2008, 2007 and 2006, respectively.

The weighted average grant-date fair value of stock options granted was A\$1.47, A\$2.61 and A\$2.78 during the years ended March 31, 2008, 2007 and 2006, respectively.

Windfall tax benefits realized in the United States from stock options exercised and included in cash flows from financing activities in the consolidated statements of cash flows were nil, \$1.8 million and \$2.2 million for the years ended March 31, 2008, 2007 and 2006, respectively.

**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

The following table summarizes outstanding and exercisable options as of March 31, 2008:

Exercise Price	(In Australian dollars)						
	Options Outstanding			Options Exercisable			
	Number	Weighted Average Remaining Life (in Years)	Weighted Average Exercise Price	Aggregate Intrinsic Value	Number	Weighted Average Exercise Price	Aggregate Intrinsic Value
A\$3.09	409,907	2.6	A\$3.09	A\$1,295,306	409,907	A\$3.09	A\$1,295,306
3.13	100,435	1.6	3.13	313,357	100,435	3.13	313,357
5.06	660,582	3.7	5.06	787,017	660,582	5.06	787,017
5.99	2,745,625	6.7	5.99	713,862	2,745,625	5.99	713,862
6.30	93,000	6.9	6.30	—	93,000	6.30	—
6.38	4,822,398	9.7	6.38	—	14,286	6.38	—
6.45	901,500	4.6	6.45	—	901,500	6.45	—
7.05	2,280,750	5.7	7.05	—	2,280,750	7.05	—
7.83	1,016,000	9.4	7.83	—	—	—	—
8.35	151,400	9.0	8.35	—	37,850	8.35	—
8.40	3,747,340	8.6	8.40	—	686,349	8.40	—
8.53	1,320,000	7.7	8.53	—	—	—	—
8.90	3,901,100	7.7	8.90	—	2,000,425	8.90	—
9.50	40,200	7.9	9.50	—	20,100	9.50	—
<b>Total</b>	<u>22,190,237</u>	7.7	A\$7.29	<u>A\$3,109,542</u>	<u>9,950,809</u>	A\$6.83	<u>A\$3,109,542</u>

The aggregate intrinsic value in the preceding table represents the total pre-tax intrinsic value based on stock options with an exercise price less than the Company's closing stock price of A\$6.25 as of March 31, 2008, which would have been received by the option holders had those option holders exercised their options as of that date.

**17. Share Repurchase Program**

On August 15, 2007, the Company announced a share repurchase program of up to 10% of the Company's issued capital, approximately 46.8 million shares. The Company repurchased 35.7 million shares of common stock during the year ended March 31, 2008. The repurchased shares had an aggregate cost of A\$236.4 million (\$208.0 million) and the average price paid per share of common stock was A\$6.62 (\$5.83). The U.S. dollar amounts were determined using the weighted average spot rates for the days on which shares were purchased. The Company had not purchased any shares during the period between April 1, 2008 and the date of this report. The Company officially cancelled 35.0 million shares on March 31, 2008.

**18. Financial Instruments**

**Foreign Currency**

As a multinational corporation, the Company maintains significant operations in foreign countries. As a result of these activities, the Company is exposed to changes in exchange rates which affect its results of operations and cash flows.

The Company purchases raw materials and fixed assets and sells some finished product for amounts denominated in currencies other than the functional currency of the business in which the related transaction is generated. In order to protect against foreign exchange rate movements, the Company may enter into forward exchange contracts timed to mature when settlement of the underlying transaction is due to occur. At March 31, 2008, there were no material contracts outstanding.

**Credit Risk**

Financial instruments which potentially subject the Company to credit risk consist primarily of cash and cash equivalents, investments and trade accounts receivable.

**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

The Company maintains cash and cash equivalents, investments and certain other financial instruments with various major financial institutions. At times, these financial instruments may be in excess of insured limits. To minimize this risk, the Company performs periodic evaluations of the relative credit standing of these financial institutions and, where appropriate, places limits on the amount of credit exposure with any one institution.

The Company is exposed to losses on forward exchange contracts in the event that counterparties fail to deliver the contracted amount. The credit exposure to the Company is calculated as the mark-to-market value of all contracts outstanding with that counterparty. At March 31, 2008 and 2007, total credit exposure arising from forward exchange contracts was not material.

Credit risk with respect to trade accounts receivable is concentrated due to the concentration of the distribution channels for the Company's fiber cement products. Credit is extended based on an evaluation of each customer's financial condition and, generally, collateral is not required. The Company has historically not incurred significant credit losses.

**Fair Values**

The carrying values of cash and cash equivalents, short-term investments, accounts receivable, short-term borrowings and accounts payable and accrued liabilities are a reasonable estimate of their fair value due to the short-term nature of these instruments. The following table summarizes the estimated fair value of the Company's long-term debt (including current portion of long-term debt):

(Millions of US dollars)	2008		March 31	
	Carrying Value	Fair Value	2007	Fair Value
Long-term debt:				
Floating	\$ 174.5	\$ 174.5	\$ 105.0	\$ 105.0
Fixed	—	—	—	—
Total	<u>\$ 174.5</u>	<u>\$ 174.5</u>	<u>\$ 105.0</u>	<u>\$ 105.0</u>

Fair values of long-term debt were determined by reference to the March 31, 2008 and 2007 market values for comparably rated debt instruments.

**19. Operating Segment Information and Concentrations of Risk**

The Company has reported its operating segment information in the format that the operating segment information is available to and evaluated by the Managing Board of Directors. USA Fiber Cement manufactures and sells fiber cement interior linings, exterior siding and related accessories products in the United States. Asia Pacific Fiber Cement includes all fiber cement manufactured in Australia, New Zealand and the Philippines and sold in Australia, New Zealand and Asia. Research and Development represents the cost incurred by the research and development centers. Other includes the manufacture and sale of fiber cement reinforced pipes in the United States, fiber cement operations in Europe and roofing operations in the United States. The roofing plant was closed and the business ceased operations in April 2006. On May 22, 2008, the Company announced plans to cease production at its Plant City, Florida Hardie Pipe plant in the U.S. The Company's operating segments are strategic operating units that are managed separately due to their different products and/or geographical location.

**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

**Operating Segments**

The following are the Company's operating segments and geographical information:

(Millions of US dollars)	2008	Net Sales to Customers (1) Years Ended March 31	
		2007	2006
USA Fiber Cement	\$ 1,144.8	\$ 1,262.3	\$ 1,218.4
Asia Pacific Fiber Cement	298.3	251.7	241.8
Other	25.7	28.9	28.3
Worldwide total	<u>\$ 1,468.8</u>	<u>\$ 1,542.9</u>	<u>\$ 1,488.5</u>

(Millions of US dollars)	2008	Loss Before Income Taxes Years Ended March 31	
		2007	2006
USA Fiber Cement (2), (3)	\$ 268.0	\$ 362.4	\$ 342.6
Asia Pacific Fiber Cement (2)	50.3	39.4	41.7
Research and Development (2)	(18.1)	(17.1)	(15.7)
Other (4)	(32.8)	(9.3)	(26.5)
Segments total	267.4	375.4	342.1
General Corporate (5), (6)	(304.0)	(462.0)	(777.0)
Total operating loss	(36.6)	(86.6)	(434.9)
Net interest income (expense) (7)	1.1	(6.5)	(0.2)
Worldwide total	<u>\$ (35.5)</u>	<u>\$ (93.1)</u>	<u>\$ (435.1)</u>

(Millions of US dollars)	2008	Total Identifiable Assets Years Ended March 31	
		2007	2006
USA Fiber Cement	\$ 835.8	\$ 893.0	
Asia Pacific Fiber Cement	218.3	199.3	
Research and Development	13.9	10.9	
Other	10.6	41.6	
Segments total	1,078.6	1,144.8	
General Corporate (8), (9)	1,101.3	983.3	
Worldwide total	<u>\$ 2,179.9</u>	<u>\$ 2,128.1</u>	

**Geographic Areas**

(Millions of US dollars)	2008	Net Sales to Customers (1) Years Ended March 31	
		2007	2006
USA	\$ 1,153.1	\$ 1,279.4	\$ 1,233.7
Australia	198.6	169.0	164.5
New Zealand	67.3	54.4	53.6
Other Countries	49.8	40.1	36.7
Worldwide total	<u>\$ 1,468.8</u>	<u>\$ 1,542.9</u>	<u>\$ 1,488.5</u>

**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

(Millions of US dollars)	Total Identifiable Assets Years Ended March 31	
	2008	2007
USA	\$ 846.6	\$ 935.7
Australia	139.0	127.1
New Zealand	26.1	23.1
Other Countries	66.9	58.9
Segments total	<u>1,078.6</u>	1,144.8
General Corporate (8), (9)	<u>1,101.3</u>	983.3
Worldwide total	<u>\$ 2,179.9</u>	<u>\$ 2,128.1</u>

- (1) Export sales and inter-segmental sales are not significant.
- (2) Research and development costs of \$7.4 million, \$10.8 million and \$13.2 million in fiscal years 2008, 2007 and 2006, respectively, were expensed in the USA Fiber Cement segment. Research and development costs of \$1.6 million, \$1.8 million and \$2.3 million in fiscal years 2008, 2007 and 2006, respectively, were expensed in the Asia Pacific Fiber Cement segment. Research and development costs of \$18.0 million, \$13.0 million and \$12.3 million in fiscal years 2008, 2007 and 2006, respectively, were expensed in the Research and Development segment. Research and Development costs of \$0.3 million, \$0.3 million and \$0.9 million in fiscal years 2008, 2007 and 2006, respectively, were expensed in the Other segment. The Research and Development segment also included selling, general and administrative expenses of \$0.1 million, \$4.1 million and \$3.4 million in fiscal years 2008, 2007 and 2006, respectively.  
 Research and development expenditures are expensed as incurred and in total amounted to \$27.3 million, \$25.9 million and \$28.7 million for the years ended March 31, 2008, 2007 and 2006, respectively.
- (3) Included in USA Fiber Cement for the year ended March 31, 2008 are asset impairment charges of \$45.6 million.
- (4) Included in the Other segment for the years ended March 31, 2008 and 2006 are asset impairment charges of \$25.4 million and \$13.4 million, respectively.
- (5) The principal components of General Corporate are officer and employee compensation and related benefits; professional and legal fees; administrative costs; and rental expense, net of rental income, on the Company's corporate offices. Also included in General Corporate are unfavorable asbestos adjustments of \$240.1 million, \$405.5 million and \$715.6 million in fiscal years 2008, 2007 and 2006, respectively and AICF SG&A expenses of \$4.0 million, nil and nil in fiscal years 2008, 2007 and 2006, respectively.
- (6) Includes costs of nil, \$13.6 million and \$17.4 million for SCI and other related expenses in fiscal years 2008, 2007 and 2006, respectively.
- (7) The Company does not report net interest expense for each operating segment as operating segments are not held directly accountable for interest expense. Included in net interest income (expense) is AICF interest income of \$9.4 million, nil and nil in fiscal years 2008, 2007 and 2006, respectively. See Note 12.
- (8) The Company does not report deferred tax assets and liabilities for each operating segment as operating segments are not held directly accountable for deferred income taxes. All deferred income taxes are included in General Corporate.
- (9) Asbestos-related assets at March 31, 2008 and March 31, 2007 are \$817.1 million and \$727.6 million, respectively, and are included in the General Corporate segment. See Note 12.

**Concentrations of Risk**

The distribution channels for the Company's fiber cement products are concentrated. If the Company were to lose one or more of its major customers, there can be no assurance that the Company will be able to find a replacement. Therefore, the loss of one or more customers could have a material adverse effect on the Company's consolidated financial position, results of operations and cash flows. The Company has three major customers that individually account for over 10% of the Company's net sales.

**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

These three customers' accounts receivable represented 42% and 58% of the Company's trade accounts receivable at March 31, 2008 and 2007, respectively. The following are gross sales generated by these three customers, which are all from the USA Fiber Cement segment:

(Millions of US dollars)	2008		Years Ended March 31 2007		2006	
		%		%		%
Customer A	\$ 431.3	27.9	\$ 446.3	26.7	\$ 426.2	35.0
Customer B	108.2	7.0	172.3	10.3	168.5	13.8
Customer C	167.3	10.8	168.9	10.1	156.6	12.9
Total	<u>\$ 706.8</u>		<u>\$ 787.5</u>		<u>\$ 751.3</u>	

Approximately 22% of the Company's fiscal year 2008 net sales from continuing operations were derived from outside the United States. Consequently, changes in the value of foreign currencies could significantly affect the consolidated financial position, results of operations and cash flows of the Company's non-U.S. operations on translation into U.S. dollars.

**20. Accumulated Other Comprehensive Income (Loss)**

Accumulated other comprehensive income (loss) consists of the following components:

(Millions of US dollars)	2008	Years Ended March 31 2007	2006
Pension and post-retirement benefit adjustments (net of \$1.0 million and \$1.2 million tax benefit, respectively)	\$ (2.1)	\$ (2.7)	\$ —
Unrealized loss on restricted short-term investments	(4.4)	—	—
Foreign currency translation adjustments	23.4	8.1	(28.4)
Total accumulated other comprehensive income (loss)	<u>\$ 16.9</u>	<u>\$ 5.4</u>	<u>\$ (28.4)</u>

**21. Related Party Transactions**

***JHI NV Directors' and Former Directors' Securities Transactions***

The Company's Directors (and Former Directors' for the relevant year) and their director-related entities held an aggregate of 275,426 ordinary shares and 210,530 ordinary shares at March 31, 2008 and 2007, respectively, and options to acquire 4,750,544 ordinary shares and 3,914,544 ordinary shares at March 31, 2008 and 2007, respectively.

Supervisory Board members (other than Mr. J. Loudon) on March 14, 2008 participated in an acquisition of shares at A\$5.7352, under the terms of the Supervisory Board Share Plan 2006 which was approved by JHI NV shareholders on August 17, 2007. Mr. J. Loudon, Mr. M. Hammes and Mr. R. Chenu also made on market-purchases during fiscal year 2008. Directors' acquisitions were as follows:

**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

	On Market Purchases/(Sales)	SBSP
Supervisory Board directors		
M. Hammes	9,000	6,859
B. Anderson	—	6,124
D. Andrews	—	3,903
D. DeFosset	—	10,377
J. Loudon	6,300	—
D. McGauchie AO	—	5,803
R. van der Meer	—	4,410
C. Walter AM	—	5,032
Managing Board directors		
L. Gries	—	N/A
R. Chenu	5,000	N/A
Former directors		
J. Barr	—	7,667
B. Butterfield	(90,000)	N/A

Mr. B. Butterfield separated from the company and resigned as a Managing Board director effective October 1, 2007. As a result of the separation, 90,000 of his 621,000 options to acquire ordinary shares were cancelled. In December 2007, Mr. Butterfield exercised options to acquire 90,000 additional ordinary shares and sold the underlying shares.

Other than Mr. Butterfield, no Director or Former Director, or their director-related entities, disposed of any shares in the Company.

The JHI NV dividends paid to Directors and their related entities were on the same terms and conditions that applied to other holders.

***Existing Loans to the Company's Directors and Directors of James Hardie Subsidiaries***

At March 31, 2008 and 2007, loans totaling \$29,267 and \$30,774, respectively, were outstanding from certain executive directors or former directors of subsidiaries of JHI NV under the terms and conditions of the Executive Share Purchase Plan (the "Plan"). Loans under the Plan are interest free and repayable from dividend income earned by, or capital returns from, securities acquired under the Plan. The loans are collateralized by CUFS under the Plan. No new loans to Directors or executive officers of JHI NV, under the Plan or otherwise, and no modifications to existing loans have been made since December 1997.

During fiscal year 2008, repayments totaling \$5,419 were received in respect of the Plan from A.T. Kneeshaw and D.A.J. Salter. During fiscal year 2005, an executive director of a subsidiary resigned with loans outstanding of \$117,688. Under the terms of the Plan, this director had two years from the date of his resignation to repay such loan. The loan was repaid in full in the year ended March 31, 2007. During fiscal year 2007, an executive director of a subsidiary resigned with loans outstanding of \$14,123 and during fiscal year 2008, an executive director of a subsidiary resigned with loans outstanding of \$16,075. Under the terms of the Plan, each loan must be repaid within two years from the date of their respective resignations.

***Payments Made to Directors and Director Related Entities of JHI NV during the Year***

Deputy Chairman D.G. McGauchie AO is a director of Telstra Corporation Limited from whom the Company purchases communications services. Supervisory Board Director R. van der Meer is Supervisory Board director of ING Bank Nederland N.V. and ING Verzekeringen (Insurance) Nederland N.V. Entities in the ING Group provide various financial services to the Company. All transactions were in accordance with normal commercial terms and conditions. It is not considered that these Directors had significant influence over these transactions.



**James Hardie Industries N.V. and Subsidiaries**  
**Notes to Consolidated Financial Statements (Continued)**

*Payments made to Director and Director Related Entities of Subsidiaries of JHI NV*

The Company has subsidiaries located in various countries, many of which require that at least one director be a local resident. All payments described below arise because of these requirements.

Payments of \$4,507 and \$4,507 for the years ended March 31, 2008 and 2007, respectively, were made to Grech, Vella, Tortell & Hyzler Advocates. Dr. J.J. Vella was a director of one of the Company's subsidiaries. The payments were in respect of legal services and were negotiated in accordance with usual commercial terms and conditions.

Payments totaling \$5,979 and \$5,364 for the years ended March 31, 2008 and 2007, respectively, were made to Bernaldo, Mirador and Directo Law Offices. R. Bernaldo is a director of a subsidiary of the Company. The payments were in respect of professional services and were negotiated in accordance with usual commercial terms and conditions.

**James Hardie Industries N.V. and Subsidiaries**

**Selected Quarterly Financial Data**

*(unaudited, not forming part of the consolidated financial statements)*

The information furnished in the selected quarterly financial data for the years ended March 31, 2008 and 2007 is unaudited but includes all adjustments which, in the opinion of management, are necessary for a fair statement of the financial results of the respective interim periods. Such adjustments are of a normal recurring nature. Interim financial statements are by necessity somewhat tentative; judgments are used to estimate interim amounts for items that are normally determinable only on an annual basis.

(Millions of US dollars)	Year Ended March 31, 2008				Year Ended March 31, 2007			
	By Quarter				By Quarter			
	First	Second	Third	Fourth	First	Second	Third	Fourth
Net sales	\$ 424.4	\$ 390.1	\$ 341.4	\$ 312.9	\$ 415.5	\$ 411.4	\$ 355.1	\$ 360.9
Cost of goods sold	(257.5)	(251.3)	(224.3)	(205.7)	(257.8)	(256.2)	(228.8)	(227.1)
Gross profit	166.9	138.8	117.1	107.2	157.7	155.2	126.3	133.8
Operating income (loss)	75.0	44.7	25.2	(181.5)	68.9	41.0	19.3	(215.8)
Interest expense	(1.3)	(2.5)	(2.9)	(4.4)	(5.6)	(0.2)	(1.5)	(4.7)
Interest income	1.8	4.5	3.7	2.2	3.6	1.2	0.2	0.5
Income (loss) from continuing operations before income taxes	75.5	46.7	26.0	(183.7)	66.9	42.0	18.0	(220.0)
Income tax (expense) benefit	(36.4)	(27.6)	(8.9)	36.8	(32.3)	(20.9)	(26.0)	323.1
Income (loss) from continuing operations	39.1	19.1	17.1	(146.9)	34.6	21.1	(8.0)	103.1
Cumulative effect of change in accounting principle for stock-based compensation (net of \$0.4 million of tax)	—	—	—	—	0.9	—	—	—
Net income (loss)	<u>\$ 39.1</u>	<u>\$ 19.1</u>	<u>\$ 17.1</u>	<u>\$ (146.9)</u>	<u>\$ 35.5</u>	<u>\$ 21.1</u>	<u>\$ (8.0)</u>	<u>\$ 103.1</u>

INDEX TO EXHIBITS

<b>Exhibit Number</b>	<b>Description of Exhibits</b>
1.1	Articles of Association, as amended on August 20, 2007 of James Hardie Industries N.V. (English Translation)
2.1	Letter Agreement of September 6, 2001 by and between James Hardie Industries N.V. and CHESSE Depository Nominees Pty Limited, as the depository for CHESSE Units of Foreign Securities (2)
2.2	Deposit Agreement dated as of September 24, 2001 between The Bank of New York, as depository, and James Hardie Industries N.V. (2)
2.3	Common Terms Deed Poll amended and restated February 20, 2008 among James Hardie International Finance B.V., James Hardie Building Products, Inc. and James Hardie Industries N.V.
2.4	Form of Term Facility Agreement between James Hardie International Finance B.V. and Financier (2)
2.5	Form of Term Facility Agreement — Occurrence of Extension Event among James Hardie International Finance B.V., James Hardie Building Products, Inc. and Financier (5)
2.6	Form of 3 Year Term (Bullet) Facility Agreement dated February 21, 2008 among James Hardie International Finance B.V., James Hardie Building Products, Inc. and Financier
2.7	Form of 5 Year Term (Bullet) Facility Agreement dated February 21, 2008 among James Hardie International Finance B.V., James Hardie Building Products, Inc. and Financier
2.8	Form of 364-day Facility Agreement between James Hardie International Finance B.V. and Financier (2)
2.9	Form of Schedule 3 — Extension Request to December 2008 for 364-day Facility Agreement between James Hardie International Finance B.V. and Financier
2.10	Form of Schedule 3 — Extension Request to June 2009 for 364-day Facility Agreement between James Hardie International Finance B.V. and Financier
2.11	Form of Extension Request to June 2009 for 364-day Facility Agreement between James Hardie International Finance B.V. and Financier
2.12	Form of Guarantee Deed between James Hardie Industries N.V. and Financier (2)
4.1	James Hardie Industries N.V. 2001 Equity Incentive Plan (2)
4.2	Economic Profit and Individual Performance Incentive Plans (2)
4.3	JHI NV Stock Appreciation Rights Incentive Plan (2)
4.4	Supervisory Board Share Plan 2006 (3)
4.5	James Hardie Industries N.V. Long Term Incentive Plan 2006 (3)
4.6	2005 Managing Board Transitional Stock Option Plan (3)
4.7	Form of Joint and Several Indemnity Agreement among James Hardie N.V., James Hardie (USA) Inc. and certain former executive officers and Managing Board directors thereto (2)
4.8	Form of Joint and Several Indemnity Agreement among James Hardie Industries N.V., James Hardie Inc. and certain former Supervisory Board and Managing Board directors thereto (2)
4.9	Form of Deed of Access, Insurance and Indemnity between James Hardie Industries N.V. and Supervisory Board directors and Managing Board directors
4.10	Form of Indemnity Agreement between James Hardie Building Products, Inc. and Supervisory Board directors, Managing Board directors and certain executive officers

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<b>Exhibit Number</b>	<b>Description of Exhibits</b>
4.11	Lease Amendment, dated March 23, 2004, among Amaca Pty Limited (f/k/a/ James Hardie & Coy Pty Limited), James Hardie Australia Pty Limited and James Hardie Industries N.V. re premises at the corner of Cobalt & Silica Street, Carole Park, Queensland, Australia (1)
4.12	Variation of Lease dated March 23, 2004, among Amaca Pty Limited (f/k/a/ James Hardie & Coy Pty Limited), James Hardie Australia Pty Limited and James Hardie Industries N.V. re premises at the corner of Colquhoun & Devon Streets, Rosehill, New South Wales, Australia (1)
4.13	Extension of Lease dated March 23, 2004, among Amaca Pty Limited (f/k/a/ James Hardie & Coy Pty Limited), James Hardie Australia Pty Limited and James Hardie Industries N.V. re premises at Rutland, Avenue, Welshpool, Western Australia, Australia (1)
4.14	Lease Amendment dated March 23, 2004, among Amaca Pty Limited (f/k/a/ James Hardie & Coy Pty Limited), James Hardie Australia Pty Limited and James Hardie Industries N.V. re premises at 46 Randle Road, Meeandah, Queensland, Australia (1)
4.15	Lease Agreement dated March 23, 2004 among Studorp Limited, James Hardie New Zealand Limited and James Hardie Industries N.V. re premises at the corner of O'Rorke and Station Roads, Penrose, Auckland, New Zealand (1)
4.16	Lease Agreement dated March 23, 2004 among Studorp Limited, James Hardie New Zealand Limited and James Hardie Industries N.V. re premises at 44-74 O'Rorke Road, Penrose, Auckland, New Zealand (1)
4.17	Ownership transfer related to corner of O'Rorke and Station Roads, Penrose, Auckland, New Zealand and 44-74 O'Rorke Road, Penrose, Auckland, New Zealand effective June 30, 2005 (3)
4.18	Industrial Building Lease Agreement, effective October 6, 2000, between James Hardie Building Products, Inc. and Fortra Fiber-Cement L.L.C., re premises at Waxahachie, Ellis County, Texas (2)
4.19	Asset Purchase Agreement by and between James Hardie Building Products, Inc. and Cemplank, Inc. dated as of December 12, 2001 (2)
4.20	Amended and Restated Stock Purchase Agreement dated March 12, 2002, between BPB U.S. Holdings, Inc. and James Hardie Inc. (2)
4.21	Amended and Restated Final Funding Agreement dated November 21, 2006 (4)
4.22	Amended FFA Amendment dated August 6, 2007
4.23	Amended FFA Amendment dated November 8, 2007
4.24	Amended FFA Amendment dated June 11, 2008
4.25	Address for Service of Notice on Trustee dated June 13, 2008
4.26	Asbestos Injuries Compensation Fund Amended and Restated Trust Deed by and between James Hardie Industries N.V. and Asbestos Injuries Compensation Fund Limited dated December 14, 2006 (5)
4.27	Deed Poll dated June, 11, 2008 – amendment of the Asbestos Injuries Compensation Fund Amended and Restated Trust Deed
4.28	Deed of Release by and among James Hardie Industries N.V., Australian Council of Trade Unions, Unions New South Wales, and Bernard Douglas Banton dated December 21, 2005 (3)
4.29	Parent Guarantee by and among Asbestos Injuries Compensation Fund Limited, The State of New South Wales, and James Hardie Industries N.V. dated December 14, 2006 (5)
4.30	Deed of Release by and between James Hardie Industries N.V. and The State of New South Wales dated June 22, 2006 (3)
4.31	Second Irrevocable Power of Attorney by and between Asbestos Injuries Compensation Fund Limited and The State of New South Wales dated December 14, 2006 (5)
4.32	Deed of Accession by and among Asbestos Injuries Compensation Fund Limited, James Hardie Industries N.V., James Hardie 117 Pty Limited, and The State of New South Wales dated December 14, 2006 (5)
8.1	List of significant subsidiaries of James Hardie Industries N.V.
12.1	Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
12.2	Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

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<b>Exhibit Number</b>	<b>Description of Exhibits</b>
13.1	Certification of the Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
15.1	Consent of independent registered public accounting firm
15.2	Consent of KPMG Actuaries Pty Ltd
99.1	Excerpts of the ASX Settlement and Transfer Corporation Pty Ltd as of March 31, 2008
99.2	Excerpts of the Financial Services Reform Act 2001, as of March 11, 2002 (2)
99.3	ASIC Class Order 02/311, dated November 3, 2002 (2)
99.4	ASIC Modification, dated March 7, 2002 (2)
99.5	ASIC Modification, dated February 26, 2004 (3)

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- (1) Previously filed as an exhibit to our Annual Report on Form 20-F dated November 22, 2004 and incorporated herein by reference.
  - (2) Previously filed as an exhibit to our Annual Report on Form 20-F dated July 7, 2005 and incorporated herein by reference.
  - (3) Previously filed as an exhibit to our Annual Report on Form 20-F dated September 29, 2006 and incorporated herein by reference.
  - (4) Previously filed as an exhibit to our Current Report on Form 6-K dated January 5, 2007 and incorporated herein by reference.
  - (5) Previously filed as an exhibit to our Annual Report on form 20-F dated July 6, 2007.

The undersigned:

Martijn Rouwenhorst, kandidaat-notaris (candidate civil-law notary), acting for Professor Martin van Olfen, notaris (civil-law notary) practising in Amsterdam, who is absent with leave, declares with respect to the articles of association (the "**Articles of Association**") of the limited liability company: **James Hardie Industries N.V.**, with its corporate seat in Amsterdam, the Netherlands (the "**Company**") as follows:

- (i) the Articles of Association correspond with the document in the Dutch language which is attached to this declaration;
- (ii) the document in the English language attached to this declaration is an unofficial translation of the Articles of Association; if differences occur in the translation, the Dutch text will govern by law; and
- (iii) the Articles of Association were most recently amended by deed (the "**Deed**") executed on 20 August 2007 before a substitute of Professor M. van Olfen, notaris (civil-law notary) in Amsterdam; according to the Deed the ministerial declaration of no-objection was granted on 16 August 2007 under number N.V. 1.000.893.

When issuing the statements included above under (i) and (iii) I, M. Rouwenhorst, substitute, based any observations entirely on the information stated in the extract from the trade register of the registration of the Company and on an official copy of the Deed.

Signed in Amsterdam on 22 August 2007.

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**ARTICLES OF ASSOCIATION**

of:

James Hardie Industries N.V.  
with corporate seat in Amsterdam  
dated 20 August 2007

**CHAPTER I**

**Definitions.**

**Article 1.**

Capitalised terms used in these articles of association shall have the following meaning:

<b>Articles</b>	these articles of association;
<b>ASTC</b>	the ASX Settlement and Transfer Corporation Pty Ltd, the holder of an Australian clearing and settlement facility licence granted under the Corporations Act;
<b>ASTC Operating Rules</b>	the Australian law governed operating rules of the ASTC, regulating the settlement, clearing and registration of, among other things, the CUFS, as amended, varied or waived (with respect to the Company or generally) from time to time;
<b>ASX</b>	The Australian Stock Exchange Limited;
<b>Business Day(s)</b>	Monday to Friday inclusive, except New Year's Day, Good Friday, Easter Monday, Christmas Day, Boxing Day, and any other day that ASX or NYSE declares is not a business day;
<b>CEO</b>	the member of the Managing Board who has been appointed as chief executive officer pursuant to article 15.1 of these Articles;
<b>CHESS</b>	Clearing House Electronic Sub-Register System as such term is defined in the ASTC Operating Rules;
<b>Company</b>	James Hardie Industries N.V.;
<b>Corporations Act</b>	Australian Corporations Act 2001 (Cth) and the rules and regulations issued pursuant thereto, as re-enacted, amended or modified from time to time;
<b>CUFS(s)</b>	any CHESS Unit(s) of Foreign Securities as defined in the ASTC Operating Rules and the Corporations Act and which are issued or made available in respect of Share(s);
<b>CUFS Holder(s)</b>	any record owner of CUFS(s) according to the terms and conditions of the ASTC Operating Rules and the Corporations Act;
<b>General Meeting</b>	as the context may require, the corporate body ( <i>orgaan</i> ) comprising Shareholders who are entitled to vote and others

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	persons who are entitled to vote, or the meeting ( <i>bijeenkomst</i> ) of the Shareholders and other persons who are entitled to attend such meetings;
<b>Information Meeting</b>	the information meeting to be held in advance of each General Meeting pursuant to article 36 of these Articles;
<b>Joint Board</b>	the board as composed or re-instituted in accordance with article 27 of these Articles;
<b>Joint Board Rules</b>	the rules governing the internal organisation of the Joint Board ( <i>gecombineerde raad reglement</i> ) as may be adopted pursuant to article 27 of these Articles;
<b>Joint Holder(s)</b>	in respect of an asset, any person who jointly together with one or more other participants ( <i>deelgenoten</i> ) holds legal title to such asset;
<b>Law</b>	unless provided otherwise in these Articles, the law of the Netherlands;
<b>Listing Rules</b>	the listing rules of the ASX and the NYSE as amended or modified from time to time;
<b>Management Rules</b>	the rules governing the internal organisation of the Managing Board ( <i>directiereglement</i> ) as may be adopted pursuant to article 15 of these Articles;
<b>Managing Board</b>	the managing board as appointed and composed in accordance with article 14 of these Articles;
<b>NYSE</b>	The New York Stock Exchange;
<b>Prescribed Rate</b>	the base rate charged by the Company's principal banker to corporate customers from time to time in respect of overdraft loans in excess of one hundred thousand United States dollars (\$100,000) calculated on a daily basis and a year of three hundred and sixty-five (365) days;
<b>Share(s)</b>	any share(s) comprised in the authorised share capital of the Company pursuant to article 4.1. of these Articles;
<b>Shareholder(s)</b>	any person who by Law holds legal title ( <i>juridisch gerechtigde</i> ) to the Shares;
<b>Shareholder's Rights</b>	the right to vote on Shares, the right to receive dividends and other distributions on Shares and the right to participate in any General Meeting;
<b>SCH</b>	the Securities Clearing House as defined in, and so designated pursuant to, section 779B of the Corporations Act;
<b>SCH Business Rules</b>	the Australian law governed business rules of SCH governing <i>inter alia</i> the CUFSS;
<b>Supervisory Board</b>	the supervisory board as appointed and composed in accordance with article 22 of these Articles;
<b>Supervisory Rules</b>	the rules governing the internal organisation of the Supervisory Board ( <i>commissarissen reglement</i> ) as may be adopted pursuant to article 23 of these Articles;

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**Usufruct** the right to use (*gebruiken*), and receive the proceeds of (*de vruchten genieten van*), another person's assets.

## **CHAPTER II**

### **Name. Seat.**

#### **Article 2.**

The name of the Company is: James Hardie Industries N.V.  
Its corporate seat is in Amsterdam.

### **Objects.**

#### **Article 3.**

The objects of the Company are:

- a. to participate in, to take an interest in any other way in and to conduct the management of business enterprises of whatever nature;
- b. to raise funds by the issues of debt or equity or in any other way and to finance third parties;
- c. to provide guarantees, including guarantees for debts of third parties, and to perform all activities which are incidental to or which may be conducive to, or connected with, any of the foregoing.

### **Share capital. Issuance of Shares. Pre-emptive rights.**

#### **Article 4.**

- 4.1. The authorised share capital of the Company amounts to one billion one hundred and eighty million euro (EUR 1,180,000,000). It is divided into two billion (2,000,000,000) shares of fifty-nine eurocents (EUR 0.59) each.
- 4.2. Subject to the approval of the Joint Board the Supervisory Board shall have the power to resolve upon the issue of Shares and to determine the price and further terms and conditions of such share issue, if and in so far as the Supervisory Board has been designated by the General Meeting as the authorised corporate body (*orgaan*) for this purpose. A designation as referred to above shall only be valid for a specific period of not more than five years and may from time to time be extended with a period of not more than five years.
- 4.3. If a designation as referred to in article 4.2 of these Articles is not in force, the General Meeting shall have power to resolve upon the issue of Shares, but only upon the proposal of and for a price and on such further terms and conditions to be determined by the Supervisory Board, subject to the approval of the Joint Board.
- 4.4. In the event of an issue of Shares, the Shareholders shall have a pre-emptive right in proportion to the number of Shares held by them. Should a Shareholder not or not fully exercise his pre-emptive right, the remaining Shareholders shall be similarly entitled to pre-emptive rights in respect of the Shares that have not been claimed.

If the latter collectively do not or do not fully exercise their pre-emptive rights, the Supervisory Board, and if a designation as referred to in article 4.2 of these Articles is not in force, the General Meeting, shall be due to decide to whom the Shares which have not been claimed shall be issued and such issue may be made at a higher price. There shall be no pre-emptive right to Shares issued against a contribution other than in cash or issued to employees of the Company or of a group company. The Company shall notify all Shareholders of an issue of Shares in respect of which pre-emption rights

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exist and of the period of time within which such rights may be exercised with due observance of article 10.2 of these Articles.

The Supervisory Board shall have the power to limit or exclude any pre-emptive rights to which Shareholders shall be entitled, but only if and in so far as it has been granted such authority by the General Meeting, and provided further that the Supervisory Board can only exercise such authority if at that time it also has authority to resolve upon the issue of Shares. The provisions in the second sentence of article 4.2 of these Articles shall equally apply.

- 4.5. If a designation as referred to in article 4.2 of these Articles is not in force, the General Meeting shall have power to limit or exclude any pre-emptive rights to which Shareholders shall be entitled, but only upon the proposal of the Supervisory Board.
- 4.6. This article 4 shall equally apply to the granting of rights to subscribe for Shares (such as stock options), but shall not apply to the issue of Shares to a person who exercises a previously acquired right to subscribe for Shares, in which case no pre-emptive right exists (and no further action pursuant to articles 4.2 and 4.3 of these Articles shall be required).

**Issuance price. Payment on Shares. Calls on Shares.**

**Article 5.**

- 5.1. Without prejudice to what has been provided in section 2:80, subsection 2 Dutch Civil Code, Shares shall at no time be issued below par. Upon subscription of a Share, the amount to be paid thereon shall be equal to the nominal value of such Share and — if such Share is subscribed for a higher amount — the difference between such amounts. It may be stipulated that a part of the nominal value, not exceeding three-fourths (3/4) thereof, shall be due for payment after the Company has so called for it to be paid.
- 5.2. Calls on Shareholders in respect of any part of the nominal value unpaid on the Shares pursuant to article 5.1. shall be made with due observance of the following:
- a. the Managing Board may cause the Company to call at any time on Shareholders in respect of any part of the nominal value unpaid on the Shares which is not by the terms of issue of those Shares made payable at fixed times;
  - b. each Shareholder shall, on receiving at least fourteen (14) days' notice specifying the time and place of payment, pay to the Company at the time and place so specified the amount called on the Shareholder's Shares;
  - c. the Managing Board may revoke or postpone a call;
  - d. a call may be required to be paid by instalments;
  - e. a call is made at such time or times specified in the resolution of the Managing Board authorising the call.
- 5.3. If and so long as the Shares are quoted on the ASX, calls shall be made, and notice of those calls given, in accordance with the Listing Rules.
- 5.4. Joint Holders of a Share are jointly and severally liable to pay any call in respect of the Share.
- 5.5. If a sum called or otherwise payable to the Company in respect of a Share is not paid before or on the date fixed for payment, the Shareholder from whom such sum is due shall pay:
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- a. interest on the sum from the day fixed for payment of the sum to the time of actual payment at a rate determined by the Managing Board but not exceeding the sum of the Prescribed Rate plus five per cent (5%); and
  - b. any costs and expenses incurred by the Company by reason of non-payment or late payment of the sum.
- 5.6. The Managing Board may waive payment of some or all of the interest or costs and expenses as referred to in article 5.5 under b, wholly or in part.
- 5.7. Any sum that, under the terms of issue of a Share, becomes payable at a fixed date shall, for the purposes of these Articles, be taken to be duly called and payable on the date on which under the terms of issue the sum becomes payable.
- 5.8. The Managing Board may accept from a Shareholder the whole or a part of the amount unpaid on a Share even if that amount has not been called. The Managing Board may authorise payment by the Company of interest on the whole or any part of an amount accepted under this article 5.8 until the amount becomes payable, at a rate, not exceeding the Prescribed Rate, which is agreed between the Managing Board and the Shareholder paying the sum. At the time the amount accepted under this article 5.8 becomes payable pursuant to a call by the Company, the Company shall treat and accept the amount so paid in advance by the Shareholder as a payment on Shares and shall off set (*verrekenen*) the amount payable by the Company to the Shareholder pursuant to the first sentence of this Article 5.8. against the amount payable by the Shareholder to the Company pursuant to the call. The Managing Board may at any time repay the whole or any part of any amount paid in advance on serving the Shareholder with one (1) month's notice of its intention to do so.
- 5.9. Payments on Shares must be made in cash to the extent that no other contribution has been agreed upon. If the Company so agrees, payment in cash can be made in a currency other than in Euro.
- 5.10. A Shareholder shall not be entitled to vote at a General Meeting unless all calls and other sums presently payable by the Shareholder in respect of any of his Shares have been paid.

#### **Acquisition by the Company of Shares. Cancellation of Shares and capital reduction.**

##### **Article 6.**

- 6.1. The Company may acquire Shares for valuable consideration if and in so far as:
- a. its shareholders equity (*eigen vermogen*) less the purchase price to be paid by the Company for such Shares is not less than the aggregate amount of the paid up and called up share capital and the reserves which must be maintained by Law;
  - b. the aggregate par value of the Shares which the Company acquires, already holds or on which it holds a right of pledge, or which are held by a subsidiary of the Company, amounts to no more than one-tenth of the aggregate par value of the issued share capital; and
  - c. the General Meeting has authorised the Managing Board to acquire such shares, which authorisation shall be valid for no more than eighteen months on each occasion,
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subject to any further applicable statutory provisions and the provisions of these Articles and the Listing Rules.

- 6.2. Shares thus acquired may again be disposed of by the Company. Notwithstanding what has been provided in article 6.1, the Managing Board shall not cause the Company to acquire Shares or dispose of such Shares other than subject to the approval of the Joint Board. If depositary receipts for Shares have been issued, such depositary receipts shall for the application of the provisions of articles 6.1 and 6.2 be treated as Shares. In addition, CUFSs shall for the application of the provisions of articles 6.1 and 6.2 be treated as Shares.
- 6.3. In the General Meeting no votes may be cast in respect of any Share held by the Company or by a subsidiary of the Company. No votes may be cast in respect of any Share if (i) the depositary receipt for such Share, or (ii) the CUFS issued in respect thereof is held by the Company or by a subsidiary of the Company. However, the holders of a right of Usufruct and the holders of a right of pledge (*pandrecht*) on Shares held by the Company or by a subsidiary of the Company, are nonetheless not excluded from the right to vote such Shares, if the right of Usufruct or the right of pledge was granted prior to the time such Shares were acquired by the Company or by a subsidiary of the Company. Neither the Company nor a subsidiary of the Company may cast votes in respect of a Share on which it holds a right of Usufruct or a right of pledge.
- Shares in respect of which voting rights may not be exercised by Law or pursuant to these Articles shall not be considered outstanding or otherwise taken into account when determining to what extent the Shareholders have cast their votes, to what extent Shareholders are present or represented at the General Meeting or to what extent the share capital is provided or represented.
- 6.4. Upon the proposal of the Managing Board the General Meeting shall have power to decide to cancel Shares acquired by the Company or depositary receipts of which were acquired by the Company or to reduce the share capital in another manner, subject however to applicable statutory provisions. A proposal of the Managing Board, as referred to in the preceding sentence, is subject to the approval of the Joint Board.
- 6.5. A partial repayment or release must be made pro rata to all Shares. The pro rata requirements may be waived by agreement of all Shareholders.

**Shares. Share certificates.**

**Article 7.**

- 7.1. Shares shall be issued in registered form only.
- 7.2. Shares shall be available in the form of an entry in the share register with or without the issue of a share certificate, which share certificate shall consist of a main part (mantel) only. Share certificates will, at the discretion of the Managing Board, be issued upon the request of a Shareholder.
- 7.3. Share certificates shall be available in such denominations as the Managing Board shall determine.
- 7.4. All share certificates shall be signed on behalf of the Company by one or more members of the Managing Board with due observance of article 18.1 of these Articles; the signature may be effected by printed facsimile. In addition, all share certificates may
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be signed on behalf of the Company by one or more persons designated by the Managing Board for that purpose.

- 7.5. All share certificates shall be identified by numbers and/or letters.
- 7.6. The Managing Board can determine that for the purpose to permit or facilitate trading of Shares at a foreign stock exchange, share certificates shall be issued in such form as the Managing Board may determine, in order to comply with the Listing Rules.
- 7.7. The expression “share certificate” as used in these Articles shall include a share certificate in respect of more than one share.

**Missing or damaged share certificates.**

**Article 8.**

- 8.1. Upon written request by or on behalf of a Shareholder, and further subject to such conditions as the Managing Board may deem appropriate, missing or damaged share certificates may be replaced by new share certificates bearing the same numbers and/or letters, provided the Shareholder who has made such request, or the person making such request on his behalf, provides satisfactory evidence of his title and, in so far as applicable, the loss of the share certificates to the Managing Board.
- 8.2. If, as and when the Managing Board deems such appropriate, the replacement of missing share certificates may be made subject to the publication of the request also stating the numbers and/or letters of the missing share certificates, in at least three daily published newspapers to be designated by the Managing Board.
- 8.3. The issue of a new share certificate shall render the share certificates that it replaces invalid.
- 8.4. The issue of new certificates may in appropriate cases, at the discretion of the Managing Board, be published in newspapers to be indicated by the Managing Board.

**Share register. Other registers.**

**Article 9.**

- 9.1. With due observance of the applicable statutory provisions in respect of registered shares, a share register shall be kept by or on behalf of the Company, which register shall be regularly updated and, at the discretion of the Managing Board, may, in whole or in part, be kept in more than one copy and at more than one address.  

Part of the register may be kept abroad in order to comply with applicable foreign statutory provisions or the Listing Rules.
  - 9.2. Each Shareholder’s name, his address and such further information as required by Law and such further information as the Managing Board deems appropriate, whether at the request of a Shareholder or not, shall be recorded in the share register.
  - 9.3. The form and the contents of the share register shall be determined by the Managing Board with due observance of the provisions of articles 9.1 and 9.2 of these Articles.
  - 9.4. Upon his request a Shareholder shall be provided with written evidence of the contents of the share register with regard to the Shares registered in his name free of charge, and the statement so issued may be validly signed on behalf of the Company by a person to be designated for that purpose by the Managing Board.
  - 9.5. The provisions of articles 9.2 through 9.4 inclusive of these Articles shall equally apply to persons who hold a right of Usufruct or a right of pledge on one or more shares.
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- 9.6. The Managing Board shall have power and authority to permit inspection of the share register and to provide information recorded therein as well as any other information regarding the direct or indirect shareholding of a Shareholder of which the Company has been notified by that Shareholder to the authorities entrusted with the supervision and/or implementation of the trading of CUFSS on the ASX.
- 9.7. The Company shall establish and maintain any such registers as required to be established and maintained by it under the Corporations Act, the Listing Rules or the ASTC Operating Rules, including but not limited to a register of debenture holders and of option holders.
- 9.8. The Managing Board shall have power and authority to permit auditing of the Company's registers at such intervals, and by such persons in such manner, as required by the Listing Rules and the ASTC Operating Rules.

**Notices.**

**Article 10.**

- 10.1. Notices of meetings and notifications which by Law or pursuant to these Articles must be made to Shareholders shall be given by way of an announcement in a nationally distributed newspaper in the Netherlands and by one of the following means, determined at the discretion of the Managing Board:
    - a. serving it on the Shareholder personally; or
    - b. sending it by post to the Shareholder's address as shown in the share register or other registers as mentioned in article 9 of these Articles or the address supplied by the Shareholder to the Company for the giving of notices; or
    - c. transmitting it to the fax number supplied by the Shareholder to the Company for the giving of notices; or
    - d. transmitting it electronically to the electronic mail address given by the Shareholder to the Company for the giving of notices; or
    - e. serving it in any manner contemplated in this article 10.1 on a Shareholder's attorney as specified by the Shareholder in a notice given pursuant to article 10.4.
  - 10.2. Without prejudice to the provisions of article 10.1, the Company shall notify all Shareholders of an issue of Shares in respect of which pre-emption rights exist and of the period of time within which such rights may be exercised by way of an advertisement in the National Gazette (*Staatscourant*) and in a nationally distributed newspaper in the Netherlands, unless the notification to all Shareholders takes place in writing to the address as supplied by the Shareholder to the Company for the giving of notices as referred to in article 10.1. under b.
  - 10.3. Any Shareholder who failed to leave his address or update the Company on any change of address is not entitled to receive any notice but the Company may elect to serve such notices to any fax number or an electronic mail address notified by the Shareholder to the Company.
  - 10.4. A Shareholder may, by written notice to the Company left at or sent to the registered office, request that all notices to be given by the Company be served on the Shareholder's attorney at an address specified in the notice and the Company may do so in its discretion.
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- 10.5. Notices to a Shareholder whose address for notices is outside the country from where the notice is sent, shall be sent by airmail, air courier, fax or electronic mail.
- 10.6. Where a notice is sent by post, airmail or air courier, service of the notice shall, to the fullest extent permitted by Law, be taken to be effected by properly addressing and posting or delivering to the air courier a letter containing the notice and to have been effected on the day after the date of its posting or delivery to the air courier.
- 10.7. In proving service of any notice it will be sufficient to prove that the letter containing the notice was properly addressed and put into the post office or other public postal receptacle or delivered to the air courier.
- 10.8. Where a notice is sent by fax or electronic transmission, service of the notice shall, to the fullest extent permitted by Law, be taken to be effected by properly addressing and sending or transmitting the notice and to have been effected on the day it is sent.
- 10.9. A notice may be given by the Company to a person entitled to a Share in consequence of the death or bankruptcy of a Shareholder:
- a. by serving it on the person personally;
  - b. by sending it by post addressed to the person by name or by the title of representative of the deceased or assignee of the bankrupt or by any like description at the address (if any) supplied for the purpose by the person;
  - c. if such an address has not been supplied, at the address to which the notice might have been sent if the death or bankruptcy had not occurred;
  - d. by transmitting it to the fax number supplied by the person to the Company; or
  - e. if such a fax number has not been supplied, by transmitting it to the fax number to which the notice might have been sent if the death or bankruptcy had not occurred; or
  - f. by transmitting it to the electronic mail address supplied by the person to the Company.
- 10.10. Unless provided otherwise in these Articles where a period of notice is required to be given, the day on which the notice is deemed to be served will, but the day of doing the act or other thing will not be included in the number of days or other period.
- 10.11. Notifications which by Law or under these Articles are to be addressed to the General Meeting may take place by including the same in the notice of the General Meeting or in a document which has been made available for inspection at the offices of the Company, provided this is mentioned in the notice of the meeting.
- 10.12. Notices of meetings and notifications which by Law or pursuant to these Articles must be made to Shareholders shall also be given to CUFS Holder(s) provided the Shares are quoted on the ASX, any other persons entitled by Law to attend a General Meeting and to any other person to whom the Company is required to give notice under the Listing Rules, and any reference to Shareholder(s) in this article 10 must be read as a reference to CUFS Holder(s), any such person(s) entitled by Law to attend a General Meeting and to any such other person to whom the Company is required to give notice under the Listing Rules, with such notices and notifications to be written in the English language and any other language determined by the Company.
- 10.13. Any notice as referred to in article 10.1 through article 10.12 inclusive, will be sent with due observance of the Listing Rules.
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- 10.14. Notifications of Shareholders and other notifications to be addressed to the Managing Board, the Supervisory Board or the Joint Board shall be sent by letter to the office of the Company or to the addresses of all members of the Managing Board, the Joint Board or the Supervisory Board.

**Transfer of registered shares.**

**Article 11.**

- 11.1. The transfer of title to the Shares or the transfer of title to or a termination of a right of Usufruct on Shares or the creation or release of a right of Usufruct or of a right of pledge on Shares shall be effected by way of a written instrument and in accordance with the (further) provisions set forth in section 2:86, or, as the case may be, section 2:86c Dutch Civil Code. In addition, upon the transfer of a Share in respect of which a share certificate has been issued, such share certificate must be delivered to the Company. The Company can acknowledge the transfer of a Share in respect of which a share certificate has been issued by endorsement on the share certificate or by issuance of a new share certificate to the transferee, at the discretion of the Managing Board.
- 11.2. If the transfer concerns Shares that have not been fully paid-up the acknowledgement by the Company can only be made if the written instrument bears a fixed date (*authentieke of geregistreerde onderhandse akte*). After the transfer or allocation (*toedeling*) of partially paid up Shares, each of the previous Shareholders shall remain jointly and severally liable vis-à-vis the Company for the amount to be paid on the Shares transferred or allocated. The Managing Board together with the Supervisory Board could discharge any previous Shareholder from further joint and several liability by means of the execution of an authentic or registered private deed bearing a fixed date (*authentieke of geregistreerde onderhandse akte*); in such case the joint and several liability of the previous Shareholder will remain to exist for payments called for within one year after the date on which said authentic or registered deed is executed.
- 11.3. The provisions of article 11.1 shall equally apply to (i) the allotment of Shares in the event of a partition of any joint holding, (ii) the transfer of Shares as a consequence of foreclosure of a right of pledge and (iii) the creation or transfer of limited rights *in rem* on Shares.
- 11.4. Any requests made pursuant to and in accordance with articles 8, 9 and 11 may be sent to the Company at such address(es) as to be determined by the Managing Board, at all times including an address in the municipality or city where the ASX has its principal place of business.

**Fees and expenses.**

**Article 12.**

Without prejudice to article 9.4, the Company is authorised to charge such amounts as may be determined by the Managing Board provided they do not exceed cost price, to persons who have made a request pursuant to and in accordance with articles 8, 9 and 11.

**Joint holding.**

**Article 13.**

If Shares, CUFSS or depositary receipts for Shares issued with the co-operation of the Company are included in a joint holding, the Joint Holders may only be represented vis-à-vis the Company

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by a person who has been designated by them in writing for that purpose. The Joint Holders may also designate more than one person. If the joint holding comprises Shares, the Joint Holders may determine at the time of the designation of the representative or thereafter — but only unanimously — that, if a Joint Holder so wishes, a number of votes corresponding to his interest in the joint holding will be cast in accordance with his instructions.

**Managing Board. Number of members of the Managing Board.**

**Appointment.**

**Article 14.**

14.1. The Company shall be managed by the Managing Board comprising of at least two (2) or more members under the guidance of the Supervisory Board. The number of members of the Managing Board shall be determined by the Supervisory Board.

14.2. Other than the CEO, no member of the Managing Board shall hold office for a continuous period in excess of three (3) years or past the end of the third annual General Meeting following such member's appointment, whichever is the longer, without submitting for re-election. If no members of the Managing Board would otherwise be required to submit for re-election but the Listing Rules require that a member of the Managing Board is appointed, the member to retire at the end of the annual General Meeting will be the member, other than the CEO, who has been longest in office since their last appointment, but, as between persons, other than the CEO, who became a member of the Managing Board on the same day, the one to retire shall (unless they otherwise agree among themselves) be determined by lot.

A member of the Managing Board, other than the CEO, retiring pursuant to this article 14.2 shall be eligible for re-election and shall hold office as a member of the Managing Board until the end of the annual General Meeting at which such member retires.

14.3. Members of the Managing Board shall be appointed by the General Meeting. If a member of the Managing Board is to be appointed, the Supervisory Board as well as any Shareholder shall have the right to make nominations.

14.4. Nominations by Shareholders must be made no less than thirty-five (35) Business Days (or in the case the General Meeting is held at the request of one or more Shareholders thirty (30) Business Days) before the date of the General Meeting at which the appointment of members of the Managing Board is to be considered.

The nominations shall be included in the notice of the General Meeting at which the appointment shall be considered. If nominations have not been made or have not been made in due time, this shall be stated in the notice and the General Meeting may appoint a member of the Managing Board at its discretion.

14.5. Members of the Managing Board are not required to hold any Shares.

**Chair of the Managing Board. CEO. Organisation of the Managing Board. Prevented from acting.**

**Article 15.**

15.1. The Supervisory Board shall appoint one of the members of the Managing Board as chair of the Managing Board.

The Supervisory Board shall appoint one of the members of the Managing Board to hold the most senior executive position in the Company and such person shall have the title and role of chief executive officer or such other title as the Supervisory Board

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determines, for the period and on the terms as the Supervisory Board thinks fit. Subject to the terms of any agreement entered into between the Company and the chief executive officer in a particular case, the Supervisory Board may at any time revoke such appointment.

- 15.2. The appointment as chair or chief executive officer automatically terminates if the chair or the chief executive officer, respectively, ceases for any reason to be a member of the Managing Board.
- 15.3. With due observance of these Articles, subject to the approval of the Supervisory Board, the Managing Board may adopt Management Rules and the Managing Board shall have authority, subject to the approval of the Supervisory Board, to amend the Management Rules from time to time. Also, subject to the approval of the Supervisory Board, the Managing Board may divide the duties among the members of the Managing Board, whether or not by way of a provision to that effect in the Management Rules. The Management Rules may include directions to the Managing Board concerning the general financial, economic, personnel and social policy of the Company, to be taken into consideration by the Managing Board in the performance of its duties.
- 15.4. In case one, more or all members of the Managing Board are prevented from acting or are absent, the Supervisory Board is authorised to designate one or more persons temporarily in charge of management (*belet en ontstentenis persoon*). In case one or more members of the Managing Board are prevented from acting or is absent, the remaining member(s) of the Managing Board may also be temporarily responsible for the entire management. In case all members of the Managing Board are prevented from acting or are absent and the Supervisory Board has not designated one or more persons temporarily in charge of the management, the Supervisory Board shall temporarily be in charge of the management. Failing one or more members of the Managing Board, the Supervisory Board shall take the necessary measures as soon as possible in order to have a definitive arrangement made.

#### **Resolutions of the Managing Board. Conflict of Interest.**

##### **Article 16.**

- 16.1. Resolutions of the Managing Board shall be validly adopted, if adopted by absolute majority of votes, in a meeting at which at least two (2) of the members of the Managing Board are present.

In case of absence, a member of the Managing Board may issue a proxy only to another member of the Managing Board, provided however that a member of Managing Board can only act as proxy for not more than one other member of the Managing Board.

Each member of the Managing Board has the right to cast one vote. In case of a tie vote, if more than two members of the Managing Board are present at the meeting, the chair of the Managing Board shall have a decisive vote. In case of a tie vote, if only two members of the Managing Board are present at the meeting, the proposal shall be rejected.

- 16.2. The Managing Board may adopt its resolutions in writing without holding a meeting, provided that the proposals for such resolutions have been communicated in writing to
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all members of the Managing Board and no member of the Managing Board has objected to this method of adoption of a resolution.

- 16.3. A certificate signed by a member of the Managing Board confirming that the Managing Board has adopted a particular resolution, shall constitute evidence of such resolution vis-à-vis third parties.
- 16.4. The Management Rules shall include provisions on the manner of convening board meetings and the internal procedure at such meetings. These meetings may be held by telephone conference communications, as well as by video communications, provided all participating members of the Managing Board can hear each other simultaneously.
- 16.5. Without prejudice to article 16.6, a member of the Managing Board who has a material personal interest in a matter that relates to the affairs of the Company must give all of the other members of the Managing Board notice of his or her interest.
- 16.6. A member of the Managing Board with a material personal interest in a matter that relates to the affairs of the Company is not required to give notice in the following circumstances:
- a. if the interest:
    - (i) arises because the member of the Managing Board is a Shareholder of the Company and is held in common with the other Shareholders of the Company; or
    - (ii) arises in relation to the member's remuneration as a member of the Managing Board; or
    - (iii) relates to a contract the Company is proposing to enter into that is subject to approval by the General Meeting and will not impose any obligation on the Company if it is not approved by the General Meeting; or
    - (iv) arises merely because the member of the Managing Board is a guarantor or has given an indemnity or security for all or part of a loan (or proposed loan) to the Company; or
    - (v) arises merely because the member of the Managing Board has a right of subrogation in relation to a guarantee or indemnity referred to above; or
    - (vi) relates to a contract that insures, or would insure, the member of the Managing Board against any liability such member incurs or would incur as an officer of the Company (but only if the contract does not make the Company or a related company the insurer); or
    - (vii) relates to any payment by the Company or another company in respect of an officer or any contract relating to such an indemnity; or
    - (viii) is in a contract, or proposed contract, with, or for the benefit of, or on behalf of, another company and arises merely because the member of the Managing Board is a director of the other company; or
  - b. if all of the following conditions are met:
    - (i) the member of the Managing Board has already given notice of the nature and extent of the interest and its relation to the affairs of the Company;
    - (ii) if a person who was not a member of the Managing Board at the time the notice above was given, is appointed as a managing director and the notice was given by that person; and
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- (iii) the nature or extent of the interest has not materially changed or increased from that disclosed in the notice; or
  - c. if the member of the Managing Board has given a standing notice of the nature and extent of the interest in accordance with article 16.8 and that standing notice is still effective in relation to the interest.
- 16.7. Notices of material personal interest given by a member of the Managing Board must:
- a. give details of the nature and extent of the interest of the member of the Managing Board and the relation of the interest to the affairs of the Company;
  - b. be given at a meeting of the Managing Board as soon as practicable after the member of the Managing Board becomes aware of his or her interest in the matter; and
  - c. be recorded in the minutes of the meeting of the Managing Board at which the notice is given.
- 16.8. The standing notice referred to in article 16.6 under c:
- a. may be given at any time and whether or not the matter relates to the affairs of the Company at the time the notice is given;
  - b. must give details of the nature and extent of the interest and be given:
    - (i) at a meeting of the Managing Board (either orally or in writing); or
    - (ii) to each of the other members of the Managing Board individually in writing.
  - c. must be tabled at the next meeting of the Managing Board in the event that it is given to other members of the Managing Board individually in written form pursuant to article 16.7 under b.;
  - d. recorded in the minutes of the meeting at which it is given or tabled.
- 16.9. A standing notice that is given under article 16.8 takes effect as soon as it is given and ceases to have effect in the following circumstances:
- a. if a person who was not a member of the Managing Board at the time when the notice was given is appointed as a member of the Managing Board; and
  - b. if the nature or extent of the interest materially changed or increases from that that disclosed in the notice.
- 16.10. A member of the Managing Board who has a material personal interest in a matter that is being considered at a meeting of the Managing Board or Joint Board may neither be present while the matter is being considered at such meeting nor vote on the matter, except in the following circumstances:
- a. if the material personal interest is a matter that is not required to be disclosed under article 16.6;
  - b. if the members of the Managing Board who do not have a material personal interest in the matter have passed a resolution that:
    - (i) identified the member of the Managing Board, the nature and the extent of the interest of the member of the Managing Board in the matter and in relation to the affairs of the Company; and
    - (ii) states that the other members of the Managing Board are satisfied that the interest should not disqualify the member of the Managing Board from voting or being present.
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- 16.11. If, after application of article 16.10, no member of the Managing Board, other than the member(s) in respect of whom the conflict exists, would remain to be entitled to be present while the matter is being considered at the meeting of the Managing Board and to vote on the matter, the member(s) of the Managing Board in respect of whom the conflict exists may call a General Meeting and the General Meeting may pass a resolution to decide as to whether or not such member(s) are entitled to be present while the matter is being considered at such meeting and to vote on the matter.
- 16.12. Articles 16.6 up to and including 16.11 shall not derogate from article 18.4.

**Mandatory prior approval for management action.**

**Article 17.**

- 17.1. Without prejudice to any other applicable provisions of these Articles, the Managing Board shall require the prior approval of the Supervisory Board for any action specified from time to time by a resolution to that effect adopted by the Supervisory Board, of which the Managing Board has been informed in writing.
- 17.2. Without prejudice to any other applicable provisions of these Articles, the Managing Board shall require the prior approval of the General Meeting if required by Law and the provisions of these Articles, as well as for such resolutions as are clearly defined by a resolution to that effect adopted by the General Meeting, of which the Managing Board has been informed in writing.
- 17.3. Without prejudice to any other applicable provisions of these Articles, the Managing Board shall furthermore require the approval of the Supervisory Board, the Joint Board and the General Meeting for resolutions of the Managing Board regarding a significant change in the identity or nature of the Company or the enterprise, including in any event:
- a. the transfer of the enterprise or practically the entire enterprise to a third party;
  - b. to conclude or cancel any long-lasting co-operation by the Company or a subsidiary ('dochtermaatschappij') with any other legal person or company or as a fully liable general partner of a limited partnership or a general partnership, provided that such co-operation or the cancellation thereof is of essential importance to the Company;
  - c. to acquire or dispose of a participating interest in the capital of a company with a value of at least one-third of the sum of the assets according to the consolidated balance sheet with explanatory notes thereto according to the last adopted annual accounts of the Company, by the Company or a subsidiary ('dochtermaatschappij').
- 17.4. A lack of the approval of the Supervisory Board, Joint Board or the General Meeting as mentioned in paragraphs 1 to 3 of this article may not be invoked by or against third parties.
- 17.5. If a serious private bid is made for a business unit or a participating interest and the value of the bid exceeds the threshold referred to in paragraph 3 under c., and such bid is made public, the Managing Board shall, at its earliest convenience, make public its position on the bid and the reasons for this position.

**Representation. Conflict of interest.**

**Article 18.**

- 18.1. The entire Managing Board is authorised to represent the Company and bind it vis-à-vis third parties. The Company may also be represented by the CEO, acting individually, and may also be represented by two members of the Managing Board acting jointly.
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- 18.2. The Managing Board may grant special and general powers of attorney to persons, whether or not such persons are employed by the Company, authorising them to represent the Company and bind it vis-à-vis third parties. The scope and limits of such powers of attorney shall be determined by the Managing Board. The Managing Board may in addition grant to such persons such titles as it deems appropriate.
- 18.3. The Managing Board shall have the power to enter into and perform agreements and all legal acts (*rechtshandelingen*) contemplated thereby as specified in section 2:94, subsections 1 and 2 Dutch Civil Code insofar as such power is not expressly excluded or limited by any provision of these Articles.
- 18.4. If a member of the Managing Board has a conflict of interest with the Company (whether acting in his personal capacity by entering into an agreement with the Company or conducting any litigation against the Company or whether acting in any other capacity), he as well as any other members of the Managing Board, shall have the power to represent the Company, with due observance of the provisions of the first paragraph, unless the General Meeting designates a person for that purpose or the law provides for the designation in a different manner. Such person may also be the member of the Managing Board in respect of whom such conflict of interest existed.

#### **Remuneration of the members of the Managing Board.**

##### **Article 19.**

- 19.1. The General Meeting shall adopt on the proposal of the Supervisory Board the policy in the area of remuneration of the Managing Board. To the extent that the Company has established an employees' council pursuant to statutory provisions, the remuneration policy shall in written form and together with the submission to the General Meeting be submitted to the employees' council for examination.
- 19.2. The salary, the bonus, if any, and the other terms and conditions of employment (including pension benefits) of the members of the Managing Board will, with due observance of the policy as referred to in the preceding paragraph, be determined by the Supervisory Board. The Supervisory Board will submit for approval by the General Meeting a proposal regarding the arrangements for the remuneration in the form of Shares or CUFSSs or rights to acquire Shares or CUFSSs. This proposal includes at least how many Shares or CUFSSs or rights to acquire Shares or CUFSSs may be awarded to the Managing Board and which criteria apply to an award or a modification.
- 19.3. The members of the Managing Board shall be paid for their services as a member of the Managing Board by way of fee, wage, salary, bonus, commission or participation in profits, but not by a commission on, or percentage of, turnover.
- 19.4. The remuneration to which a member of the Managing Board is entitled may be provided to a member in cash or in such other form as is agreed between the Company and such member. A member of the Managing Board may elect to forgo some or all of the member's entitlement to cash remuneration in favour of another agreed form of remuneration and vice versa.
- 19.5. The members of the Managing Board shall also be entitled to be paid or reimbursed for all travelling and other expenses properly incurred by them in attending and returning from any Managing Board meeting, meeting of any committee of the members of the
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Managing Board, General Meeting or otherwise in connection with the business or affairs of the Company.

- 19.6. Subject to applicable Law and the Listing Rules, a member of the Managing Board may be engaged by the Company in any other capacity and may be appointed on such terms as to remuneration, tenure of office and otherwise as may be agreed with the Company.
- 19.7. In addition to any other amounts payable under these Articles, the Company may make any payment or give any benefit to any member of the Managing Board or a member of the managing board of a subsidiary of the Company or any other person in connection with the such member's retirement, resignation from or loss of office or death while in office, if it is made or given in accordance with the Law and the Listing Rules.
- 19.8. Subject to this article 19, the Company may:
- a. make contracts or arrangements with a member of the Managing Board or a person about to become a member of the Managing Board or a member of the managing board of a subsidiary of the Company under which such member or any person nominated by such member is paid or provided with a lump sum payment, pension, retiring allowance or other benefit on or after such member or person about to become a member of the Managing Board or of the managing board of a subsidiary of the Company ceases to hold office for any reason;
  - b. make any payment under any contract or arrangement referred to in paragraph a. above; and
  - c. establish any fund or scheme to provide lump sum payments, pensions, retiring allowances or other benefits for:
    - (i) members of the Managing Board, on them ceasing to hold office; or
    - (ii) any person including a person nominated by the member of the Managing Board, in the event of such member's death while in office,
    - (iii) and from time to time pay to the fund or scheme any sum as the Company considers necessary to provide those benefits.
- 19.9. The Company may impose any conditions and restrictions under any contract, arrangement, fund or scheme referred to in article 19.8 as it thinks proper.
- 19.10. The Company may authorise any subsidiary of the Company to make a similar contract or arrangement with the members of its Managing Board and make payments under it or establish and maintain any fund or scheme, whether or not all or any of the members of its managing board are also a member of the Managing Board.

**Suspension or dismissal of members of the Managing Board.**

**Article 20.**

- 20.1. The General Meeting shall at any time be entitled to suspend or dismiss a member of the Managing Board.
- 20.2. The Supervisory Board shall also at any time be entitled to suspend (but not to dismiss) a member of the Managing Board. During his suspension, a member of the Managing Board will not receive any salary or other payments unless his employment agreement or the resolution regarding his suspension provides otherwise.
- 20.3. Within three months after a suspension of a member of the Managing Board has taken effect, a General Meeting shall be held, in which meeting a resolution must be adopted
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to either terminate or extend the suspension for a maximum period of another three months. If neither such resolution is adopted nor the General Meeting has resolved to dismiss the member of the Managing Board, the suspension shall terminate after the period of suspension has expired.

The member of the Managing Board shall be given the opportunity to account for his actions at that meeting.

- 20.4. Further to article 20.1, a member of the Managing Board shall cease to be a member of the Managing Board if he:
- a. becomes bankrupt, or obtains suspension of payments, or any event having analogous effect under applicable law, or proposes or makes any agreement for the deferral, rescheduling or other adjustment of all or part of his debts;
  - b. loses his full legal capacity (*handelingsbekwaamheid*), or any event having analogous effect under applicable law;
  - c. resigns by notice in writing to the Company;
  - d. is absent without the consent of the other members from Managing Board meetings held during a continuous period of three (3) months;
  - e. becomes prohibited from being a member of the Managing Board by reason of any provision of law; or
  - f. dies.

### **Supervisory Board.**

#### **Article 21.**

- 21.1. The Supervisory Board shall be responsible for supervising the policy pursued by the Managing Board and the general course of affairs of the Company and the business enterprise which it operates. The Supervisory Board shall assist the Managing Board with advice relating to the general policy aspects connected with the activities of the Company. In fulfilling their duties the members of the Supervisory Board shall serve the interests of the Company and the business enterprise which it operates.
- 21.2. The Managing Board shall provide the Supervisory Board and the Joint Board in good time with all relevant information as well as with all other information as the Supervisory Board and the Joint Board may request, in connection with the exercise of its duties. At least once per year, the Managing Board shall inform the Supervisory Board and the Joint Board in writing in respect of the principles of the strategic plan, the general and financial risks and the management and control systems of the Company. The Managing Board shall at that time ask the approval of the Supervisory Board and the Joint Board for:
  - a. The operational and financial objectives of the Company;
  - b. The strategy designed to achieve the objectives; and
  - c. The parameters to be applied in relation to the strategy, for example in respect of the financial ratio's.

### **Number of members of the Supervisory Board. Appointment.**

#### **Article 22.**

- 22.1. The Supervisory Board shall consist of at least two (2) members. The number of members of the Supervisory Board shall be determined by the Supervisory Board.
  - 22.2. No member of the Supervisory Board shall hold office for a continuous period in excess of three (3) years or past the end of the third annual General Meeting following such
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member's appointment, whichever is the longer, without submitting for re-election. If no member of the Supervisory Board would otherwise be required to submit for re-election but the Listing Rules require that a member of the Supervisory Board is appointed, the member of the Supervisory Board to retire at the end of the annual General Meeting will be the member who has been longest in office since their last election, but, as between persons who became member of the Supervisory Board on the same day, the one to retire shall (unless they otherwise agree among themselves) be determined by lot. A retiring member of the Supervisory Board pursuant to this article 22.2 shall be eligible for re-election and shall hold office as a member of the Supervisory Board until the end of the annual General Meeting at which such member retires. The Supervisory Board shall draw up a retirement schedule for the members of the Supervisory Board.

- 22.3. Members of the Supervisory Board shall be appointed by the General Meeting, provided however, that in case of a vacancy in the Supervisory Board at any time after the end of an annual General Meeting and prior to the subsequent annual General Meeting, the Supervisory Board may appoint the member(s) of the Supervisory Board so as to fill any vacancy provided that:
- a. the member(s) of the Supervisory Board so appointed by the Supervisory Board retire(s) no later than at the end of the first annual General Meeting following his or their appointment; and
  - b. the number of the members of the Supervisory Board appointed by the Supervisory Board at any given time shall not exceed one-third (1/3) of the aggregate number of members of the Supervisory Board prior to the moment a vacancy occurs, such that if the resulting number is not a whole number, the number of members to be appointed by the Supervisory Board shall be rounded downwards to the nearest whole number.
- 22.4. If a member of the Supervisory Board is to be appointed by the General Meeting, the Supervisory Board as well as any Shareholder shall have the right to make a nomination.
- 22.5. Nominations by Shareholders must be made no less than thirty-five (35) Business Days (or in the case the General Meeting is held at the request of the Shareholders thirty (30) Business Days) before the date of the General Meeting at which the appointment of members of the Supervisory Board is to be considered. The nominations shall be included in the notice of the General Meeting at which the appointment shall be considered. If nominations have not been made or have not been made in due time, this shall be stated in the notice and the General Meeting may appoint a member of the Supervisory Board at its discretion. Whenever a member of the Supervisory Board must be appointed the information referred to in section 2:142 subsection 3 Dutch Civil Code shall be made available to the Shareholders for their prior inspection. In case of a reappointment the manner in which the candidate has fulfilled his duties as a member of the Supervisory Board shall be taken into account.
- 22.6. Members of the Supervisory Board are not required to hold any Shares.
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**Chair of the Supervisory Board. Organisation of the Supervisory Board. Company Secretary.****Article 23.**

- 23.1. The Supervisory Board shall appoint one of its members as its chair. The Supervisory Board shall be assisted by the Company Secretary, to be appointed and dismissed, as the case may be, by the Managing Board and the Supervisory Board jointly, subject to the approval of the Joint Board.
- 23.2. The Supervisory Board shall adopt a profile of its size and composition, taking account of the nature of the business, its activities and the desired expertise and background of the members of the Supervisory Board.
- 23.3. The Supervisory Board may appoint committees from among its members.
- 23.4. With due observance of these Articles, the Supervisory Board may adopt Supervisory Rules and the Supervisory Board shall have the authority to amend the Supervisory Board Rules from time to time. Furthermore, the Supervisory Board shall adopt rules for each of its committees and the Supervisory Board shall have the authority to amend these committee rules from time to time.
- 23.5. The Supervisory Board may decide that one or more of its members shall have access to all premises of the Company and that they shall be authorised to examine all books, correspondence and other records and to be fully informed of all actions which have taken place.
- 23.6. At the expense of the Company, the Supervisory Board may obtain such advice from experts as the Supervisory Board deems desirable for the proper fulfilment of its duties.
- 23.7. If there is only one member of the Supervisory Board in office, such member shall have all rights and obligations granted to and imposed on the Supervisory Board and the chair of the Supervisory Board by Law and by these Articles.

**Resolutions by the Supervisory Board. Conflict of Interest.****Article 24.**

- 24.1. Resolutions of the Supervisory Board shall be validly adopted, if adopted by absolute majority of votes in a meeting at which at least two (2) of the members of the Supervisory Board are present.
- In case of absence, a member of the Supervisory Board may issue a proxy only to another member of the Supervisory Board, provided however that a member of Supervisory Board can only act as proxy for not more than one other member of the Supervisory Board.
- Each member of the Supervisory Board has the right to cast one vote. In case of a tie vote, if more than two members of the Supervisory Board are present at the meeting, the chair of the Supervisory Board shall have a decisive vote. In case of a tie vote, if only two members of the Supervisory Board are present at the meeting, the proposal shall be rejected.
- 24.2. The Supervisory Board may adopt its resolutions in writing without holding a meeting, provided that the proposals for such resolutions have been communicated in writing to all members of the Supervisory Board and no member has objected to this method of adoption of a resolution.
- 24.3. A certificate signed by a member of the Supervisory Board confirming that the Supervisory Board has adopted a particular resolution, shall constitute evidence of such resolution vis-à-vis third parties.
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- 24.4. The members of the Managing Board shall attend meetings of the Supervisory Board at the latter's request.
- 24.5. Meetings of the Supervisory Board shall be convened by the chair of the Supervisory Board, either at the request of two or more members of the Supervisory Board or at the request of the Managing Board. If the chair fails to convene a meeting so that it can be held within four weeks of the receipt of the request, the members of the Supervisory Board making the request are entitled to convene the meeting.
- 24.6. The Supervisory Rules shall include provisions on the manner of convening supervisory board meetings and the internal procedure at such meetings. These meetings may be held by telephone conference communications, as well as by video communications, provided all participating members of the Supervisory Board can hear each other simultaneously.
- 24.7. Articles 16.5 through 16.11 inclusive of these Articles shall, to the fullest extent possible, equally apply to members of the Supervisory Board. Any references to member(s) of the Managing Board or the Managing Board in those articles must be read as a reference to member(s) of the Supervisory Board or the Supervisory Board, respectively.

**Remuneration of the members of the Supervisory Board.**

**Article 25.**

- 25.1. The General Meeting shall, on proposal of the Supervisory Board, determine the maximum aggregate amount of the remuneration of the members of the Supervisory Board, which may include an amount designated for members of the Supervisory Board to be appointed in the future.
- 25.2. The remuneration as determined in accordance with article 25.1:
- a. shall be divided among the members of the Supervisory Board in the proportions as they may agree or, if they cannot agree, equally among them; and
  - b. may be exclusive of any benefits that the Company provides to members of the Supervisory Board in satisfaction of legislative schemes (including benefits provided under superannuation guarantee or similar schemes).
- 25.3. Remuneration payable to members of the Supervisory Board shall be by a fixed sum and not by a commission on or as a percentage of the operating revenue of the Company.
- 25.4. The members of the Supervisory Board shall also be entitled to be paid or reimbursed for all travelling and other expenses properly incurred by them in attending and returning from any meeting of the Supervisory Board, meeting of any committee of the Supervisory Board, General Meeting or otherwise in connection with the business or affairs of the Company.
- 25.5. Subject to applicable Law and the Listing Rules, a member of the Supervisory Board may be engaged by the Company in any other capacity and may be appointed on such terms as to remuneration, tenure of office and otherwise as may be agreed with the Company.
- 25.6. Articles 19.7 through 19.10 of these Articles shall, to the fullest extent possible, equally apply to members of the Supervisory Board. Any references to member(s) of the
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Managing Board in those articles must be read as a reference to member(s) of the Supervisory Board.

**Suspension or dismissal of members of the Supervisory Board.**

**Article 26.**

- 26.1. A member of the Supervisory Board may at any time be suspended or dismissed by the General Meeting with due observance of article 22 of these Articles.
- 26.2. Within three months after a suspension of a member of the Supervisory Board has taken effect, a General Meeting shall be held, in which meeting a resolution must be adopted to either terminate or extend the suspension for a maximum period of another three months. If neither such resolution is adopted nor the General Meeting has resolved to dismiss the member of the Supervisory Board, the suspension shall terminate after the period of suspension has expired. The member of the Supervisory Board shall be given the opportunity to account for his actions at that meeting.
- 26.3. Further to article 26.1, a member of the Supervisory Board shall cease to be a member of the Supervisory Board if he:
- a. becomes bankrupt, or obtains suspension of payments, or any other event having analogous effect under applicable law, or proposes or makes any agreement for the deferral, rescheduling or other adjustment of all or part of his debts;
  - b. loses its full legal capacity (handelingsbekwaamheid), or any other event having analogous effect under applicable law;
  - c. resigns by notice in writing to the Company;
  - d. is absent without the consent of the other members of the Supervisory Board from meeting of the Supervisory Board held during a continuous period of three (3) months;
  - e. becomes prohibited from being a member of the Supervisory Board by reason of any provision of Law; or
  - f. dies.

**Joint Board.**

**Article 27.**

- 27.1. The Company shall have a Joint Board comprising not less than three (3) and no more than twelve (12) members, or such greater number as determined by the General Meeting. Without prejudice to the preceding sentence, the number of members of the Joint Board shall be determined by the chair of the Supervisory Board.

The Joint Board will be responsible for overseeing the general course of affairs of the Company and has the other powers as described in these Articles.

The Joint Board shall consist of all members of the Supervisory Board, the CEO and, if the chair of the Supervisory Board decides thereto, one or more other members of the Managing Board, to be designated by the chair of the Supervisory Board, provided however that the number of members of the Managing Board being on the Joint Board can never be greater than the number of members of the Supervisory Board.

The chair of the Supervisory Board shall adopt a resolution to designate one or more members of the Managing Board as member(s) of the Joint Board in writing and shall communicate such resolution to all members of the Joint Board, including the designated members of the Managing Board.

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- 27.2. The Joint Board may resolve by unanimous votes at a meeting at which all members of the Joint Board are present or represented to abolish the Joint Board. The Joint Board shall no longer be instituted from the date such resolution has been filed with the trade register of the competent Chamber of Commerce and Industry as referred to in section 2:77 Dutch Civil Code.
- 27.3. Following any resolution of the Joint Board as referred to in article 27, paragraph 2, the Supervisory Board may resolve to re-institute a Joint Board. Any such re-institution of the Joint Board shall be effective as from the date of filing of such resolution with the trade register of the competent Chamber of Commerce and Industry as referred to in section 2: 77 Dutch Civil Code.
- If and so long as a Joint Board has been instituted, the provisions of this article shall apply to the Joint Board and its members, without prejudice to what has otherwise been provided in these Articles concerning the Joint Board and its members.
- 27.4. If and so long as the Joint Board is not instituted, the powers and authorities of the Joint Board shall vest in the Supervisory Board, and the powers and authorities of the chair of the Joint Board shall vest in the chair of the Supervisory Board.
- 27.5. The members of the Joint Board shall resign or be suspended or dismissed from the Joint Board simultaneously with their resignation, suspension or dismissal as member of the Managing Board or Supervisory Board.
- 27.6. The Joint Board shall appoint one of its members as chair of the Joint Board. The Joint Board may adopt Joint Board Rules.
- 27.7. Unless otherwise provided in these Articles, resolutions of the Joint Board shall be validly adopted by an absolute majority of votes in a meeting at which at least three (3) of the members of the Joint Board are present, provided however that, unless there are no members of the Supervisory Board in office, at least one member of the Supervisory Board must be present or represented at the meeting and the votes cast in favour of the resolution must include the vote of at least one member of the Supervisory Board. In case of absence, a member of the Joint Board may issue a proxy, however, only to another member of the Joint Board. Each member of the Joint Board has the right to cast one vote. In case of a tie vote, the chair of the Joint Board shall have a decisive vote.
- 27.8. The Joint Board may adopt its resolutions in writing without holding a meeting, provided that the proposals for such resolutions have been communicated to all members and no member has objected to this method of adoption of a resolution.
- 27.9. A certificate signed by a member of the Joint Board confirming that the Joint Board has adopted a particular resolution, shall constitute evidence of such resolution vis-à-vis third parties.
- 27.10. The Joint Board shall meet whenever the chairman of the Joint Board or two or more of its members so request. Meetings of the Joint Board shall be convened by the chair of the Joint Board. If the chair fails to convene a meeting so that it can be held within four weeks of the receipt of the request, the members of the Joint Board who have requested a meeting of the Joint Board to be held are entitled to convene such meeting.
- 27.11. The Joint Board Rules shall include provisions on the manner of convening board meetings and the internal procedure at such meetings. These meetings may be held by
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telephone conference communications, as well as by video communications, provided all participating members can hear each other simultaneously.

**Indemnification.**

**Article 28.**

- 28.1. Unless otherwise provided for by Dutch Law, the Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative based on acts or failures to act in the exercise of his duties as a member of the Managing Board, Supervisory Board or Joint Board, officer, employee or agent of the Company, or in the exercise of his duties as a director, officer or agent of another company, a partnership, joint venture, trust or other enterprise at the Company's request, against all expenses (including attorneys' fees) judgements, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding.
  - 28.2. A party involved is not entitled to reimbursement as referred to in paragraph 1 in case and to the extent that (i) a Dutch court has established in a final and non-appealable decision that the acts or omissions to act of the party involved may be characterized as being wilful misconduct (*opzet*), intentional recklessness (*bewuste roekeloosheid*) or seriously imputable (*ernstig verwijtbaar*) unless otherwise provided for by Dutch law or unless such in view of the circumstances of the case would be unacceptable according to standards of reasonableness and fairness or that (ii) the costs or the financial loss of the party involved are covered by an insurance and the insurer has reimbursed the costs or financial loss.
  - 28.3. To the extent that a supervisory director, managing director, member of the Joint Board, officer, employee or agent of the Company has been successful on the merits or otherwise in defence of any action, suit or proceeding, referred to in paragraph 1, or in defence of any claim, issue or matter therein, he shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him in connection therewith.
  - 28.4. Expenses incurred in defending a civil or criminal action, suit or proceeding will be paid by the Company in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the member of the Managing Board, Supervisory Board, Joint Board, officer, employee or agent to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Company as authorised in this article.
  - 28.5. The indemnification provided for by this article shall not be deemed exclusive of any other right to which a person seeking indemnification may be entitled under any by-laws, agreement, resolution of the General Meeting or of the disinterested members of the Managing Board or otherwise, both as to actions in his official capacity and as to actions in another capacity while holding such position, and shall continue as to a person who has ceased to be a member of the Managing Board, Supervisory Board, Joint Board, officer, employee or agent and shall also inure to the benefit of the heirs, executors and administrators of such a person.
  - 28.6. The Company shall have the power to purchase and maintain insurance on behalf of any person who is or was a member of the Managing Board, Supervisory Board, Joint
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Board, officer, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another company, a partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity or arising out of his capacity as such, whether or not the Company would have the power to indemnify him against such liability under the provisions of this article.

- 28.7. Whenever in this article reference is made to the Company, this shall include, in addition to the resulting or surviving company also any constituent company (including any constituent company of a constituent company) absorbed in a consolidation or merger which, if its separate existence had continued, would have had the power to indemnify its members of the Managing Board, Supervisory Board, Joint Board, officers, employees and agents, so that any person who is or was a member of the Managing Board, Supervisory Board, Joint Board, officer, employee or agent of such constituent company, or is or was serving at the request of such constituent company as a director, officer or agent of another company, a partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this article with respect to the resulting or surviving company as he would have with respect to such constituent company if its separate existence had continued.
- 28.8. The Supervisory Board may further execute the foregoing with respect to members of the Managing Board. The Managing Board may further execute the foregoing with respect to members of the Supervisory Board, Joint Board, officers, employees and agents of the Company.

**General Meeting. Annual General Meeting.**

**Article 29.**

- 29.1. The annual General Meeting shall be held within six months after the close of the financial year.
- 29.2. At this General Meeting the following subjects shall be considered:
- a. the written annual report prepared by the Managing Board on the course of business of the Company and the conduct of its affairs during the past financial year;
  - b. the adoption of the annual accounts;
  - c. the appointment of member(s) of the Managing Board, in accordance with the provisions of article 14;
  - d. the appointment of member(s) of the Supervisory Board, in accordance with the provisions of article 22; and
  - e. any other proposal placed on the agenda in accordance with the provisions of the Law or these Articles.
- If the agenda shall include a proposal regarding discharge of liability (*décharge*) this will be separate for managing directors and supervisory directors.
- 29.3. The Managing Board and the Supervisory Board shall give the General Meeting the opportunity to ask questions and ask for information.
- All reasonable questions will be answered and all reasonable requests for information will be fulfilled subject to the decision of the chairman of the General Meeting.
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**Extraordinary General Meetings.****Article 30.**

- 30.1. Without prejudice to articles 30.4 and 30.5, extraordinary General Meetings shall be called for and held as often as deemed necessary by the Managing Board and the Supervisory Board and shall be held on the request of:
- a. Shareholders, representing at least five percent (5%) of the issued share capital of the Company; or
  - b. at least one hundred (100) Shareholders or one (1) Shareholder representing at least one hundred (100) CUFS Holders or any relevant combination so that the request of at least one hundred (100) persons are taken into account,
- with the percentage of votes that the Shareholders represent to be determined as at midnight (Sydney time) before the date referred to in the last stanza of article 30.2. The Managing Board will only call a General Meeting, as referred to in the preceding sentence after having this proposed to and approved by the Joint Board.
- 30.2. The request referred to in article 30.1:
- a. must be in writing;
  - b. must state any resolution, and the wording of any resolution, proposed to be put on the agenda for, and to be adopted at, the General Meeting;
  - c. may state any statement, and the wording of any statement, to be considered at the General Meeting as referred to in article 30.7;
  - d. must be signed by the Shareholder(s) making the request;
  - e. must be given to the Company; and
  - f. may be given in one or more counterparts,
- and if given in more than one counterpart will be taken to be received by the Company on the date that the last of such requests is received as is necessary to satisfy the representation requirement set out in article 30.1.
- 30.3. A General Meeting as requested pursuant to article 30.1 must be called within twentyone (21) days after the request is given to the Company. The meeting is to be held not later than two (2) months after the request is given to the Company with the notice convening such General Meeting to be given in accordance with the other provisions of these Articles.
- The Company must distribute to all of its Shareholders a copy of the proposed resolution and, if applicable, the statement as referred to in article 30.2 under c immediately following the receipt thereof, or as soon as practicable afterwards, and in the same way, as it is required to give notice to it's Shareholders pursuant to article 10.1. under a. through e. inclusive. The Company shall meet the expenses incurred in making the request provided the copy of the said statement (if any) is received in time to send it out to the Shareholders together with the notice of the General Meeting. Unless the Managing Board agrees otherwise, the Shareholders requesting the General Meeting shall be jointly and individually liable for the expenses reasonably incurred by the Company in distributing a copy of the statement (if any) if the Company does not receive the same in time to send it out with the notice of the General Meeting.
- 30.4. If none of the Managing Board or Supervisory Board convene a General Meeting within the twenty one (21) day period referred to in article 30.3, Shareholders who represent fifty percent (50%) of the votes of all of the persons who made, or were so represented
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in respect of, the request under article 30.1, may call, and arrange to hold, a General Meeting, to be held within three (3) months of the request given under article 30.1, at the cost of the Company, including the reasonable expenses of the Shareholders. The notice convening such General Meeting must be given in accordance with the other provisions of these Articles.

- 30.5. In addition to article 30.1, shareholders representing at least five percent (5%) of the issued share capital of the Company may call, and arrange to hold, a General Meeting at the cost of such Shareholders. The notice convening such General Meeting must be given in accordance with the other provisions of these Articles. The percentage of votes that Shareholders represent is to be determined as at midnight (Sydney time) before the date on which the General Meeting is called.
- 30.6. Shareholders, who individually or together with other Shareholders may request an extraordinary General Meeting pursuant to article 30.1, may at all times give the Company notice of a resolution that they propose to put on the agenda for, and have adopted at, a General Meeting.

Such notice:

- a. must be in writing;
- b. must state the proposed resolution, and the wording of the proposed resolution;
- c. must be signed by the Shareholder(s) making the request;
- d. must be given to the Company; and
- e. may be given in one or more counterparts, and if given in more than one counterpart will be taken to be received by the Company on the date that the last of such requests is received as is necessary to satisfy the representation requirement set out in article 30.1.

The Managing Board or Supervisory Board shall ensure that such resolution is considered at the next General Meeting that occurs more than two (2) months after such notice is given with such notice to be given in accordance with the other provisions of these Articles. The Company must give its Shareholders notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it is required to give notice to its Shareholders pursuant to article 10.1. under a. through e. inclusive. The Company shall meet the expenses incurred in giving the notice if it receives the notice in time to send it out to the Shareholders with the notice of the General Meeting. Unless the Managing Board agrees otherwise, the Shareholders requesting the General Meeting shall be jointly and individually liable for the expenses reasonably incurred by the Company in giving notice of the resolution if the Company does not receive the request in time to send it out with the notice of the General Meeting

To the fullest extent permitted by Law, the Company need not comply with the request if the notice of the proposed resolution is more than one thousand (1,000) words long or defamatory.

- 30.7. Shareholders, who individually or together with other Shareholders may request an extraordinary General Meeting pursuant to article 30.1, may at all times request the Company give to all its Shareholders a statement provided by the Shareholders making the request in connection with a resolution that is proposed to be adopted at a General
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Meeting or about any other matter that may properly be considered at a General Meeting.

Such request:

- a. must be in writing;
- b. must state the statement, and the wording of the statement;
- c. must be signed by the Shareholder(s) making the request;
- d. must be given to the Company; and
- e. may be given in one or more counterparts, and if given in more than one counterpart will be taken to be received by the Company on the date that the last of such requests is received as is necessary to satisfy the representation requirement set out in article 30.1.

The Company must distribute to all of its Shareholders a copy of the proposed resolution immediately following the receipt thereof, or as soon as practicable afterwards, and in the same way, as it is required to give notice to its Shareholders pursuant to article 10.1. under a. through e. inclusive.

The Company shall meet the expenses incurred in distributing the statement, provided it receives the statement in time to send it out to the Shareholders together with the notice of the General Meeting. Unless the Managing Board agrees otherwise, the Shareholders making the request shall be jointly and individually liable for the expenses reasonably incurred by the Company in distributing the statement if the Company does not receive the request in time to send it out with the notice of the General Meeting.

To the fullest extent permitted by Law, the Company need not comply with the request if the statement is more than one thousand (1,000) words long or defamatory.

#### **Place and notice of General Meetings.**

##### **Article 31.**

- 31.1. General Meetings shall be held at Amsterdam, Haarlemmermeer (Schiphol Airport), Rotterdam, or The Hague and at the time and location stated in the notice convening such General Meeting, without prejudice to article 37.2 under b sub (i) or article 37.3.
  - 31.2. The notice convening a General Meeting pursuant to articles 30.1. through 30.3 inclusive shall be given by either the Managing Board or the Supervisory Board. The notice convening a General Meeting pursuant to articles 30.4. and 30.5 shall be given by the Shareholders in accordance with the said articles.
  - 31.3. Any notice of a General Meeting shall exclusively be given:
    - a. with due observance of the provisions of articles 10 and 32 and shall state the location and time of, and in case the General Meeting may be attended and addressed by way of telephone or video conferencing pursuant to article 34.3, the details for such conferencing, and agenda (and possible other information) for, the General Meeting and the Information Meeting;
    - b. to every Shareholder and other persons entitled to receive notices of meetings and notifications pursuant to article 10.12; and
    - c. to the auditor to the Company.
  - 31.4. Written requests as referred to in article 30 paragraph 1 and article 32 paragraph 3, may be submitted electronically. Written requests as referred to in article 30 paragraph
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1 and article 32 paragraph 3 shall comply with conditions stipulated by the Managing Board, which conditions shall be posted on the company's website.

**Notice period. Agenda.**

**Article 32.**

- 32.1. The notice convening a General Meeting shall be sent no later than on the twentyeighth day prior to the meeting. The notice shall always contain or be accompanied by the agenda for the meeting, the place and contact details for the purpose of receiving proxy appointments and such information as, at the discretion of the person(s) convening the General Meeting, is deemed necessary to enable Shareholders to make a well considered decision or refer where such information shall be publicly available.
- 32.2. The agenda shall contain such subjects to be considered at the meeting as the person(s) convening the meeting shall decide. No valid resolutions can be adopted at a General Meeting in respect of subjects that are not mentioned in the agenda.
- 32.3. Without prejudice of the provisions of article 30, one or more Shareholders representing solely or jointly at least one-hundredth part of the issued share capital or, as long as the shares of the Company are admitted to official quotation on a stock exchange as referred to in article 1, subsection e of the Securities Transactions Supervision Act 1995 (*Wet toezicht effectenverkeer 1995*), that is under the supervision of the government or of an authority or organization recognized by the government, representing a value of at least fifty million euro (EUR 50,000,000) according to the official price list of the stock exchange concerned, can request the Managing Board to place a matter on the agenda, provided that the Company has received such request at least sixty days prior to the date of the General Meeting concerned and provided that it is not detrimental to an overriding interest of the Company.
- 32.4. The Managing Board and the Supervisory Board shall, after consultation with the Joint Board, inform the General Meeting by means of explanatory notes to the agenda of all facts and circumstances relevant to the proposals on the agenda. These explanatory notes to the agenda shall be put on the company's website.

**Chair of General Meetings. Minutes.**

**Article 33.**

- 33.1. General Meetings shall be presided by the chair of the Supervisory Board. In case of absence of the chair of the Supervisory Board the meeting shall be presided by any other person nominated by the Supervisory Board. The chair of the General Meeting shall appoint the secretary of that meeting.
- 33.2. The secretary of the meeting shall keep the minutes of the business transacted at the General Meeting. Minutes shall be adopted and in evidence of such adoption be signed by the chair and the secretary of the General Meeting, or alternatively be adopted by a subsequent General Meeting; in the latter case the minutes shall be signed by the chair and the secretary of such subsequent General Meeting in evidence of their adoption, unless a notarial official record (*notarieel proces-verbaal*) will be drawn up by a civil law notary (*notaris*), in which case said official record need only be signed by the civil law notary and by the witnesses, if any.

The draft minutes of the General Meeting shall be made available, on request, to shareholders no later than three months after the end of the meeting, after which the

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shareholders shall have the opportunity to react to the draft minutes in the following three months. The minutes shall then be adopted in the manner as described in the second sentence of this paragraph.

If a notarial official record (*notarieel proces-verbaal*) has been drawn up, the notarial official record shall be made available, on request, no later than three months after the end of the general meeting.

- 33.3. A certificate signed by the chairman and the secretary of the meeting confirming that the General Meeting has adopted a particular resolution, shall constitute evidence of such resolution vis-à-vis third parties.
- 33.4. The chair of the General Meeting may request a civil law notary (*notaris*) to include the minutes of the meeting in a notarial official record (*notarieel proces-verbaal*).

**Attendance of General Meetings.**

**Article 34.**

- 34.1. All Shareholders and other persons entitled to vote at General Meetings are entitled to attend the General Meetings, to address the General Meeting and to vote, provided that, and if so required as set out in the notice convening the meeting, such person has notified the Managing Board in writing of such person's intention to be present at the General Meeting or to be represented not later than the time specified in the notice convening the meeting.
- 34.2. The provisions laid down in article 34.1 are mutatis mutandis applicable on Shares from which the holders of a right of Usufruct or pledge who have the voting right attached to those Shares derive their rights. In addition, the provisions laid down in article 34.1 shall equally apply to CUFS Holders, except that the CUFS Holders shall not have the right to vote.
- 34.3. If so determined by the Managing Board or the Supervisory Board, General Meetings may also be attended and addressed (but no voting may so be established) by means of telephone or video conference, provided each person entitled to attend and address the General Meeting pursuant to article 34.1 can hear and be heard at the same time.
- 34.4. The Managing Board may determine that the persons who are entitled to attend the General Meeting, as referred to in article 34.1 and article 34.2, are persons who (i) are a Shareholders or persons who are otherwise entitled to attend the General Meeting as at a certain date, determined by the Managing Board, such date hereinafter referred to as: the "record date", and (ii) who are as such registered in a register (or one or more parts thereof) designated thereto by the Managing Board, hereinafter referred to as: the "register", regardless of whether they are a Shareholder or person otherwise entitled to attend the General Meeting at the time of the General Meeting.
- 34.5. The record date referred to in article 34.4 cannot be earlier than the date permitted by the Law and the Listing Rules. The notice (*oproeping*) of the General Meeting shall contain the record date, the procedure for registration, and the procedure for registration lodgement of valid proxies.
- 34.6. To the extent that the Managing Board makes use of its right as referred to in article 34.5, the Managing Board may decide that persons entitled to attend General Meetings and vote thereat may, within a period prior to the General Meeting to be set by the Managing Board, which period cannot begin prior to the record date as meant in article
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34.5, cast their votes electronically in a manner to be decided by the Managing Board. Votes cast in accordance with the previous sentence are equal to votes cast at the meeting.

- 34.7. The Managing Board may decide that each person entitled to attend General Meetings and vote thereat may, either in person or by written proxy, vote at that meeting by electronic means of communication, provided that such person can be identified via the electronic means of communication and furthermore provided that such person can directly take note of the business transacted at the General Meeting concerned. The Managing Board may attach conditions to the use of the electronic means of communication, which conditions shall be announced at the convocation of the General Meeting and shall be posted on the company's website.

**Proxies.**

**Article 35.**

- 35.1. Shareholders and other persons entitled to attend a General Meeting may be represented by proxies duly authorised in writing, and provided notice and proxy appointments are given in the form approved by the Managing Board in writing to the Managing Board in accordance with article 34.1 and with due observance of article 35.2, such proxies shall be admitted to the General Meeting.
- 35.2. The instrument appointing the proxy given in accordance with article 35.1, and any power of attorney or other authority (if any) under which the instrument is signed, must be deposited not less than forty-eight hours before the start of the General Meeting or adjourned General Meeting (or such lesser time as set out in the notice convening the General Meeting), at the registered office of the Company or at such other place as is specified for that purpose in the notice convening the General Meeting.
- 35.3. All matters regarding the admittance to the General Meeting, the exercise of voting rights and the outcome of the votes, as well as any other matters regarding the proceedings at the General Meeting shall be decided upon by the chair of that meeting, with due observance of the provisions of section 2:13 Dutch Civil Code.

**Information meeting.**

**Article 36.**

- 36.1. Information Meetings shall be held no more than seven (7) days prior to each General Meeting and shall be for the benefit of Shareholders and other persons entitled to attend a General Meeting who are unable to attend such General Meeting.
- 36.2. Information Meetings shall be held in Australia. The notice convening an Information Meeting shall be included in the notice convening the General Meeting and shall be given with due observance of article 31.3.
- 36.3. No voting will occur at any Information Meeting.
- 36.4. Subject to articles 34.1 and 35.1 and without limiting any other lodgement with the Company as set out in the relevant notice of a General Meeting, the Managing Board shall ensure that Shareholders and other persons entitled to vote at General Meetings are able to lodge proxies at the Information Meeting for admission to the General Meeting.
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**Adoption of resolutions. Quorum. Adjournments.****Article 37.**

- 37.1. Unless provided otherwise by Law or these Articles, resolutions shall be validly adopted if adopted by an absolute majority of votes cast at a General Meeting at which at least five percent (5%) of the issued and outstanding share capital is present or represented. Blank and invalid votes shall not be counted.
- 37.2. If a quorum is not present within thirty (30) minutes after the opening of the General Meeting:
- a. where the meeting was convened upon the request of Shareholders, the General Meeting will be dissolved;
  - b. in any other case, provided the Shares are quoted on the ASX:
    - (i) the meeting stands adjourned to a time and place as the Managing Board decides provided however that such meeting shall be resumed as soon as practically possible but not later than twenty four hours after the time originally fixed for the General Meeting and that the place may only be altered into a place within the same municipality as originally fixed for the General Meeting; and
    - (ii) if at the adjourned meeting a quorum is not present within thirty (30) minutes after the time appointed for the meeting, the meeting will be dissolved.
- 37.3. Provided the Shares are quoted on the ASX, the chair may in order to procure the orderly conduct of proceedings at the General Meeting (for instance, to allow for a break, to gain information and advice, to give the opportunity to deliberate) adjourn the General Meeting from time to time and from place to place, provided however that such meeting shall be resumed as soon as practically possible but not later than twenty four hours after the time originally fixed for the General Meeting and that the place may only be altered in a place within the same municipality as originally fixed for the General Meeting. If the chair elects to adjourn the General Meeting pursuant to the preceding sentence, the chair may decide whether to seek the approval of the Shareholders present. No business shall be transacted at any adjourned General Meeting other than the business left unfinished at the General Meeting from which the adjournment took place.
- 37.4. Any resolution to be considered at a General Meeting shall be decided on written votes and in the manner and at the time the chair of the General Meeting directs.
- 37.5. The chair shall determine any dispute as to the admission or rejection of a vote and such determination made in good faith shall be final and conclusive, subject to any judicial examination by any competent court. An objection to the qualification of a person to vote raised before or at the General Meeting or adjourned General Meeting shall be decided upon by the chair of the meeting, whose decision shall be final, subject to any judicial examination by any competent court.
- 37.6. If the voting concerns the appointment of a person and more than one person has been nominated for appointment, then votes shall be taken until one of the nominees has obtained an absolute majority of the votes cast. The further votes may, at the chair's discretion, be taken at a subsequent General Meeting.
- 37.7. In the case of an equality of votes cast at the General Meeting the chair has a casting vote.
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- 37.8. Unless depositary receipts for Shares have been issued with the co-operation of the Company, the Shareholders may adopt a resolution that they can adopt at a meeting, without holding a meeting. Such a resolution shall only be valid if all Shareholders entitled to vote have cast their votes in writing in favour of the proposal concerned and all members of the Managing Board and the Supervisory Board were been offered the opportunity to advise on the resolution to be so adopted.

**Voting right per share.**

**Article 38.**

At the General Meeting each Share shall confer the right to cast one vote, unless provided otherwise by Law or these Articles.

**Special resolutions. Proposals to amend these Articles or to liquidate or to merge and demerge the Company.**

**Article 39.**

- 39.1. Without prejudice to the quorum requirement as referred to in article 37.1., a resolution of the General Meeting to amend these Articles or to dissolve the Company shall only be valid if:
- a. adopted by at least a three-fourths (3/4) majority of the votes cast at such General Meeting; and
  - b. with respect to a proposed amendment of these Articles one complete copy of the proposal has been freely available for the Shareholders and the other persons entitled to attend the General Meeting at the office of the Company as from the day of notice convening such meeting until the close of that meeting.
- 39.2. Without prejudice to the quorum requirement as referred to in article 37.1., a resolution by the General Meeting to merge or demerge the Company shall only be valid if adopted by at least a three-fourths (3/4) majority of the votes cast at such General Meeting.

**Annual accounts. Report of the Managing Board and distributions.**

**Article 40.**

- 40.1. The financial year of the Company shall run from the first day of April up to and including the thirty-first day of March of the following year.
- 40.2. Each year the Managing Board shall prepare the annual accounts, consisting of a balance sheet as at the thirty-first day of March and a profit and loss account in respect of the preceding financial year, together with the explanatory notes thereto. The Managing Board shall furthermore prepare a report on the course of business of the Company and the conduct of its affairs during the past financial year.
- 40.3. The Managing Board shall draw up the annual accounts in accordance with applicable generally accepted accounting principles and all other applicable provisions of the Law.
- The annual accounts shall be signed by all members of the Managing Board and the Supervisory Board; if the signature of one or more of them is lacking, this shall be disclosed, stating the reasons thereof.
- 40.4. The Managing Board shall explain, in a separate chapter of the annual report the principles of the corporate governance structure of the Company. This chapter shall reflect how the Company has applied the provisions of the code of conduct designated pursuant to the order in council (*algemene maatregel van bestuur*) as referred to in article 2:391,
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paragraph 4, Civil Code to the extent that these provisions are directed to the Managing Board or Supervisory Board. To the extent that the Company does not comply with the provisions referred to in the preceding sentence, the Managing Board shall reflect in the chapter referred to above why and to what extent the Company deviates from these provisions.

- 40.5. The Managing Board shall, on behalf of the Company, cause the annual accounts to be examined by one or more registered accountant(s) designated for the purposes by the General Meeting or other experts designated for that purpose in accordance with section 2:393 Dutch Civil Code. The auditor or the other expert designated shall report on his examination to the Supervisory Board and the Managing Board and shall issue a certificate containing the results thereof. The Managing Board shall ensure that the report on the annual accounts shall be available at the offices of the Company for the Shareholders.
- 40.6. Copies of the annual accounts, the annual report of the Managing Board and the information to be added to each of such documents pursuant to the Law shall be made freely available at the office of the Company for the Shareholders and the other persons entitled to attend General Meeting, as from the date of the notice convening the General Meeting at which meeting they shall be discussed, until the close thereof.
- 40.7. The registered accountant or the other expert designated for that purpose pursuant to article 2:393, Civil Code, may be questioned by the General Meeting in relation to its statement on the fairness of the annual account. The registered accountant or the other expert designated for that purpose pursuant to article 2:393, Civil Code shall therefore be invited to attend this meeting and be entitled to address this meeting.

**Article 41.**

*[This article has lapsed.]*

**Profit and Loss. Reservation. Dividend.**

**Article 42.**

- 42.1. Out of the profit made in any financial year shall first be retained by way of reserve, with due observance of applicable provisions of Law relating to statutory reserves (*wettelijke reserves*) such portion of the profit — the positive balance of the profit and loss account - as determined by the Supervisory Board. The Supervisory Board may determine how to attribute losses.
  - 42.2. The portion of the profit remaining after application of article 42.1, shall be at the disposal of the Managing Board, or, if the Managing Board resolves so, the General Meeting.
  - 42.3. Subject to the Law and these Articles, the Managing Board may, subject to the approval of the Joint Board, resolve to declare a dividend and fix the date and amount of payment and determine as to whether or not profits are distributed to Shareholders either in cash or in Shares or other securities issued by the Company or by other companies, or a combination thereof, provided however that a resolution to distribute Shares requires a resolution of the corporate body authorised to resolve upon the issue of Shares.
  - 42.4. Subject to the provisions of section 2:105 subsection 4 Dutch Civil Code, and these Articles the Managing Board may, subject to the approval of the Joint Board, resolve to
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declare an interim dividend on Shares. Subject to the approval of the Joint Board, interim dividends may be distributed to the Shareholders, in proportion to the number of Shares held by each of them, either in cash or in Shares or other securities issued by the Company or by other companies, or a combination thereof, provided however that a resolution to distribute Shares requires a resolution of the corporate body authorised to resolve upon the issue of Shares.

- 42.5. Dividends shall be divisible among the Shareholders in proportion to the nominal amount paid (or credited as paid) (excluding the amounts unpaid on those Shares pursuant to article 5) on the Shares of each Shareholder without prejudice to the other provisions of this article 42. To the extent one or more payments on Shares are made during the period to which a dividend relates, the dividend on the amounts so paid on Shares shall be reduced pro rata to the date of these payments.
- 42.6. The Company can only declare dividends in so far as its shareholders equity (*eigen vermogen*) exceeds the amount of the paid up and called portion of the share capital, plus the statutory reserves (*wettelijke reserves*).

**Other Distributions.**

**Article 43.**

- 43.1. Next to possible other reserves, the Company may maintain a share premium reserve for Shares.
- 43.2. The Managing Board may, subject to the approval of the Joint Board, declare distributions out of a share premium reserve or out of any other reserve shown in the annual accounts, not being a statutory reserve (*wettelijke reserve*).
- 43.3. Subject to the Law and these Articles and subject to the approval of the Joint Board, the Managing Board may resolve to declare a distribution as referred to in article 43.2. and fix the date and amount of payment and determine as to whether or not profits are distributed to Shareholders either in cash or in Shares or other securities issued by the Company or by other companies, or a combination thereof, provided however that a resolution to distribute Shares requires a resolution of the corporate body authorised to resolve upon the issue of Shares.
- 43.4. Distributions shall be divisible among the Shareholders in proportion to the nominal amount paid (or credited as paid) (excluding the amounts unpaid on those Shares pursuant to article 5) on the Shares of each Shareholder.
- 43.5. The Company can only declare distributions in so far as its shareholders equity (*eigen vermogen*) exceeds the amount of the paid up and called portion of the share capital, plus the statutory reserves (*wettelijke reserves*).

**Payment of dividend and other distributions.**

**Article 44.**

- 44.1. Distributions pursuant to article 42 or article 43 of these Articles shall be payable as of the date fixed for payment by the Managing Board, subject to the approval of the Joint Board. No dividend shall carry interest against the Company.
- 44.2. Distributions pursuant to article 42 or article 43 of these Articles shall be made payable at an address or addresses in the Netherlands, to be determined by the Managing Board, as well as at least one address in each other country or state where the Shares or CUFSS are traded on a stock exchange.
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- 44.3. Cash distributions shall be declared in United States Dollars, unless the Managing Board determines otherwise and may be paid in such currency or currencies as the Managing Board determines using the rate of exchange prevailing on a date fixed by the Managing Board.
- 44.4. The person entitled to a distribution on Shares pursuant to article 42 or article 43 of these Articles shall be the person in whose name the Share is registered at a date fixed by the Managing Board.
- 44.5. Distributions on Shares in cash pursuant to article 42 or article 43 of these Articles that have not been collected within five years and two days after have become due and payable shall revert to the Company.
- 44.6. In the case of a distribution on Shares pursuant to articles 42.3, 43.3 or article 43.4, any Shares or other securities in the Company or another company not claimed within a period to be determined by the Managing Board shall be sold for the account of the persons entitled to the distribution who failed to claim such Shares or other securities. The net proceeds of such sale shall thereafter be held at the disposal of the above persons in proportion to their entitlement; the right to the proceeds shall lapse, however, if the proceeds are not claimed within five years and two days after the date fixed for payment of the distribution.
- 44.7. In the case of a distribution on Shares pursuant to articles 42.3, 43.3 or article 43.4, any Shares or other securities in the Company or another company that can not under applicable law be claimed or accepted by a Shareholder within a period to be determined by the Managing Board may at the request of the relevant Shareholder be sold for the account of the persons entitled to such distribution. The net proceeds of such sale shall thereafter be paid to, or held at the disposal of, the above person; the right to the proceeds shall lapse, however, if the proceeds are not claimed within five years and two days after the date the Company has notified such person of the sale and the proceeds arising therefrom.
- 44.8. The Managing Board may cause the Company to deduct from any dividend or other distribution payable to a Shareholder all sums of money due and payable by such Shareholder to the Company on account of calls or otherwise in relation to Shares.

**Dissolution. Liquidation.****Article 45.**

- 45.1. If the Company is dissolved, the liquidation shall be carried out by the person(s) designated for that purpose by the General Meeting, under the supervision of the Supervisory Board.
- 45.2. The General Meeting shall upon the proposal of the Supervisory Board determine the remuneration payable to the liquidators and to the person responsible for supervising the liquidation.
- 45.3. The liquidation shall take place with due observance of the provisions of the Law. During the liquidation period these Articles shall, to the extent possible, remain in full force and effect.
- 45.4. After settling the liquidation, the liquidators shall render account in accordance with the provisions of the Law.
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45.5. After the Company has ceased to exist, the books and records of the Company shall remain in the custody of the person designated for that purpose by the liquidators during a seven (7) year period.

**Distribution to Shareholders upon dissolution.**

**Article 46.**

After all liabilities of the Company have been settled, including those incidental to the liquidation, the balance shall then be distributed among the Shareholders in proportion to the nominal amount paid (or credited as paid) (excluding the amounts unpaid on those Shares pursuant to article 5) on the Shares of each Shareholder.

**Effect of these Articles.**

**Article 47.**

These Articles are binding on the Company and each Shareholder and the Company, on the one hand, and each Shareholder severally, on the other hand, is to observe and perform these Articles so far as they apply to him/it.

**Holding of Shares and CUFS.**

**Article 48.**

The Shareholder holds the Shares (and accordingly any holder of CUFS takes its interests in the Shares) subject to:

- a. the provisions of these Articles;
- b. any obligations or liabilities which the Shareholder may incur in respect of the Shares pursuant to these Articles; and
- c. any rights or interests of the Company or any third party in the Shares which may arise under or pursuant to the exercise of any power contained in these Articles.

**CHAPTER III**

**Limitations on the right to hold Shares.**

**Article 49.**

Capitalised terms used and not defined in article 1 in this chapter III shall have the following meaning:

<b>Affiliated Companies</b>	of a Person:
	(i) a Parent Company of the Person;
	(ii) a Subsidiary Company of the Person; and/or
	(iii) another company where the Person and that company are both Subsidiary Companies of the same Parent Company;
<b>ASIC Associate</b>	Australian Securities and Investments Commission; of a Person:
	(i) an Affiliated Company of the Person; and/or
	(ii) another Person with whom such Person has entered into an agreement for the purpose of holding or acquiring a Relevant Interest;
<b>Australian Law and Policy</b>	(i) decisions of an Australian court;
	(ii) published policy statements, practice notes and other guidelines and public releases issued by ASIC; and

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(iii) published decisions, rules, policies and other guidelines and public releases issued by the Panel, each in relation to the provisions in the Corporations Act (including predecessors of that legislation) similar in nature to these Articles;

**Bid Securities Control**

the CUFS or Shares being bid for under a Take-over Bid; over a Person,

- (i) the ability to exercise, directly or Indirectly:
  - (A) more than twenty (20%) of the voting rights in a general meeting of such Person; or
  - (B) the right to dismiss or appoint more than fifty percent (50%) of the members of such Person's managing or supervisory board; or
- (ii) in respect of a Person that is not a legal entity: being liable (whether actually or contingently) -alone or together with one or more Affiliated Companies — for such Person's debts vis-à-vis third parties;

**Corporations Act Bid**

a bid for Shares or CUFS made in compliance, so far as possible, with Parts 6.4, 6.5, 6.6 and 6.8 of the Corporations Act in respect of off-market bids (as that term is defined in the Corporations Act) as if the Company were incorporated in Australia and were the "target" as defined in those Parts, subject to:

- (i) any requirement under those provisions for a document to be lodged with ASIC being taken to be satisfied if the document is given to ASX instead; and
- (ii) any other modifications or exemptions agreed between the Person making the bid and the Supervisory Board in accordance with article 49.13;

**Indirectly**

by, through or in concert with:

- (i) one or more Affiliated Companies of such Person;
- (ii) a nominee or trustee for the Person; or
- (iii) another Person with whom such Person has entered into an agreement for the purpose of holding or acquiring a Relevant Interest;

**On Market Transaction**

a transaction that is effected on ASX and is:

- (i) an on-market transaction as defined in the rules governing the operation of ASX; or
- (ii) if those rules do not define on-market transactions — effected in the ordinary course of trading on ASX;

**Panel**

the Corporations and Securities Panel established under the Australian Securities and Investments Commission Act (2001) or any successor or replacement entity;

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- Parent Companies** of a Person, one or more companies exercising Control over such Person;
- Person** a natural person, a legal entity or any other legal form that under applicable law has the power to hold a Relevant Interest;
- Relevant Interest** any interest in Shares that causes or permits a Person to:
- (i) exercise or to influence (or restrain) the exercise of voting rights on Shares (whether through the giving of voting instructions or as a proxy or otherwise); or
  - (ii) dispose or to influence (or restrain) the disposal of Shares,
- including *inter alia* the legal ownership of a Share, a CUFS, a right of pledge (*pandrecht*) or right of Usufruct on a Share and an interest under an option agreement to acquire a Share or a CUFS;
- Senior Counsel** an Australian legal practitioner practising in the New South Wales or Victorian bar who has been appointed by the Attorney General of New South Wales or Victoria (as the case may be) as a senior counsel or queen's counsel;
- Subsidiary Companies** of a Person, one or more companies over which Control is exercised by such Person;
- Take-over Bid** a bid for Shares or CUFS that at all relevant times fulfils the purposes set out in article 49.1 and complies with the principles in article 49.13.
- 49.1. The purposes of this chapter III is to ensure that:
- a. the acquisition of control over CUFS or Shares takes place in an efficient, competitive and informed market; and
  - b. each Shareholder and CUFS Holder and as well as the Managing Board, Joint Board and Supervisory Board:
    - (i) know the identity of any Person who proposes to acquire a substantial interest in the Company; and
    - (ii) are given reasonable time to consider a proposal to acquire a substantial interest in the Company; and
    - (iii) are given enough information to assess the merits of a proposal to acquire a substantial interest in the Company; and
  - c. as far as practicable, the Shareholders and CUFS Holders all have a reasonable and equal opportunity to participate in any benefits accruing through a proposal to acquire a substantial interest in the Company.
- In the interpretation of a provision of article 49, a construction that would promote the purpose or object underlying these Articles is to be preferred to a construction that would not promote that purpose or object.
- 49.2. Without prejudice to the exceptions and exemptions as referred to in articles 49.5 and 49.6, no Person may hold a Share if, because of an acquisition of a Relevant Interest by any Person in that Share:
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- a. the number of Shares in respect of which any Person (including, without limitation, the holder) directly or Indirectly acquires or holds a Relevant Interest increases:
- (i) from twenty percent (20%) or below to more than twenty percent (20%); or
  - (ii) from a starting point that is above twenty (20%) and below ninety percent (90%),  
of the issued and outstanding share capital of the Company; or
- b. the voting rights which any Person (including, without limitation, the holder) directly or Indirectly, is entitled to exercise at a General Meeting on any matter increase:
- (i) from twenty percent (20%) or below to more than twenty percent (20%); or
  - (ii) from a starting point that is above twenty percent (20%) and below ninety percent (90%),  
of the total number of such voting rights which may be exercised by any Person at a General Meeting.

For the purposes of this article 49 (including article 49.2), a Person holds a Share if the Person:

- (A) is the legal owner of the Share; or
- (B) holds a right of pledge (*pandrecht*) or right of Usufruct on Shares, provided the right to vote the Shares so pledged or subject to the right of Usufruct is included in such right.

Any holding of a Share or acquisition of a Relevant Interest in breach of this article 49.2 does not cause such acquisition or holding to be invalid.

- 49.2A (a) A Shareholder must give the information referred to in article 49.2A(e) to the Company if:
- (i) a Person begins to have, or ceases to have, a substantial holding in the Company; or
  - (ii) a Person has a substantial holding in the Company and there is a movement of at least one percent (1%) in their holding; or
  - (iii) a Person makes a Take-over Bid for securities of the Company.
- The Shareholder must also give the information to the ASX. For the purposes of this article, a "Substantial Holder" means a Person referred to in paragraphs (i), (ii) or (iii) above.
- (b) The obligation of the Shareholder to provide this information referred to in article 49.2A(e) is taken to be satisfied if it is provided to the Company and ASX by the Substantial Holder.
- (c) For the purposes of this article, a Person has a substantial holding in the Company if the total votes attached to Shares in which the Person directly or Indirectly:
- (A) has Relevant Interests; or
  - (B) would have a Relevant Interest but for the operation of article 49.5(g) or article 49.5(j),  
is five percent (5%) or more of the total number of votes attached to all Shares.
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- (d) For the purposes of this article there is a movement of at least one percent (1%) in a Person's holding if the percentage worked out using the following formula increases or decreases by one (1) or more percentage points from the percentage they last disclosed under this article in relation to the Company:

$$\frac{\text{Person's votes}}{\text{Total votes in the Company}} \times \text{one hundred (100)}$$

where:

"Person's votes" is the total number of votes attached to all the Shares (if any) in which the Person directly or Indirectly has a Relevant Interest.

"Total votes in the Company" is the total number of votes attached to all Shares.

- (e) The information to be given must include:
- (i) the Substantial Holder's name and address;
  - (ii) details of their Relevant Interest in Shares and of the circumstances giving rise to that Relevant Interest;
  - (iii) the name of the Shareholders in relation to the Shares in which the Substantial Holder has a Relevant Interest;
  - (iv) details of any agreement through which the Substantial Holder would have a Relevant Interest in Shares in the Company;
  - (v) the name of each Associate who has a Relevant Interest in Shares in the Company, together with details of:
    - (A) the nature of their association with the Associate;
    - (B) the Relevant Interest of the Associate; and
    - (C) any agreement through which the Associate has the Relevant Interest; and
  - (vi) if the information is being given because of a movement in their holding — the size and date of that movement.
- (f) The information must be given in the form prescribed by the Company (if the Company has prescribed a form) and must be accompanied by:
- (i) a copy of any document including any agreement that:
    - (A) contributed to the situation giving rise to the Shareholder needing to provide the information; and
    - (B) is in writing and readily available to the Substantial Holder or Shareholder; and
  - (ii) a statement by the Substantial Holder or Shareholder giving full and accurate details of any contract, scheme or arrangement that:
    - (A) contributed to the situation giving rise to the Shareholder needing to provide the information; and
    - (B) is not both in writing and readily available to the Substantial Holder or Shareholder.
- (g) The information does not need to be accompanied by the documents referred to in article 49.2A(f) if the transaction that gives rise to the Shareholder needing to provide the information takes place on the ASX.
- (h) The Shareholder must give the information:
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- (i) within two (2) Business Days after they become aware of the information as referred to in article 49.2(A)(e); or
- (ii) by nine-thirty (9.30 am) on the next trading day of the ASX after they become aware of the information as referred to in article 49.2(A)(e) if a Take-over Bid is made.

49.3. For the purpose of article 49.2 or article 49.2A, a Person:

- a. holding or acquiring a Relevant Interest; or
- b. exercising the voting rights at a General Meeting,

shall together with his Affiliated Companies be considered as one Person in respect of such Relevant Interest or exercise of voting rights, and each of them, to the extent he holds one or more Shares shall be jointly and severally liable (*hoofdelijk aansprakelijk*) for each other's obligations under these Articles pursuant to article 49.7 under a., and article 50.3 under b. In addition, there may be imposed on each of them the other remedies referred to in articles 49.7 and 50.3.

49.4. For the purpose of article 49.2 or article 49.2A, if one or more Persons pursuant to an agreement or a nominee or trustee arrangement act together for the purpose of:

- a. holding or acquiring a Relevant Interest; or
- b. exercising the voting rights at a General Meeting; or
- c. circumventing the prohibition as referred to in article 49.2 or the obligation in article 49.2A,

all of them shall be considered as one Person in respect of such Relevant Interest, exercise of voting rights or circumvention of the prohibition or obligation. Each of them, to the extent he holds one or more Shares shall be jointly and severally liable (*hoofdelijk aansprakelijk*) for each other's obligations under these Articles pursuant to article 49.7 under a. and article 50.3 under b. In addition, there may be imposed on each of them the other remedies referred to in articles 49.7 and 50.3.

49.5. A Person is not considered to hold or acquire a Relevant Interest for the purpose of article 49.2 or article 49.2A, if the Relevant Interest arises merely because:

- a. that Person acquires a Relevant Interest solely as a nominee or trustee for a Person who may direct the nominee or trustee as to the exercise of any power relating to the Relevant Interest;
  - b. that Person holds Shares as a securities intermediary (*effectenbemiddelaar*) within the meaning of section 7 of the 1995 Act on the supervision of the securities trade (*Wet toezicht effectenverkeer 1995*), such as *inter alia* brokers and dealers, provided such Person acts on behalf of someone else (and not for his own account) in the ordinary course of such Person's business and provided such person is qualified to practise under applicable law;
  - c. that Person holds Shares as a custodian (*bewaarder*) or depository in order to enable the Shares of the Company to be traded on a stock market of a securities exchange, provided such Person is qualified to practise under applicable law;
  - d. that Person holds or acquires a Relevant Interest as a result of a share repurchase and cancellation of shares;
  - e. of a charge or other security taken for the purpose of a transaction entered into by the Person if:
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- (i) the mortgage, charge or security is taken or acquired in the ordinary course of the Person's business of providing financial services and on ordinary commercial terms; and
- (ii) the Person whose property is subject to the charge or security is not an Affiliated Company of the Person;
- f. the Person has been appointed to vote as a proxy or representative on Shares if:
  - (i) the appointment is for one General Meeting only; and
  - (ii) neither the Person nor any Affiliated Company gives valuable consideration for such appointment;
- g. of:
  - (i) an exchange traded option over the Shares; or
  - (ii) a right to acquire a Relevant Interest given by a (futures) agreement.

This paragraph g. stops applying to any Relevant Interest when the obligation to make or take delivery of the Shares arises;

- h. a company's articles of association or applicable law gives all shareholders pre-emptive rights on the transfer of shares if all shareholders of the relevant company have pre-emptive rights on the same terms;
- i. the Person is a (managing) director of a legal entity having a Relevant Interest; or
- j. of an agreement if the agreement is conditional on a resolution referred to in article 49.6 under e.

When a Person's Relevant Interest in a Share is disregarded pursuant to this article 49.5, the Person shall for the purposes of article 49.2 under b. or article 49.2A be taken not to be entitled to exercise, directly or Indirectly, the voting rights relating to that Share.

49.6. The prohibition as referred to in article 49.2 or the obligation as referred to in article 49.2A shall not apply to the extent that:

- a. the holding or acquisition of a Relevant Interest results from the acceptance of offers under a Take-over Bid;
  - b. the holding or acquisition of a Relevant Interest is the result of an On-Market Transaction if:
    - (i) the acquisition is by or on behalf of the bidder under a Take-over Bid; and
    - (ii) the acquisition occurs during the bid period in respect of the Take-over Bid; and
    - (iii) the Take-over Bid is for all the Bid Securities; and
    - (iv) the Take-over Bid is unconditional;
  - c. the holding or acquisition of a Relevant Interest arises in the following circumstances:
    - (i) throughout the six (6) months before the acquisition a Person directly, or Indirectly, holds a Relevant Interest in the issued and outstanding share capital of the Company of at least nineteen percent (19%); and
    - (ii) as a result of the acquisition, directly, or Indirectly, the Person would have a Relevant Interest in the issued and outstanding share capital of the Company not more than three (3) percentage points higher than he had six (6) months before the acquisition;
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- d. the holding or acquisition of a Relevant Interest:
    - (i) is consistent with the purposes in article 49.1; and
    - (ii) conforms to the principles in article 49.13 as they apply to the acquisition or holding, adjusting those principles as appropriate to meet the particular circumstances of the acquisition or holding but without derogating from the purposes in article 49.1; and
    - (iii) has received the prior approval of the Supervisory Board;
  - e. the holding or acquisition of a Relevant Interest has been approved previously by a General Meeting if:
    - (i) no votes are cast in favour of the resolution by:
      - (A) the Person proposing to make the acquisition and its Associates; or
      - (B) the Person (if any) from whom the acquisition is to be made and its Associates; and
    - (ii) the Shareholders were given all information known to the Person proposing to make the acquisition or its Associates, or known to the Company, that was material to the decision on how to vote on the resolution, including:
      - (A) the identity of the Person proposing to make the acquisition and its Associates; and
      - (B) the maximum extent of the increase in that Person's Relevant Interest in the Company that would result from the acquisition; and
      - (C) the Relevant Interest that Person would have as a result of the acquisition; and
      - (D) the maximum extent of the increase in the Relevant Interest each of that Person's Associates that would result from the acquisition; and
      - (E) the Relevant Interest that each of that Person's Associates would have as a result of the acquisition;
  - f. the holding or acquisition of a Relevant Interest results from an acquisition through operation of law including a merger by Law in accordance with the Dutch Civil Code;
  - g. the holding or acquisition of a Relevant Interest results from the acceptance of take over offers made by the Company for the securities of another body corporate listed on the stock market of a securities exchange, which offers are made in accordance with applicable securities law regulating the conduct of take-overs of bodies corporate of that kind, where Shares or securities convertible into Shares are included in the consideration for the acquisition of securities under those offers;
  - h. the holding or acquisition of a Relevant Interest results from the exercise of rights of conversion attaching to securities convertible into Shares issued in accordance with paragraph g; or
  - i. the holding or acquisition of a Relevant Interest results from an issue by the Company under a prospectus to a Person as underwriter or sub-underwriter to the issue where the prospectus disclosed the effect or range of possible effects
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that the issue would have on the number of Shares in which that Person would have a Relevant Interest and on the voting rights of that Person.

- 49.7. Subject to articles 49.8 and 49.9, the Supervisory Board may cause the Company to exercise any one or more of the following remedies if a breach by a Person of the provisions of article 49.2 or article 49.2A has occurred or is continuing:
- a. require, by notice in writing, the Shareholder to dispose all or part of the Shares so held in breach of article 49.2 or article 49.2A within the time specified in the notice;
  - b. disregard the exercise by such Person of all or part of the voting rights arising from the Shares or the right of pledge (*pandrecht*) or the right of Usufruct on Shares, provided the right to vote the Shares so pledged or subject to the right of Usufruct is included in such right so held in breach of article 49.2 or article 49.2A; or
  - c. suspend such Person from the right to receive all or part of the dividends or other distributions arising from the Shares so held in breach of article 49.2 or article 49.2A.
- 49.8. The Company may exercise the remedies referred to in article 49.7 if it first obtains a judgement from the competent courts and acts in accordance with such judgement, that a breach of the prohibition of article 49.2 or the obligation in article 49.2A has occurred and is continuing.
- 49.9. In addition to exercising its rights under articles 49.8 and 49.10, the Company may exercise the remedies referred to in article 49.7 if it first obtains advice from, and acts in accordance with the advice of:
- a. a Senior Counsel in the commercial field of at least five (5) years standing as a Senior Counsel; or
  - b. a senior partner experienced in Australian mergers and acquisitions of a major Australian commercial law firm; and
- in either case, being independent of (and not associated with) the Company or any other interested party and without a material personal interest in the matter.
- The advisor shall be appointed by the Company, but must be nominated by:
- (i) the president of the Panel; or
  - (ii) if such Person is unwilling or unable to make the nomination, the director of the Panel; or
  - (iii) if such Person is unwilling or unable to make the nomination, a mediator on the Supreme Court of New South Wales list of approved mediators nominated by the Company.
- The advisor must *inter alia* be instructed to:
- (A) advise whether any breach of article 49.2, article 49.2A or article 50.2 has occurred;
  - (B) have regard to the purposes under article 49.1 and to the extent applicable, the principles in article 49.13, Australian Law and Policy in interpreting these provisions and giving this advice;
  - (C) in determining whether the exception under article 49.6 under a. applies to an acquisition or holding of a Relevant Interest pursuant to a Take-over Bid that is
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not a Corporations Act Bid, have regard to the manner in which a bid for CUFS or Shares would have been conducted under a Corporations Act Bid, including the information which would have provided to shareholders in connection with such bid;

- (D) give the Company and any Person that would be aggrieved by the exercise of the Company's powers under articles 49.7 or article 50.3 the opportunity, with their legal advisors, to make submissions to the advisor, prior to the advisor providing the advice;
- (E) have regard to issues under Dutch law to the extent relevant to providing his or her advice and for that purpose to retain, at the Company's cost, an appropriately qualified expert in Dutch law; and
- (F) provide his or her advice as soon as possible.

The Company shall:

- 1. provide any assistance or information it may possess, which is reasonably required by the advisor to give this advice;
- 2. be responsible for paying the advisors' fees and expenses;
- 3. include in the terms of the advisor's appointment an indemnity by the Company in favour of the advisor for any loss or liability he or she may incur in connection with providing this advice, except as a result of his or her negligence or wilful default; and
- 4. provide a copy of the advice to the Person who has breached or is alleged to have breached article 49.2, article 49.2A or article 50.2.

The Company shall include any other terms and conditions in the appointment of the advisor which the Person nominating the advisor specifies.

- 49.10. Where the Company is seeking but has not received advice under article 49.9, the Company may also exercise any of the remedies described in article 49.7 (other than that as described under a.) by notice in writing to the Shareholder but so that they have effect for the period commencing on the date the notice is given and ending on the earlier of:
    - a. twenty one (21) days after the notice has been given; and
    - b. one (1) day after the advice under article 49.9 has been provided to the Company.
  - 49.11. If there are reasonable grounds to believe that a breach of article 49.2 or article 49.2A has occurred, the Supervisory Board must consider whether to exercise the remedies under article 49.7 or article 50.3 and take advice as to whether it should exercise those remedies. For that purpose, the Supervisory Board must give proper consideration to (and include within any brief for advice) any submission that a breach has occurred from any Shareholders or any other interested Person or officer of the Company aggrieved by the alleged breach.
  - 49.12. If the requirements of any notice pursuant to article 49.7 under a. are not complied with by the Person within the time specified in the notice, the Company may, as an irrevocable proxy of the Shareholder, without any further instrument, cause the Shares referred to in the notice to be sold on any relevant securities exchange on which they
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are quoted, or, if they are not so quoted, in accordance with section 2: 87b Dutch Civil Code.

The Company may:

- a. appoint a Person as transferor to effect a transfer in respect of any Shares sold in accordance with this article and to receive and give good discharge of the purchase money for them;
- b. acknowledge the transfer despite the fact that the share certificates (if any) may not have been delivered to the Company;
- c. issue a new share certificate (if required) in which event the previous certificate(s) (if any) are deemed to have been cancelled;
- d. if the Person delivers the relevant share certificates (if any) to the Company for cancellation, the purchase money less the expenses of any sale made in accordance with paragraph (b) above must be paid to the Person whose Shares were sold; and
- e. if the Person does not deliver the relevant share certificates (if any) to the Company, the Company may sue the Person in detinue for recovery of the share certificates (if any), and the Person is not entitled to deny or dispute the Company's ownership and right to possession of any share certificate in any legal action.

The Company may, by notice in writing, at any time require any Shareholder to provide the Company any information or evidence (on oath or otherwise verified if the Company reasonably requires) as the Company may consider likely to be of assistance in determining whether or not that Person is eligible to remain a Shareholder with respect to all his Shares.

Despite anything in this article 49.12, the Company has no liability, subject to article 49.18, arising from any Person holding Shares in circumstances which would result in or have the effect of causing an infringement or contravention of article 49.2 or article 49.2A.

The Company and the members of its Managing Board, Supervisory Board or Joint Board have no liability to any Person arising from any action taken by the Company under this article, provided that such action was taken in good faith.

49.13. In addition to fulfilling the purposes in article 49.1, a Take-over Bid must comply with the following principles.

- a. An offer for Bid Securities must be an offer to buy all the Bid Securities or a specified proportion of the Bid Securities. The proportion specified must be the same for all holders of the Bid Securities.
  - b. A Person who holds one (1) or more parcels of those securities as trustee or nominee for, or otherwise on account of, another Person may accept the offer as if a separate offer had been made in relation to:
    - (i) each of those parcels; and
    - (ii) any parcel they hold in its own right;
  - c. All the offers made must be the same. In applying this paragraph, the following shall be disregarded:
-

- (i) any differences in the offers attributable to the fact that the number of Bid Securities that may be acquired under each offer is limited by the number of Bid Securities held by the holder;
  - (ii) any differences in the offers attributable to the fact that the offers relate to Bid Securities having different accrued dividend or distribution entitlements;
  - (iii) any differences in the offers attributable to the fact that the offers relate to Bid Securities on which different amounts are paid up or remain unpaid;
  - (iv) any differences in the offers attributable to the fact that the Person making the offer may issue or transfer only whole numbers of securities as consideration for the acquisition; and
  - (v) any additional cash amount offered to holders instead of the fraction of a security that would otherwise be offered.
- d. The consideration offered for Bid Securities must equal or exceed the maximum consideration that the Person making the offer directly or Indirectly provided, or agreed to provide, for Shares or CUFS under any purchase or agreement during the four (4) months before the first day of the period of the offer.
- e. A Person making an offer for Bid Securities must not directly or Indirectly, during the period of the offer, give, offer to give or agree to give a benefit to a Person if:
- (i) the benefit is likely to induce the Person directly or Indirectly to:
    - (A) accept the offer; or
    - (B) dispose of Shares or CUFS; and
  - (ii) the benefit is not offered to all holders of Bid Securities.
- f. The period of the offer must:
- (i) start on the date the first offer is made; and
  - (ii) last for at least one (1) month, and not more than twelve (12) months.
- If, within the last seven (7) days of the period of the offer:
- (A) the offers are varied to improve the consideration offered (including by offering an alternative form of consideration); or
  - (B) the number of Shares in which the Person making the offer directly or Indirectly holds a Relevant Interest, or both, increases to more than fifty percent (50%) of the issued and outstanding share capital of the Company, the period of the offer is extended so that it ends fourteen (14) days after the event referred to in paragraph (A) or (B) above.
- g. Offers must not be subject to a maximum acceptance condition. A maximum acceptance condition is one that provides that the offers will terminate, or the maximum consideration offered will be reduced, if effectively one or more of the following occurs:
- (i) the number of Bid Securities for which the Person making the offer receives acceptances reaches or exceeds a particular number; or
  - (ii) the number of Shares in which the Person making the offer directly or Indirectly holds a Relevant Interest, or both, reaches or exceeds a
-

particular percentage of the issued and outstanding share capital of the Company; or

- (iii) the percentage of Bid Securities the Person making the offer has a Relevant Interest in reaches or exceeds a particular percentage of Bid Securities in that class.

Offers must not be subject to a discriminatory condition. A discriminatory condition is a condition that allows the Person making the offer to acquire, or may result in that Person acquiring, Bid Securities from some but not all of the people who accept the offers.

Offers must not be subject to a condition if the fulfilment of the condition depends on:

- (i) the opinion, belief or other state of mind of the Person making the offer or an Affiliated Company; or
- (ii) the happening of an event that is within the sole control of, or is a direct result of action by, any of the following:
  - (A) the Person making the offer (acting alone or together with an Affiliated Company); or
  - (B) an Affiliated Company (acting alone or together with the Person making the offer or another Affiliated Company of that Person).

h. The Person making the offer may only vary the offer made by:

- (i) improving the consideration offered (including by offering an additional form of consideration); or
- (ii) extending the period of the offer.

The terms of unaccepted offers must be varied in the same way. Any person who has already accepted an offer must be entitled to the improved consideration and, in the case of an addition of a new form of consideration, be entitled to make a fresh election.

- i. A Person making an offer that is unconditional may extend the period of the offer at any time before the end of the offer. A Person making an offer that is still subject to conditions may only extend the period of the offer at least seven (7) days before the end of the period of the offer unless during that seven (7) day period another Person announces a bid for Bid Securities or improves the consideration offered under another bid for Bid Securities.
  - j. Each offer must be in writing and have the same date. This date is the day the first offer is made.
  - k. The Person making the offer must, at the same time it gives its offer to holders of Bid Securities, also give a document to those holders setting out all information known to the Person that is material to the making of the decision by a holder of Bid Securities whether or not to accept the offer. This document must be given to the Company and ASX at least fourteen (14) days before it is given to these holders and must be dated. The date is the date on which the document is given to ASX. If the Person making the offer becomes aware of:
    - (i) a misleading or deceptive statement in the document; or
-

- (ii) an omission from the document of information required by article 49.1 or this article 49.13; or
- (iii) a new circumstance that:
  - (A) has arisen since the document was given to the Company; and
  - (B) would have been required by article 49.1 or this article 49.13 to be included in the document if it had arisen before the document was given to the Company,

that is material from the point of view of a holder of Bid Securities, the Person making the offer must prepare a supplementary document that remedies this defect. The Person making the offer must give the supplementary document to the Company and give a copy with ASX. The supplementary document must be dated. The date is the date on which the supplementary document is given to ASX.

49.14. A bid for Shares or CUFS is taken to comply with the principles in article 49.13 if it is a Corporations Act Bid at all relevant times. The Supervisory Board must act reasonably and in a timely manner in agreeing with a Person making a Corporations Act Bid to any modifications or exemptions to the application of Parts 6.4, 6.5, 6.6 and 6.8 of the Corporations Act to a Corporations Act Bid having regard to the purposes in article 49.1, the principles in article 49.13 and Australian Law and Policy.

49.15. If a Take-over Bid is made, the Company must:

- a. give to all holders of Bid Securities, ASX and the Person making the Take-over Bid a document in a timely manner setting out all information that the holders and their professional advisers would reasonably require to make an informed assessment whether to accept an offer under the Take-over Bid. The document must contain this information:

- (i) only to the extent to which it is reasonable for investors and their professional advisers to expect to see the information in the document; and
- (ii) only if the information is known to any members of the Managing Board or Joint Board; and

The document must also contain a statement by each member of the Managing Board and Joint Board:

- (A) recommending that offers under the Take-over Bid be accepted or not accepted, and giving reasons for the recommendation; or
- (B) giving reasons why a recommendation is not made.

The document must be dated. The date is the date on which the document is given to ASX;

- b. if it becomes aware of:
    - (i) a misleading or deceptive statement in the document; or
    - (ii) an omission from the document of information required by paragraph a above; or
    - (iii) a new circumstance that:
      - (A) has arisen since the document was given to the Person making the offer; and
-



(B) would have been required by paragraph a. above to be included if it had arisen before the document was given to the Person making the offer, that is material from the point of view of a holder of Bid Securities, prepare a supplementary document that remedies this defect and give it to the Person making the offer and ASX. The supplementary document must be dated. The date is the date on which the supplementary document is given to ASX; and

- c. if it has been given a document in accordance with article 49.13 under k. and the Person making the offer makes a request for information under this paragraph for the purposes of fulfilling the purposes under article 49.1 and complying with the principles under article 49.13, the Company must inform the Person of the name and address of each Person who held Bid Securities and that Person's holding, at the specified time by the Person making the Offer. The Company must give the information to the Person making the offer in a timely manner and:
- (i) in the form that the Person requests; or
  - (ii) if the Company is unable to comply with the request — in writing.

If the Company must give the information to the Person in electronic form, the information must be readable but the information need not be formatted for the preferred operating system of the Person making the offer.

49.16. The Company may, by giving notice in writing, require the holder of a Share or a CUFS to give to the Company, within two (2) Business Days after receiving the notice, a statement in writing setting out:

- a. full details of the holder's Relevant Interest and of the circumstances giving rise to that Relevant Interest; and
- b. the name and address of each other Person who has a Relevant Interest together with full details of:
  - (i) the nature and extent of the Relevant Interest; and
  - (ii) the circumstances that give rise to the Person's Relevant Interest; and
- c. the name and address of each Person who has given the holder of the Shares or the Person as referred to in paragraph b. above instructions about:
  - (i) the acquisition or disposal of a Relevant Interest; or
  - (ii) the exercise of any voting or other rights attached to a Relevant Interest;
  - (iii) any other matter relating to a Relevant Interest;

together with full details of those instructions (including the date or dates on which those relevant instructions were given).

A matter referred to in paragraph b. or c. need only be disclosed to the extent to which it is known to the Person making the disclosure

Where a statement is delivered to the Company containing any details as referred to in paragraphs b. or c., the Company may, by giving notice in writing, require a holder of a Share or a CUFS to give to the Company or to use its best endeavours to procure that any other Persons as referred to in paragraphs b. or c. above to give to the Company, within two (2) days after receiving the notice, a statement in writing setting out the details as referred to in paragraphs a, b. and/or c. above.

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- 49.17. So long as Shares are quoted on ASX, if the Company becomes subject to the law of any jurisdiction which applies so as to regulate the acquisition of control, and the conduct of any take-over, of the Company:
- a. the Company shall consult promptly with ASX to determine whether, in the light of the application of such law:
    - (i) ASX requires amendment to Chapter III of these articles in order for these Articles to comply with the Listing Rules as then in force; or
    - (ii) any waiver of the Listing Rules permitting the inclusion of all or part of Chapter III in these Articles has ceased to have effect; and
  - b. where:
    - (i) the Listing Rules require these Articles to contain a provision and it does not contain such a provision;
    - (ii) the Listing Rules require these Articles not to contain a provision and it contains such a provision; or
    - (iii) any provision of these Articles is or becomes inconsistent with the Listing Rules,

the Managing Board shall put to the General Meeting a proposal to amend these Articles so as to make them, to the fullest extent permitted by Law, consistent with the Listing Rules.
- 49.18. The Company shall indemnify a Person who:
- a. is or was a Shareholder for the purpose of making CUFS available; and
  - b. was or is a party or is threatened to be made a party to any threatened, pending, current or completed action, suit, investigation or proceeding, whether civil, criminal, administrative or investigative brought by any other person in connection with any action taken or not taken by such person or the Company as contemplated under article 49.7, article 49.12 or article 50.3,
- against all expenses (including attorneys' fees) judgements, fines and amounts paid in settlement which are actually and reasonably incurred by the person in connection with such action, suit, investigation or proceeding unless such Shareholder acted in bad faith.

#### **CUFS Holders.**

##### **Article 50**

- 50.1. This article 50 is applicable to CUFS Holders who are bound by these Articles under the Corporations Act (as modified) or any other applicable law.
  - 50.2. A CUFS Holder shall not do anything which would result in a breach of these Articles whether on the part of that Person or another Person bound by these Articles.
  - 50.3. Where a remedy is exercisable under article 49.7 in respect of Shares and CUFS are issued in respect of the Shares which are the subject of the remedy:
    - a. the Company must give a written notice setting out the name and holding of the CUFS Holder, whose CUFS relate to the Shares, and such other information as the Company considers necessary, to the Shareholder and the Shareholder shall be entitled to rely on the information contained in that notice for the purposes of these Articles. A copy of this notice, as well as any notice given to the
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Shareholder under article 49.7 or article 49.10, must also be given to that CUFS Holder;

- b. the Supervisory Board may cause the Company to require, by notice in writing to the CUFS Holder, that the CUFS Holder dispose of such number of CUFS that relate to the Shares, and within such time, as is specified in the notice;
  - c. if the notice to the Shareholder under paragraph a. above states that the right to receive dividends or other distributions in respect of any of those Shares has been suspended, the Shareholder shall not, before receiving notice from the Company that the suspension has been lifted, distribute, nor direct the Company to distribute, to the CUFS Holder any dividend or distribution from the Company in respect of the CUFS which relate to those Shares;
  - d. if the notice to the Shareholder under paragraph a. above states that the Company has determined to disregard the exercise of voting rights attached to particular Shares, the Shareholder shall inform the Company, as required by the Company, of such directions as to voting which the Shareholder has received from the CUFS Holders, and the names of the CUFS Holders concerned, in respect of all Shares held by the Shareholder, in order to ensure that the exercise of voting rights attaching to those Shares which are the subject of the Company's determination, and not other Shares, are disregarded. The Company shall be entitled to rely upon the information provided by the Shareholder.
- 50.4. If the requirements of a notice under article 50.3 under b. are not complied with by the Person within the time specified in the notice, the Company may, as an irrevocable proxy of the CUFS Holder, without any further instrument, cause the CUFS referred to in the notice to be sold to the extent permitted by and in accordance with the ASTC Operating Rules and must pay to the Person whose CUFS were sold the purchase money less the expenses of the sale.
- The Company may, by notice in writing, at any time require any CUFS Holder to provide the Company any information or evidence (on oath or otherwise verified if the Company reasonably requires) as the Company may reasonably consider likely to be of assistance in determining whether or not a breach of these Articles has occurred or is continuing.
- Despite anything in this article 50.4, the Company and the Shareholder have no liability arising from any Person holding CUFS in circumstances which would result in or have the effect of causing an infringement or contravention of article 49.2, article 49.2A or article 50.2.
- 50.5. A CUFS Holder shall not have any claim against the Company, the members of its Managing Board, Supervisory Board or Joint Board or the Shareholder for any action taken by any of them in accordance with article 49 or this article 50 or the ASTC Operating Rules, provided that such action was taken in good faith.

#### **CHAPTER IV**

##### **Renewal provision.**

##### **Article 51.**

Articles 49.9 and 49.10 of these Articles shall lapse after a period of five (5) years from the later of the date referenced in the head of this deed (the twentieth day of August two thousand and

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seven) and the date that the General Meeting last extended the applicability of articles 49.9 and 49.10, subject to the confirmation of such extension by way of the deposit by the Managing Board on recommendation of the Joint Board of a declaration with the trade register of the competent Chamber of Commerce and Industry as referred to in section 2: 77 Dutch Civil Code. If those articles lapse, the remedies in article 49.7 may thereafter be exercised only if the Company has obtained a judgment from the competent court(s) in accordance with article 49.8.

# MALLESONS STEPHEN JAQUES

James Hardie — Common Terms Deed Poll

Amended and restated on 20 February 2008

James Hardie International Finance B.V. (“**JHIF**”)

James Hardie Building Products, Inc. (“**JHBP**”)

James Hardie Industries N.V. (“**Guarantor**”)

**Mallesons Stephen Jaques**

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**James Hardie — Common Terms Deed Poll**  
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**James Hardie — Common Terms Deed Poll**

Details

**Interpretation** — Definitions are in clause 1.

**Parties** **JHIF, JHBP** and the **Guarantor**, each as described below.

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<b>JHIF</b>	Name	James Hardie International Finance B.V.
	Corporate seat	Amsterdam
	Registered Number	34108775
	Address	8th Floor, Atrium, Unit 08 Strawinskylaan 3077 1077 ZX Amsterdam The Netherlands
	Fax	+ 31 20 404 2544
	Attention	Treasurer
<b>JHBP</b>	Name	James Hardie Building Products, Inc.
	Incorporated in	Nevada
	Address	Suite 100 26300 La Alameda Mission Viejo CA 92691 United States of America
	Fax	+ 1 949 348 4534
	Attention	Company Secretary
<b>Guarantor</b>	Name	James Hardie Industries N.V.
	Corporate seat	Amsterdam
	Registered Number	34106455
	ABN	49 097 829 895
	Address	8th Floor, Atrium, Unit 08 Strawinskylaan 3077 1077 ZX Amsterdam The Netherlands
	Fax	+ 31 20 404 2544

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<b>Parties</b>	JHIF, JHBP and the <b>Guarantor</b> , each as described below.
	Attention Managing Director and Company Secretary
<b>In favour of:</b>	Each Creditor as defined in this amended and restated deed.
<b>Date of deed</b>	See Signing page
<b>Recitals</b>	A This amended and restated deed amends and restates the “James Hardie - Common Terms Deed Poll” dated 15 June 2005 executed by JHIF and the Guarantor as previously amended by the “CTDP Amendment Deed and New Borrower Deed Poll” dated 12 January 2006 executed by JHBP, JHIF and the Guarantor (together, the “ <b>Previous Deeds</b> ”).
	B The amendment and restatement of the Previous Deeds does not affect the nomination of any Person as a Creditor nor the nomination of any document as a Facility Agreement or Transaction Document prior to the execution of this amended and restated deed.

## James Hardie — Common Terms Deed Poll

### General terms

#### 1 Interpretation

##### 1.1 Definitions

These meanings apply unless the contrary intention appears:

**AS, AUD or Australian Dollars** means the lawful currency of Australia.

**Amended and Restated Trust Deed** means the Asbestos Injuries Compensation Fund Amended and Restated Trust Deed dated 14 December 2006 between the Guarantor and Asbestos Injuries Compensation Fund Limited.

**Asbestos Injuries Compensation Fund** has the meaning given to it in the Amended and Restated Trust Deed.

**ASX** means the stock exchange operated by ASX Limited.

**ASX CNW Announcement** means any release of information by the Guarantor through the ASX concerning any event or circumstance affecting the financial position of the Group in a manner which would affect the calculation of Consolidated Net Worth and which sets out specific details of the balance sheet impact of such event or circumstance.

**ASX CNW Announcement Date** means the date on which an ASX CNW Announcement is made.

**Authorisation** means:

- (a) any consent, registration, filing, agreement, notarisation, certificate, licence, approval, permit, authority or exemption from, by or with a Government Agency; and
- (b) any consent or authorisation regarded as given by a Government Agency due to the expiration of the period specified by a statute within which the Government Agency should have acted if it wished to proscribe or limit anything already lodged, registered or notified under that statute.

**Authorised Officer** means:

- (a) in the case of a Creditor, a director or secretary of the Creditor, or an officer of that party whose title contains the word “director”, “chief”, “head”, “president”, “vice-president”, “executive” or “manager”, or a person performing the functions of any of them, or any other person appointed by the Creditor as an Authorised Officer for the purposes of a Transaction Document; and

- (b) in the case of an Obligor, a person appointed by the Obligor and notified to the Creditor as an Authorised Officer for the purposes of a Transaction Document, and whose specimen signature is provided with such notification to the Creditor.

**Beneficiary Nomination Letter** means, in relation to a Creditor, the “Beneficiary Nomination Letter” (as that term is defined in the Guarantee Trust Deed) for that Creditor and one or more Facility Agreements for that Creditor.

**Borrower** means each of JHIF, JHBP and any new borrower under clause 14.1 (“New Borrowers”) individually but not jointly. It excludes any person released pursuant to clause 14.2 (“Release of Borrowers”).

**Break Costs** means the actual costs and losses which a Creditor certifies (with reasonable details) that it has suffered or incurred by reason of:

- (a) the liquidation or re-employment of deposits or other funds acquired or contracted for by the Creditor to fund or maintain financial accommodation under a Facility; or
- (b) the termination or reversing of any agreement or arrangement entered into by the Creditor to hedge, fix or limit its effective cost of funding in relation to a Facility,

but excluding any loss of margin.

**Business Day** means a weekday (not being a public holiday) on which:

- (a) in respect of a day on which the interest rate under a Facility Agreement is required to be determined and for the purposes of giving drawdown notices and selection notices under a Facility Agreement, banks are open for general banking business in London;
- (b) for the purposes of making or receiving any payments in US Dollars, banks are open for general banking business in London, New York and Sydney;
- (c) for the purpose of making or receiving any payments in another currency, banks are open for general banking business in such place or places specified in a relevant Facility Agreement; and
- (d) for all other purposes, banks are open for general banking business in Amsterdam, Sydney and any other place specified in a relevant Facility Agreement.

**Capital Lease** means, at any time, a lease with respect to which the lessee is required concurrently to recognise the acquisition of an asset and the incurrence of a liability in accordance with GAAP.

**Capital Lease Obligation** means, with respect to any Group Member (other than an Excluded Entity) and a Capital Lease, the amount of the obligation of such Group Member as the lessee under such Capital Lease which would, in

accordance with GAAP, appear as a liability on a balance sheet of such Group Member.

**Change of Control** means the Guarantor becoming a Subsidiary (as defined in the Corporations Act) of another person.

**Charitable Fund** has the meaning given to it in the Final Funding Agreement.

**Compensation Provision** means, at any time, the aggregate amount (without double counting) of provisions made by the Group at that time in accordance with GAAP for asbestos related liabilities (including, without limitation, obligations to fund or pay compensation pursuant to the Final Funding Agreement).

**Consolidated Funded Capitalisation** means, at any time, the sum of Consolidated Net Worth and Consolidated Funded Debt at that time.

**Consolidated Funded Debt** means, as of any date of determination, the total of all Funded Debt of the Group outstanding on that date, after eliminating:

- (a) all Funded Debt (if any) of the Excluded Entities; and
- (b) all offsetting debits and credits between any Group Members (excluding the Excluded Entities) and all other items required to be eliminated in the course of the preparation of consolidated financial statements of the Group in accordance with GAAP.

**Consolidated Net Worth** means, at any date of determination, the sum of:

- (a) the par value (or value stated in the books of the Group) of the capital stock (but excluding treasury stock and capital stock subscribed and unissued) of the Group; and
- (b) the amount of the paid-in capital and retained earnings of the Group,

plus the Compensation Provision on that date (and eliminating all other consequential balance sheet impacts relating to the Compensation Provision), in each case as such amounts would be shown on the consolidated balance sheet of the Group prepared:

- (c) as if the Excluded Entities were not Subsidiaries of the Guarantor (to the intent that the assets, liabilities and other balance sheet items of all Excluded Entities shall be excluded in calculating Consolidated Net Worth); and
- (d) in accordance with GAAP,

on the most recent Reporting Date or, where applicable, on the most recent ASX CNW Announcement Date, to the extent such amounts have been adjusted to reflect the content of any ASX CNW Announcement which post-dates such balance sheet.

**Consolidated Permitted External Financial Indebtedness** means, as of any date of determination, the total of all Permitted External Financial Indebtedness of the Group outstanding on that date, after eliminating all offsetting debits and credits between any Group Members (excluding the Excluded Entities) and all other items required to be eliminated in the course of the preparation of consolidated financial statements of the Group in accordance with GAAP.

**Controller** has the meaning it has in the Corporations Act.

**Corporations Act** means the *Corporation Act 2001* of Australia.

**Costs** means costs, fees, disbursements, charges and expenses, including, without limitation where an Obligor is liable to pay or reimburse the Costs, those incurred in connection with advisers and, unless an Event of Default is subsisting, only for an amount and on a basis previously agreed to in writing by the Obligor.

**Creditor** means each party nominated as a “Creditor” under a Facility Nomination Letter (and includes in the case of any syndicated facility, the facility agent) and, if there are more than one, means each of them individually but not jointly. It does not include any Group Member.

**Deed of Release** means a deed poll in the form of schedule 5 (“Form of Deed of Release”).

**Default Rate** means, in respect of a Transaction Document, the rate of interest specified in that document as payable on any amount not paid under the document on the due date for payment.

**Details** means the section of this amended and restated deed headed “Details”.

**Directive** means:

- (a) a law; or
- (b) a treaty, official directive, regulation, request, guideline or policy (whether or not having the force of law) with which responsible financiers generally comply in carrying on their business.

**Due Currency** means, in respect of any payment to be made under a Transaction Document, the currency in which that payment is due.

**EBIT** means the operating profit of the Group, on a consolidated basis, before adjustments for:

- (a) significant, extraordinary, abnormal or exceptional items;
- (b) items recognised in connection with the Special Commission of Inquiry into Medical Research and Compensation Foundation and other related expenses; and
- (c) income tax,

but after:

- (d) adding back Net Interest Charges and all items referred to in paragraphs (a) to (c) of the definition of “Net Interest Charges” that were deducted in deriving the operating profit figure of the Group; and
- (e) eliminating all income, expense and other profit and loss statement impact of the Excluded Entities,

determined in each case by reference to the latest audited consolidated financial statements of the Group delivered under clause 9.6(b). It excludes any earnings from any Project Activities if these are derived from Project Vehicles or Project Property over which there exist Security Interests (unless such earnings have actually been received in cash by an Obligor).

**Environmental Laws** means any and all applicable statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licences, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

**Event of Default** means an Event of Default set out in clause 10.1 (“Events of Default”).

**Exchange Act** means the Securities Exchange Act 1934 of the United States of America.

**Excluded Entity** means the Fund and each of the following entities:

- (a) Amaba Pty Limited (ACN 000 387 342);
- (b) Amaca Pty Limited (ACN 000 035 512);
- (c) ABN 60 Pty Limited (ACN 000 009 263); and
- (d) Marlew Mining Pty Limited (formerly known as Asbestos Mines Pty Limited) (ACN 000 049 650),

and any other entity agreed in writing by the Guarantor and each Creditor (or, in the case of a syndicated facility, the facility agent).

**Excluded Tax** means:

- (a) a Tax imposed by any jurisdiction on or assessed against a Creditor as a consequence of the Creditor being a resident of or organised in or doing business in that jurisdiction, but not any Tax:
  - (i) that is calculated on or by reference to the gross amount of a payment derived under a Transaction Document or another document referred to in a Transaction Document (without the allowance of a deduction);

- (ii) that is imposed as a result of the Creditor being considered a resident or organised or doing business in that jurisdiction solely as a result of it being a party to a Transaction Document or a transaction contemplated by a Transaction Document; or
- (b) in relation to any payment by an Obligor resident or incorporated in the United States of America (“**US Obligor**”), any Tax payable by reason of the Creditor not being in receipt of such payment through, or such payment not being attributable to, a branch or lending office in the United States of America or by reason of the payment not being considered effectively connected income of a trade or business conducted within the United States of America by such branch or lending office (including, without limitation, any withholding tax payable under the laws of the United States of America in respect of interest due from a US Obligor under a Facility Agreement); or
- (c) a Tax which would not be required to be deducted by an Obligor if, before the Obligor makes a relevant payment, a relevant Creditor provided the Obligor with any of its name, address, registration number or similar details or any relevant tax exemption or similar details.

**Facility** means any facility under a Facility Agreement.

**Facility Agreement** means each agreement to which a Creditor (together with any other persons) and a Borrower are party, which is nominated as a “Facility Agreement” in a Facility Nomination Letter.

**Facility Nomination Letter** means a letter substantially in the form set out in schedule 2 (“Facility Nomination Letter”) to this deed prior to amendment and restatement or in the form set out in schedule 2 (“Facility Nomination Letter”) to this amended and restated deed, in either case in favour of a person (not being a Group Member) providing financial accommodation to a Borrower (or any agent or trustee on that person’s behalf).

**Final Funding Agreement** means the agreement entitled “Final Funding Agreement” dated 1 December 2005 between the Guarantor, James Hardie 117 Pty Limited (formerly known as LGTDD Pty Limited) and the State of New South Wales, as amended and restated by the agreement entitled “Amended & Restated Final Funding Agreement” dated 21 November 2006 between the Guarantor, James Hardie 117 Pty Limited, the State of New South Wales and the Fund.

**Financial Indebtedness** means, with respect to any Group Member, without double counting:

- (a) its liabilities for borrowed money (including all liabilities in respect of letters of credit (excluding letters of credit and performance guarantees posted in respect of payment of accounts payable arising in the ordinary course of business) or instruments serving a similar function issued or accepted for its account by banks and other financial institutions);



- (b) its liabilities for the deferred purchase price (for more than 90 days) of property acquired by such Group Member (excluding accounts payable arising in the ordinary course of business);
- (c) its Capital Lease Obligations;
- (d) all Preferred Stock of Subsidiaries (excluding the Excluded Entities) of such Group Member which is not owned by such Group Member or a Wholly Owned Subsidiary of such Group Member; and
- (e) any Guarantee of such Group Member with respect to liabilities of a type described in any of paragraphs (a) to (d) of this definition.

**Financial Year** means each year ending on 31 March.

**Financier Nomination Letter** means, in relation to a Creditor, the “Financier Nomination Letter” (as that term is defined in the Intercreditor Deed) for that Creditor and one or more Facility Agreements for that Creditor.

**Free Cash Flow** has the meaning given to that term in the Final Funding Agreement.

**Fund** means Asbestos Injuries Compensation Fund Limited as trustee for the Asbestos Injuries Compensation Fund.

**Fund Guarantee** has the meaning given to it in the Guarantee Trust Deed.

**Funded Debt** means, at any time, with respect to any Group Member (other than an Excluded Entity), all drawn and outstanding Financial Indebtedness (other than Non-Recourse Debt) of such Group Member owing to any person outside the Group (other than an Excluded Entity) at that time.

**GAAP** means generally accepted accounting principles as in effect from time to time in the United States of America.

**Government Agency** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity having jurisdiction over, or in relation to the affairs of, a Group Member and, for the avoidance of doubt, includes, without limitation, the Australian Taxation Office, the US Internal Revenue Service and the Dutch tax authorities.

**Group** means the Guarantor and its Subsidiaries and **Group Member** means any one of them.

**Guarantee** means any guarantee, suretyship, letter of credit, or any other obligation (whatever called and of whatever nature):

- (a) to provide funds (whether by the advance or payment of money, the purchase of or subscription for shares or other securities, the purchase of assets or services, or otherwise) for the payment or discharge of;
- (b) to indemnify any person against the consequences of default in the payment of; or

(c) to be responsible for,

any debt or monetary liability of another person or the assumption of any responsibility or obligation in respect of the insolvency or the financial condition of any other person.

**Guarantee and Subordination Documents** means:

- (a) the Guarantee Trust Deed;
- (b) the Intercreditor Deed;
- (c) each Beneficiary Nomination Letter; and
- (d) each Financier Nomination Letter.

**Guarantee Trust Deed** means the deed entitled “Guarantee Trust Deed” dated 19 December 2006 between the Guarantor and AET Structured Finance Services Pty Limited.

**Guarantor** means the person so described in the Details.

**Indirect Tax** means any goods and services tax, consumption tax, value added tax or any tax of a similar nature.

**Intercreditor Deed** means the deed so entitled dated 19 December 2006 between the State of New South Wales, the Guarantor, Asbestos Injuries Compensation Fund Limited in its capacity as trustee for the Charitable Fund and AET Structured Finance Services Pty Limited as amended by the letter dated 19 December 2006 between the same parties.

**JHBP Financial Reports** means the non-public financial or equivalent reports prepared in respect of JHBP (or separate reports prepared for each division of JHBP) for the purpose of preparing consolidated financial statements of the Group, the form and content of which is at the discretion of the Obligors.

**JHIF Financial Report** means the non-public financial or equivalent reports prepared in respect of JHIF (or separate reports prepared for each division of JHIF) for the purpose of preparing consolidated financial statements of the Group, the form and content of which is at the discretion of the Obligors.

**Majority Creditor** means:

- (a) in relation to a syndicated or capital markets facility, the Creditors who form a “majority” (howsoever described) as defined under that Facility or all such Creditors, to the extent so required under that facility; and
- (b) in relation to a bilateral facility, the Creditor under that facility.

**Material Adverse Effect** means a material adverse effect on:

- (a) the ability of each Borrower to perform its obligations to pay Outstanding Moneys when the same are due or within any applicable grace period;
- (b) the ability of the Guarantor to perform its obligations under the Guarantee Trust Deed in favour of the Creditor when the same are due or within any applicable grace period; or
- (c) the validity or enforceability of the Transaction Documents.

**Material Subsidiary** means any Subsidiary of the Guarantor (other than an Excluded Entity) whose total assets at the time of determination (consolidated in the case of a Subsidiary which itself has one or more Subsidiaries) represent not less than 15% of Consolidated Net Worth at that time.

**Net Interest Charges** for a period means all interest and amounts in the nature of interest or of similar effect to interest, paid or payable by the Group (excluding the Excluded Entities), on a consolidated basis, less interest income received by or arising to the Group (excluding the Excluded Entities), on a consolidated basis, in the same period for which such Net Interest Charges are being determined, in each case by reference to the financial statements referred to in clause 9.6. It excludes:

- (a) any swap break or reset costs incurred and paid as part of any termination of any hedging or facility;
- (b) any break costs, early redemption premium, make-whole payments, liquidated damages or other penalties (howsoever described) incurred and paid in connection with the prepayment of any facility;
- (c) capitalising interest under any agreement for the provision of Financial Indebtedness to a Group Member which is in the nature of:
  - (i) a construction facility to fund capital expenditure to be undertaken by a Group Member (but only while that capitalising interest is not payable under the terms of that agreement); or
  - (ii) a capital-indexed or zero coupon debt instrument which contractually allows the capitalisation of interest;
- (d) establishment, arrangement, underwriting and other fees payable once only on the initial provision of financial accommodation; and
- (e) all interest and amounts in the nature of interest, and any other amounts of the kind referred to in paragraphs (a) to (d) above, relating to:
  - (i) Subordinated Debt;
  - (ii) hybrid capital;
  - (iii) Non-Recourse Debt; or

- (iv) a loan under which financial accommodation is provided from one Group Member (not being an Excluded Entity) to another Group Member (not being an Excluded Entity).

**New Borrower** means a person who executes a New Borrower Deed Poll in accordance with clause 14.1 (“New Borrowers”).

**New Borrower Deed Poll** means each deed poll entered into by a New Borrower substantially in the form set out in schedule 3 (“Form of New Borrower Deed Poll”).

**Non-Australian Obligor** means an Obligor which is not resident or incorporated in Australia.

**Non-Recourse Debt** means any Project Debt if, and for so long as:

- (a) the person to whom the Project Debt is owed does not have recourse (whether by way of execution, set-off or otherwise) to a Group Member or its assets for the payment or repayment of the Project Debt other than to assets which the Security Interest (“**Project Securities**”) securing that Project Debt are permitted to extend to under paragraph (h) of the definition of Permitted Security Interest (that person, and any agent or trustee on that person’s behalf, being a “**Non-Recourse Financier**”);
- (b) the Non-Recourse Financier may not seek to wind up or place into administration, or pursue or make a claim in the winding up or administration of, any other Group Member to recover or to be repaid that Project Debt;
- (c) the Non-Recourse Financier cannot obtain specific performance or a similar remedy with respect to any obligation of another Group Member to pay or repay that Project Debt; and
- (d) the Non-Recourse Financier and any receiver, receiver and manager, agent or attorney appointed under the Project Securities, may not incur a liability on behalf of, or for the account of, a Group Member which liability itself is not subject to the above paragraphs as if references to Project Debt in those paragraphs included that liability.

For the avoidance of doubt, if Project Debt is incurred or owed by a Group Member which is not a Project Vehicle, then the tests in paragraphs (b) and (c) above must also be satisfied in respect of that Group Member in order for the Project Debt to qualify as Non-Recourse Debt.

**Obligor** means:

- (a) a Borrower; or
- (b) the Guarantor.

**Obligors’ Agent** means JHIF or another Borrower:

- (a) appointed by all the Borrowers and the Guarantor as Obligors’ Agent;

- (b) which has accepted such appointment; and
- (c) whose appointment has been notified to all Creditors.

**Outstanding Moneys** means all debts and monetary liabilities of each Obligor to a Creditor under or in relation to any Transaction Document and in any capacity, irrespective of whether the debts or liabilities:

- (a) are present or future;
- (b) are actual, prospective, contingent or otherwise;
- (c) are at any time ascertained or unascertained;
- (d) are owed or incurred by, or on account of, that Obligor alone or severally or jointly with any other person;
- (e) are owed to or incurred for the account of that Creditor alone or severally or jointly with any other person;
- (f) are owed or incurred as principal, interest, fees, charges, taxes, duties or other imposts, damages (whether for breach of contract or tort or incurred on any other ground), losses, costs or expenses, or on any other account; or
- (g) comprise any combination of the above.

**Permitted External Financial Indebtedness** means Financial Indebtedness of a Group Member (other than an Obligor or an Excluded Entity) owing to any person outside the Group under or in connection with:

- (a) a working capital facility;
- (b) a transactional banking facility;
- (c) a Capital Lease;
- (d) Non-Recourse Debt;
- (e) a “soft loan” or other form of financial accommodation given to a Group Member by a Government Agency in connection with capital works or expansion plans undertaken by that Group Member or any other Group Member; or
- (f) any financial accommodation which, in the opinion of the Guarantor, it is preferable for the relevant Group Member to raise from external sources (rather than by an intra-Group borrowing) for reasons based on economic advantage, administrative convenience and/or legal, structural, political and/or tax considerations.

**Permitted Security Interest** means:

- (a) a Security Interest created by operation of law or otherwise to secure taxes, assessments or other governmental charges which are not more than 90 days overdue or are being contested in good faith;

- (b) a Security Interest which a Group Member is required to create by any applicable law or is required or considers it necessary or expedient to create in order to obtain, maintain or renew any Authorisation;
  - (c) a Security Interest created by operation of law or otherwise in favour of a landlord, carrier, warehouseman, mechanic, materialman or other supplier (including rights by way of reservation or retention of title to property) or other similar Security Interest, in each case, incurred in the ordinary course of business for sums which are not more than 90 days overdue or are being contested in good faith;
  - (d) a Security Interest incurred, or deposits made, in the ordinary course of business:
    - (i) in connection with workers' compensation, unemployment insurance and other types of social security, employment or retirement benefits; or
    - (ii) to secure (or to obtain letters of credit that secure) the performance of tenders, statutory obligations, surety bonds, appeal bonds, bids, leases (other than Capital Leases), performance bonds, purchase, construction or sales contracts and other similar obligations,in each case not incurred or made:
    - (A) in connection with the borrowing of money, the obtaining of advances or credit or payment of the deferred purchase price of property; nor
    - (B) to secure obligations due under the Final Funding Agreement or any Related Agreement (as defined in the Final Funding Agreement);
  - (e) a Security Interest in respect of a judgment debt of a Group Member, provided that the judgment is discharged or execution of it is stayed (permanently or pending appeal) within 90 days of entry thereof or adequate reserves have been provided for it;
  - (f) leases or subleases granted to others, easements, rights-of-way, restrictions and other similar charges or encumbrances, in each case incidental to, and not interfering with, the ordinary conduct of the business of the Group;
  - (g) a Security Interest on property or assets of a Group Member (not being an Excluded Entity) securing Financial Indebtedness owing to another Group Member (not being an Excluded Entity);
  - (h) a Security Interest existing or created under or in respect of Non-Recourse Debt facilities where the party holding any such Security Interest has security over Project Property or Project Vehicles only but no right of recourse to an Obligor or any Obligor's other assets;
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- (i) a Security Interest created on any asset or group of associated assets acquired by a Group Member or developed by a Group Member after 15 June 2005:
    - (i) for the sole purpose of financing or refinancing that acquisition or development; and
    - (ii) securing principal moneys not exceeding one hundred per cent (100%) of the cost of that acquisition or development;
  - (j) a Security Interest existing at the time of acquisition on any asset acquired by a Group Member after 15 June 2005 and not created in contemplation of the acquisition, provided that there is no increase in the amount of the principal moneys secured by that Security Interest;
  - (k) a Security Interest existing on property of a person immediately prior to its being consolidated with or merged into a Group Member or its becoming a Group Member (by becoming a Subsidiary of the Guarantor), provided that the Security Interest was not created in contemplation of the consolidation, merger or acquisition and there is no increase in the amount of the principal moneys secured by that Security Interest;
  - (l) any Security Interest existing at 15 June 2005 provided there is no increase in the amount of the principal moneys secured by that Security Interest;
  - (m) a Security Interest replacing, renewing, extending or refunding any Security Interest permitted by paragraph (i), (j), (k), (l) or (m), provided that:
    - (i) the principal moneys secured by such Security Interest immediately prior to such replacement, renewal, extension or refunding is not increased or the maturity thereof reduced; and
    - (ii) the Security Interest is not extended to any other property;
  - (n) a Security Interest created with the prior written consent of each Majority Creditor (or in the case of a syndicated facility, an agent or trustee acting on the instructions of the relevant Majority Creditor);
  - (o) a Security Interest created by a Group Member over its interest in a joint venture to secure:
    - (i) its obligations under the joint venture to any other party to the joint venture; or
    - (ii) its obligations, or the obligations of the joint venture, or the obligations of any entity formed for the purpose of the joint venture, under any agreement (including an agreement relating to financial accommodation) entered into for the purposes of the joint venture; or
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- (p) any Security Interest created pursuant to the general conditions of a bank operating in the Netherlands based on the general conditions drawn up by the Netherlands Bankers' Association (Nederlandse Vereniging van Banken) and the Consumers Union (Consumentenbond),

provided the aggregate amount of Financial Indebtedness of the Group (excluding intra-Group transactions and Financial Indebtedness of the Excluded Entities) secured by all such Permitted Security Interests granted in favour of persons outside the Group may not exceed 10% of the total assets of the Group (excluding the Excluded Entities) at any time.

**PMP** means a professional market party as defined in the Act on the Financial Supervision (Wet op het financieel toezicht) which includes (among others):

- (a) legal entities which are authorised or regulated to operate in the financial markets, including: credit institutions, investment firms, other authorised or regulated financial institutions, insurance companies, collective investment schemes and their management companies, pension funds and their management companies, commodity dealers, as well as entities not so authorised or regulated whose corporate purpose is solely to invest in securities;
- (b) national or regional public bodies, central banks, international or supranational financial organizations;
- (c) enterprises:
  - (i) having a net shareholders' equity totalling €10,000,000 or more preceding the making available of the repayable funds; and
  - (ii) which have been active on the financial markets at least twice a month, on average, during two consecutive years preceding the making available of the repayable funds; and
- (d) a person or company from which redeemable funds will be obtained through a debt instrument or a private contract, if the nominal value of the debt instrument or the claim under the private contract is at least €50,000 (or the equivalent in another currency), or the debt instrument or the claim under the private contract is acquired for a total consideration of at least €50,000 (or the equivalent in another currency).

**Potential Event of Default** means an event or condition the occurrence or existence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.

**Preferred Stock** means any class of capital stock of a corporation that is preferred over any other class of capital stock of such corporation as to payment of dividends or the payment of any amount upon liquidation or dissolution of the corporation.



**Previous Deeds** has the meaning given to it in the Recitals to this amended and restated deed.

**Project Activity** means the acquisition, development, construction, extension, expansion or improvement of any asset.

**Project Debt** means with respect to a project or development:

- (a) Financial Indebtedness in relation to the acquisition and/or cost of Project Activities;
- (b) Financial Indebtedness incurred before or at the time of carrying out Project Activities solely for the purpose of financing or refinancing the acquisition and/or cost of the Project Activities;
- (c) any Financial Indebtedness incurred solely to refinance any Financial Indebtedness referred to above or incurred under any successive refinancing;
- (d) any liabilities under hedging transactions entered into in connection with any Financial Indebtedness referred to above or any Project Activity;
- (e) interest or amounts in the nature of interest, charges, fees, costs of any nature (including break costs or costs arising from changes in law), duties, expenses, currency indemnities, withholding taxes, indirect taxes and other similar indebtedness (however described) which, in any case, is or are incurred or payable in connection with any of the above; or
- (f) any guarantee or indemnity securing payment or repayment of any of the above amounts (but not any other Financial Indebtedness),

but does not include any Financial Indebtedness which is used to refinance any assets owned by an Obligor as at 15 June 2005.

**Project Property** means a Group Member's assets used or predominantly used in, or generated by, any Project Activities for a project or development including:

- (a) assets forming part of or connected with or derived from that project or development; and
- (b) proceeds derived from other Project Property relating to that project or development.

**Project Vehicle** means an entity, which is established for the purposes of, and confines its business operations solely to, owning or producing Project Property, carrying out Project Activities and incurring Project Debt.

**Related Entity** has the meaning given in the Corporations Act.

**Release Request** means a letter in the form of schedule 4 ("Form of Release Request").

**Relevant Entity** means an Obligor or a Material Subsidiary.

**Reporting Date** means each 31 March, 30 June, 30 September and 31 December in any year.

**Security Interest** means any mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind or any other right of, or arrangement with, any creditor to have its claims satisfied in priority to other creditors with, or from the proceeds of, any asset. This definition:

- (a) includes any retention of title agreements arising other than in the ordinary course of business; and
- (b) excludes any right of set-off, right to combine accounts, or other similar right or arrangement arising in the ordinary course of business or by operation of law.

**Subordinated Debt** means any Financial Indebtedness of any Group Member (other than an Excluded Entity) which is subordinated to the Facilities on terms which each Creditor (or under a syndicated facility, an agent or trustee acting on the instructions of the Majority Creditor) has confirmed are acceptable to it (such confirmation not to be unreasonably withheld or delayed).

**Subsidiary** in relation to a corporation means a subsidiary of the corporation for the purposes of the Corporations Act.

**Tax** means any present or future tax (including Indirect Taxes), levy, impost, duty, charge, fee, deduction, compulsory loan or withholding or any income, stamp or transaction duty, tax or charge, in the nature of tax whatsoever called (except if imposed on, or calculated having regard to, the net income of a Creditor) and whether imposed, levied, collected, withheld or assessed by any Government Agency and includes, but is not limited to, any penalty, fine, charge, fee, interest or other amount payable in connection with failure to pay or delay in paying the same.

**Termination Date** in respect to a Facility Agreement, means the termination date, maturity date, final repayment date, final redemption date or other final payment date (howsoever described) of a Facility as defined in the relevant Facility Agreement.

**Transaction Document** means each of:

- (a) this amended and restated deed;
- (b) each Facility Agreement;
- (c) each Facility Nomination Letter;
- (d) each New Borrower Deed Poll;
- (e) each Deed of Release;
- (f) the Guarantee and Subordination Documents;

- (g) any other document agreed to be a Transaction Document by the Guarantor and a Creditor; and
- (h) any document entered into for the purpose of amending or novating any of the above.

**US\$, USD or US Dollars** means the lawful currency of the United States of America.

**Wholly Owned Subsidiary** has the meaning given in section 9 of the Corporations Act.

## **1.2 References to certain general terms**

Unless the contrary intention appears, a reference in a Transaction Document to:

- (a) a group of persons is a reference to any two or more of them jointly and to each of them individually;
- (b) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (c) an agreement, representation or warranty by two or more persons binds them individually only;
- (d) anything (including an amount) is a reference to the whole and each part of it (but nothing in this clause 1.2(d) implies that performance of part of an obligation constitutes performance of the obligation);
- (e) a document (including this amended and restated deed) includes any variation, supplement to, novation or replacement of it;
- (f) law includes (without limitation) common law, principles of equity, and laws made by any legislative body of any jurisdiction (and references to any statute, regulation or by-law include any modification or re-enactment of or any provision substituted for, and all statutory and subordinate instruments issued under such statute, regulation or by-law or such provision);
- (g) an accounting term is a reference to that term as it is used in GAAP;
- (h) the word “person” includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated association and any Government Agency;
- (i) a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (j) the words “including”, “for example” or “such as” when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;

- (k) other parts of speech and grammatical forms of a word or phrase defined in this amended and restated deed have a corresponding meaning;
- (l) an agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (m) a reference to a document includes any agreement in writing, or any certificate, notice, instrument or other document of any kind;
- (n) a reference to a body, other than a party to, or a beneficiary of, a Transaction Document (including an institute, association or authority) whether statutory or not:
  - (i) that ceases to exist; or
  - (ii) whose powers or functions are transferred to another body,is a reference to the body that replaces it or any body that substantially succeeds to its powers or functions;
- (o) “continuing” or “subsisting”, in relation to an Event of Default or Potential Event of Default, means an Event of Default or Potential Event of Default (as the case may be) that has not been waived in writing or remedied.

### **1.3 Numbers**

In a Transaction Document, the singular includes the plural and vice versa.

### **1.4 Headings**

In a Transaction Document, headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of the Transaction Document.

### **1.5 Conflict**

- (a) Subject to paragraph (b), even if any other Transaction Document is not expressly made subject to this amended and restated deed and despite the time and date of its execution, where a conflict arises between the provisions of this amended and restated deed and any other Transaction Document, the provisions of this amended and restated deed shall prevail unless the relevant provision in the other Transaction Document includes words substantially to the effect of “Despite the terms of the Common Terms Deed Poll”.
- (b) Where a conflict arises between the provisions of this amended and restated deed on the one hand and the Guarantee and Subordination Documents on the other hand, the provisions of the Guarantee and Subordination Documents shall prevail to the extent of the inconsistency.

**1.6 Shareholder ratification**

Each Obligor which is a shareholder of another company (a "**Relevant Company**") which is, or is to become, an Obligor, ratifies and approves in its capacity as a shareholder of that Relevant Company, the execution and performance by each such Relevant Company of each Transaction Document to which it is a party.

**1.7 Borrowers severally liable only**

Notwithstanding any other provision of this or any other Transaction Document, no Borrower is liable under the Transaction Documents for any obligation of another Borrower (including, without limitation, any obligation to indemnify a Creditor).

**2 Creditors and Facilities**

**2.1 Creditors and Facilities**

This amended and restated deed is for the benefit of, and is enforceable by, each Creditor from time to time even though it is not a party to, or is not in existence at the time of execution and delivery of this amended and restated deed, in relation to the Facility under which that Creditor is entitled and each Transaction Document under which that Creditor has benefits or obligations.

The benefit and obligations of this amended and restated deed may be extended to any other person (and such person shall become a Creditor) in relation to any other document (and such document shall become a Facility Agreement), by the Obligors' Agent signing and delivering to that Creditor (or, in the case of a syndicated facility, the facility agent) a Facility Nomination Letter and the Creditor countersigning such Facility Nomination Letter.

Each Obligor irrevocably authorises the Obligors' Agent to sign and deliver any Facility Nomination Letter and acknowledges and confirms that the provisions of this amended and restated deed which are for the benefit of the Creditors will extend to the Facility Agreement so nominated in that Facility Nomination Letter.

**2.2 Removal of benefit for particular Creditor**

This amended and restated deed ceases to be for the benefit of, and enforceable by, a Creditor if at any time:

- (a) all Outstanding Moneys owing to that Creditor have been fully and finally paid;
- (b) that Creditor is not committed to providing further financial accommodation to a Borrower pursuant to any Facility; and
- (c) this is confirmed in writing by the Creditor. If requested by an Obligor, a Creditor will promptly confirm in writing that this amended and restated deed has ceased to be for the benefit of, and enforceable by, that Creditor.

### 3 Conditions precedent

#### 3.1 Conditions to first drawdown

A Creditor's obligation to make available the first drawdown under a Facility Agreement entered into on the same date as, or after, the amendment and restatement of this amended and restated deed is subject to the following conditions precedent:

- (a) the Creditor (or, in the case of a syndicated facility, the facility agent) has received each of the following items in form and substance satisfactory to the Creditor or the facility agent (as the case may be):
  - (i) **(verification certificate)** a certificate in relation to each Obligor given by a director of the relevant Obligor substantially in the form of schedule 1 ("Verification Certificate") with the attachments referred to therein;
  - (ii) **(legal opinions)** closing legal opinions in respect of this amended and restated deed, the Facility Agreement and the Guarantee and Subordination Documents from:
    - (A) Loyens & Loeff N.V., Netherlands legal advisers to JHIF and the Guarantor;
    - (B) McDonald Carano & Wilson, United States of America legal advisers to JHBP;
    - (C) Mallesons Stephen Jaques, Australian legal advisers to the Obligors; and
    - (D) if a relevant Borrower is incorporated in a jurisdiction other than The Netherlands or Australia, legal advisers to the Obligors of recognised standing and acceptable to the Creditor;
  - (iii) **(executed documents)** to the extent not previously provided to the Creditor under this amended and restated deed:
    - (A) an original counterpart or certified copy of this amended and restated deed;
    - (B) original counterparts of the Facility Agreement; and
    - (C) a Facility Nomination Letter, if required by the Facility Agreement;
    - (D) certified copy of the Guarantee Trust Deed;

(E) a Beneficiary Nomination Letter, if required by the Facility Agreement;

(F) a certified copy of the Intercreditor Deed; and

(G) a Financier Nomination Letter, if required by the Facility Agreement,

executed by all relevant Obligor; and

(iv) **(fees)** evidence of instructions issued by the Obligors' Agent to pay all fees and expenses which are due under the Facility Agreement on or before the first drawdown; and

(b) **(know your customer)** if, in relation to the relevant Facility, a Creditor is required to comply with any know your customer checks and the information necessary is not already available to it and to the extent not previously provided to the Creditor under this amended and restated deed or under any other agreement, such documentation and other evidence as is reasonably requested to enable the Creditor to so comply, each in form and substance satisfactory to the Creditor (acting reasonably);

(c) **(representations true)** the representations and warranties by each Obligor in clause 8.1 of this amended and restated deed are true as at the date of the first drawdown notice and on the date of the first drawdown; and

(d) **(no default)** no Event of Default or Potential Event of Default subsists at the date of the first drawdown notice or on the date of the first drawdown or will result from the provision of the requested financial accommodation.

### 3.2 Conditions to subsequent drawdowns

The Creditor need not provide any financial accommodation subsequent to the first drawdown under a Facility Agreement unless:

(a) **(representations true)** the representations and warranties by each Obligor in clause 8.1 of this amended and restated deed (other than clause 8.1(d)(ii)) are true as at the date of the drawdown notice and on the drawdown date, as though they had been made at that date in respect of the facts and circumstances then subsisting; and

(b) **(no default)** no Event of Default or Potential Event of Default subsists at the date of the drawdown notice or on the drawdown date or will result from the provision of the requested financial accommodation.



## **4 Payments**

### **4.1 Manner of payment**

Each Obligor agrees to make payments (including by way of reimbursement) under each Transaction Document:

- (a) on the due date (or, if that is not a Business Day, on the next Business Day unless that day falls in the following month or after the Termination Date for the relevant Facility, in which case, on the previous Business Day);
- (b) at the time which is customary at the time for settlement of transactions in the relevant currency in the place for payment (if any) specified in the relevant Facility Agreement;
- (c) in the Due Currency in immediately available funds;
- (d) in full without set-off or counterclaim, and without any deduction in respect of Taxes unless prohibited by law; and
- (e) to the applicable Creditor (or, in the case of a Creditor under a syndicated facility, the facility agent on its behalf) by making payment to the account nominated by the Creditor or by payment as the Creditor otherwise directs.

If a Creditor directs an Obligor to pay a particular party or in a particular manner, the Obligor is taken to have satisfied its obligation to the Creditor by paying in accordance with the direction.

An Obligor satisfies a payment obligation only when the Creditor (or, in the case of a Creditor under a syndicated facility, the facility agent on its behalf) or the person to whom it has directed payment actually receives the amount.

### **4.2 Currency of payment**

Each Obligor waives any right it has in any jurisdiction to pay an amount other than in Due Currency. However, if a Creditor receives an amount in a currency other than the Due Currency:

- (a) it may convert the amount received into the Due Currency (even though it may be necessary to convert through a third currency to do so) on the day and at such rates (including spot rate, same day value rate or value tomorrow rate) as it reasonably considers appropriate. It may deduct its usual Costs in connection with the conversion; and
- (b) the Obligor satisfies its obligation to pay in the Due Currency only to the extent of the amount of the Due Currency obtained from the conversion after deducting the Costs of the conversion. Any surplus amount will be paid promptly by that Creditor to the relevant Obligor.

## **5 Withholding tax**

### **5.1 Payments by Obligor**

If a law requires an Obligor to deduct or withhold an amount in respect of Taxes (other than Indirect Taxes) in respect of a payment under any Transaction Document such that a Creditor (“**Indemnified Party**”) would not actually receive on the due date the full amount provided for under the Transaction Document, then:

- (a) the Obligor agrees to deduct the amount for such Taxes and any further deduction applicable to any further payment due under paragraph (c) below;
- (b) the Obligor agrees to pay an amount equal to the amount deducted or withheld to the relevant authority in accordance with applicable law; and
- (c) unless the Tax is an Excluded Tax, the amount payable is increased so that, after making the deduction or withholding and further deductions or withholdings applicable to additional amounts payable under this clause 5.1(c), the Indemnified Party is entitled to receive (at the time the payment is due) the amount it would have received if no deductions or withholdings had been required.

### **5.2 Payments by a facility agent to Creditors**

If a law requires a facility agent under a syndicated facility to deduct or withhold an amount in respect of Taxes (other than Indirect Taxes) in respect of a payment by the facility agent to a Creditor under a syndicated facility such that the Creditor would not actually receive on the due date the full amount provided for under the syndicated facility, then:

- (a) the facility agent must deduct or withhold the amount for such Taxes and any further deduction or withholding applicable to any further payment due under paragraph (c) below;
- (b) the facility agent must pay an amount equal to the amount deducted or withheld to the relevant authority in accordance with applicable law and promptly give the original receipts to the relevant Borrower;
- (c) unless the Tax is an Excluded Tax, the amount payable is increased so that, after making the deduction or withholding and further deductions or withholdings applicable to additional amounts payable under this clause 5.2(c), the Creditor is entitled to receive (at the time the payment is due) the amount it would have received if no deductions or withholdings had been required; and
- (d) unless the Tax is an Excluded Tax, the relevant Borrower must pay to the facility agent an amount equal to any deduction or withholding which the facility agent is required to make under this clause 5.2.

### **5.3 Tax credit**

If and to the extent that any Creditor is able in its opinion to apply for or otherwise take advantage of any offsetting tax credit, tax rebate or other similar tax benefit out of or in conjunction with any deduction or withholding which gives rise to an obligation on any Obligor to pay any additional amount pursuant to clause 5.1 or 5.2(d), that Creditor shall:

- (a) give notice thereof to the Obligors' Agent and take steps to obtain that credit, rebate or benefit; and
- (b) to the extent that in its opinion it can do so without prejudice to the retention of the credit, rebate or benefit, and upon receipt thereof, reimburse to the Obligor such amount of the credit, rebate or benefit as that Creditor shall, in its opinion (acting reasonably), have determined to be attributable to the deduction or withholding. In complying with this clause, no Creditor need disclose to any Obligor information about their tax affairs or order them in a particular way.

### **5.4 Early repayment or redemption**

Without limiting the other provisions of this clause 5, if a Borrower is required to pay any amount to a Creditor or facility agent under a syndicated facility under this clause 5, that Borrower may elect to repay or redeem early all of that Creditor's outstandings under the applicable Facility which is affected by the event or events referred to in clause 5.1 or 5.2.

## **6 Increased costs**

### **6.1 Compensation**

The relevant Borrower agrees to compensate a Creditor on 30 days written notice if the Creditor determines that:

- (a) a Directive, or change in Directive, in either case applying for the first time after the date of the relevant Facility Agreement;
- (b) a change in a Directive's interpretation or administration by an authority after the date of the relevant Facility Agreement; or
- (c) compliance by the Creditor or any of its Related Entities with any such Directive, changed Directive or changed interpretation or administration,

directly or indirectly:

- (i) increases the effective cost to that Creditor of making, funding or maintaining the relevant Facility or its proportion of the Facility; or
- (ii) reduces any amount paid or payable to, or received or receivable by, that Creditor or the effective return to that Creditor in connection with the relevant Facility.

In this clause 6.1, a reference to a Directive does not include a Directive imposing or changing the basis of a Tax on the overall net income of the Creditor.

Compensation need not be in the form of a lump sum and may be demanded as a series of payments.

A notice under this clause may not claim compensation for an increase or reduction suffered more than 180 days before the date of the notice, except to the extent that the event or circumstance giving rise to the increased cost or reduction is that a Directive is applied retrospectively and the notice was given by the Creditor no later than 120 days after it became aware of that event or circumstance and was able to quantify the amount for which it is entitled to be compensated under this clause 6.1.

Any demand under this clause 6.1 is to be made to the Obligors' Agent by the Creditor (except in the case of a Creditor under a syndicated facility, in which case demand must be made by the facility agent).

## **6.2 Substantiating costs**

If a Creditor (or a facility agent on its behalf) makes a demand under clause 6.1 ("Compensation"), it must provide the relevant Borrower with reasonably detailed calculations showing how the amount demanded has been ascertained. However, nothing in this clause 6.2 obliges the Creditor to provide details of its business or tax affairs which it considers in good faith to be confidential.

## **6.3 Procedure for claim**

- (a) In the absence of manifest error, and subject to clause 6.2 ("Substantiating costs"), a certificate by a Creditor is sufficient evidence of the amount of the compensation payable by the relevant Borrower to the Creditor under clause 6.1 ("Compensation").
- (b) In determining the amount of the compensation payable under clause 6.1 ("Compensation"), the Creditor may use averaging and attribution methods commonly used by the Creditor or any other method it reasonably considers appropriate to determine the amount.

## **6.4 Possible minimisation**

- (a) The Creditor agrees:
  - (i) to use reasonable endeavours to mitigate the effects of those events or circumstances giving rise to the increased cost or reduction in any payment or return for which the Creditor (or a facility agent on its behalf) claims compensation under clause 6.1 ("Compensation"); and
  - (ii) at the request of the Obligors' Agent, to consider the transfer or assignment of its rights and obligations under this amended and restated deed and the other relevant Transaction

Documents to which it is a party to another bank or financial institution at par.

- (b) Subject to clause 6.4(a)(i), the relevant Borrower agrees to compensate the Creditor whether or not the increase or the reduction could have been avoided.

## **7 Illegality**

### **7.1 Creditor's right to suspend or cancel**

This clause 7 applies if a Creditor determines in good faith that:

- (a) a change in a Directive;
- (b) a change in the interpretation or administration of a Directive by an authority; or
- (c) a Directive,

makes it (or will make it) illegal in practice for the Creditor to fund, provide, or continue to fund or provide, financial accommodation under any Transaction Document. In these circumstances, the Creditor by giving a notice to the Obligors' Agent, may suspend or cancel some or all of the Creditor's obligations under the relevant Transaction Document as indicated in the notice.

### **7.2 Extent and duration**

The suspension or cancellation:

- (a) must apply only to the extent necessary to avoid the illegality; and
- (b) in the case of suspension, may continue only for so long as the illegality continues.

### **7.3 Notice requiring early repayment or redemption**

If the illegality relates to an amount outstanding to a Creditor, the Creditor (or, in the case of a syndicated facility, the facility agent), by giving a notice to the Obligors' Agent, may require early repayment or redemption of all or part of the affected outstandings and interest accrued on that part. The relevant Borrower in respect of which the Creditor has made a determination under clause 7.1 agrees to repay or redeem the amount specified no later than the date the illegality arises.

### **7.4 Creditor to seek alternative funding method**

The affected Creditor (at no cost to an Obligor) during the period of 90 days after the notice pursuant to clause 7.1 agrees to use reasonable endeavours to make that part of the facility affected by the illegality available by alternative means (including changing its lending office to another then existing lending office or making the financial accommodation available through a Related Entity of the Creditor).

## 8 Representations and warranties

### 8.1 Representations and warranties

Each Obligor (but in the case of a Borrower only from the date that it becomes a Borrower) represents and warrants (except in relation to matters disclosed to the Creditors and accepted in writing by the Creditors) that:

- (a) **(status)** it is a corporation duly incorporated and validly existing under the laws of its place of incorporation;
- (b) **(corporate authorisation, documents binding)** each Transaction Document to which it is a party has been duly authorized by all necessary corporate action on the part of the Obligor and constitutes a legal, valid and binding obligation of the Obligor enforceable against the Obligor in accordance with its terms, except as such enforceability may be limited by:
  - (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally; and
  - (ii) general principles of law (regardless of whether such enforceability is considered in a proceeding in equity or at law);
- (c) **(compliance with laws)** the execution, delivery and performance of the Transaction Documents to which it is a party will not:
  - (i) contravene its constitution;
  - (ii) result in the creation of any Security Interest (other than any Permitted Security Interest) in respect of any property of the Obligor or any of its Subsidiaries (excluding the Excluded Entities);
  - (iii) contravene in any material respect any law to which the Obligor or any of its Subsidiaries (excluding the Excluded Entities) is subject or by which the Obligor or any of its Subsidiaries (excluding the Excluded Entities) or any of their respective properties may be bound;
  - (iv) conflict with or result in a breach in any material respect of any of the terms, conditions or provisions of any order, judgment, decree, or ruling of any court, arbitrator or Government Agency applicable to the Obligor or any of its Subsidiaries (excluding the Excluded Entities); and
  - (v) result in the acceleration or cancellation of any agreement or obligation in respect of Financial Indebtedness of any Group Member (excluding the Excluded Entities);
- (d) **(disclosure)**

- (i) all information given to the Creditors by it or with its authority was, when given, true and correct in all material respects; and
  - (ii) the most recent Form 20-F filed by the Guarantor with the United States Securities and Exchange Commission was prepared and filed in accordance with the applicable requirements of US securities laws;
- (e) **(Group financial statements)**
- (i) the most recent financial statements of the Group (including in each case the related schedules and notes) fairly present in all material respects the consolidated financial position of the Group as at the end of the financial period to which they relate and have been prepared in accordance with GAAP consistently applied throughout the periods involved, except as set forth in the notes thereto (subject, in the case of an interim financial statements, to normal year-end adjustments); and
  - (ii) since the date of delivery of those statements, there has been no change in the financial condition, operations, business or prospects of the Group (excluding the Excluded Entities), except changes that individually or in the aggregate do not or are not likely to have a Material Adverse Effect;
- (f) **(JHIF financial statements)**
- (i) the most recent financial statements of JHIF provided in accordance with clause 9.6(c)(iii) (including in each case the related schedules and notes) fairly present in all material respects the consolidated financial position of JHIF as at the end of the financial period to which they relate and have been prepared in accordance with generally accepted accounting principles as in effect from time to time in the Netherlands consistently applied throughout the periods involved, except as set forth in the notes thereto (subject, in the case of an interim financial statements, to normal year-end adjustments); and
  - (ii) since the date of delivery of those statements, there has been no change in the financial condition, operations, business or prospects of JHIF, except changes that individually or in the aggregate do not or are not likely to have a Material Adverse Effect;
- (g) **(Authorisations)** all Authorisations necessary in connection with the execution, delivery or performance by the Obligor of the Transaction Documents to which it is a party have been obtained and are in full force and effect;
- (h) **(litigation)** except as disclosed in the most recent financial statements of the Group, in an announcement by the Guarantor through the ASX

or under clause 9.6(f) of this amended and restated deed, no litigation, arbitration, administrative proceeding or other procedure for the resolution of disputes is currently taking place or pending against any Group Member (excluding the Excluded Entities) or any Group Member's assets (excluding the Excluded Entities' assets) which has or is likely to have a Material Adverse Effect;

- (i) **(Security Interests)** no Security Interest exists over any Group Member's assets (excluding the Excluded Entities' assets) which is not permitted by clause 9.3;
- (j) **(environmental matters)** each Group Member (excluding the Excluded Entities) has complied with all applicable Environmental Laws and the terms and conditions of any Authorisation issued pursuant to an Environmental Law, except where a failure to comply does not or is not likely to have a Material Adverse Effect;
- (k) **(no immunity)** neither it nor any of its assets has any immunity from jurisdiction, suit, execution, attachment or other legal process in any jurisdiction in which its assets are located or it carries on business;
- (l) **(not a trustee)** it does not enter into any Transaction Document as trustee;
- (m) **(ranking)** its obligations under the Transaction Documents rank at least pari passu with all of its other unsecured and unsubordinated obligations, other than those mandatorily preferred by law;
- (n) **(default under law)** no member of the Group (excluding the Excluded Entities) is in breach of any law, Authorisation, agreement or obligation binding upon it or its assets which has or is likely to have a Material Adverse Effect; and
- (o) **(holding company)** in the case of the Guarantor only, at the date of this amended and restated deed, the Guarantor has no material liabilities other than:
  - (i) creditors, provisions and indemnities incidental to its activities as a holding company without a material operating business,
  - (ii) liabilities under this amended and restated deed and the Guarantee and Subordination Documents;
  - (iii) liabilities to the Fund, the Charitable Fund and the State of New South Wales under the Final Funding Agreement (and Related Agreements, as defined in the Final Funding Agreement), including the Fund Guarantee;
  - (iv) liabilities in relation to taxation; and
  - (v) liabilities to shareholders in their capacity as such not prohibited under the Final Funding Agreement.



## 8.2 When representations and warranties made

Each representation and warranty is made in favour of a Creditor on the date of execution of its Facility Agreement and is not repeated unless specified in that Facility Agreement or in clause 3.2(a).

## 8.3 Reliance on representations and warranties

Each Obligor acknowledges that the Creditors have entered into the Transaction Documents in reliance on the representations and warranties in this clause.

## 9 Undertakings

### 9.1 Application

All undertakings set out in this clause 9 apply to a Facility Agreement unless the Majority Creditor (or under a syndicated facility, an agent or trustee acting on the instructions of the Majority Creditor) under that Facility Agreement consents in writing.

### 9.2 General undertakings

Each Obligor undertakes to each Creditor as follows:

- (a) **(nature of business)** it will not (and will not permit any of its Subsidiaries (excluding the Excluded Entities) to) engage in any business if, as a result, the general nature of the business, taken on a consolidated basis, which would then be engaged in by the Group would be substantially changed from the general nature of the business engaged in by the Group on the date of the relevant Facility Agreement;
- (b) **(compliance with laws)** it will comply (and will procure that its Subsidiaries (excluding the Excluded Entities) comply) with all applicable laws (including, without limitation, all Environmental Laws and the terms and conditions of any Authorisation required under an Environmental Law) in all material respects where non-compliance has or is likely to have a Material Adverse Effect;
- (c) **(ranking)** it will ensure that its obligations to the Creditor under the Transaction Documents rank and will continue to rank at least pari passu with all of its other unsecured and unsubordinated obligations, other than those mandatorily preferred by law;
- (d) **(Financial Indebtedness of Group Members)** in the case of the Guarantor only, and without limiting clauses 9.4(d) or 9.4(e), it will ensure that each Group Member (excluding the Excluded Entities) that is not an Obligor does not incur any Financial Indebtedness owing to any person outside the Group that is not Permitted External Financial Indebtedness;

- (e) **(holding company status)** in the case of the Guarantor only, it will have no material liabilities other than those described in clause 8.1(o); and
- (f) **(Final Funding Agreement)** in the case of the Guarantor only, it will not (without the prior written consent of each relevant Creditor (or under a syndicated facility, an agent or trustee acting on the instructions of the Majority Creditor), such consent not to be unreasonably withheld or delayed) vary, or agree to vary, in any material adverse respect the Final Funding Agreement.

### 9.3 Negative Pledge

Each Obligor undertakes to each Creditor that it will not, and will not permit any of its Subsidiaries (excluding the Excluded Entities) to, create or allow to exist a Security Interest over any of its assets, other than a Permitted Security Interest.

### 9.4 Financial undertakings

- (a) **(Consolidated Net Worth)** The Guarantor must ensure that Consolidated Net Worth is not less than US\$320 million on each Reporting Date and, where applicable, on each ASX CNW Announcement Date.
- (b) **(EBIT)** The Guarantor will ensure that EBIT will not be less than 2.5 times Net Interest Charges for the 12 month period ending on each Reporting Date.
- (c) **(compensation funding)** The Guarantor will ensure that no more than 35% of its Free Cash Flow in any given Financial Year is contributed to the Fund on the payment dates under the Final Funding Agreement in the next following Financial Year.
- (d) **(Funded Debt)** The Guarantor will ensure that the ratio of Consolidated Funded Debt to Consolidated Funded Capitalisation does not exceed 65% at any time.
- (e) **(Permitted External Financial Indebtedness)** The Guarantor will ensure that the ratio of Consolidated Permitted External Financial Indebtedness to Consolidated Funded Capitalisation does not exceed 15% at any time.

### 9.5 GAAP

The financial undertakings in clause 9.4 have been drafted such that compliance with them is based on GAAP . If:

- (a) a Borrower's or Guarantor's accountants or auditors advise at any time that any change to GAAP occurring after 15 June 2005 materially and adversely alters the effect of any such provision (or any related definition) and the Obligors' Agent so notifies the Creditor; or

- (b) the Creditor gives written notice to the Obligors' Agent referring specifically to this clause 9.5 and giving details of a change to GAAP occurring after 15 June 2005 which in the Creditor's opinion (acting reasonably) materially and adversely alters the effect of any such provision (or any related definition),  
then:
- (c) the Creditor and the Guarantor must negotiate in good faith to amend such provision so that they have an effect comparable to that at the date of this amended and restated deed; and
- (d) until such time as the amendments referred to in clause 9.5(c) are agreed, compliance with the relevant provision (and related definitions) will be determined by reference to GAAP.

#### 9.6 Reporting undertakings

The Guarantor shall deliver to each Creditor (or, in the case of a syndicated facility, the facility agent) the following:

- (a) **(quarterly Group statements)** within 60 days after the end of each quarterly fiscal period in each fiscal year of the Guarantor (other than the last quarterly fiscal period of each such fiscal year) a copy of:
  - (i) a consolidated balance sheet of the Group as at the end of such quarter; and
  - (ii) consolidated statements of income, changes in shareholders' equity and cash flows of the Group, for such quarter and (in the case of the second and third quarters) for the portion of the fiscal year ending with such quarter,

setting forth in each case in comparative form the figures for the corresponding periods in the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP applicable to quarterly financial statements generally, and certified by the chief financial officer, treasurer or principal accounting officer of the Group as fairly presenting, in all material respects, the financial position of the companies being reported on and their results of operations and cash flows, subject to changes resulting from year-end adjustments, provided that delivery within the time period specified above of copies of the Guarantor's Quarterly Report on Form 10-Q prepared in compliance with the requirements applicable thereto and filed with the United States Securities and Exchange Commission shall be deemed to satisfy the requirements of this clause 9.6(a);

- (b) **(annual Group statements)** within 105 days after the end of the fiscal year of the Guarantor a copy of:
  - (i) a consolidated balance sheet of the Group, as at the end of such year; and

(ii) consolidated statements of income, changes in shareholders' equity and cash flows of the Group, for such year,

setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP, and accompanied by an opinion thereon of independent certified public accountants of recognised national standing, which opinion shall state that such financial statements present fairly, in all material respects, the financial position of the companies being reported upon and their results of operations and cash flows and have been prepared in conformity with GAAP, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and that such audit provides a reasonable basis for such opinion in the circumstances, provided that the delivery within the time period specified above of the Guarantor's Annual Report on Form 10-K for such fiscal year (together with the Guarantor's annual report to shareholders, if any, prepared pursuant to Rule 14a-3 under the Exchange Act) prepared in accordance with the requirements applicable thereto and filed with the United States Securities and Exchange Commission shall be deemed to satisfy the requirements of this clause 9.6(b);

(c) **(JHIF and JHBP statements and reports)**

(i) at the same time at which each financial statement or report is delivered pursuant to clause 9.6(a) ("**Consolidated Quarterly Statement**") and for as long as the JHIF Financial Reports are prepared as a matter of general internal accounting practice of the Obligor, a copy of the JHIF Financial Reports for the year to date as at the end of the quarterly fiscal period to which the Consolidated Quarterly Statement relates;

(ii) at the same time at which each financial statement or report is delivered pursuant to clause 9.6(b) ("**Consolidated Annual Statement**") and for as long as the JHIF Financial Reports are prepared as a matter of general internal accounting practice of the Obligor, a copy of the JHIF Financial Reports for the fiscal year to which the Consolidated Annual Statement relates;

(iii) within 180 days after the end of the fiscal year of JHIF a copy of:

(A) the balance sheet of JHIF, as at the end of such year; and

(B) a statement of income, changes in shareholders' equity and cash flows of JHIF, for such year,

setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, prepared in accordance with generally accepted accounting principles as

in effect from time to time in the Netherlands, and accompanied by an opinion thereon of independent certified public accountants of recognised national standing in the Netherlands, which opinion shall state that such financial statements present fairly, in all material respects, the financial position of JHIF and its results of operations and cash flows and have been prepared in conformity with generally accepted accounting principles as in effect from time to time in the Netherlands, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards in the Netherlands, and that such audit provides a reasonable basis for such opinion in the circumstances;

- (iv) at the same time at which each Consolidated Quarterly Statement is delivered pursuant to clause 9.6(a) and for as long as the JHBP Financial Reports are prepared as a matter of general internal accounting practice of the Obligors, a copy of the JHBP Financial Reports for the year to date as at the end of the quarterly fiscal period to which the Consolidated Quarterly Statement relates; and
  - (v) at the same time at which each Consolidated Annual Statement is delivered pursuant to clause 9.6(b) and for as long as the JHBP Financial Reports are prepared as a matter of general internal accounting practice of the Obligors, a copy of the JHBP Financial Reports for the fiscal year to which the Consolidated Annual Statement relates;
- (d) **(SEC and other reports)** promptly upon their becoming available, one copy of:
- (i) to the extent not already provided under clauses 9.6(a), 9.6(b) or 9.6(c), each financial statement, report, notice or proxy statement sent by a Group Member (other than an Excluded Entity) to public securities holders generally; and
  - (ii) each regular or periodic report, each registration statement (without exhibits, except as expressly requested by the Creditor or facility agent as the case may be), and each prospectus and all amendments thereto filed by a Group Member (other than an Excluded Entity) with the United States Securities and Exchange Commission and all announcements made by the Guarantor through ASX and press releases and other statements made available generally by any Group Member (other than an Excluded Entity) to the public concerning developments that are material;
- (e) **(Notice of Event of Default or Potential Event of Default)** promptly upon becoming aware of it, written notice to each Creditor (or, in the case of a syndicated facility, the facility agent) of:
- (i) the existence of any Event of Default or Potential Event of Default; and

- (ii) the occurrence of any event which has or is likely to have a Material Adverse Effect;
- (f) **(litigation)** to the extent not disclosed in a document provided under clauses 9.6(a), 9.6(b), 9.6(c), 9.6(d) or 9.6(e), notice in writing and in reasonable detail of any litigation, arbitration, administrative proceeding or other procedure for the resolution of disputes commenced, taking place, pending or to its knowledge, threatened against any Group Member (other than an Excluded Entity) or any Group Member's assets (other than an Excluded Entity's assets) which has or is likely to have a Material Adverse Effect; and
- (g) **(requested information)** such other information relating to the business, operations and condition (financial or otherwise) of the Group (excluding the Excluded Entities) as from time to time may be reasonably requested by a Creditor (but excluding any information which the Guarantor is bound by an obligation of confidentiality not to disclose).

#### 9.7 Officer's certificate

Each set of consolidated financial statements delivered pursuant to clause 9.6(a) or 9.6(b) shall be accompanied by:

- (a) a supplementary set of financial statements for the Group (excluding the Excluded Entities), showing adjustments made to the consolidated financial statements to eliminate the impact of the Excluded Entities; and
- (b) a certificate of the chief financial officer, treasurer or principal accounting officer of the Group setting forth the information (including reasonably detailed calculations) required in order to establish whether the Guarantor was in compliance with the relevant requirements of clause 9.4.

#### 10 Events of default

##### 10.1 Events of Default

Each of the following is an Event of Default:

- (a) **(non-payment of principal)** a Borrower fails to pay an amount of principal payable by it under a Facility Agreement when due and does not remedy that failure within 2 Business Days after that amount becomes due and payable;
- (b) **(non-payment of other amounts)** a Borrower fails to pay any amount, other than an amount described in paragraph (a), payable by it under a Facility Agreement and does not remedy that failure within 3 Business Days after that amount becomes due and payable;

- (c) **(financial undertakings)**
- (i) there is at any time a breach of any financial undertaking in clause 9.4 and, in the case of a breach of clause 9.4(d) or 9.4(e), the breach is not cured within 10 Business Days of the Guarantor receiving written notice from a Creditor (or, in the case of a syndicated facility, the facility agent) requiring such remedy; or
  - (ii) the Guarantor fails to deliver a certificate as required by clause 9.7(b) within 7 days of receipt of written notice from a Creditor of failure to provide such certificate;
- (d) **(other default)**
- (i) any Obligor defaults in the performance of or compliance with any material obligation contained in a Transaction Document (other than those referred to in clause 10.1(a), 10.1(b) or 10.1(c)); and
  - (ii) the default is not waived or, if capable of remedy, the default is not remedied within 21 days of the Obligor receiving written notice from a Creditor (or, in the case of a syndicated facility, the facility agent) referring specifically to this clause 10.1(d) and requiring such remedy;
- (e) **(Final Funding Agreement)** the Group Member primarily liable to make funding payments to the Fund under the Final Funding Agreement defaults in the performance of, or compliance with, its obligation to make any such payment when due or within any applicable grace period and such default is not cured by that Group Member or the Guarantor within 3 Business Days;
- (f) **(misrepresentation)**
- (i) any representation or warranty made or deemed to be made by an Obligor in a Transaction Document proves to have been inaccurate in any material respect when made or deemed to be repeated; and
  - (ii) the misrepresentation or breach of warranty is not waived or, if capable of remedy, the matter giving rise to the misrepresentation or breach of warranty is not remedied within 21 days of the Obligor becoming aware that the representation or warranty was inaccurate when made or deemed to have been repeated;
- (g) **(cross-default)**
- (i) an Obligor is in default in the payment of any Financial Indebtedness that is outstanding in an aggregate principal amount of at least US\$20,000,000 (or its equivalent in another currency) beyond any period of grace provided with

respect thereto and such Financial Indebtedness is not paid within 3 Business Days; or

- (ii) any Financial Indebtedness of an Obligor exceeding US\$20,000,000 (or its equivalent in another currency) has become, or has been declared, due and payable before its stated maturity and such Financial Indebtedness is not paid within 3 Business Days.
- (h) **(insolvency)** a Relevant Entity:
- (i) is generally not paying, or admits in writing its inability to pay, its debts as they become due;
  - (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganisation or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, reorganization, moratorium or other similar law of any jurisdiction (for the avoidance of doubt, this includes, in respect of a person established under Dutch law, a filing of a petition by it with any court in the Netherlands in relation to its bankruptcy (*faillissement*) or suspension of payments (*surseance van betaling*));
  - (iii) makes an assignment for the benefit of its creditors;
  - (iv) consents to the appointment of a custodian, receiver, receiver and manager, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property;
  - (v) consents to the appointment of an administrator;
  - (vi) is adjudicated as insolvent or to be liquidated; or
  - (vii) takes corporate action for the purpose of any of the foregoing.
- (i) **(receiver)**
- (i) A court or Government Agency of competent jurisdiction enters an order appointing, without consent by a Relevant Entity, a custodian, receiver, receiver and manager, trustee or other officer with similar powers with respect to the Relevant Entity or with respect to any substantial part of its property, or constituting an order for relief or approving a petition for relief or reorganisation or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Relevant Entity, or any such petition shall be filed against the Relevant Entity (other than a frivolous or vexatious petition) and such petition is not dismissed or cancelled within 30 days (and for the avoidance of doubt, this includes, in respect of a person



established under Dutch law, appointment by a court of a trustee (*curator*) in relation to its bankruptcy or appointment by a court of a receiver (*bewindvoerder*) in relation to its provisional suspension of payments); or

- (ii) an administrator of the Relevant Entity is appointed; or
- (iii) a receiver, receiver and manager, administrative receiver or similar officer is appointed to all or any substantial part of the assets of a Relevant Entity in respect of Financial Indebtedness that has been due and payable for at least 5 Business Days in an aggregate principal amount of at least US\$20,000,000 (or its equivalent in another currency) and that officer is not removed within 7 days of his appointment;
- (j) **(judgment)** a final judgment or judgments for the payment of money aggregating in excess of US\$20,000,000 (or its equivalent in another currency) are rendered against a Relevant Entity and such judgments are not, within 45 days after entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within 45 days after the expiration of such stay;
- (k) **(vitiation of documents)**
  - (i) any material provision of a Transaction Document ceases for any reason to be in full force and effect or becomes void, voidable or unenforceable;
  - (ii) any law suspends, varies, terminates or excuses performance by an Obligor of any of its material obligations under a Transaction Document or purports to do any of the same;
  - (iii) it becomes impossible or unlawful for an Obligor to perform any of its material obligations under a Transaction Document or for the Creditors to exercise all or any of their rights, powers and remedies under a Transaction Document; or
  - (iv) an Obligor alleges that a Transaction Document has been affected as described in this paragraph;
- (l) **(ownership of Borrower)** any Borrower ceases to be directly or indirectly fully owned and controlled by the Guarantor;
- (m) **(Authorisation)** any Authorisation necessary in connection with the execution, delivery or performance by an Obligor of the Transaction Documents, or the validity or enforceability of the Transaction Documents, is not granted or ceases to be in full force and effect for any reason or is modified or amended in a manner which, in the reasonable opinion of all Creditors, would have a Material Adverse Effect; or
- (n) **(material change)** a change occurs in the financial condition of the Group (as a whole, but excluding the Excluded Entities) which has a Material Adverse Effect.

## 10.2 Consequences of default

If an Event of Default is continuing, a Creditor (or, in the case of a syndicated facility, an agent or trustee acting on the instructions of the Majority Creditor) may declare at any time by notice to the Obligors' Agent that:

- (a) an amount equal to all or any part of the Outstanding Moneys payable to the Creditor (or, in the case of a syndicated facility, the facility agent) is:
  - (i) payable on demand; or
  - (ii) immediately due for payment;
- (b) the obligations of the Creditor specified in the notice are terminated and cancelled.

A Creditor (or, in the case of a syndicated facility, the facility agent) may make either or both of these declarations. The making of either of them gives immediate effect to its provisions.

## 11 Review events

If, at any time after the date of a Facility Agreement and for any reason, whether or not within the control of the Obligors:

- (a) a Change of Control occurs;
- (b) the securities of the Guarantor are suspended from quotation by ASX for more than 10 Business Days or the Guarantor is removed from the Official List of ASX; or
- (c) provisions made by the Group in accordance with GAAP for asbestos related liabilities (if any) not arising in connection with the Final Funding Agreement exceed 15% of Consolidated Net Worth at that time (with Consolidated Net Worth for this purpose calculated by adding back all such asbestos related liabilities under this paragraph (c), ignoring the 15% cap),

then the Guarantor must notify each Creditor (or, in the case of a syndicated facility, the facility agent) in writing of the occurrence of the event as soon as reasonably practicable. A Creditor may, by notice to any Borrower (with a reasonably detailed explanation of the reasons for its election to discontinue funding that Borrower) within 60 days of the date of receipt of notice from the Guarantor:

- (d) cancel its commitment to provide financial accommodation under the relevant Facility Agreement with immediate effect; and/or
- (e) declare the moneys borrowed under the relevant Facility Agreement to be, and the borrowed moneys will be, due and payable on a date no earlier than 90 days from the date of the Creditor's notice.

## **12 Costs and indemnities**

### **12.1 What the Borrower agrees to pay**

Each relevant Borrower agrees to pay a Creditor promptly on demand to the Obligors' Agent from that Creditor (except in the case of a Creditor under a syndicated facility, in which case demand must be made by the facility agent):

- (a) the reasonable Costs of each Creditor in connection with:
  - (i) the registration of any Transaction Document; and
  - (ii) giving and considering consents, waivers, variations, discharges and releases requested by the relevant Borrower, the Guarantor or the Obligors' Agent;
- (b) the Costs of each Creditor in exercising, enforcing or preserving rights in connection with a Transaction Document; and
- (c) Taxes and fees (including registration fees) (other than Excluded Taxes) and fines and penalties in respect of fees paid in connection with any Transaction Document or a payment or receipt or any other transaction contemplated by any Transaction Document. However, the relevant Borrower need not pay a fine or penalty in connection with Taxes or fees to the extent that it has lodged with the relevant Creditor sufficient cleared funds for the relevant Creditor to be able to pay the Taxes or fees by the due date.

This clause 12.1 shall not apply to any amounts, which have otherwise been paid or compensated for under a Transaction Document.

### **12.2 Indemnity**

Each relevant Borrower indemnifies each Creditor against any claim, action, damage, loss, liability, cost, charge, expense, outgoing and payment of Break Costs which that Creditor pays, suffers, incurs or is liable for in connection with:

- (a) any failure by the relevant Borrower to draw down financial accommodation requested by it under a Transaction Document for any reason except default of a Creditor;
- (b) financial accommodation under a Transaction Document being repaid, discharged or made payable other than at its maturity, an interest payment date or other due date applicable to it;
- (c) any failure to prepay any part of the amount outstanding to a Creditor in accordance with a prepayment notice given under a Facility;
- (d) a Creditor acting in connection with a Transaction Document in good faith on fax or telephone instructions which have no apparent irregularity on their face, purport to originate from the offices of an Obligor or to be given by an Authorised Officer of an Obligor which,

in the case of fax instructions, are signed and such signature accords with a current specimen signature of an Authorised Officer in the possession of the Creditor;

- (e) an Event of Default or Potential Event of Default;
- (f) a Creditor exercising or attempting to exercise a right or remedy in connection with a Transaction Document after an Event of Default; or
- (g) any indemnity a Creditor gives a Controller or administrator of the Obligor.

Each Borrower agrees to pay amounts due under this indemnity on demand to the Obligors' Agent from the applicable Creditor (except in the case of a Creditor under a syndicated facility, in which case demand must be made by, and payment must be made to the facility agent).

### **12.3 Currency conversion on judgment debt**

If a judgment, order or proof of debt for an amount in connection with a Transaction Document is expressed in a currency other than that in which the amount is due under the Transaction Document, then the relevant Borrower indemnifies each Creditor against:

- (a) any difference arising from converting the other currency if the rate of exchange used by the Creditor under clause 4.2 ("Currency of payment") for converting currency when it receives a payment in the other currency is less favourable to the Creditor than the rate of exchange used for the purpose of the judgment, order or acceptance of proof of debt; and
- (b) the Costs of conversion.

Each Borrower agrees to pay amounts due under this indemnity to a Creditor on demand from that Creditor (except in the case of a Creditor under the syndicated facility, in which case demand must be made by the facility agent).

### **12.4 Indirect Taxes**

- (a) All payments to be made by an Obligor under or in connection with any Transaction Document have been calculated without regard to Indirect Tax. If all or part of any such payment is the consideration for a taxable supply or chargeable with Indirect Tax then, when the Obligor makes the payment:
  - (i) it must pay to the Creditor an additional amount equal to that payment (or part) multiplied by the appropriate rate of Indirect Tax; and
  - (ii) the Creditor will promptly provide to the Obligor a tax invoice complying with the relevant law relating to that Indirect Tax.

- (b) Where a Transaction Document requires an Obligor to reimburse a Creditor for any costs or expenses, that Obligor shall also at the same time pay and indemnify that Creditor against all Indirect Tax incurred by that Creditor in respect of the costs or expenses save to the extent that that Creditor is entitled to repayment or credit in respect of the Indirect Tax. The Creditor will promptly provide to the Obligor a tax invoice complying with the relevant law relating to that Indirect Tax.

### **13 Interest on overdue amounts**

#### **13.1 Obligation to pay**

If an Obligor does not pay any amount under any Transaction Document (including an amount of interest payable under this clause 13.1 on the due date for payment, that Obligor must pay interest on that amount at the Default Rate. The interest accrues daily from (and including) the due date to (but excluding) the date of actual payment and is calculated on actual days elapsed and either a 360 or 365 day year, whichever is the length of time customarily adopted for such calculations for the currency in which the relevant amount is denominated.

The relevant Obligor must pay interest under this clause to the relevant Creditor.

#### **13.2 Compounding**

Interest payable under clause 13.1 (“Obligation to pay”), which is not paid when due for payment, may be added to the overdue amounts by the relevant Creditor on the last Business Day of each calendar month. Interest is payable on the increased overdue amount at the Default Rate in the manner set out in clause 13.1 (“Obligation to pay”).

#### **13.3 Interest following judgment**

If a liability becomes merged in a judgment, the relevant Obligor must pay interest on the amount of that liability as an independent obligation. This interest:

- (a) accrues daily from (and including) the date the liability becomes due for payment both before and after the judgment up to (but excluding) the date the liability is paid; and
- (b) is calculated at the judgment rate or the Default Rate (whichever is higher).

The relevant Obligor must pay interest under this clause 13 to the relevant Creditor on demand from the relevant Creditor.

**14 Change of Borrowers**

**14.1 New Borrowers**

A Wholly Owned Subsidiary of the Guarantor may, with the consent of each relevant Creditor, become a party to this amended and restated deed as a Borrower (after the date of this amended and restated deed) by:

- (a) signing and delivering to each relevant Creditor (or, in the case of a syndicated facility, the facility agent) a deed poll substantially in the form of schedule 3 ("Form of New Borrower Deed Poll"); and
- (b) doing any other thing the relevant Creditors reasonably request to ensure the enforceability of that company's obligations as a Borrower and, if requested, agrees to provide an opinion in form and substance satisfactory to the relevant Creditors from legal advisers of recognised standing acceptable to the relevant Creditors in that company's place of incorporation confirming such enforceability.

The Guarantor will confirm in writing to each relevant Creditor that the Guarantee Trust Deed applies to the borrowings of the new Borrower under the relevant Facility Agreements.

**14.2 Release of Borrowers**

- (a) The Guarantor may request that a Borrower cease to be a Borrower by giving to each relevant Creditor (or, in the case of a syndicated facility, the facility agent) a duly completed Release Request executed by an Authorised Officer of the Guarantor and the Borrower that is, subject to the remaining provisions of this clause, to cease being a Borrower.
- (b) On giving a Release Request to the Creditor (or, in the case of a syndicated facility, the facility agent) pursuant to clause 14.2(a), the Guarantor and the Borrower identified in that Release Request represent and warrant to the Creditor that no Event of Default or Potential Event of Default is outstanding or would result from the release of that Borrower from its obligations under this amended and restated deed.
- (c) The Creditor (or, in the case of a syndicated facility, the facility agent) must, as soon as reasonably practicable after receiving a Release Request, execute a Deed of Release releasing the Borrower identified in the Release Request from its obligations under this amended and restated deed if, and only if:
  - (i) no amount due and payable to that Creditor by that Borrower under this amended and restated deed remains outstanding and unpaid; and

- (ii) that Creditor is not committed to providing further financial accommodation to that Borrower pursuant to any Facility.
- (d) The Borrower identified in the Release Request will cease to be a Borrower when the Creditor (or, in the case of a syndicated facility, the facility agent) executes a Deed of Release in respect of that Borrower.

## **15 Dealing with interests**

### **15.1 Dealings by Obligor**

An Obligor may only assign or otherwise deal with its rights or obligations under any Transaction Document with the consent of each Creditor.

### **15.2 Dealings by Creditors**

A Creditor may assign, transfer, sub-participate or otherwise deal with all or any of its rights or obligations under a Transaction Document at any time if:

- (a) the Obligors' Agent has given its prior consent, which consent shall not be unreasonably withheld;
- (b) in respect of any Dutch Borrower, the assignment, transfer, sub-participation or other dealing is to or with a PMP; and
- (c) in the case of a transfer of obligations, the transfer is effected by a novation in form and substance reasonably satisfactory to the relevant Borrower.

### **15.3 Change in lending office**

A Creditor may change its lending office if it first notifies and consults with the Obligors' Agent. If this occurs, clause 15.5 will apply.

### **15.4 Securitisation permitted**

- (a) Subject to clause 15.4(b), a Creditor may, without having to obtain the consent of or notify any Obligor, assign, transfer, sub-participate or otherwise deal with all or any part of its rights and benefits under any Transaction Document to a trustee of a trust, company or other entity which in each case is established for the purposes of securitisation and, to the extent required for the Dutch Borrower to comply with the Banking Act on the Financial Supervision is a PMP.
- (b) Notwithstanding any assignment, transfer, sub-participation or other dealing by that Creditor under clause 15.4(a):
  - (i) that Creditor remains bound by, and must continue to perform all its obligations under the Transaction Documents;
  - (ii) that Creditor is the only person entitled to exercise any power, and no assignee, transferee, sub-participant or other person who obtains an interest in any of the rights or benefits of that

Creditor under the Transaction Documents pursuant to clause 15.4(a) may do so; and

- (iii) any amount payable by the Obligors to that Creditor under any Transaction Document will, if paid by an Obligor to that Creditor, operate as an effective discharge of the Obligor's obligation to make that payment.

(c) Nothing done by a Creditor under this clause 15.4 will affect any Obligor's rights under any Transaction Documents.

#### **15.5 No increased costs**

Despite anything to the contrary in this amended and restated deed or the Transaction Documents, if a Creditor changes its lending office or transfers, assigns, novates or otherwise deals with its rights or obligations under the Transaction Documents, then no Obligor will be required to pay:

- (a) any net increase in the total amount of fees, Taxes, costs, expenses or charges which arises as a consequence of the change in lending office, transfer, assignment, novation or other dealing; or
- (b) any fees, Taxes, costs, expenses or charges in respect of the change in lending office, transfer, assignment, novation or other dealing.

A substitution will be regarded as a transfer for the purposes of this clause 15.5.

#### **15.6 Professional Market Party (PMP)**

The Obligors acknowledge that unless the Creditors are notified in writing by the Obligors' Agent of a change in the meaning of "PMP" as defined in the Act on the Financial Supervision, the Creditors will rely on, and will not independently investigate, the definition of PMP set out in this amended and restated deed for the purpose of complying with the requirements of clause 15.2(b) and 15.4(a).

#### **16 Obligors' Agent**

##### **16.1 Obligors' Agent as agent of the Obligors**

Each Obligor (other than the Obligors' Agent):

- (a) irrevocably authorises the Obligors' Agent to act on its behalf as its agent in relation to the Transaction Documents, including:
  - (i) to give and receive as agent on its behalf all notices and instructions (including drawdown notices);
  - (ii) to sign on its behalf all documents in connection with the Transaction Documents (including amendments and variations of any Transaction Documents, and to execute any new Transaction Documents); and



- (iii) to take such other action as may be necessary or desirable under or in connection with the Transaction Documents; and
- (b) confirms that it will be bound by any action taken by the Obligors' Agent under or in connection with the Transaction Documents.

## **16.2 Acts of Obligors' Agent**

- (a) The respective liabilities of each of the Obligors under the Transaction Documents shall not be in any way affected by:
  - (i) any actual or purported irregularity in any act done or failure to act by the Obligors' Agent;
  - (ii) the Obligors' Agent acting (or purporting to act) in any respect outside any authority conferred upon it by any Obligor; or
  - (iii) any actual or purported failure by or inability of the Obligors' Agent to inform any Obligor of receipt by it of any notification under the Transaction Documents.
- (b) In the event of any conflict between any notices or other communications of the Obligors' Agent and any other Obligor, those of the Obligors' Agent shall prevail.

## **17 Notices**

### **17.1 Form**

Unless expressly stated otherwise in a Transaction Document, all notices, certificates, consents, approvals, waivers and other communications in connection with that Transaction Document ("**Notices**") must be in writing, signed by an Authorised Officer of the sender and marked for attention as set out or referred to in the Details of this amended and restated deed or another Transaction Document or, if the recipient has notified otherwise, marked for attention in the way last notified.

### **17.2 Delivery**

Notices must be:

- (a) delivered to the address set out or referred to in this amended and restated deed or as set out as the recipient's relevant address in another Transaction Document; or
- (b) sent by prepaid post (airmail, if appropriate) to the address set out or referred to in the Details or as set out as the recipient's address in another Transaction Document; or
- (c) sent by fax to the fax number set out or referred to in the Details or as set out as the recipient's relevant fax number in another Transaction Document.

However, if the intended recipient has notified a changed postal address or changed fax number, then the communication must be to that address or number.

**17.3 When effective**

Notices take effect from the time they are received unless a later time is specified in them.

**17.4 Receipt — postal**

If sent by post, Notices are taken to be received three Business Days after posting (or five Business Days after posting if sent across national boundaries).

**17.5 Receipt — fax**

If sent by fax, Notices are taken to be received at the time shown in the transmission report as the time that the whole fax was sent.

**17.6 Receipt — general**

Despite clauses 17.4 (“Receipt — postal”) and 17.5 (“Receipt — fax”), if Notices are received after 5:00pm in the place of receipt or on a non-Business Day, they are taken to be received at 9:00am on the next Business Day.

**17.7 Notices to or from facility agent**

A Notice to or from a facility agent appointed under a syndicated facility constitutes sufficient notice to or from the Creditors under that Facility Agreement for the purposes of this amended and restated deed.

**17.8 Waiver of notice period**

The Majority Creditor may waive a period of notice required to be given by an Obligor under any Transaction Document.

**18 General**

**18.1 Consents**

Each Obligor agrees to comply with all conditions in any consent a Creditor gives in connection with a Transaction Document if the Obligor relies on that consent in performing its obligations under the Transaction Documents.

**18.2 Certificates**

A Creditor may give an Obligor a certificate about an amount payable or other matter in connection with a Transaction Document. Subject to any applicable provision of the Transaction Documents specifying the form or content of the certificate (including clause 6.2 of this amended and restated deed), the certificate is sufficient evidence of the amount or matter, unless it is proved to be incorrect.

**18.3 Set-off**

At any time after a declaration is made under clause 10.2 of this amended and restated deed, the Creditor making the declaration (or on whose behalf a declaration was made by a facility agent for a syndicate of financiers) may set off any amount due for payment by the Creditor to an Obligor against any amount due for payment by the Obligor to the Creditor under the Transaction Document.

**18.4 Discretion in exercising rights**

A Creditor may exercise a right or remedy or give or refuse its consent under a Transaction Document in any way it considers appropriate (including by imposing conditions).

**18.5 Partial exercising of rights**

If a Creditor does not exercise a right or remedy under a Transaction Document fully or at a given time, the Creditor may still exercise it later.

**18.6 No liability for loss**

No Creditor is liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy under a Transaction Document.

**18.7 Conflict of interest**

A Creditor's rights and remedies under any Transaction Document may be exercised even if this involves a conflict of duty or the Creditor has a personal interest in their exercise.

**18.8 Remedies cumulative**

The rights and remedies of a Creditor under any Transaction Document are in addition to other rights and remedies given by law independently of the Transaction Document.

**18.9 Indemnities**

Any indemnity in a Transaction Document is a continuing obligation, independent of each Obligor's other obligations under that Transaction Document and continues after the Transaction Document ends. It is not necessary for a Creditor to incur expense or make payment before enforcing a right of indemnity under a Transaction Document.

**18.10 Rights and obligations are unaffected**

Rights given to a Creditor under a Transaction Document and each Obligor's liabilities under it are not affected by anything which might otherwise affect them at law.

**18.11 Inconsistent law**

To the extent permitted by law, each Transaction Document prevails to the extent it is inconsistent with any law.

**18.12 Supervening legislation**

Any present or future legislation which operates to vary the obligations of any Obligor in connection with a Transaction Document with the result that a Creditor's rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

**18.13 Variation**

A provision of a Transaction Document, or right created under it, may not be varied except in writing signed by the party or parties to be bound (whether directly or through a properly authorised agent or attorney). A provision of this amended and restated deed may only be amended by agreement between the Obligors and each relevant Creditor.

**18.14 Waiver**

A provision of this amended and restated deed or right created under it may not be waived except in writing by the party granting the waiver.

**18.15 Confidentiality**

No Obligor or Creditor may disclose information provided by any party to a Transaction Document that is not publicly available (including the existence of or contents of any Transaction Document) except:

- (a) to any person in connection with an exercise of rights or (subject to compliance with clause 15 a dealing with rights or obligations under a Transaction Document (including when a Creditor consults other Creditors after an Event of Default or in connection with preparatory steps such as negotiating with any potential assignee or potential sub-participant or other person who is considering contracting with the Creditor in connection with a Transaction Document);
- (b) on a confidential basis, to officers, employees, legal and other advisers and auditors of any Obligor or Creditor;
- (c) on a confidential basis, to any party to a Transaction Document or any Related Entity of any party to a Transaction Document;
- (d) with the consent of the party who provided the information (such consent not to be unreasonably withheld); or
- (e) as required by any law or stock exchange or any Governmental Agency (including for US and Dutch tax authorities).

Each Obligor and Creditor is taken to consent to disclosures made in accordance with this clause 18.15.

**18.15A Creditor's compliance with law**

Each Obligor consents to a Creditor obtaining, verifying, recording and/or disclosing to any Government Agency all information concerning that Obligor, the Transaction Documents and the transactions contemplated thereunder which the Creditor is required by the law of any country (including, without limitation, laws relating to money laundering and/or the financing of terrorism) to obtain, verify, record and/or disclose. The Obligors agree to provide all information to the Creditor that the Creditor reasonably requires to comply with any such law.

**18.16 No responsibility for other's obligations**

If a Creditor does not comply with its obligations under a Transaction Document, this does not relieve any other Creditor or an Obligor of any of their respective obligations. No party is responsible for the obligations of another party.

**18.17 Further steps**

Each Obligor agrees to do anything a Creditor reasonably asks (such as obtaining consents, signing and producing documents and getting documents completed and signed):

- (a) to bind the Obligor and any other person intended to be bound under a Transaction Document;
- (b) to enable a Creditor to register any power of attorney or any Transaction Document; or
- (c) to show whether the Obligor is complying with this amended and restated deed.

**18.18 Counterparts**

A Transaction Document may consist of a number of copies, each signed by one or more parties to the document. If so, the signed copies are treated as making up the one document.

**18.19 Governing law**

Each Transaction Document is governed by the law in force in New South Wales. Each Obligor submits to the non-exclusive jurisdiction of the courts of that place.

**18.20 Serving documents**

Subject to clause 18.21 ("Process Agent") and without preventing any other method of service, any document in a court action may be served on a party by being delivered to or left at that party's address for service of notices under clause 17 ("Notices").

**18.21 Process Agent**

Each Non-Australian Obligor appoints James Hardie Australia Pty Limited (ABN 12 084 635 558) of Level 3, 22 Pitt Street, Sydney NSW 2000 (Attention: The Company Secretary) as its agent for service of process to receive any document in connection with the Transaction Documents. If for any reason James Hardie Australia Pty Limited (ABN 12 084 635 558) ceases to be able to act as process agent for the Non-Australian Obligor, the Non-Australian Obligor must promptly appoint another person in New South Wales to act as its process agent and must promptly notify each Creditor (or, in the case of a syndicated facility, the facility agent) of that appointment.

**18.22 Each Creditor's consent to this amended and restated deed**

The terms of this amended and restated deed will take effect (and prevail over the terms of the Previous Deeds) as between the Obligors and a Creditor only after that Creditor has provided its written consent to the Obligors in respect of this amended and restated deed and until that time the Previous Deeds will apply as between the Obligors and that Creditor.

Subject to the above paragraph, the Previous Deeds remain in full force and effect.

**EXECUTED** as a deed poll

**James Hardie — Common Terms Deed Poll**

Schedule 1 — Verification Certificate (clause 3.1)



[name]  
[address]

Tel [insert]  
Fax [insert]

To: [Name of financier]

**US\$[•] Facility Agreement dated [•]2008 between James Hardie International Finance B.V. and [Name of financier] (“Facility Agreement”)**

I [name] am a director of [James Hardie International Finance B.V. (with corporate seat in Amsterdam) / James Hardie Industries N.V. (with corporate seat in Amsterdam) / James Hardie Building Products, Inc. (incorporated in Delaware)] (“**Company**”). I refer to the Facility Agreement. Definitions in the Facility Agreement apply in this Certificate.

**I CERTIFY** as follows:

1 Attached to this Certificate is a complete and up to date copy of:

- (a) the constituent documents of the Company; and
- (b) a written resolution of the Managing Board and power of attorney in the name of the Company, evidencing resolutions of the Managing Board approving execution of those of the following documents to which the Company is expressed to be a party, appointing attorneys for that purpose and appointing Authorised Officers of the Company for the purposes of those documents:
  - (i) the Facility Agreement;
  - (ii) the Common Terms Deed Poll; and
  - (iii) any Beneficiary Nomination Letter, Facility Nomination Letter or Financier Nomination Letter in relation to the Facility Agreement.

Those resolutions and that power of attorney have not been amended, modified or revoked and are in full force and effect.

2 Set out below are specimen signatures of the Authorised Officers of the Company.

**Authorised Officers#**

**Name**

**Position**

**Signature**

\*  
\*  
\*

\*  
\*  
\*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
# One of the Authorised Officers must be the chief financial officer, treasurer or principal accounting officer of the Group (see clause 9.7 of the Common Terms Deed Poll).

**DATED** 2008

\_\_\_\_\_  
Name:



**James Hardie — Common Terms Deed Poll**

Schedule 2 — Facility Nomination Letter  
(clause 2.1)



**James Hardie**

**James Hardie International  
Finance B.V.**

Atrium, Unit 08  
Strawinskylaan 3077  
1077 ZX Amsterdam  
The Netherlands

Tel +31 20 3012980  
Fax +31 20 4042544

To: [Creditor]

[Date]

**James Hardie — Common Terms Deed Poll — Facility Nomination Letter**

We refer to the James Hardie — Common Terms Deed Poll as amended and restated on 1] 2008 (“CTDP”).

For the purposes of the CTDP, on and from the date of this letter:

1. we nominate [each of] the following agreement[s] as a Facility Agreement:

Name: [•]

Date: [•]

Parties:[•]

[repeat as necessary]

2. the agreement, and each document named or referred to as a [“Financing Document”] in such agreement, is a Transaction Document for the purposes of the CTDP; and

3. we nominate you as a “Creditor” pursuant to that Facility Agreement.

Please confirm your acceptance of the above nomination, and the benefit and obligations of the CTDP, by signing and returning the attached copy of this letter.

Clauses 1 (“Interpretation”) and 18.19 (“Governing law”) of the CTDP described above apply to this letter as they were fully set out in this letter.

For and on behalf of

**James Hardie International Finance B.V. as Obligors’ Agent**

(with corporate seat in Amsterdam)

Authorised Officer: [Name]

We accept and agree to the above nomination. We accept the benefit and obligations of the CTDP, and we agree to be bound by the terms of that deed. We confirm that we are *[insert relevant category of PMP, eg, a company from which redeemable funds will be obtained in an amount of at least EUR 50,000 (or the equivalent in another currency)]* and accordingly we are a PMP within the meaning of the CTDP. In making this representation, we rely on, and have not independently investigated, the definition of PMP set out in the CTDP.

For and on behalf of *[Insert name of Creditor]*

by its Authorised Officer

Name:

Title:

**James Hardie — Common Terms Deed Poll**

Schedule 3 — Form of New Borrower Deed Poll  
(clause 14.1)

**Deed Poll**

---

**New Borrower** *[Insert name and ABN/ACN or other registration number]*

of: *[Insert address]*

Fax no:

Attention:

**CTDP** James Hardie — Common Terms Deed Poll as amended and restated on [•] 2008

**BY THIS DEED POLL** the New Borrower described above, for the benefit of each Creditor under the CTDP described above:

- (a) irrevocably agrees that from the date of this deed poll it is a Borrower under the CTDP;
- (b) irrevocably agrees to comply with and be bound by all current and future obligations of a Borrower or an Obligor under the CTDP or any other Transaction Document to which it is a party;
- (c) acknowledges having read a copy of the CTDP before signing this deed poll;
- (d) gives, as at the date of this deed poll, all representations and warranties on the part of a Borrower or an Obligor contained in the CTDP; and
- (e) acknowledges receiving valuable consideration for this deed poll.

Clauses 1 (“Interpretation”) and 18.19 (“Governing law”) of the CTDP described above apply to this deed poll as if they were fully set out in this deed poll.

**DATED** *[Insert Date]*

**EXECUTED** as a deed poll

*[Insert execution clause for New Borrower and, if it is a Dutch company, its corporate seal]*

**James Hardie — Common Terms Deed Poll**

Schedule 4 — Form of Release Request  
(clause 14.2)

[Date]

To: [Each relevant Creditor]

**James Hardie — Common Terms Deed Poll — Release Request**

We refer to the deed entitled James Hardie — Common Terms Deed Poll as amended and restated on f] 2008 (“CTDP”).

(a) **Release request**

We request each of you release [Insert name of retiring Borrower] (“Retiring Borrower”) from all liability under the CTDP pursuant to the attached Deed of Release.

(b) **Representation and warranty**

We represent and warrant that no Event of Default or Potential Event of Default is continuing or will result from the release of the Retiring Borrower.

Clause 1 of the CTDP applies to this Release Request as if it was fully set out in this Release Request.

For and on behalf of  
**James Hardie Industries N.V.**  
(with corporate seat in Amsterdam)

For and on behalf of  
[Insert the **name of the retiring Borrower** and, if it is a Dutch company, its corporate seat]

Authorised Officer: [Name]

Authorised Officer: [Name]

**James Hardie — Common Terms Deed Poll**

Schedule 5 — Form of Deed of Release  
(clause 14.2)

**Deed of Release**

**Parties**            **The Creditor, the Retiring Borrower and the Obligors' Agent**, as described below.

**Creditor**            *[Insert name and ABN/ACN or other registration number of a relevant Creditor]*

**Retiring Borrower**    *[Insert name and ABN/ACN or other registration number]*

**Obligors' Agent**    [     ] on behalf of each Obligor other than the Retiring Borrower.

**CTDP**                James Hardie — Common Terms Deed Poll as amended and restated on [ ] 2008.

The Creditor releases the Retiring Borrower described above from all liability under the CTDP described above, with effect from *[insert date or "the date of this deed"]*.

Nothing in this deed affects the obligations of the Retiring Borrower described above other than under the CTDP.

Each Obligor (other than the Retiring Borrower) consents to this release and agrees that nothing in this deed affects its obligations to the Creditor or the Creditor's rights in respect of the Obligors (other than the Retiring Borrower) under a Transaction Document.

Clauses 1 ("Interpretation") and 18.19 ("Governing law") of the CTDP described above apply to this deed as if they were fully set out in this deed.

**DATED** *[Insert date]*

**EXECUTED** as a deed

*[Insert execution clauses for (1) each Creditor, (2) the Obligors' Agent (and its corporate seat) on behalf of each Obligor other than the Retiring Borrower, and (3) the Retiring Borrower and, if it is a Dutch company, its corporate seat]*

James Hardie — Common Terms Deed Poll

Signing page

DATED: 2008

SIGNED, SEALED AND DELIVERED by
and
as attorneys for JAMES HARDIE INTERNATIONAL FINANCE B.V. under power of attorney dated

in the presence of:
Signature of witness
Name of witness (block letters)

.....

By executing this amended and restated deed each attorney states that the attorney has received no notice of revocation of the power of attorney

SIGNED, SEALED AND DELIVERED by
and
as Authorised Representatives of JAMES HARDIE BUILDING PRODUCTS, INC. in the presence of:

Signature of witness
Name of witness (block letters)

.....

By executing this agreement each Authorised Representative states that the Authorised Representative has received no notice of revocation of his or her authority to execute this deed



# MALLESONS STEPHEN JAQUES

## 3 Year Bullet Facility Agreement

### Form of James Hardie — Bullet Facility Agreement

Dated 21 February 2008

James Hardie International Finance B.V. (“**JHIF**” and “**Obligors’ Agent**”)

James Hardie Building Products, Inc. (“**JHBP**”)

#1# (“**Financier**”)

#### **Mallesons Stephen Jaques**

Level 61

Governor Phillip Tower

1 Farrer Place

Sydney NSW 2000

Australia

T +61 2 9296 2000

F +61 2 9296 3999

DX 113 Sydney

[www.mallesons.com](http://www.mallesons.com)

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# Form of James Hardie — Bullet Facility Agreement

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# Form of James Hardie — Bullet Facility Agreement

## Details

**Interpretation** — Definitions are in clause 1.

---

<b>Parties</b>	<b>JHIF, JHBP and Financier</b> , each as described below.	
<b>JHIF</b>	Name	<b>James Hardie International Finance B.V.</b>
	Corporate seat	Amsterdam
	Registered Number	34108775
	Address	8th Floor, Atrium, Unit 08 Strawinskylaan 3077 1077 ZX Amsterdam The Netherlands
	Fax	+31 20 404 2544
	Attention	Treasurer
	<b>JHBP</b>	Name
Incorporated in		Nevada
Address		Suite 100 26300 La Alameda Mission Viejo CA 92691 United States of America
Fax		+1 949 348 4534
Attention		Company Secretary
<b>Financier</b>	Name	#1#
	ABN/Incorporated in/Registered number	#2#
	Address	#3#
	Fax	#4#
	Attention	#5#

---

<b>Parties</b>	JHIF, JHBP and Financier, each as described below.	
<b>Facility</b>	Description	Revolving US\$ cash advance facility.
	Facility Limit	US\$#6#
	Maturity Date	Subject to clause 5.4, the third anniversary of the date of this agreement.
	Currency	US\$
	Interest Rate	For an Interest Period, means LIBOR plus the Margin.
	Margin	#7#
	Interest Periods	Subject to clause 4.2 (“Selection of Interest Period”), 2 weeks or 1, 2, 3, 6, 9 or 12 months, or such other period as agreed between a Borrower and Financier.
	Purpose	For general corporate purposes of the Group, including, without limitation: <ul style="list-style-type: none"> <li>• to fund the Group's working capital requirements;</li> <li>• to refinance existing Financial Indebtedness and pay related transaction costs;</li> <li>• to fund acquisitions;</li> <li>• to fund or reimburse against capital expenditure costs and payments to the Fund by any Group member; and/or</li> <li>• to fund distributions or other capital payments (if any).</li> </ul>
<b>Fees</b>	Approval Fee	#8#
(also see clause 8)	Commitment Fee	#9#
	#10#	#11#
<b>Date of agreement</b>	See Signing page	

# Form of James Hardie — Bullet Facility Agreement

## General terms

### 1 Definitions

#### 1.1 Definitions

**Amount Owing** means the total of all amounts which are then due for payment, or which will or may become due for payment, in connection with any Financing Document (including transactions in connection with them) to the Financier.

**Availability Period** means the period commencing on the date of this agreement and ending on the Maturity Date or, if earlier, the date on which the Facility Limit is cancelled in full.

**Borrower** means each of JHIF and JHBP individually but not jointly.

**Common Terms Deed Poll** means the deed poll entitled “James Hardie — Common Terms Deed Poll” as amended and restated on or about the date of this agreement.

**Default Rate** means the applicable Interest Rate at the time plus 2% per annum. For the purpose of this definition, the Interest accrues daily from (and including) the due date to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 360 days as if the overdue amount is a cash advance with Interest Periods of 30 days (or another period chosen from time to time by the Financier) with the first Interest Period starting on and including the due date.

**Details** means the section of this agreement headed “Details”.

**Drawdown Date** means the Business Day on which a drawdown of the Facility is or is to be made but does not include a rollover of a Drawing on the last day of an Interest Period.

**Drawdown Notice** means a completed notice in writing, substantially in the form of, and containing the information and representations and warranties set out in, schedule 1 (“Drawdown Notice”) and signed by an Authorised Officer of the Obligors’ Agent.

**Drawing** means the outstanding principal amount of a drawdown made under the Facility.

**Extension Request** means a completed notice in writing, substantially in the form of, and containing the information and representations and warranties set out in, schedule 5 (“Extension Request”) and signed by an Authorised Officer of the Obligors’ Agent.

**Facility** means the facility made available under this agreement.

**Facility Limit** means the amount set out as such in the Details, as reduced by the total of all cancellations under this agreement.

**Fee Payment Date** means each 31 March, 30 June, 30 September and 31 December after the date of this agreement.

**Financier** means the person so described in the Details.

**Financing Document** means each of:

- (a) this agreement;
- (b) the Common Terms Deed Poll;
- (c) the Guarantee and Subordination Documents;
- (d) each Drawdown Notice;
- (e) each Selection Notice;
- (f) the agreement entitled “James Hardie — Term Facility Agreement”
- (g) the agreement entitled “James Hardie — 364 Day Facility Agreement”
- (h) any other document which the Obligors’ Agent and the Financier agree to be a Financing Document; and
- (i) any document entered into for the purpose of amending or novating any of the above.

**Interest Payment Date** means, in respect of an Interest Period, the last day of that Interest Period.

**Interest Period** means each period selected in accordance with clause 4.2 (“Selection of Interest Period”).

**Interest Rate** means, subject to clause 4.6 (“Market disruption”), the interest rate set out in the Details.

**LIBOR** means, in relation to any Drawing:

- (a) the applicable British Bankers’ Association Interest Settlement Rate for US\$ and the relevant period displayed on the appropriate page of the Reuters screen (but if the agreed page is replaced or service ceases to be available, the Financier may specify another page or service displaying the appropriate rate after consultation with the Obligors’ Agent) (“**Screen Rate**”); or
- (b) (if no Screen Rate is available for US\$ and the Interest Period of that Drawing) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Financier at its request quoted by the principal London offices of at least three leading international banks chosen by the Financier in consultation with the Obligors’ Agent to other leading banks in the London interbank market,

as of 11:00am (London time) on the day two Business Days before the first day of an Interest Period for which the interest rate is to be determined for the offering of deposits in US\$ and for a period comparable to the Interest Period for that Drawing.

**Margin** means on any day, the margin set out in the Details.

**Market Disruption Event** means:

- (a) at or about noon on the day two Business Days before the first day of an Interest Period for which the interest rate is to be determined, by reason of circumstances affecting the London interbank market for US\$, the “LIBOR” component of the Interest Rate cannot be determined; or
- (b) before close of business in London on the day two Business Days before the first day of an Interest Period for which the interest rate is to be determined, the Financier determines that the cost to it of obtaining matching deposits in the London interbank market would be in excess of LIBOR.

**Maturity Date** means the maturity date for the Facility as set out in the Details, but if that is not a Business Day, then the preceding Business Day.

**Prepayment Notice** means a completed notice in writing, substantially in the form of, and containing the information and representations and warranties set out in, schedule 4 (“Prepayment Notice”) and signed by an Authorised Officer of the Obligors’ Agent.

**Repayment Notice** means a completed notice in writing, substantially in the form of, and containing the information and representations and warranties set out in, schedule 3 (“Repayment Notice”) and signed by an Authorised Officer of the Obligors’ Agent.

**Selection Notice** means a notice under clause 4.2(b) (“Selection of Interest Period”), to be substantially in the form of schedule 2 (“Selection Notice”).

**Undrawn Facility Limit** means the Facility Limit less the aggregate of all Drawings outstanding.

## 1.2 Interaction with the Common Terms Deed Poll

- (a) Each Borrower acknowledges that:
  - (i) the Financier is a Creditor; and
  - (ii) this agreement is a Facility Agreement,for the purposes of the Common Terms Deed Poll.

- (b) On execution of this agreement, the provisions of the Common Terms Deed Poll (subject to paragraph (d) below) are incorporated into this agreement to the intent and effect that any such provision for the benefit of a Creditor or a Borrower (as defined in the Common Terms Deed Poll) may be enforced by the Financier or a Borrower to the same extent as if the Financier was a party to the Common Terms Deed Poll.
- (c) A term which has a defined meaning (including by reference to another document) in the Common Terms Deed Poll has the same meaning when used in this agreement unless it is expressly defined in this agreement, in which case the meaning in this agreement prevails.
- (d) Where a conflict arises between a provision of the Common Terms Deed Poll and this agreement, the Common Terms Deed Poll will prevail unless the provision in this agreement includes words substantially to the effect of “Despite the terms of the Common Terms Deed Poll”, in which case the relevant provision of this agreement prevails.

## **2 The Facility and Facility Limit**

### **2.1 Financier to fund**

Subject to clause 2.3, the Financier agrees to provide to the relevant Borrower the financial accommodation requested by the Obligors’ Agent under this agreement.

### **2.2 Maximum accommodation**

The financial accommodation to be provided under this agreement must not exceed the Facility Limit.

### **2.3 Source of funding**

If the Borrower is JHBP or another entity resident in the United States of America, the Financier agrees to provide any financial accommodation under clause 2.1 to such Borrower through a branch of the Financier located in the United States of America or, where this is not possible, from a branch of the Financier located in the United Kingdom.

## **3 Using the Facility**

### **3.1 Drawing down**

The Borrowers need not use the Facility. However, if a Borrower wants to use the Facility, it may do so by one or more drawdowns.

### **3.2 Requesting a drawdown**

- (a) If a Borrower wants a drawdown, the Obligors’ Agent must provide a written Drawdown Notice to the Financier by 11:00am (London time) at least 2 Business Days prior to the requested Drawdown Date (or such later time as the Financier may agree).



- (b) The minimum amount of a Drawing is the lesser of:
  - (i) US\$1,000,000; and
  - (ii) the Undrawn Facility Limit.

### **3.3 Effect of a Drawdown Notice**

A Drawdown Notice is effective when the Financier actually receives it in legible form. An effective Drawdown Notice is irrevocable.

### **3.4 Conditions to first drawdown**

Each Borrower agrees not to request the first drawdown, and a Financier is not obliged to provide the first drawdown, unless:

- (a) all the conditions precedent listed in clause 3 (“Conditions precedent”) of the Common Terms Deed Poll have been either satisfied or waived in accordance with that agreement; and
- (b) a completed Facility Nomination Letter nominating this agreement as a Facility Agreement has been received by the Financier.

### **3.5 Conditions to all drawdowns**

In addition to the conditions precedent in clause 3 (“Conditions precedent”) of the Common Terms Deed Poll, the Financier need not provide any financial accommodation on a Drawdown Date unless it is satisfied that:

- (a) the Drawdown Date is a Business Day during the Availability Period for the Facility;
- (b) the amount of the Drawing equals or exceeds the minimum drawdown amount set out in clause 3.2(b) (“Requesting a drawdown”);
- (c) after the Drawing has been made, the sum of all outstanding Drawings will not exceed the Facility Limit;
- (d) the Financier has received a Drawdown Notice in respect of the requested drawdown in accordance with clause 3.2 (“Requesting a drawdown”); and
- (e) the proposed Drawing is for one or more of the purposes set out in the Details.

### **3.6 Benefit of conditions**

Each condition to a drawdown is for the sole benefit of the Financier and may only be waived by the Financier.

### **3.7 Currency and timing of drawdowns**

The Financier agrees to make each drawdown available to the account specified in the relevant Drawdown Notice in immediately available US\$ funds by 2:00pm (local time in Amsterdam) on the relevant Drawdown Date.

## **4 Interest**

### **4.1 Interest charges**

Each Borrower must pay interest on each Drawing it makes for each of its Interest Periods at the applicable Interest Rate. Interest:

- (a) accrues daily from and including the first day of an Interest Period to but excluding the last day of the Interest Period; and
- (b) is payable in arrears on each relevant Interest Payment Date; and
- (c) is calculated on actual days elapsed and a year of 360 days.

### **4.2 Selection of Interest Period**

An Interest Period for a Drawing is:

- (a) for the first Interest Period, the period specified in the Drawdown Notice for that Drawing; and
- (b) for each subsequent Interest Period, a period notified in a Selection Notice given by the Obligors' Agent to the Financier on the Business Day before the last day of the current Interest Period. However, in each case, the specified period must be one that is set out in the Details. If the Obligors' Agent does not give correct notice, the subsequent Interest Period is the same length as the Interest Period which immediately precedes it (or it is the period until the Maturity Date, if that is shorter than the preceding Interest Period).

### **4.3 When Interest Periods begin and end**

- (a) An Interest Period for a Drawing begins:
  - (i) for the first Interest Period, on its Drawdown Date; and
  - (ii) for each subsequent Interest Period, on the day when the preceding Interest Period for the Drawing ends.
- (b) An Interest Period which would otherwise end on a day which is not a Business Day ends on the next Business Day (unless that day falls in the following month, in which case the Interest Period ends on the previous Business Day). However, an Interest Period which would otherwise end after the Maturity Date ends on the Maturity Date.
- (c) If an Interest Period of one or a number of months commences on a date in a month for which there is no corresponding date in the month in which the Interest Period is to end, it will end on the last Business Day of the latter month.

#### **4.4 Limit on Interest Periods**

In selecting Interest Periods under clause 4.2 (“Selection of Interest Period”), the Obligors’ Agent must ensure that there are no more than 5 different Interest Periods at any one time.

#### **4.5 Notification of interest**

Interest on a Drawing is payable in immediately available funds.

The Financier will notify the Obligors’ Agent of the interest rates determined under this agreement as soon as they are ascertained. Failure to do so will not affect the obligations of a Borrower in any way.

#### **4.6 Market disruption**

If a Market Disruption Event occurs in relation to a Drawing for any Interest Period, then the Interest Rate on that Drawing for the Interest Period shall be the rate per annum which is the sum of:

- (a) the Margin; and
- (b) the rate notified by the Financier as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to the Financier of funding its participation in that Drawing from whatever source it may reasonably select.

#### **4.7 Alternative basis of interest or funding**

- (a) If a Market Disruption Event occurs and the Financier or a Borrower so requires, the Financier and the Obligors’ Agent shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.
- (b) Any alternative basis agreed pursuant to paragraph (a) above shall, with the prior consent of the Financier and the Obligors’ Agent, be binding on each of them and the Borrowers.

### **5 Repaying and prepaying**

#### **5.1 Repayment**

- (a) Each Borrower agrees to repay the total of the Drawings drawn by it and all interest and other amounts (including default interest) which have accrued or which are otherwise payable (but unpaid) in respect of this agreement on the Maturity Date.
- (b) The Obligors’ Agent must provide a written Repayment Notice to the Financier by 11:00am (London time) at least 2 Business Days prior to the Maturity Date (or such later time as the Financier may agree), but failure to do so is without prejudice to the obligations of the Borrowers under clause 5.1(a) above.

## 5.2 Prepayment

Each Borrower may prepay all or part of a Drawing drawn by it as follows:

- (a) if only part of a Drawing is prepaid, it must be at least US\$1,000,000 and a whole multiple of US\$500,000, or such lesser amount as may be agreed by the Financier (at its discretion) from time to time; and
- (b) the Borrower must also pay all accrued (but unpaid) interest on that Drawing; and
- (c) the Obligors' Agent must provide a written Prepayment Notice to the Financier at least 10 Business Days prior to the date of the requested prepayment (as at close of business London time) (once given, a notice of prepayment is irrevocable and the Borrower is obliged to prepay in accordance with the notice).

If the prepayment is made on an Interest Payment Date for the Drawing to be prepaid, no Break Costs are payable. However, if the Borrower prepays on a day other than the Interest Payment Date for the Drawing to be prepaid and the Financier incurs any Break Costs as a result of such prepayment, then the Borrower will be liable for Break Costs (if any) under clause 12 ("Costs and indemnities") of the Common Terms Deed Poll.

## 5.3 Prepayment and the Facility Limit

The Facility Limit is not reduced by amounts prepaid under clause 5.2 ("Prepayment").

## 5.4 Extension of Maturity Date

- (a) The Obligors' Agent will have the option to request an extension of the Facility on the first and second anniversary of the date of this agreement.
- (b) The Obligors' Agent will notify the Financier of its intention to extend the Facility not less than 50 days prior to the applicable anniversary by providing a written Extension Request. The Financier must respond to the Extension Request by the date which is no later than 30 days after the date the Extension Request is provided.
- (c) The Financier participating will have the right, but not the obligation, to accept the extension requested. If a Financier chooses to accept the extension, the Maturity Date will be extended for a further year.
- (d) If the Financier does not choose to accept the extension, the then current Maturity Date will continue to apply.
- (e) If the Financier does not respond to an Extension Request, it is taken to have chosen not to accept the extension.

- (f) The Obligors' Agent may choose not to extend the Facility on the first anniversary and still have the ability to request an extension on the second anniversary to up to the same Maturity Date as if it had extended on both the first and second anniversaries.
- (g) The Financier may choose to agree to a requested extension on the second anniversary even if it has not chosen to agree to an extension request on the first anniversary. The new Maturity Date will be extended by a minimum of one year or greater as agreed between the Obligors' Agent and the Financier.

## **6 Payments**

### **6.1 Payment by direction**

If the Financier directs a Borrower to pay a particular party or in a particular manner, the Borrower is taken to have satisfied its obligation to the Financier by paying in accordance with the direction.

### **6.2 Amount Owing**

Subject to the provisions of any Financing Document, each Borrower agrees to repay the Amount Owing on the Maturity Date under this agreement.

### **6.3 Application of payments — pre-default**

Prior to an Event of Default, the Financier will apply amounts paid by each Borrower in accordance with the terms of the Financing Documents.

### **6.4 Application of payments — post-default**

If an Event of Default subsists, the Financier may apply amounts paid by each Borrower towards satisfaction of the Borrower's obligations under the Financing Documents in the manner it sees fit, unless the Financing Documents expressly provide otherwise. This appropriation overrides any purported appropriation by the Borrower or any other person.

## **7 Cancellation**

The Obligors' Agent may cancel the Undrawn Facility Limit in whole or in part at any time during the Availability Period by notifying the Financier in writing at least 2 Business Days prior to the date the cancellation is to take effect. A partial cancellation must be at least US\$1,000,000, unless the Financier agrees otherwise. Once given, the notice is irrevocable. The Facility Limit is reduced by the amount of any cancellation.

The Facility Limit is automatically cancelled at 5:30pm (London time) on the last day of the Availability Period.

## **8 Fees**

### **8.1 Approval Fee**

The Obligors' Agent agrees to pay on execution of this agreement, an Approval Fee as set out in the Details.

### **8.2 Commitment fee**

The Obligors' Agent agrees to pay in arrears on each Fee Payment Date, on any cancellation date described below and on the Maturity Date, the accrued but unpaid commitment fee as set out in the Details.

If the Obligors' Agent cancels any of the Undrawn Facility Limit, it also agrees to pay on the cancellation date, the commitment fee in respect of the cancelled amount from (but excluding) the last Fee Payment Date up to and including the cancellation date.

The commitment fee is calculated on actual days elapsed using a 360 day year.

#10

## **9 Financier representation**

The Financier represents that it is a #12# PMP within the meaning of this agreement as at the date of execution of this agreement. Each Borrower acknowledges that in making this representation the Financier relies on, and has not independently investigated, the definition of PMP set out in the Common Terms Deed Poll.

## **10 Interest on overdue amounts**

This clause applies despite the provisions of the Common Terms Deed Poll.

### **10.1 Obligation to pay**

If a Borrower does not pay any amount under or in respect of this agreement (including an amount of interest payable under this clause 10.1) on the due date for payment, the Borrower must pay interest on that amount at the Default Rate. The interest accrues daily from (and including) the due date to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 360 days.

A Borrower must pay interest under this clause to the Financier on demand from the Financier on the last Business Day of each calendar month.

### **10.2 Compounding**

Interest payable under clause 10.1 ("Obligation to pay") which is not paid when due for payment may be added to the overdue amount by the Financier on the last Business Day of each calendar month. Interest is payable on the increased overdue amount at the Default Rate in the manner set out in clause 10.1 ("Obligation to pay").

### **10.3 Interest following judgment**

If a liability becomes merged in a judgment, the relevant Borrower must pay interest on the amount of that liability as an independent obligation. This interest:

- (a) accrues daily from (and including) the date the liability becomes due for payment both before and after the judgment up to (but excluding) the date the liability is paid; and
- (b) is calculated at the judgment rate or the Default Rate (whichever is higher).

The relevant Borrower must pay interest under this clause to the Financier on demand from the Financier.

### **11 Money Laundering**

Each Borrower agrees that the Financier may delay, block, or refuse to make any payment if the Financier believes on reasonable grounds that making that payment will breach any law in Australia or any other country where such payment is to be made, and the Financier will incur no liability to the Borrower if it does so.

Each Borrower must provide all information to the Financier that the Financier reasonably requires to comply with any law in Australia or any other country. Each Borrower agrees the Financier may disclose information which it provides to the Financier where required by any law in Australia or any other country.

Unless a Borrower has disclosed that it is acting in a trustee capacity or on behalf of another party, that Borrower warrants that it is acting on its own behalf in applying for and using any of the Financier's products or services.

Each Borrower declares and undertakes to the Financier that the payment of monies by the Financier in accordance with any written instructions given by the Borrower will not breach any law in Australia or any other country where such money is to be paid.

### **12 Governing law and jurisdiction**

This agreement is governed by the law in force in New South Wales and each Borrower submits to the non-exclusive jurisdiction of the courts of that place.

**EXECUTED** as an agreement.

# Form of James Hardie — Bullet Facility Agreement

## Schedule 1 — Drawdown Notice (clause 3)



[name]  
[address]

Tel [insert]  
Fax [insert]

To: [•]

Attention: [•]

Fax: [•]

[Insert date]

**Drawdown Notice — James Hardie — Bullet Facility Agreement dated [•] 2008 between James Hardie International Finance B.V. (a “Borrower” and “Obligors’ Agent”), James Hardie Building Products, Inc. (a “Borrower”) and [•] (“Financier”) (“Facility Agreement”)**

Under clause 3.2 (“Requesting a drawdown”) of the Facility Agreement, the Obligors’ Agent gives notice as follows:

[Borrower name] wants to borrow under the Facility.

- The requested Drawdown Date is [•].<sup>2</sup>
- The amount of the proposed drawdown is US\$[•].
- The requested first Interest Period is [•].
- The proposed drawdown is to be paid to:

Account number:	[•]
Account name:	[•]
Bank:	[•]
Branch:	[•]
Branch identifying number (Fedwire, BSB, etc):	[•]



**Representations and Warranties**

[*Borrower name*] represents and warrants that:

[for the first Drawdown only]: the representations and warranties in clause 8 (“Representations and warranties”) of the Common Terms Deed Poll are correct and not misleading on the date of this notice and that each will be correct and not misleading on the Drawdown Date.

[for any subsequent Drawdown]: those representations and warranties listed in clause 3.2(a) (“Conditions to subsequent drawdowns”) of the Common Terms Deed Poll as required to be true on the date of each drawdown notice, are correct and not misleading on the date of this notice and that each will be correct and not misleading on the Drawdown Date.

No Event of Default or Potential Event of Default subsists at the date of this notice or will result from the provision of the requested utilisation.

Clause 1 (“Definitions”) of the Facility Agreement applies to this notice as if it was fully set out in this notice.

Yours faithfully

---

[**Name of person**] being  
an Authorised Officer of  
**James Hardie International Finance B.V.**  
as Obligors’ Agent (with corporate seat in Amsterdam)

**Instructions for completion**

- 1 All items must be completed.
- 2 Must be a Business Day within the Availability Period.

# Form of James Hardie — Bullet Facility Agreement

## Schedule 2 — Selection Notice (clause 4.2)



[name]  
[address]

Tel [insert]  
Fax [insert]

To: [•]

Attention: [•]

Fax: [•]

[Insert date]

**Selection Notice — James Hardie — Bullet Facility Agreement dated [•] 2008 between James Hardie International Finance B.V. (a “Borrower” and “Obligors’ Agent”), James Hardie Building Products, Inc. (a “Borrower”) and [•] (“Financier”) (“Facility Agreement”)**

Terms defined in the Facility Agreement have the same meaning when used in this notice.

This is an irrevocable notice under clause 4.2 (“Selection of Interest Period”) of the Facility Agreement.

Under clause 4.2 (“Selection of Interest Period”) of the Facility Agreement, the Obligors’ Agent gives notice as follows:

The current Interest Period in respect of the Drawing drawn by **Borrower name** is due to end on [•].

The Interest Period following the current Interest Period is to be a period of [•]<sup>1</sup>.

Yours faithfully

---

[Name of person] being  
an Authorised Officer of  
**James Hardie International Finance B.V.**  
as Obligors’ Agent (with corporate seat in Amsterdam)

### Instructions for completion

1 To be an Interest Period set out in the Details

# Form of James Hardie — Bullet Facility Agreement

## Schedule 3 — Repayment Notice (clause 5.1)



[name]  
[address]

Tel [insert]  
Fax [insert]

To: [•]

Attention: [•]

Fax: [•]

[Insert date]

**Repayment Notice — James Hardie — Bullet Facility Agreement dated [•] 2008 between James Hardie International Finance B.V. (a “Borrower” and “Obligors’ Agent”), James Hardie Building Products, Inc. (a “Borrower”) and [•] (“Financier”) (“Facility Agreement”)**

Terms defined in the Facility Agreement have the same meaning when used in this notice and where not otherwise defined in this notice.

Under clause 5.1 (“Repayment”) of the Facility Agreement, the Obligors’ Agent gives notice as follows:

The Borrower, [*Borrower name*], wants to repay under the Facility Agreement in accordance with clause 5.1 (“Repayment”) of the Facility Agreement.

- Repayment date: [•]
- The amount of the repayment: US\$[•]
- Principal maturing: US\$[•]
- This repayment will not trigger any Break Costs under clause 5.2 of the Facility Agreement.

Yours faithfully

---

[Name of person] being  
an Authorised Officer of  
**James Hardie International Finance B.V.**  
as Obligors’ Agent (with corporate seat in Amsterdam)

# Form of James Hardie — Bullet Facility Agreement

## Schedule 4 — Prepayment Notice (clause 5.2)



[name]  
[address]

Tel [insert]  
Fax [insert]

To: [•]

Attention: [•]

Fax: [•]

[Insert date]

**Prepayment Notice — James Hardie — Bullet Facility Agreement dated [•] 2008 between James Hardie International Finance B.V. (a “Borrower” and “Obligors’ Agent”), James Hardie Building Products, Inc. (a “Borrower”) and [•] (“Financier”) (“Facility Agreement”)**

Terms defined in the Facility Agreement have the same meaning when used in this notice and where not otherwise defined in this notice.

Under clause 5.2 (“Prepayment”) of the Facility Agreement, the Obligors’ Agent gives notice as follows:

The Borrower, [*Borrower name*], wants to prepay under the Facility Agreement in accordance with clause 5.2 (“Prepayment”) of the Facility Agreement.

- Prepayment date: [•]
- The amount of the prepayment (including any accrued but unpaid interest): US\$[•]
- This repayment [will/will not] not trigger any Break Costs under clause 5.2 of the Facility Agreement.

Yours faithfully

---

[Name of person] being  
an Authorised Officer of  
**James Hardie International Finance B.V.**  
as Obligors’ Agent (with corporate seat in Amsterdam)

## Form of James Hardie — Bullet Facility Agreement

### Schedule 5 — Extension Request (clause 5.4)



[name]  
[address]

Tel [insert]  
Fax [insert]

To: [•]

Attention: [•]

Fax: [•]

[Insert date]

**Extension Request — James Hardie — Bullet Facility Agreement dated [•] 2008 between James Hardie International Finance B.V. (a “Borrower” and “Obligors’ Agent”), James Hardie Building Products, Inc. (a “Borrower”) and [•] (“Financier”) (“Facility Agreement”)**

Terms defined in the Facility Agreement have the same meaning when used in this notice and where not otherwise defined in this notice.

In accordance with clause 5.4 (“Extension of Maturity Date”) of the Facility Agreement, the Obligors’ Agent requests as follows:

We request that the Maturity Date under the Facility Agreement be extended to a date [12/24] months after the current Maturity Date under the Facility Agreement.

The Maturity Date, if extended in accordance with this request, will be [•]<sup>2</sup>.

Please sign the attached copy of this request and return it to us by [•]<sup>3</sup> if you accept the extension request.

Yours faithfully

---

[Name of person] being  
an Authorised Officer of  
**James Hardie International Finance B.V.**  
as Obligors’ Agent (with corporate seat in Amsterdam)

We agree to extend the Maturity Date for the requested Facility Limit in accordance with the above notice.

Signed for the Financier on *[insert date]* by:

---

**[Name of person]** being an  
Authorised Officer of the Financier

**Instructions for completion**

- 1 Only insert “24” if the Extension Request relates to the second anniversary of the date of this agreement and an Extension Request was not given, or was declined, in relation to the first anniversary of the date of this agreement and the Obligor’s Agent is seeking a two year extension. Otherwise, insert “12”.
- 2 Insert the date which is fifth anniversary of the date of this agreement if the Extension Request relates to the second anniversary of the date of this agreement and an Extension Request was not given, or was declined, in relation to the first anniversary of the date of this agreement and the Obligor’s Agent is seeking a two year extension. Otherwise insert the date 12 months after the current Maturity Date.
- 3 Insert a date which is 30 days after the date this Extension Request is to be provided to the Financier.

**James Hardie — Bullet Facility Agreement**

**Signing page**

**DATED:** February 2008

**JHIF**

**SIGNED** by )

as attorneys for **JAMES  
HARDIE INTERNATIONAL  
FINANCE B.V.** under power of  
attorney dated )

in the presence of: )

\_\_\_\_\_  
Signature of witness )

\_\_\_\_\_  
Name of witness (block letters) )

**JHBP**

**SIGNED** by )

as Authorised Representatives  
of **JAMES HARDIE  
BUILDING PRODUCTS,  
INC.** in the presence of: )

\_\_\_\_\_  
Signature of witness )

\_\_\_\_\_  
Name of witness (block letters) )

\_\_\_\_\_

By executing this agreement each attorney  
states that the attorney has received no notice  
of revocation of the power of attorney

\_\_\_\_\_

By executing this agreement each Authorised  
Representative states that the Authorised  
Representative has received no notice of  
revocation of his or her authority to execute  
this deed

**Financier**

SIGNED by )

as attorney for #1# under power of )  
attorney dated )

in the presence of: )  
)  
)  
)  
)

\_\_\_\_\_  
Signature of witness )

\_\_\_\_\_  
Name of witness (block letters) )

\_\_\_\_\_  
By executing this agreement the  
attorney states that the attorney has  
received no notice of revocation of  
the power of attorney



# MALLESONS STEPHEN JAQUES

## 5 Year Bullet Facility Agreement

### Form of James Hardie — Bullet Facility Agreement

Dated 21 February 2008

James Hardie International Finance B.V. (“**JHIF**” and “**Obligors’ Agent**”)

James Hardie Building Products, Inc. (“**JHBP**”)

#1# (“**Financier**”)

#### **Mallesons Stephen Jaques**

Level 61

Governor Phillip Tower

1 Farrer Place

Sydney NSW 2000

Australia

T +61 2 9296 2000

F +61 2 9296 3999

DX 113 Sydney

[www.mallesons.com](http://www.mallesons.com)

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# Form of James Hardie — Bullet Facility Agreement

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# Form of James Hardie — Bullet Facility Agreement

## Details

**Interpretation** — Definitions are in clause 1.

---

<b>Parties</b>	<b>JHIF, JHBP and Financier</b> , each as described below.	
<b>JHIF</b>	Name	<b>James Hardie International Finance B.V.</b>
	Corporate seat	Amsterdam
	Registered Number	34108775
	Address	8th Floor, Atrium, Unit 08 Strawinskylaan 3077 1077 ZX Amsterdam The Netherlands
	Fax	+31 20 404 2544
	Attention	Treasurer
	<b>JHBP</b>	Name
Incorporated in		Nevada
Address		Suite 100 26300 La Alameda Mission Viejo CA 92691 United States of America
Fax		+1 949 348 4534
Attention		Company Secretary
<b>Financier</b>	Name	#1#
	ABN/Incorporated in/Registered in	#2#
	Address	#3#
	Fax	#4#
	Attention	#5#

---

<b>Parties</b>	JHIF, JHBP and Financier, each as described below.	
<b>Facility</b>	Description	Revolving US\$ cash advance facility.
	Facility Limit	US\$#6#
	Maturity Date	The fifth anniversary of the date of this agreement.
	Currency	US\$
	Interest Rate	For an Interest Period, means LIBOR plus the Margin.
	Margin	#7#
	Interest Periods	Subject to clause 4.2 (“Selection of Interest Period”), 2 weeks or 1, 2, 3, 6, 9 or 12 months, or such other period as agreed between a Borrower and Financier.
	Purpose	For general corporate purposes of the Group, including, without limitation: <ul style="list-style-type: none"> <li>• to fund the Group’s working capital requirements;</li> <li>• to refinance existing Financial Indebtedness and pay related transaction costs;</li> <li>• to fund acquisitions;</li> <li>• to fund or reimburse against capital expenditure costs and payments to the Fund by any Group member; and/or</li> <li>• to fund distributions or other capital payments (if any).</li> </ul>
<b>Fees</b>	Approval Fee	#8#
(also see clause 8)	Commitment Fee	#9#
<b>Date of agreement</b>	See Signing page	

# Form of James Hardie — Bullet Facility Agreement

## General terms

### 1 Definitions

#### 1.1 Definitions

**Amount Owing** means the total of all amounts which are then due for payment, or which will or may become due for payment, in connection with any Financing Document (including transactions in connection with them) to the Financier.

**Availability Period** means the period commencing on the date of this agreement and ending on the Maturity Date or, if earlier, the date on which the Facility Limit is cancelled in full.

**Borrower** means each of JHIF and JHBP individually but not jointly.

**Common Terms Deed Poll** means the deed poll entitled “James Hardie — Common Terms Deed Poll” as amended and restated on or about the date of this agreement.

**Default Rate** means the applicable Interest Rate at the time plus 2% per annum. For the purpose of this definition, the Interest accrues daily from (and including) the due date to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 360 days as if the overdue amount is a cash advance with Interest Periods of 30 days (or another period chosen from time to time by the Financier) with the first Interest Period starting on and including the due date.

**Details** means the section of this agreement headed “Details”.

**Drawdown Date** means the Business Day on which a drawdown of the Facility is or is to be made but does not include a rollover of a Drawing on the last day of an Interest Period.

**Drawdown Notice** means a completed notice in writing, substantially in the form of, and containing the information and representations and warranties set out in, schedule 1 (“Drawdown Notice”) and signed by an Authorised Officer of the Obligors’ Agent.

**Drawing** means the outstanding principal amount of a drawdown made under the Facility.

**Extension Request** means a completed notice in writing, substantially in the form of, and containing the information and representations and warranties set out in, schedule 5 (“Extension Request”) and signed by an Authorised Officer of the Obligors’ Agent.

**Facility** means the facility made available under this agreement.

**Facility Limit** means the amount set out as such in the Details, as reduced by the total of all cancellations under this agreement.

**Fee Payment Date** means each 31 March, 30 June, 30 September and 31 December after the date of this agreement.

**Financier** means the person so described in the Details.

**Financing Document** means each of:

- (a) this agreement;
- (b) the Common Terms Deed Poll;
- (c) the Guarantee and Subordination Documents;
- (d) each Drawdown Notice;
- (e) each Selection Notice;
- (f) the agreement entitled "James Hardie — Term Facility Agreement"
- (g) the agreement entitled "James Hardie — 364 Day Facility Agreement"
- (h) any other document which the Obligors' Agent and the Financier agree to be a Financing Document; and
- (i) any document entered into for the purpose of amending or novating any of the above.

**Interest Payment Date** means, in respect of an Interest Period, the last day of that Interest Period.

**Interest Period** means each period selected in accordance with clause 4.2 ("Selection of Interest Period").

**Interest Rate** means, subject to clause 4.6 ("Market disruption"), the interest rate set out in the Details.

**LIBOR** means, in relation to any Drawing:

- (a) the applicable British Bankers' Association Interest Settlement Rate for US\$ and the relevant period displayed on the appropriate page of the Reuters screen (but if the agreed page is replaced or service ceases to be available, the Financier may specify another page or service displaying the appropriate rate after consultation with the Obligors' Agent) ("**Screen Rate**"); or
- (b) (if no Screen Rate is available for US\$ and the Interest Period of that Drawing) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Financier at its request quoted by the principal London offices of at least three leading international banks chosen by the Financier in consultation with the Obligors' Agent to other leading banks in the London interbank market,

as of 11:00am (London time) on the day two Business Days before the first day of an Interest Period for which the interest rate is to be determined for the offering of deposits in US\$ and for a period comparable to the Interest Period for that Drawing.

**Margin** means on any day, the margin set out in the Details.

**Market Disruption Event** means:

- (a) at or about noon on the day two Business Days before the first day of an Interest Period for which the interest rate is to be determined, by reason of circumstances affecting the London interbank market for US\$, the “LIBOR” component of the Interest Rate cannot be determined; or
- (b) before close of business in London on the day two Business Days before the first day of an Interest Period for which the interest rate is to be determined, the Financier determines that the cost to it of obtaining matching deposits in the London interbank market would be in excess of LIBOR.

**Maturity Date** means the maturity date for the Facility as set out in the Details, but if that is not a Business Day, then the preceding Business Day.

**Prepayment Notice** means a completed notice in writing, substantially in the form of, and containing the information and representations and warranties set out in, schedule 4 (“Prepayment Notice”) and signed by an Authorised Officer of the Obligors’ Agent.

**Repayment Notice** means a completed notice in writing, substantially in the form of, and containing the information and representations and warranties set out in, schedule 3 (“Repayment Notice”) and signed by an Authorised Officer of the Obligors’ Agent.

**Selection Notice** means a notice under clause 4.2(b) (“Selection of Interest Period”), to be substantially in the form of schedule 2 (“Selection Notice”).

**Undrawn Facility Limit** means the Facility Limit less the aggregate of all Drawings outstanding.

## 1.2 Interaction with the Common Terms Deed Poll

- (a) Each Borrower acknowledges that:
  - (i) the Financier is a Creditor; and
  - (ii) this agreement is a Facility Agreement,  
for the purposes of the Common Terms Deed Poll.



- (b) On execution of this agreement, the provisions of the Common Terms Deed Poll (subject to paragraph (d) below) are incorporated into this agreement to the intent and effect that any such provision for the benefit of a Creditor or a Borrower (as defined in the Common Terms Deed Poll) may be enforced by the Financier or a Borrower to the same extent as if the Financier was a party to the Common Terms Deed Poll.
- (c) A term which has a defined meaning (including by reference to another document) in the Common Terms Deed Poll has the same meaning when used in this agreement unless it is expressly defined in this agreement, in which case the meaning in this agreement prevails.
- (d) Where a conflict arises between a provision of the Common Terms Deed Poll and this agreement, the Common Terms Deed Poll will prevail unless the provision in this agreement includes words substantially to the effect of “Despite the terms of the Common Terms Deed Poll”, in which case the relevant provision of this agreement prevails.

## **2 The Facility and Facility Limit**

### **2.1 Financier to fund**

Subject to clause 2.3, the Financier agrees to provide to the relevant Borrower the financial accommodation requested by the Obligors’ Agent under this agreement.

### **2.2 Maximum accommodation**

The financial accommodation to be provided under this agreement must not exceed the Facility Limit.

### **2.3 Source of funding**

If the Borrower is JHBP or another entity resident in the United States of America, the Financier agrees to provide any financial accommodation under clause 2.1 to such Borrower through a branch of the Financier located in the United States of America #10#.

## **3 Using the Facility**

### **3.1 Drawing down**

The Borrowers need not use the Facility. However, if a Borrower wants to use the Facility, it may do so by one or more drawdowns.

### **3.2 Requesting a drawdown**

- (a) If a Borrower wants a drawdown, the Obligors’ Agent must provide a written Drawdown Notice to the Financier by 11:00am (London time) at least 2 Business Days prior to the requested Drawdown Date (or such later time as the Financier may agree).

- (b) The minimum amount of a Drawing is the lesser of:
  - (i) US\$1,000,000; and
  - (ii) the Undrawn Facility Limit.

### **3.3 Effect of a Drawdown Notice**

A Drawdown Notice is effective when the Financier actually receives it in legible form. An effective Drawdown Notice is irrevocable.

### **3.4 Conditions to first drawdown**

Each Borrower agrees not to request the first drawdown, and a Financier is not obliged to provide the first drawdown, unless:

- (a) all the conditions precedent listed in clause 3 (“Conditions precedent”) of the Common Terms Deed Poll have been either satisfied or waived in accordance with that agreement; and
- (b) a completed Facility Nomination Letter nominating this agreement as a Facility Agreement has been received by the Financier.

### **3.5 Conditions to all drawdowns**

In addition to the conditions precedent in clause 3 (“Conditions precedent”) of the Common Terms Deed Poll, the Financier need not provide any financial accommodation on a Drawdown Date unless it is satisfied that:

- (a) the Drawdown Date is a Business Day during the Availability Period for the Facility;
- (b) the amount of the Drawing equals or exceeds the minimum drawdown amount set out in clause 3.2(b) (“Requesting a drawdown”);
- (c) after the Drawing has been made, the sum of all outstanding Drawings will not exceed the Facility Limit;
- (d) the Financier has received a Drawdown Notice in respect of the requested drawdown in accordance with clause 3.2 (“Requesting a drawdown”); and
- (e) the proposed Drawing is for one or more of the purposes set out in the Details.

### **3.6 Benefit of conditions**

Each condition to a drawdown is for the sole benefit of the Financier and may only be waived by the Financier.

### **3.7 Currency and timing of drawdowns**

The Financier agrees to make each drawdown available to the account specified in the relevant Drawdown Notice in immediately available US\$ funds by 2:00pm (local time in Amsterdam) on the relevant Drawdown Date.

## **4 Interest**

### **4.1 Interest charges**

Each Borrower must pay interest on each Drawing it makes for each of its Interest Periods at the applicable Interest Rate. Interest:

- (a) accrues daily from and including the first day of an Interest Period to but excluding the last day of the Interest Period; and
- (b) is payable in arrears on each relevant Interest Payment Date; and
- (c) is calculated on actual days elapsed and a year of 360 days.

### **4.2 Selection of Interest Period**

An Interest Period for a Drawing is:

- (a) for the first Interest Period, the period specified in the Drawdown Notice for that Drawing; and
- (b) for each subsequent Interest Period, a period notified in a Selection Notice given by the Obligors' Agent to the Financier on the Business Day before the last day of the current Interest Period. However, in each case, the specified period must be one that is set out in the Details. If the Obligors' Agent does not give correct notice, the subsequent Interest Period is the same length as the Interest Period which immediately precedes it (or it is the period until the Maturity Date, if that is shorter than the preceding Interest Period).

### **4.3 When Interest Periods begin and end**

- (a) An Interest Period for a Drawing begins:
  - (i) for the first Interest Period, on its Drawdown Date; and
  - (ii) for each subsequent Interest Period, on the day when the preceding Interest Period for the Drawing ends.
- (b) An Interest Period which would otherwise end on a day which is not a Business Day ends on the next Business Day (unless that day falls in the following month, in which case the Interest Period ends on the previous Business Day). However, an Interest Period which would otherwise end after the Maturity Date ends on the Maturity Date.
- (c) If an Interest Period of one or a number of months commences on a date in a month for which there is no corresponding date in the month in which the Interest Period is to end, it will end on the last Business Day of the latter month.

#### **4.4 Limit on Interest Periods**

In selecting Interest Periods under clause 4.2 (“Selection of Interest Period”), the Obligors’ Agent must ensure that there are no more than 5 different Interest Periods at any one time.

#### **4.5 Notification of interest**

Interest on a Drawing is payable in immediately available funds.

The Financier will notify the Obligors’ Agent of the interest rates determined under this agreement as soon as they are ascertained. Failure to do so will not affect the obligations of a Borrower in any way.

#### **4.6 Market disruption**

If a Market Disruption Event occurs in relation to a Drawing for any Interest Period, then the Interest Rate on that Drawing for the Interest Period shall be the rate per annum which is the sum of:

- (a) the Margin; and
- (b) the rate notified by the Financier as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to the Financier of funding its participation in that Drawing from whatever source it may reasonably select.

#### **4.7 Alternative basis of interest or funding**

- (a) If a Market Disruption Event occurs and the Financier or a Borrower so requires, the Financier and the Obligors’ Agent shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.
- (b) Any alternative basis agreed pursuant to paragraph (a) above shall, with the prior consent of the Financier and the Obligors’ Agent, be binding on each of them and the Borrowers.

### **5 Repaying and prepaying**

#### **5.1 Repayment**

- (a) Each Borrower agrees to repay the total of the Drawings drawn by it and all interest and other amounts (including default interest) which have accrued or which are otherwise payable (but unpaid) in respect of this agreement on the Maturity Date.
- (b) The Obligors’ Agent must provide a written Repayment Notice to the Financier by 11:00am (London time) at least 2 Business Days prior to the Maturity Date (or such later time as the Financier may agree), but failure to do so is without prejudice to the obligations of the Borrowers under clause 5.1(a) above.

## **5.2 Prepayment**

Each Borrower may prepay all or part of a Drawing drawn by it as follows:

- (a) if only part of a Drawing is prepaid, it must be at least US\$1,000,000 and a whole multiple of US\$500,000, or such lesser amount as may be agreed by the Financier (at its discretion) from time to time; and
- (b) the Borrower must also pay all accrued (but unpaid) interest on that Drawing; and
- (c) the Obligors' Agent must provide a written Prepayment Notice to the Financier at least 10 Business Days prior to the date of the requested prepayment (as at close of business London time) (once given, a notice of prepayment is irrevocable and the Borrower is obliged to prepay in accordance with the notice).

If the prepayment is made on an Interest Payment Date for the Drawing to be prepaid, no Break Costs are payable. However, if the Borrower prepays on a day other than the Interest Payment Date for the Drawing to be prepaid and the Financier incurs any Break Costs as a result of such prepayment, then the Borrower will be liable for Break Costs (if any) under clause 12 ("Costs and indemnities") of the Common Terms Deed Poll.

## **5.3 Prepayment and the Facility Limit**

The Facility Limit is not reduced by amounts prepaid under clause 5.2 ("Prepayment").

## **6 Payments**

### **6.1 Payment by direction**

If the Financier directs a Borrower to pay a particular party or in a particular manner, the Borrower is taken to have satisfied its obligation to the Financier by paying in accordance with the direction.

### **6.2 Amount Owing**

Subject to the provisions of any Financing Document, each Borrower agrees to repay the Amount Owing on the Maturity Date under this agreement.

### **6.3 Application of payments — pre-default**

Prior to an Event of Default, the Financier will apply amounts paid by each Borrower in accordance with the terms of the Financing Documents.

### **6.4 Application of payments — post-default**

If an Event of Default subsists, the Financier may apply amounts paid by each Borrower towards satisfaction of the Borrower's obligations under the Financing Documents in the manner it sees fit, unless the Financing Documents expressly provide otherwise. This appropriation overrides any purported appropriation by the Borrower or any other person.

## **7 Cancellation**

The Obligors' Agent may cancel the Undrawn Facility Limit in whole or in part at any time during the Availability Period by notifying the Financier in writing at least 2 Business Days prior to the date the cancellation is to take effect. A partial cancellation must be at least US\$1,000,000, unless the Financier agrees otherwise. Once given, the notice is irrevocable. The Facility Limit is reduced by the amount of any cancellation.

The Facility Limit is automatically cancelled at 5:30pm (London time) on the last day of the Availability Period.

## **8 Fees**

### **8.1 Approval Fee**

The Obligors' Agent agrees to pay on execution of this agreement, an Approval Fee as set out in the Details.

### **8.2 Commitment fee**

The Obligors' Agent agrees to pay in arrears on each Fee Payment Date, on any cancellation date described below and on the Maturity Date, the accrued but unpaid commitment fee as set out in the Details.

If the Obligors' Agent cancels any of the Undrawn Facility Limit, it also agrees to pay on the cancellation date, the commitment fee in respect of the cancelled amount from (but excluding) the last Fee Payment Date up to and including the cancellation date.

The commitment fee is calculated on actual days elapsed using a 360 day year.

## **9 Financier representation**

The Financier represents that it is a PMP within the meaning of this agreement as at the date of execution of this agreement. Each Borrower acknowledges that in making this representation the Financier relies on, and has not independently investigated, the definition of PMP set out in the Common Terms Deed Poll.

## **10 Interest on overdue amounts**

This clause applies despite the provisions of the Common Terms Deed Poll.

### **10.1 Obligation to pay**

If a Borrower does not pay any amount under or in respect of this agreement (including an amount of interest payable under this clause 10.1) on the due date for payment, the Borrower must pay interest on that amount at the Default Rate. The interest accrues daily from (and including) the due date to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 360 days.

A Borrower must pay interest under this clause to the Financier on demand from the Financier on the last Business Day of each calendar month.

### **10.2 Compounding**

Interest payable under clause 10.1 (“Obligation to pay”) which is not paid when due for payment may be added to the overdue amount by the Financier on the last Business Day of each calendar month. Interest is payable on the increased overdue amount at the Default Rate in the manner set out in clause 10.1 (“Obligation to pay”).

### **10.3 Interest following judgment**

If a liability becomes merged in a judgment, the relevant Borrower must pay interest on the amount of that liability as an independent obligation. This interest:

- (a) accrues daily from (and including) the date the liability becomes due for payment both before and after the judgment up to (but excluding) the date the liability is paid; and
- (b) is calculated at the judgment rate or the Default Rate (whichever is higher).

The relevant Borrower must pay interest under this clause to the Financier on demand from the Financier.

## **11 Money Laundering**

Each Borrower agrees that the Financier may delay, block, or refuse to make any payment if the Financier believes on reasonable grounds that making that payment will breach any law in Australia or any other country where such payment is to be made, and the Financier will incur no liability to the Borrower if it does so.

Each Borrower must provide all information to the Financier that the Financier reasonably requires to comply with any law in Australia or any other country. Each Borrower agrees the Financier may disclose information which it provides to the Financier where required by any law in Australia or any other country.

Unless a Borrower has disclosed that it is acting in a trustee capacity or on behalf of another party, that Borrower warrants that it is acting on its own behalf in applying for and using any of the Financier’s products or services.

Each Borrower declares and undertakes to the Financier that the payment of monies by the Financier in accordance with any written instructions given by the Borrower will not breach any law in Australia or any other country where such money is to be paid.

## **12 Governing law and jurisdiction**

This agreement is governed by the law in force in New South Wales and each Borrower submits to the non-exclusive jurisdiction of the courts of that place.

**EXECUTED** as an agreement.



# Form of James Hardie — Bullet Facility Agreement

## Schedule 1 — Drawdown Notice (clause 3)



[name]  
[address]

Tel [insert]  
Fax [insert]

To: [•]

Attention: [•]

Fax: [•]

[Insert date]

**Drawdown Notice — James Hardie — Bullet Facility Agreement dated [•] 2008 between James Hardie International Finance B.V. (a “Borrower” and “Obligors’ Agent”), James Hardie Building Products, Inc. (a “Borrower”) and [•] (“Financier”) (“Facility Agreement”)**

Under clause 3.2 (“Requesting a drawdown”) of the Facility Agreement, the Obligors’ Agent gives notice as follows:

[Borrower name] wants to borrow under the Facility.

- The requested Drawdown Date is [•].<sup>2</sup>
- The amount of the proposed drawdown is US\$[•].
- The requested first Interest Period is [•].
- The proposed drawdown is to be paid to:

Account number: [•]  
Account name: [•]  
Bank: [•]  
Branch: [•]  
Branch identifying  
number (Fedwire, BSB, etc): [•]

**Representations and Warranties**

[*Borrower name*] represents and warrants that:

[for the first Drawdown only]: the representations and warranties in clause 8 (“Representations and warranties”) of the Common Terms Deed Poll are correct and not misleading on the date of this notice and that each will be correct and not misleading on the Drawdown Date.

[for any subsequent Drawdown]: those representations and warranties listed in clause 3.2(a) (“Conditions to subsequent drawdowns”) of the Common Terms Deed Poll as required to be true on the date of each drawdown notice, are correct and not misleading on the date of this notice and that each will be correct and not misleading on the Drawdown Date.

No Event of Default or Potential Event of Default subsists at the date of this notice or will result from the provision of the requested utilisation.

Clause 1 (“Definitions”) of the Facility Agreement applies to this notice as if it was fully set out in this notice.

Yours faithfully

---

**[Name of person]**

being an Authorised Officer of

**James Hardie International Finance B.V.**

as Obligors’ Agent (with corporate seat in Amsterdam)

**Instructions for completion**

- 1 All items must be completed.
- 2 Must be a Business Day within the Availability Period.

# Form of James Hardie — Bullet Facility Agreement

## Schedule 2 — Selection Notice (clause 4.2)



[name]

[address]

Tel [insert]

Fax [insert]

To: [•]

Attention: [•]

Fax: [•]

[Insert date]

**Selection Notice — James Hardie — Bullet Facility Agreement dated [•] 2008 between James Hardie International Finance B.V. (a “Borrower” and “Obligors’ Agent”), James Hardie Building Products, Inc. (a “Borrower”) and [•] (“Financier”) (“Facility Agreement”)**

Terms defined in the Facility Agreement have the same meaning when used in this notice.

This is an irrevocable notice under clause 4.2 (“Selection of Interest Period”) of the Facility Agreement.

Under clause 4.2 (“Selection of Interest Period”) of the Facility Agreement, the Obligors’ Agent gives notice as follows:

The current Interest Period in respect of the Drawing drawn by **[Borrower name]** is due to end on [•].

The Interest Period following the current Interest Period is to be a period of [•]!

Yours faithfully

---

[Name of person]

being an Authorised Officer of

**James Hardie International Finance B.V.**

as Obligors’ Agent (with corporate seat in Amsterdam)

### Instructions for completion

- 1 To be an Interest Period set out in the Details

## Form of James Hardie — Bullet Facility Agreement

### Schedule 3 — Repayment Notice (clause 5.1)



[name]

[address]

Tel [insert]

Fax [insert]

To: [•]

Attention: [•]

Fax: [•]

[Insert date]

**Repayment Notice — James Hardie — Bullet Facility Agreement dated [•] 2008 between James Hardie International Finance B.V. (a “Borrower” and “Obligors’ Agent”), James Hardie Building Products, Inc. (a “Borrower”) and [•] (“Financier”) (“Facility Agreement”)**

Terms defined in the Facility Agreement have the same meaning when used in this notice and where not otherwise defined in this notice.

Under clause 5.1 (“Repayment”) of the Facility Agreement, the Obligors’ Agent gives notice as follows:

The Borrower, [*Borrower name*], wants to repay under the Facility Agreement in accordance with clause 5.1 (“Repayment”) of the Facility Agreement.

- Repayment date: [•]
- The amount of the repayment: US\$[•]
- Principal maturing: US\$[•]
- This repayment will not trigger any Break Costs under clause 5.2 of the Facility Agreement.

Yours faithfully

---

[Name of person]

being an Authorised Officer of

**James Hardie International Finance B.V.**

as Obligors’ Agent (with corporate seat in Amsterdam)

# Form of James Hardie — Bullet Facility Agreement

## Schedule 4 — Prepayment Notice (clause 5.2)



[name]  
[address]

Tel [insert]  
Fax [insert]

To: [•]

Attention: [•]

Fax: [•]

[Insert date]

**Prepayment Notice — James Hardie — Bullet Facility Agreement dated [•] 2008 between James Hardie International Finance B.V. (a “Borrower” and “Obligors’ Agent”), James Hardie Building Products, Inc. (a “Borrower”) and [•] (“Financier”) (“Facility Agreement”)**

Terms defined in the Facility Agreement have the same meaning when used in this notice and where not otherwise defined in this notice.

Under clause 5.2 (“Prepayment”) of the Facility Agreement, the Obligors’ Agent gives notice as follows:

The Borrower, [*Borrower name*], wants to prepay under the Facility Agreement in accordance with clause 5.2 (“Prepayment”) of the Facility Agreement.

- Prepayment date: [•]
- The amount of the prepayment (including any accrued but unpaid interest): US\$[•]
- This repayment [will/will not] not trigger any Break Costs under clause 5.2 of the Facility Agreement.

Yours faithfully

---

[Name of person]

being an Authorised Officer of  
**James Hardie International Finance B.V.**  
as Obligors’ Agent (with corporate seat in Amsterdam)

**Form of James Hardie — Bullet Facility Agreement**

Signing page

**DATED:** February 2008

**JHIF**

**SIGNED** by )

)

)

)

)

as attorneys for **JAMES HARDIE** )

**INTERNATIONAL FINANCE** )

**B.V.** under power of attorney dated )

)

)

in the presence of: )

)

)

)

\_\_\_\_\_  
Signature of witness )

)

)

\_\_\_\_\_  
Name of witness (block letters) )

)

)

\_\_\_\_\_

By executing this agreement each attorney states that the attorney has received no notice of revocation of the power of attorney

**JHBP**

**SIGNED** by )

)

)

)

)

as Authorised Representatives of )

**JAMES HARDIE BUILDING** )

**PRODUCTS, INC.** in the presence )

)

of: )

)

)

)

\_\_\_\_\_  
Signature of witness )

)

)

\_\_\_\_\_  
Name of witness (block letters) )

)

)

)

\_\_\_\_\_  
By executing this agreement each Authorised Representative states that the Authorised Representative has received no notice of revocation of his or her authority to execute this deed





**James Hardie — Form of 364-day Facility Agreement**

**Schedule 3 — Extension Request (clause 5.2)**

**To: (Financier) #1#**

**Date: 7 September 2007**

**Extension Request — James Hardie — 364-day Facility Agreement dated #2# June 2005 between James Hardies International Finance BV (“Borrower” and “Obligors’ Agent”) and #1# (“Financier”) (“Facility Agreement”)**

In accordance with clause 5.2 (“Extension of Maturity Date”) of the Facility Agreement, the Obligors’ Agent requests as follows;

We request that the Maturity Date under the Facility Agreement in respect of US\$#3# be extended to a date 182 days after the current Maturity Date under the Facility Agreement.

The Maturity Date, if extended in accordance with this request, will be #4# December 2008.

If this extension request is accepted, the Facility Limit applicable from the current Maturity Date will be US\$ #3#.

\_\_\_\_\_  
[Names of person] being an  
Authorised Officer of

\_\_\_\_\_  
[Name of person] being an  
Authorised Officer of

**James Hardie International Finance BV**  
as Obligors’ Agent (with corporate seat in Amsterdam)

We agree to extend the maturity Dare for the requested Facility Limit in accordance with the above notice.

Signed for the Financier #1# on \_\_\_\_\_ by:

\_\_\_\_\_  
\_\_\_\_\_ being an Authorise Officer of the Financier #1#  
(print name)



# James Hardie — Form of 364-day Facility Agreement

## Schedule 3 — Extension Request (clause 5.2)

To: (Financier) #1#

Date: 7 March 2008

**Extension Request — James Hardie — 364-day Facility Agreement dated #2# June 2005 between James Hardies International Finance BV (“Borrower” and “Obligors’ Agent”) and #1# (“Financier”) (“Facility Agreement”)**

In accordance with clause 5.2 (“Extension of Maturity Date”) of the Facility Agreement, the Obligors’ Agent requests as follows;

We request that the Maturity Date under the Facility Agreement in respect of US\$#3# be extended to a date 182 days after the current Maturity Date under the Facility Agreement.

The Maturity Date, if extended in accordance with this request, will be #4# June 2009.

If this extension request is accepted, the Facility Limit applicable from the current Maturity Date will be US\$ #3#.

\_\_\_\_\_  
[Name of person] being an  
Authorised Officer of

\_\_\_\_\_  
[Name of person] being an  
Authorised Officer of

**James Hardie International Finance BV**  
as Obligors’ Agent (with corporate seat in Amsterdam)

We agree to extend the maturity Dare for the requested Facility Limit in accordance with the above notice.

Signed for the Financier #1# on \_\_\_\_\_ by:

\_\_\_\_\_  
being an Authorise Officer of the Financier  
(print name)

**James Hardie — Form of 364-day Facility Agreement**

## Extension Request (clause 5.2)

To: (Financier) #1#

Date: #2# June 2008

**Revised Extension Request — James Hardie — 364-day Facility Agreement dated #3# June 2005 between James Hardies International Finance BV (“Borrower” and “Obligors’ Agent”) and #1# (“Financier”) (“Facility Agreement”)**

In accordance with clause 5.2 (“Extension of Maturity Date”) of the Facility Agreement, the Obligors’ Agent requests as follows:

We request that the Maturity Date under the Facility Agreement in respect of US\$#4# be extended to a date 182 days after the current Maturity Date under the Facility Agreement.

After discussions between the Obligors’ Agent and the Financier, although not provided for in the Facility Agreement, a revised margin (“Revised Margin”) of #5#% per annum has been agreed to apply as set out below.

On acceptance of this Extension Request:

- The Facility Limit applicable from the current Maturity Date will be US#4#.
- The new Maturity Date will be 11 June 2009.
- The Revised Margin of #5#% per annum will only apply from the current Maturity Date (#6# December 2008) to the new Maturity Date (11 June 2009). At the new Maturity Date (11 June 2009) the margin will revert to the Margin stated in the Details of the Facility Agreement, unless otherwise agreed between us.
- The Commitment Fee will be #7# per annum (being #8#% of the applicable margin)
- No Extension Fee is payable in connection with this Extension Request.

Yours faithfully

---

 [Name of person] being an  
 Authorised Officer of

---

 [Name of person] being an  
 Authorised Officer of

**James Hardie International Finance BV**  
 as Obligors’ Agent (with corporate seat in Amsterdam)

We agree to extend the maturity Dare for the requested Facility Limit in accordance with the above notice.

Signed for the Financier on \_\_\_\_\_ by:

---

 \_\_\_\_\_ being an Authorise Officer of the Financier #1#  
 (print name)

## Deed of access, insurance and indemnity

**Dutch law deed for certain Officeholders of JHINV and JHINV Subsidiaries**

Dated

James Hardie Industries N.V. ("**Indemnitor**")

[ ] ("**Indemnified Person**")

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# Deed of access, insurance and indemnity

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# Deed of access, insurance and indemnity

## Details

Parties	Indemnitor and Indemnified Person	
<b>Indemnitor</b>	Name	James Hardie Industries N.V.
	Trade Register (Amsterdam)	34106455
	Address	Atrium 8th floor Strawinskylaan 3077 1077 ZX Amsterdam The Netherlands
	Telephone	+31 (0) 20 301 2986
	Fax	+31 (0) 20 404 2544
	Attention	general counsel
	Email	●
<b>Indemnified Person</b>	Name	
	Address	
	Telephone	
	Fax	
	Email	

- Recitals**
- A The Indemnified Person has been appointed as or is acting in the role of:
- a) a director, company secretary, public officer and/or employee of the Indemnitor; and/or
  - b) a director, company secretary, public officer and/or employee of a JHINV Subsidiary; and/or
  - c) a director, company secretary, public officer and/or employee of an Outside Entity, (an “**Officeholder**”).

- B** The Indemnitor acknowledges that this deed constitutes a formal request from the Indemnitor for the Indemnified Person to act, or continue to act, as an Officeholder.
- C** As a condition of the Indemnified Person agreeing to act (either at the date of this deed or any time after the date of this deed) or continuing to act as an Officeholder of:
- a) the Indemnitor;
  - b) any JHINV Subsidiary; or
  - c) an Outside Entity where the appointment or service as an Officeholder is made or done at the request of the Indemnitor, the Indemnified Person has requested that the Indemnitor enter into this deed.
- D** The Indemnitor enters into this deed in order to secure for itself and/or the JHINV Subsidiaries the benefit of the Indemnified Person acting as an Officeholder.
- E** The Indemnitor has agreed to provide the covenants and indemnities provided for under this deed and acknowledges having received valuable consideration for doing so.
- F** This deed is not intended to replace or diminish any Third Party's obligations to the Indemnified Person, including any insurer's obligation to indemnify the Indemnified Person against any liability, or any other indemnity granted by any JHINV Subsidiary except to the extent stated in this deed.

**Date of deed**

See Signing page

# Deed of access, insurance and indemnity

## General terms

### 1 Interpretation

#### 1.1 Definitions

These meanings apply unless the contrary intention appears:

**Access Rights** means the rights referred to and contained in clause 3.1 to access and take copies of the Company Books.

**ASIC** means Australian Securities and Investments Commission.

**Authority** means:

- (a) a Royal Commission, Board of Inquiry, Parliamentary Committee or similar body;
- (b) ASIC, Australian Prudential Regulation Authority, Australian Competition and Consumer Commission, Australian Securities Exchange and any other regulatory authority;
- (c) a department of any Australian government or government of any other jurisdiction;
- (d) SEC (the U.S. Securities and Exchange Commission);
- (e) NYSE (New York Stock Exchange);
- (f) a prosecutor, state attorney or attorney general, law enforcement agency or other public authority;
- (g) an instrumentality, agent or appointee of the Crown in right of the Commonwealth, in right of a State or in right of a Territory or the equivalent of any of them in any other jurisdiction; and
- (h) any other body exercising statutory or prerogative power under any applicable law.

**Board** means the Indemnitor's boards of directors, comprising the managing board (*directie*), the supervisory board (*raad van commissarissen*) and joint board and any equivalent corporate body of the Indemnitor.

**Board Papers** means:

- (a) all existing and future Documents given or made available to Officeholders of the Indemnitor or a JHINV Subsidiary or any of them in such capacity or tabled at meetings of the Board or any committee of the Board (including periodic Board papers, submissions, minutes, letters, presentations, Board committee and sub-committee papers); and



(b) any other Documents in the possession or control of the Indemnitor or a JHINV Subsidiary which are referred to in any of those Documents, whether or not legal professional privilege applies to the Documents.

**Claim** means:

- (a) any Proceedings, including any formal written claim, cause of action, action, demand or suit (including by way of contribution or indemnity and including actions by or in the right of the Indemnitor or a JHINV Subsidiary) at law or in equity (whether for damages or for declaratory, injunctive or other relief) however commenced;
- (b) any investigation or inquiry by or initiated by any Authority or External Administrator in any way connected with any Indemnified Person's Act;
- (c) any formal investigation or inquiry:
  - (i) conducted by or initiated by the Indemnitor or a JHINV Subsidiary concerning any Indemnified Person's Act; or
  - (ii) to which it is reasonable in the circumstances for the Indemnified Person to respond, where the investigation or inquiry is concerning any Indemnified Person's Act;
- (d) any formal written claim, claim, cause of action, action, demand or suit originated by the Indemnified Person, but only where the Indemnified Person has first obtained approval by at least a 2/3 vote of all members of the managing board (*directie*) of the Indemnitor holding office; or
- (e) any written or oral threat, complaint or demand that might reasonably result in the Indemnified Person believing that any action referred to in paragraphs (a) or (b) or (c) might be initiated.

**Company Books** includes:

- (a) a register;
- (b) any other record of information;
- (c) financial reports or financial records, however compiled, recorded or stored;
- (d) a Document; and
- (e) the Board Papers,

of the Indemnitor or a relevant JHINV Subsidiary.

**Corporations Act** means the Corporations Act 2001 (Cwlth).

**Details** means the section of this deed headed “Details”.

**Document** includes:

- (a) any paper or other material on which there is writing or printing or on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- (b) a disc, tape, hard drive or other article from which sounds, images, writings or messages are capable of being reproduced; and
- (c) a disc, tape, hard drive or other article, or any material, from which sounds, images, writings or messages are capable of being reproduced with or without the aid of any other article or device,

including any notice, order, writ, summons and other legal process document.

**Effective Date** means the date of this deed.

**Excluded Liability** means a liability for which the Indemnitor is not allowed to grant an indemnity against under applicable law or under its articles of association (*statuten*) in force on the date of this deed.

**External Administrator** means a liquidator, provisional liquidator, controller (which has the same meaning as in the Corporations Act) or an administrator, receiver, trustee, debtor in possession, official committee, examiner, or other person or entity with the power to act on behalf of the Indemnitor or a JHINV Subsidiary during bankruptcy or an insolvency, or equivalent officer appointed under or recognized by the law of any jurisdiction of incorporation of the Indemnitor or a JHINV Subsidiary.

**GST** has the same meaning as in the GST Law.

**GST Law** means the A New Tax System (Goods and Services Tax) Act 1999 (Cwlth) and any legislation or regulation which imposes, levies, implements or varies a GST.

**Indemnified Person’s Act** means any actual or alleged act, error, statement, misstatement, misleading statement, omission, neglect, conduct or breach of duty made, committed, omitted or attempted by the Indemnified Person (either alone or jointly with one or more other persons) in any way connected with the Indemnified Person being or acting in the role of an Officeholder of the Indemnitor, any JHINV Subsidiary or any Outside Entity (whether before or after the Effective Date).

**Insurance Policy** means an insurance policy against liabilities incurred as a director and/or officer of the Indemnitor or a JHINV Subsidiary taken out in accordance with and subject to clause 6.

**Insurer** means any reputable and financially sound insurer whose business includes the provision of the insurance contemplated in clause 6.

**JHINV Subsidiary** means a subsidiary (*dochtermaatschappij*) of James Hardie Industries N.V. within the meaning of Section 2:24a of the Dutch Civil Code and for the avoidance of doubt includes any corporation that was a subsidiary of James Hardie Industries N.V. when the Indemnified Person's Act for which indemnity is sought under this deed occurred, even though it has ceased to be a subsidiary at the time the Claim is made, but does not include any subsidiaries in Australia, New Zealand, the Philippines or North America.

**Legal Costs** means legal costs, fees, charges or expenses.

**Liability** includes any liability, judgment, fines, costs, amounts paid in settlement, loss, expense, damages, monetary obligation or charge (whether actual, contingent or prospective), and includes Legal Costs, other than an Excluded Liability.

**Outside Entity** has the meaning ascribed to it in clause 4.9 ("Outside Entities") and for the avoidance of doubt includes any corporation that was an Outside Entity when the Indemnified Person's Act for which indemnity is sought under this deed occurred, even though it has ceased to be an Outside Entity at the time the Claim is made.

**Previous Deed** means the [ ] dated [ ].<sup>1</sup>

**Proceedings** means any civil, criminal, administrative, investigative or arbitral proceedings, mediation or other form of alternative dispute resolution (whether or not held in conjunction with any civil, criminal, administrative or arbitral proceedings), in which it is alleged that an Indemnified Person's Act has occurred.

**Retirement Date** means the last date on which the Indemnified Person ceases to be an Officeholder of the Indemnitor or a JHINV Subsidiary or an Outside Entity, except that for the purposes of this definition, the Indemnified Person has not ceased to hold office as an Officeholder if the Indemnified Person, in his capacity as a director, retires at a general meeting of the relevant entity in accordance with its constitution or the listing rules of the relevant exchange, offers himself for re-election at that meeting and is re-elected at that meeting (or any adjournment of that meeting).

**Supply** has the same meaning as in the GST Law.

**Third Party** means a person other than the Indemnitor or a JHINV Subsidiary and includes an insurer.

**VAT** means value added tax (*omzetbelasting*) or any similar levy or tax, including but not limited to GST.

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<sup>1</sup> Delete for a newly appointed Indemnified Person.

## 1.2 General interpretation

In this deed unless the contrary intention appears:

- (a) **(executors and administrators)** a reference to the Indemnified Person includes a reference to the Indemnified Person's personal representatives, executors and administrators;
- (b) **(variations or replacement)** a reference to this deed includes any variation or replacement of it;
- (c) **(singular includes plural)** the singular includes the plural and vice versa;
- (d) **(person)** the word "person" includes an individual and a body corporate;
- (e) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (f) **(as an Officeholder)** a reference to a Liability incurred "as an Officeholder of the Indemnitor, a JHINV Subsidiary or an Outside Entity" includes a reference to a Liability incurred by the Indemnified Person after the Retirement Date to the extent the Liability relates to any Indemnified Person's Act occurring while the Indemnified Person was an Officeholder of the Indemnitor, a JHINV Subsidiary or an Outside Entity; and
- (g) **(Officeholder)** a reference to an Officeholder of a body corporate includes a reference to the persons acting in the role of the members of the board of directors and any equivalent corporate body (under applicable law) and company secretary, public officer or employee of such body corporate.

## 1.3 Headings

Headings are for convenience only and do not affect the interpretation of this deed.

## 1.4 Footnotes

The footnotes to this deed are for information only and do not form part of this deed.

## 1.5 Counterparts

This deed may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

## 2 Consideration

The Indemnitor enters into this deed for valuable consideration from the Indemnified Person and receipt of that consideration is acknowledged.

### **3 Access to documents**

#### **3.1 Access Rights**

It is acknowledged and accepted that the Indemnified Person shall have, to the fullest extent permitted by applicable law, the right to access and take copies of the Company Books.

Without limiting the generality of the foregoing, the Indemnified Person may have access to and take copies of the Company Books in connection with:

- (a) any investigation or inquiry by an Authority or External Administrator:
  - (i) into the affairs of the Indemnitor or a JHINV Subsidiary during the Indemnified Person's time as an Officeholder of the relevant entity; or
  - (ii) into any Indemnified Person's Act; and
- (b) any other purpose, if and to the extent approved by the managing board (*directie*) of the Indemnitor or its delegate (such approval not to be unreasonably withheld or delayed).

The Access Rights in clauses (a) and (b) above continue so long as the Indemnified Person shall continue to serve as an Officeholder of the Indemnitor or a JHINV Subsidiary and, following his Retirement Date, so long as the Indemnified Person shall be subject to any possible Proceedings (such period, the "**Access Period**").

#### **3.2 Request for Access Rights**

To exercise Access Rights, the Indemnified Person must notify the Indemnitor specifying:

- (a) the reason the Indemnified Person wants Access Rights; and
- (b) to which Company Books the Indemnified Person wants Access Rights.

#### **3.3 Indemnitor's obligations regarding access**

If the request is one for which approval for access is required under clause 3.1 (b), the Indemnitor agrees to promptly procure consideration of the request by its managing board (*directie*) or its delegate and notify the Indemnified Person of its decision.

If access is permitted under this deed, the Indemnitor agrees to, or, where relevant, procure that the relevant JHINV Subsidiary:

- (a) allow the Indemnified Person access to the Company Books during normal business hours at the principal office of the relevant entity or another place or time agreed between the relevant entity and the Indemnified Person; and

- (b) if required by the Indemnified Person, provide free of charge to the Indemnified Person a copy of any of the Company Books requested.

### **3.4 Indemnitor's obligation to maintain documents**

The Indemnitor agrees to use reasonable endeavours throughout the Access Period to maintain:

- (a) a complete set of Board Papers in an orderly fashion at a secure place; and
- (b) procure that each JHINV Subsidiary uses its reasonable endeavours to maintain the Company Books in accordance with its usual practices and policies.

In this clause, a complete set of Board Papers means those documents formally prepared and circulated as a Board pack of documents to all members of the Board or to all members of any relevant committee of the Board (including documents formally distributed or presented at a Board meeting).

### **3.5 Notification of privileged documents**

The Indemnitor agrees to notify or, as applicable, to procure that the relevant JHINV Subsidiary notifies the Indemnified Person:

- (a) if any Company Books to which the Indemnified Person is to be given or has been given Access Rights are the subject of legal professional privilege in favour of the Indemnitor or a JHINV Subsidiary; and
- (b) of the general nature of acts, omissions or conduct that could cause the privilege to be waived, extinguished or lost.

### **3.6 Indemnified Person's obligations**

The Indemnified Person agrees:

- (a) to use Company Books to which Access Rights have been given only for the permitted purpose;
- (b) to keep Company Books confidential except that, subject to paragraph (c), the Indemnified Person may disclose them:
  - (i) to the Indemnified Person's lawyers and expert advisors retained by the Indemnified Person or those lawyers but only for the purpose for which access is given to the Indemnified Person; and
  - (ii) to the other parties to Proceedings in which the Indemnified Person is a party if this is necessary for the purposes of those Proceedings (but only those parts relevant to the Proceedings may be disclosed),  
provided the recipient has agreed to maintain confidentiality; and

- (c) if the Indemnified Person has been advised that privilege exists, not to waive that privilege or do any act or omit to do any act which would cause that privilege to be waived or extinguished without the consent of the Indemnitor or the relevant JHINV Subsidiary (which must not be unreasonably withheld).

### **3.7 Return of documents**

On request from the Indemnitor, the Indemnified Person agrees to return to the Indemnitor or relevant JHINV Subsidiary, as applicable, all copies of Company Books for which Access Rights were granted when the permitted purpose has finished. This applies even after the Access Period has ended.

### **3.8 Other rights of access preserved**

Nothing in this deed limits or restricts any other right of access to the Company Books the Indemnified Person has under any applicable law.

## **4 Indemnities**

### **4.1 Indemnities**

To the maximum extent permitted by law and subject to this deed, the Indemnitor unconditionally and irrevocably indemnifies the Indemnified Person against any and all:

- (a) Claims or in respect of any Liabilities (including without limitation a liability for negligence) arising from or in connection with an Indemnified Person's Act (other than Legal Costs or civil penalties which are indemnified under paragraphs (b) and (c));
- (b) civil penalties being pecuniary penalties imposed under legislation;
- (c) Legal Costs, not limited to taxed costs (i.e. costs reviewed and approved by a court), actually and reasonably incurred by the Indemnified Person in defending, or otherwise being represented in connection with a Claim or in respect of any Liability;
- (d) reasonable Legal Costs actually incurred by the Indemnified Person in good faith in obtaining legal advice for the purposes of making a claim for indemnification or seeking legal advice in relation to any issues that may arise under this deed in connection with making a claim for indemnification under this deed or any insurance policy procured by the Indemnitor under clause 6;
- (e) reasonable Legal Costs actually incurred by the Indemnified Person in good faith in connection with any civil, criminal, administrative, investigative or arbitral proceedings, mediation or other form of alternative dispute resolution (whether or not held in conjunction with any civil, criminal, administrative or arbitral proceedings) in which the Indemnified Person is made a witness by reason of the fact of his service as an Officeholder of the Indemnitor, a JHINV Subsidiary or an Outside Entity;

- (f) reasonable Legal Costs actually incurred by the Indemnified Person in good faith in obtaining legal advice on issues relevant to their performance of their functions and the discharge of their duties as an Officeholder of the Indemnitor, a JHINV Subsidiary or an Outside Entity (other than Legal Costs (i) incurred in connection with a Claim or in respect of any Liability which are indemnified on the basis specified in paragraph (c), (ii) indemnified on the basis specified in paragraph (d), or (iii) indemnified on the basis specified in paragraph (e)) if that expenditure has been approved by the Indemnitor in accordance with the Indemnitor's articles of association (*statuten*); and
- (g) any social security premiums or other taxes which are payable by or on account of the Indemnified Person as a result of the event or circumstances indemnified against and the Indemnified Person's actual or deemed receipt of any payment hereunder.

#### 4.2 Limit on Indemnities

Subject to paragraphs (e) and (f) of this clause, the Officeholder is not entitled to the indemnities contained in this deed to the extent that a Dutch court has established in a final and non-appealable decision that the Liability is in connection with an Indemnified Person's Act which may be characterized as being:

- (a) wilful misconduct (*opzet*);
- (b) intentional recklessness (*bewuste roekeloosheid*);
- (c) seriously imputable (*ernstig verwijtbaar*); or
- (d) not in good faith (*te kwader trouw*) or in a manner the Officeholder reasonably could not believe to be in or not opposed to the best interests of the Indemnitor or relevant JHINV Subsidiary, as applicable, or, with respect to any criminal action or proceeding, had no reasonable cause to believe that the Officeholder's conduct was lawful;

(in each case to be determined under the standards of Dutch corporate law, i.e. if the relevant entity is not governed by Dutch law, it is to be decided whether under rules and principles of Dutch corporate law, the Indemnified Person's Act would constitute any of the above if the entity had been governed by Dutch law),

unless:

- (e) otherwise provided for by Dutch law; or
- (f) in view of the circumstances of the case, the managing board (*directie*) of the Indemnitor provides otherwise based on standards of reasonableness and fairness.



- (g) The termination of any Claim by a judgement, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that (i) the Indemnified Person's Act may be characterized as being wilful misconduct (*opzet*), intentional recklessness (*bewuste roekeloosheid*) or seriously imputable (*ernstig verwijtbaar*), (ii) the Indemnified Person did not act in good faith or did not act in a manner which the Indemnified Person reasonably could have believed to be in (or not opposed to) the best interests of the Indemnitor or the relevant JHINV Subsidiary, as applicable, or, (iii) with respect to any criminal action or proceeding, the Indemnified Person had no reasonable cause to believe that the Indemnified Person's conduct was lawful.

#### 4.3 Nature of indemnities

- (a) The indemnities in this deed:
  - (i) are continuing obligations, independent of the Indemnitor's other obligations under this deed and survive the termination of this deed; and
  - (ii) extend to Liabilities arising out of Claims made after the Indemnified Person has ceased being an Officeholder of the Indemnitor or a JHINV Subsidiary or an Outside Entity.
- (b) It is not necessary for the Indemnified Person to incur expense or make payment before enforcing a right of indemnity under this deed.
- (c) The Indemnitor's obligations under this deed are a primary obligation and the Indemnified Person is not obliged to proceed against or enforce any other right against any person or property or demand payment from any other person before making a demand for payment by the Indemnitor under this deed.
- (d) The Indemnitor's obligations under this deed are absolute and unconditional. They are not subject to any set-off, counterclaims or conditions. In particular, the Indemnitor's obligations will not be affected by anything which might abrogate, prejudice or limit them or the effectiveness of this deed.
- (e) The Indemnitor waives in favour of the Indemnified Person all rights at law or otherwise against any person or property so far as necessary to give effect to this deed.

#### 4.4 Payment of indemnified amounts

If the Indemnified Person is entitled to be indemnified under this deed for a Liability which is due and payable, the Indemnitor agrees to pay that amount at the direction of the Indemnified Person to discharge the Liability. Payment is to be made within 30 days of the date on which the Indemnified Person provides evidence reasonably satisfactory to the Indemnitor that the:

- (a) Indemnified Person has incurred the Liability; and
- (b) amount is due and payable, or within such shorter time provided that the Indemnified Person can demonstrate that such a Liability is payable within a shorter time.

#### 4.5 Currency

(a) Currency of payment

- (i) The Indemnitor must pay all money payable by it under this deed in the currency reasonably required by the Indemnified Person.
- (ii) If the Indemnified Person accepts a payment under this deed in a currency other than that in which payment is required by clause 4.5(a)(i), that payment will not satisfy the amount due for payment except to the extent that the Indemnified Person could buy (either directly or through a currency other than that in which the payment is due) with the payment received the required currency within a reasonable time of receipt after the deduction of all costs relating to the purchase.

(b) Currency deficiency

If there is any deficiency between:

- (i) an amount payable by the Indemnitor under this deed which is received by the Indemnified Person in a currency other than the currency payable under this deed because of a judgment, order or otherwise; and
- (ii) the amount produced by converting the payment received from the currency in which it was paid into the currency in which it was agreed to be paid either directly or through a currency other than that in which it was agreed to be paid,

the Indemnitor must pay to the Indemnified Person the deficiency and any loss, costs or expenses resulting from it.

(c) Exchange rate

Subject to any express provision to the contrary, if for the purposes of this deed it is necessary to convert one currency into another currency the conversion must be effected using an exchange rate selected by the Indemnified Person (acting reasonably) reflecting market conditions (including transaction costs) at the time of conversion.

#### 4.6 Payment of Legal Costs

Without limiting clause 4.1 and 4.4, to the maximum extent permitted by law, Legal Costs and other Liabilities incurred by the Indemnified Person which may be indemnified under clause 4.1 will be paid by the Indemnitor promptly as required in clause 4.4 and, where a Claim is involved, in advance of the final determination of such Claim, provided that amounts payable under this clause must be repaid if and to the extent required under clause 4.8.

#### **4.7 Other insurance policies and indemnities**

The Indemnified Person is not obliged to claim under any indemnity or insurance policy before claiming under this deed.

#### **4.8 Repayment by Indemnified Person**

The Indemnified Person agrees to repay amounts paid by, or at the direction of, the Indemnitor under this deed to or on behalf of the Indemnified Person in connection with a Liability (including but not limited to any amounts paid pursuant to clause 4.6), within 30 days after receiving a written request from the Indemnitor specifying the amount to be repaid, to the extent that:

- (a) the Liability is or becomes a Liability for which the Indemnified Person is not entitled to be indemnified under this deed;
- (b) a court of competent jurisdiction determines that the Indemnified Person is not entitled to be indemnified by the Indemnitor for the Liability; or
- (c) the Indemnified Person is reimbursed by a Third Party for the Liability, or a Third Party satisfies the Liability directly.

If the law requires earlier repayment then the amount advanced must be repaid when the law so requires.

For the purpose of this clause, the Indemnified Person is only required to repay amounts solely and directly attributable to the defence of the Indemnified Person (to the exclusion of any other party to any Proceedings) in relation to a Claim or Liability.

#### **4.9 Outside Entities**

In this clause, "Outside Entity" means a body corporate which is not the Indemnitor or a JHINV Subsidiary (and for this purpose includes another company, a partnership, joint venture, trust or other enterprise but does not include the Asbestos Injuries Compensation Fund Limited (ACN 117 363 461), ABN 60 Pty Limited (ACN 000 009 263), Amaca Pty Limited (ACN 000 035 512) and Amaba Pty Limited (ACN 000 387 342)) where the Indemnified Person has been appointed as an Officeholder of an Outside Entity at the request of the Indemnitor or is serving, or continuing to serve, as an Officeholder at the request of the Indemnitor. In that event the Indemnified Person is indemnified by the Indemnitor in accordance with this deed against any Claim and in respect of any Liability incurred in the capacity as an Officeholder of the Outside Entity as if that Liability had been incurred in the capacity as an Officeholder of the Indemnitor in accordance with clause 4.1.

#### **4.10 Multiple indemnities**

- (a) The indemnity given under this clause 4 is only available to the Indemnified Person to the extent that an Indemnified Person is not actually indemnified under any other indemnity given in favour of the Indemnified Person, including but not limited to an indemnity from the Indemnitor, a JHINV Subsidiary or an indemnity from an Outside Entity.

- (b) The Indemnitor is not obliged to make payments to the extent that the Indemnified Person has already received payment from any other JHINV Subsidiary and the Indemnified Person acknowledges he cannot claim payment from the Indemnitor to the extent he recovers payment from a JHINV Subsidiary.

#### **4.11 Reasonable Costs**

If the parties do not reach agreement as to whether Legal Costs under clause 4.1 or 4.6 are reasonable within 30 days of the claim being made then either party may refer the dispute to an expert on legal costs in the place where the dispute arises for determination. The expert is to be the person nominated by the Chairman of the Board of the Amsterdam Bar Association or a designee of such person who has regard to the place where the dispute arises, unless the parties agree to another person before the Chairman nominates the expert.

Where an expert has been nominated under this clause to determine a dispute:

- (a) the expert will determine the procedures for determination of the dispute and the allocation of costs and expenses in connection with the referral; and
- (b) the decision of the expert will be conclusive and binding on the parties in the absence of manifest error.

### **5 Conduct of Claim**

#### **5.1 Indemnified Person's undertakings**

The Indemnified Person agrees:

- (a) to notify the Indemnitor as soon as possible after the Indemnified Person becomes aware of any circumstances which could reasonably be expected to give rise to a request by the Indemnified Person for indemnity under this deed, provided that the failure to so notify Indemnitor will not relieve Indemnitor from any liability which it may have to the Indemnified Person (except to the extent that the Indemnitor is prejudiced by such failure);
- (b) to take any action and provide any information the Indemnitor reasonably requires to avoid, dispute, defend or appeal any Claim which could reasonably be expected to give rise to a request by the Indemnified Person for indemnity under this deed;
- (c) to assist the Indemnitor to the best of the Indemnified Person's abilities in any action the Indemnitor takes to avoid, dispute, defend or appeal any Claim which may give rise to a request by the Indemnified Person for indemnity under this deed;
- (d) not to admit liability for or settle any Claim which may give rise to a request by the Indemnified Person for indemnity under this deed without the Indemnitor's consent (which must not be unreasonably withheld);

- (e) to notify the Indemnitor immediately of any offer of settlement or compromise received from a person making a Claim; and
- (f) if the Indemnitor is entitled to act under clause 5.2, to do everything the Indemnitor reasonably requests, to enable the Indemnitor to enforce its rights under that clause or clause 5.3.

## **5.2 Conduct of Claim**

With respect to any Claim:

- (a) the Indemnitor shall be entitled to participate therein at its own expense;
- (b) except with prior written consent of the Indemnified Person, the Indemnitor shall not be entitled to assume the defence of any Claim;
- (c) the Indemnitor shall not settle any Claim in any manner which would impose any penalty or limitation on the Indemnified Person without the Indemnified Person's prior written consent (not to be unreasonably withheld or delayed);
- (d) the Indemnified Person shall not settle any Claim without the Indemnitor's prior written consent (not to be unreasonably withheld or delayed); and
- (e) as far as legally possible, the Indemnitor may elect to be subrogated to the rights of the Indemnified Person against a Third Party in connection with the Claim and any Liability arising in connection with the Claim, unless an insurer is entitled to be subrogated to those rights.

## **5.3 Control of Claim**

If the Indemnitor is entitled to act under clause 5.2, the Indemnitor may manage and control the conduct of the Claim but must do so at the cost of the Indemnitor or its insurers. In those circumstances, the Indemnitor agrees to instruct its lawyers on behalf of both the Indemnitor and the Indemnified Person and indemnify the Indemnified Person against any costs awarded against the Indemnified Person in any Claim brought by the Indemnitor in the exercise of its rights under this clause 5.

## **5.4 Legal advisers appointed by the Indemnified Person**

Where Indemnitor has not assumed control of the conduct of a Claim under clause 5.2, the Indemnified Person may appoint legal or other advisers to assist the Indemnified Person in connection with the Claim not being the advisers assisting the Indemnitor in connection with the Claim. Subject to the terms of this deed and to the Indemnitor approving the identity of the advisers to be appointed (such approval not to be unreasonably withheld or delayed), the Indemnitor agrees to pay all reasonable Legal Costs and other costs and expenses incurred by the Indemnified Person in those circumstances.

Nothing in this clause 5.4 derogates from clauses 4.1(c), 4.1(d), 4.1(e), 4.1(f) and 4.8.

## **5.5 Interpretation**

Each cause of action, demand or suit comprised in any Claim shall be treated as a separate and distinct Claim, with the result that clauses 5.2 and 5.4 may each apply to different aspects of what might otherwise be regarded as the same Claim or Proceeding.

## **6 Insurance**

### **6.1 Indemnitor to maintain insurance**

To the extent permitted by law, the Indemnitor must, so long as the Indemnified Person shall continue to serve as an Officeholder of the Indemnitor or a JHINV Subsidiary or an Outside Entity and, following his Retirement Date, so long as the Indemnified Person shall be subject to any possible Proceedings, procure that an adequate Insurance Policy with an Insurer so far as is reasonably available at a reasonable cost is maintained for the benefit of the Indemnitor or the relevant JHINV Subsidiary. The Insurance Policy may contain generally accepted exclusions and conditions.

The Indemnitor agrees to and agrees to procure that any JHINV Subsidiary agrees to:

- (a) use reasonable endeavours not to do or permit to be done anything which prejudices, and promptly rectify anything which might prejudice, cover under the Insurance Policy;
- (b) upon receipt of a request in writing from the Indemnified Person, provide the Indemnified Person with a copy of the Insurance Policy and any certificates of insurance connected with it;
- (c) notify the Indemnified Person promptly if, for any reason, the Insurance Policy is cancelled or is not renewed or is likely to be cancelled or not renewed; and
- (d) use reasonable endeavours to ensure that cover under the Insurance Policy following the Retirement Date is not materially less favourable to the Indemnified Person than to the Officeholders of the Indemnitor in office at that time.

### **6.2 Indemnified Person's undertaking in connection with insurance**

The Indemnified Person agrees:

- (i) to do anything the Indemnitor reasonably requires to enable the Indemnitor to take out and maintain the Insurance Policy at the Indemnitor's expense; and

- (ii) to comply at all times with all his obligations under the Insurance Policy, including reporting claims in writing as soon as practicable, and reporting circumstances which could give rise to a claim.

### **6.3 Indemnified Person's acknowledgment in connection with insurance**

The Indemnified Person acknowledges that the negotiation of the terms of the Insurance Policy may:

- (a) involve the Insurer varying the terms of the insurance policy offered which, if accepted by the Indemnitor, may provide less coverage or less favourable coverage for the Indemnified Person;
- (b) involve a decision by the Indemnitor, acting reasonably, to balance the proposed level of premiums against the terms offered; or
- (c) result in a decision by the Indemnitor to accept varied terms or to change Insurers.

### **7 Subrogation**

- (a) In the event of the Indemnitor meeting its obligations under this Deed, any rights which the Indemnified Person has or might have against any other party in respect of any matter which has been the subject of indemnity will be subject to a right of subrogation by the Indemnitor.
- (b) If the Indemnitor acts under this clause 7, the Indemnified Person agrees to any claim or proceedings being brought by the Indemnitor in the Indemnified Person's name and agrees to provide the Indemnitor with all reasonable assistance and co-operation including the execution of any necessary documents and papers.
- (c) If the Indemnified Person recovers any amount from a Third Party in respect of any matter giving rise to a claim under this indemnity, the Liability of the Indemnitor will be reduced by the amount so recovered. Should the Indemnitor recover an amount in excess of the total payment made, then the excess of that payment shall be restored to the Indemnified Person less the cost to the Indemnitor of such recovery.
- (d) The Indemnified Person and Indemnitor shall do nothing to prejudice these rights.

### **8 Notices**

#### **8.1 Requirements for notices**

All notices, consents, approvals, waivers and other communications in connection with this deed must be in writing, signed by the sender (if the Indemnified Person) or an authorised representative of the sender (if the Indemnitor), and sent to the address or facsimile number, and marked for attention of the person identified in the Details or, if the recipient has notified otherwise, then marked for attention in the way last notified.

## **8.2 When effective**

Communications take effect from the time they are received or taken to be received. Communications are taken to be received:

- (a) if sent by post, on the day after the date of posting; or
- (b) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent; or
- (c) if sent by email, on the earlier of receipt by the sender of an automated message confirming delivery or on the day after the email is sent, unless the sender receives an automated message that the email has not been delivered.

## **9 Operation of the Previous Deed<sup>2</sup>**

### **9.1 Revocation**

The Previous Deed, to the extent it relates to:

- (a) the Indemnitor's obligation to maintain insurance in respect of the Indemnified Person, is revoked; and
  - (b) all other matters, is superseded by this deed,
- from the Effective Date.

### **9.2 Preservation**

Clause 9.1 of this deed does not prejudice any accrued rights, obligations, claims or liabilities of a party arising under the Previous Deed before the Effective Date with respect to any matter other than the Indemnitor's obligation to maintain insurance in respect of the Indemnified Person.

### **9.3 Continuing indemnities**

Without limiting clause 9.2, clause 9.1 of this deed does not affect the indemnities provided by the Previous Deed in connection with any Indemnified Person's Act occurring before the Effective Date. Those indemnities continue in full force and effect in connection with any Indemnified Person's Act occurring before the Effective Date even if a claim is made under the Previous Deed after the Effective Date.

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<sup>2</sup> Delete for a newly appointed Indemnified Person.



## **10 General**

### **10.1 Exercise of rights**

A right in favour of the Indemnified Person under this deed or a breach of an obligation of the Indemnitor under this deed can only be waived by an instrument duly executed by the Indemnified Person. No other act, omission or delay of the Indemnified Person will constitute a waiver binding against, or estoppel against, the Indemnified Person.

### **10.2 Discretion in exercising rights**

The Indemnitor may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this deed expressly states otherwise. However, the Indemnitor acknowledges that in exercising any discretion it will in the ordinary course seek to provide the maximum protection to the Indemnified Person that is consistent with the terms of this deed and applicable law.

### **10.3 Successors: Binding Agreement**

This deed shall be binding on, and shall inure to the benefit of and be enforceable by, the Indemnitor's successors and assigns and by the Indemnified Person's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, and legatees. Indemnitor shall require any successor or assignee (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Indemnitor expressly to assume and agree in writing to perform this Agreement in the same manner and to the same extent that such Indemnitor would be required to perform if no such succession or assignment had taken place.

### **10.4 Reinstatement of rights**

If a transaction (including a payment) in connection with this deed is determined or conceded or compromised to be void or voidable then:

- (a) the Indemnified Person is immediately entitled as against the Indemnitor to all the rights under this deed to which the Indemnified Person was entitled immediately before the transaction; and
- (b) on request from the Indemnified Person, the Indemnitor must do all things necessary (including signing any document) to restore all those rights to the Indemnified Person.

### **10.5 VAT**

Unless otherwise specifically stated, amounts payable under this deed are on a VAT exclusive basis. If any Supply made by one party ("**supplier**") in connection with this deed becomes subject to VAT, then the party receiving the Supply or other transaction being subject to VAT ("**recipient**") agrees to pay an additional amount to the supplier equal to the amount of VAT payable to the applicable tax authority in respect of the Supply or other transaction being subject to VAT. If the amount of VAT recovered by the supplier from

the recipient under this clause differs from the amount of VAT payable under applicable law by the supplier, the amount payable by the recipient to the supplier is to be adjusted accordingly.

Where one party (“**payer**”) is liable to reimburse another party (“**payee**”) for any expenditure incurred by the payee (“**Expenditure**”), the amount reimbursed by the payer must be the VAT exclusive Expenditure plus any VAT payable to the payee by the payer under this clause.

#### **10.6 Variation and waiver**

A provision of this deed, or right created under it, may not be waived or varied except in writing signed by the party or parties to be bound. A purported variation has no effect if it infringes applicable law.

#### **10.7 Severability**

If the whole or any part of a provision of this deed is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this deed.

#### **10.8 Governing law and jurisdiction**

- (a) This deed is governed by and is to be construed in accordance with the law in force in The Netherlands.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of The Netherlands and, in the case of an Indemnified Person at the time resident outside The Netherlands, the relevant courts, whether state, federal or howsoever organised under the law of the place of residence of the Indemnified Person and courts of appeal from them. The Indemnitor waives any right it has to object to an action being brought in those courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

**EXECUTED** as a deed



## Indemnity Agreement

Dated

Between

**James Hardie Building Products, Inc.**,  
a corporation formed under the laws of the State of Nevada  
(the "Indemnitor")

**and**

[ ] (the "Indemnitee").

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## Indemnity Agreement

This Indemnity Agreement (the "**Agreement**") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, by and between James Hardie Building Products, Inc., a Nevada corporation ("**Indemnitor**"), and \_\_\_\_\_ (the "**Indemnitee**") (individually, each a "**Party**" and collectively the "**Parties**").

### Recitals

Both Indemnitor and Indemnitee recognize the increased risk of litigation and other claims being asserted against directors and officers of public companies in today's environment. The Indemnitee and Indemnitor are also aware that it is common for plaintiffs to name a parent company and its board of directors in lawsuits originating at the subsidiary level.

Indemnitor acknowledges that Indemnitee has served, is serving and shall serve as a director, officer and/or employee of Indemnitor and James Hardie Industries, NV (the "Parent") or as an Affiliate Indemnitee (as hereinafter defined), in the positions and for the entities identified on Exhibit A attached hereto, at the request of Indemnitor. The Indemnitee is only willing to continue such service as a director, officer and/or employee of Indemnitor and of Parent or as an Affiliate Indemnitee, if the Indemnitee is indemnified by the Indemnitor for any claims against Indemnitee relating, inter alia, to Indemnitee's service as a director, officer and/or employee of Indemnitor and of Parent or as an Affiliate Indemnitee. Parent has also requested that Indemnitor provide indemnification for the Indemnitee so that it can continue to attract and retain the best qualified candidates for its Board of Directors.

Indemnitor's operations are by far the largest and most important segment of Parent's business. In fiscal year 2006, Indemnitor contributed approximately 82% of Parent's total net sales and approximately 89% of income before taxes. In that same year, 65% of the employees of the Parent and its subsidiaries worked for Indemnitor, and Indemnitor's assets were 82% of Parent's total assets (other than general corporate assets).

Indemnitor recognizes that Indemnitee dedicates substantial time and effort to the concerns of Indemnitor, including time spent (a) in meetings and in preparation for meetings, reflecting the importance of Indemnitor to Parent's corporate group, (b) to review and consider the business and affairs of Indemnitor, including through annual visits to Indemnitor's offices and facilities, and (c) to establish policies for Indemnitor's activities, operations, and capital improvements.

In addition to spending time and effort in the manner described above and otherwise, Indemnitee has made, does make and will make many decisions which greatly affect and benefit Indemnitor. Such decisions include, but are not limited to, managing equity and debt issues at the Parent level, allocating Parent resources to Indemnitor and reviewing requests for Parental investment in and assistance to Indemnitor.

Indemnitor acknowledges that, due to the benefits it receives from the service of the Indemnitee and from the valuable administrative, financial and other support provided by Parent, it has a vested corporate self-interest in ensuring that qualified individuals are not discouraged from serving as directors and officers of Parent, because of the risk of litigation or other claims. Moreover, the large and tangible benefits Indemnitor reasonably expects to derive from the activities of Indemnitee are such that the reasonably expected value to be obtained by Indemnitor from encouraging service by Indemnitee is at least as great as any reasonably expected cost.

In part to provide the Indemnitee with specific contractual assurance of substantial protection against personal liability (regardless of, among other things, any amendment to or revocation of any other law or agreement protecting Indemnitee, or any change in Indemnitor's or Parent's Board of Directors, which, in the case of Parent, includes its Management Board, Supervisory Board, and Joint Board, or control of Indemnitor or Parent), the Indemnitor desires to enter into this Agreement to hold harmless and indemnify the Indemnitee and to make arrangements pursuant to which the Indemnitee may be advanced or reimbursed expenses incurred by the Indemnitee in certain proceedings, in every case to the fullest extent that would be authorized or permitted by the laws of the State of Nevada. Such agreement is not intended to be exclusive of any other rights to which the Indemnitee may be entitled.

## General terms

NOW THEREFORE, in consideration of the foregoing recitals, and of the mutual promises contained herein, which the Parties agree constitute full and adequate consideration, the Parties agree as follows:

### 1 Service by the Indemnitee

At the request of Indemnitor, the Indemnitee has served, is serving and shall continue to serve as a director, officer and/or employee of Indemnitor and of Parent and/or as an Affiliate Indemnitee, as shown on Exhibit A, which may be amended from time to time, for so long as he is duly elected or qualified for such service or until such time as he tenders his resignation in writing. Subject to any other contractual obligation or other obligation imposed by operation of law, the Indemnitee may at any time and for any reason resign from such position. Nothing in this Agreement will confer upon the Indemnitee the right to continue in the employ of any of Indemnitor, Parent or an Affiliate Indemnitor (as hereinafter defined).

### 2 Indemnification

- (a) To the fullest extent permitted by Nevada law in effect on the date hereof or as such laws may from time to time be amended, the Indemnitor shall hold harmless and indemnify the Indemnitee, his executors, administrators or assigns against any and all expenses, liabilities and losses (including, without limitation, investigation expenses, expert witnesses' and attorneys' fees and expenses, judgments, penalties, fines, amounts paid or to be paid in settlement, any interest, assessments, or other charges imposed thereon and any federal, state, local or foreign taxes imposed as a result of actual or deemed receipt of any payment hereunder) actually and reasonably incurred by the Indemnitee (net of any related insurance proceeds or other amounts received by the Indemnitee or paid by or on behalf of an Indemnitor on the Indemnitee's behalf in compensation of such expenses, liabilities or losses) in connection with any actual or threatened action, suit or proceeding, whether civil, criminal, administrative or investigative or in arbitration, to which the Indemnitee is a party or participant or is threatened to be made a party or participant (a "**Proceeding**"), as a plaintiff, defendant, respondent, witness or otherwise, based upon, arising from, relating to or by reason of the fact that the Indemnitee:
- (i) is, was, shall be or shall have been a director, officer and/or employee of Parent;

- (ii) is, was, shall be or shall have been a director, officer and/or employee of Indemnitor; or
  - (iii) is or was serving, shall serve, or shall have served at the request of Indemnitor as a director, officer, partner, member, manager, trustee, fiduciary, employee or agent (“**Affiliate Indemnitee**”) of another foreign or domestic corporation or non-profit corporation, cooperative, partnership, joint venture, trust, employee benefit plan, or other incorporated or unincorporated enterprise (each, an “**Affiliate Indemnitor**”) or arising from or relating to any action or omission to act taken by the Indemnitee in any of the foregoing capacities; *provided, however*, that, except as provided in Section 11(d) or (e) hereof, an Indemnitor shall indemnify the Indemnitee in connection with a Proceeding initiated by the Indemnitee only if such proceeding (or part thereof) was authorized by a two-thirds vote of the Board of Directors of Indemnitor.
- (b) The Indemnitee shall be presumed to be entitled to such indemnification under this Agreement upon submission of a written claim pursuant to Section 9 hereof. Thereafter, the Indemnitor shall have the burden of proof to overcome the presumption that the Indemnitee is so entitled. Such presumption shall only be overcome by a judgment or other final adjudication, after all appeals and all time for appeals has expired (“**Final Determination**”), which is adverse to the Indemnitee and which establishes:
- (i) that his acts were committed in bad faith, or were the result of active and deliberate dishonesty or wilful fraud or illegality, and were material to the cause of action so adjudicated;
  - (ii) that the Indemnitee in fact personally gained a financial profit or other advantage to which he was not legally entitled; or
  - (iii) that indemnification of Indemnitee is prohibited by applicable law.
- (c) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement (with or without court approval), conviction or upon a plea of *nolo contendere* or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself create a presumption that Indemnitee is not entitled to indemnification or otherwise adversely affect the rights of the Indemnitee to indemnification except as may be provided herein.
- (d) If the Indemnitee is not wholly successful in any Proceeding but is successful on the merits or otherwise as to one or more but less than all claims, issues or matters in such Proceeding, the Indemnitor agrees to indemnify the Indemnitee to the maximum extent permitted by law against all losses and expenses incurred by the Indemnitee in connection with each successfully resolved claim, issue or matter. For the purposes of this section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal with or without prejudice shall be deemed to be a successful result as to such claim, issue or matter. Neither the failure of the Indemnitor (including its Board of Directors, legal counsel or stockholders) to have made a determination prior to the commencement of such Proceeding that indemnification of the Indemnitee is proper in the circumstances because such person has met the applicable standard of conduct, nor an actual determination by such Indemnitor (including its Board of Directors, its legal counsel or its stockholders) that the Indemnitee has not met the applicable standard of conduct, shall be a defense

to the action or create a presumption that the Indemnitee has not met the applicable standard of conduct. The purchase, establishment or maintenance of any other indemnification arrangement shall not in any way diminish, restrict, limit or adversely affect the rights and obligations of the Indemnitor or of the Indemnitee under this Agreement, except as expressly provided herein, and the execution and delivery of this Agreement by the Indemnitor and the Indemnitee shall not in any way diminish, restrict, limit or adversely affect the Indemnitee's right to indemnification from the Indemnitor or any other party or parties under any other indemnification arrangement, the Articles of Incorporation or the Bylaws of the Indemnitor (the "Charter Documents"), or applicable law.

- (e) No indemnity pursuant to this Agreement shall be paid by the Indemnitor:
- (i) in respect of remuneration paid to Indemnitee if it shall be determined by a Final Determination that such remuneration was in violation of law;
  - (ii) on account of any suit in which judgment is rendered against Indemnitee for an accounting of profits made from the purchase or sale by Indemnitee of securities of Parent pursuant to the provisions of Section 16(b) of the *Securities Exchange Act* of 1934 and amendments thereto or similar provisions of any applicable federal, state or local statutory law;
  - (iii) on account of Indemnitee's conduct which is adjudged in a Final Determination to have been knowingly fraudulent or deliberately dishonest, or to constitute wilful misconduct; or
  - (iv) if a Final Determination by a court having jurisdiction in the matter shall determine that such indemnification is not lawful (and, in this respect, both the Indemnitor and the Indemnitee have been advised that the Securities and Exchange Commission believes that:
    - (A) indemnification for liabilities arising under the federal securities laws is against public policy and is, therefore, unenforceable; and
    - (B) claims for indemnification should be submitted to the appropriate court for adjudication).

### **3 Indemnification for Expenses of a Witness**

Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of his status as a director, officer, employee or agent or fiduciary of Parent, Indemnitor, or an Affiliate Indemnitor, a witness in any Proceeding to which Indemnitee is not a party, he shall be indemnified by the Indemnitor against all expenses actually and reasonably incurred by him or on his behalf in connection therewith.

### **4 Period of Limitations**

No legal action shall be brought and no cause of action shall be asserted by or on behalf of Indemnitor against the Indemnitee, Indemnitee's spouse, heirs, executors, or personal or legal representatives after the expiration of two years from the date of accrual of such cause of action, or such longer period as may be required by applicable law under the circumstances. Any claim or cause of action of the Indemnitor or its affiliate shall be extinguished and deemed released unless asserted by the timely filing of a legal action within such period; *provided, however*, that if any shorter period of limitations is otherwise applicable to any such cause of action the shorter period shall govern.



## 5 Insurance

Subject only to the provisions of this Section 5, as long as the Indemnitee shall continue to serve at the request of Indemnitor, as a director, officer and/or employee of Indemnitor or Parent (or shall continue at the request of Indemnitor to serve as an Affiliate Indemnitee) and, thereafter, as long as the Indemnitee shall be subject to any possible Proceeding by reason of the fact that the Indemnitee was a director, officer and/or employee of Indemnitor or Parent (or served in any of said other capacities), the Indemnitor shall purchase or arrange for, and maintain in effect for the benefit of the Indemnitee, one or more valid, binding and enforceable policies of directors' and officers' liability insurance providing adequate liability coverage for the Indemnitee's acts as a director, officer and/or employee of Parent or Indemnitor or as an Affiliate Indemnitee ("**D&O Insurance**") so far as it is reasonably available at a reasonable cost (or in the event that such third party insurance policies are not available maintain an appropriate self-insurance program). The Indemnitor shall promptly notify the Indemnitee if such D&O Insurance is not available or of any lapse, amendment or failure to renew said policy or policies or any provision thereof relating to the extent or nature of coverage provided thereunder. In the event that Indemnitor cannot purchase or maintain in effect said policy or policies of D&O Insurance pursuant to the provisions of this Section 5, the Indemnitor shall, in addition to and not in limitation of the other rights granted to the Indemnitee under this Agreement, hold harmless and indemnify the Indemnitee to the full extent of coverage which would otherwise have been provided for the benefit of the Indemnitee pursuant to the D&O Insurance. As far as is legally possible, the Indemnitor shall elect to be subrogated to the rights of the Indemnitee against a third-party claim in connection with a Proceeding and any liability arising in connection with such Proceeding, unless an insurer is entitled to be subrogated to those rights.

## 6 Claims for Payments

- (a) Notwithstanding any other provision of this Agreement, to the fullest extent allowed by Nevada law, the Indemnitee shall have the right to receive from the Indemnitor on demand or, at his option, to have the Indemnitor pay promptly on his behalf, within thirty (30) days of the date the Indemnitee submits a Claim (as defined below in this paragraph 6(a)) and in advance of a Final Determination of a Proceeding, all amounts payable by the Indemnitor pursuant to the terms of this Agreement as corresponding amounts are expended or incurred by the Indemnitee in connection with any Proceeding or otherwise (such amounts so expended or incurred being referred to as "**Advanced Amounts**"). In making any claim for payment by the Indemnitor of any amount, including any Advanced Amount, pursuant to this Agreement, the Indemnitee shall submit to the Indemnitor a written request for payment (a "**Claim**") which includes a schedule setting forth in reasonable detail the dollar amount expended (or incurred or expected to be expended or incurred). Each item on such schedule shall be supported by the bill, agreement, or other documentation relating thereto, a copy of which shall be appended to the schedule as an exhibit. The Corporate Secretary of the Indemnitor shall, promptly upon receipt of such a request for indemnification, advise the Indemnitor's Board of Directors in writing that Indemnitee has requested indemnification.
- (b) Where the Indemnitee is requesting Advanced Amounts, the Indemnitee must also provide an undertaking to repay such Advanced Amounts if a Final Determination is made that the Indemnitee is not entitled to indemnification hereunder. Any advances and undertakings to repay pursuant to this Section 6 shall be unsecured and interest free.

- (c) Notwithstanding the foregoing, the obligation of the Indemnitor to pay Advanced Amounts pursuant to this Section 6 shall be subject to the condition that, if, when and to the extent that the Indemnitor determines that Indemnitee would not be permitted to be indemnified under applicable law, Indemnitor shall be entitled to be reimbursed, within thirty (30) days of such determination, by Indemnitee (who hereby agrees to reimburse Indemnitor) for all such amounts thereto paid; *provided, however*, that if Indemnitee has commenced or thereafter commences legal proceedings in a court of competent jurisdiction to secure a determination that Indemnitee should be indemnified under applicable law, any determination made by Indemnitor that Indemnitee would not be permitted to be indemnified under applicable law shall not be binding and Indemnitee shall not be required to reimburse Indemnitor for any Advanced Amounts until a Final Determination is made with respect thereto (as to which all rights of appeal therefrom have been exhausted or lapsed).

## **7 Continuation of Indemnity**

All agreements and obligations of the Indemnitor contained herein shall continue during the period the Indemnitee is a director, officer and/or employee of Indemnitor or Parent (or is serving at the request of Indemnitor as an Affiliate Indemnitee) and shall continue thereafter so long as the Indemnitee shall be subject to any possible Proceeding by reason of the fact that the Indemnitee was a director, officer and/or employee of Indemnitor or Parent or served at the request of the Indemnitor as an Affiliate Indemnitee, whether or not Indemnitee is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement. This Agreement shall continue in effect regardless of whether Indemnitee continues to serve as a director, officer and/or employee of the Indemnitor, Parent or as an Affiliate Indemnitee at Indemnitor's request.

## **8 Successors: Binding Agreement**

This Agreement shall be binding on, and shall inure to the benefit of and be enforceable by, the Indemnitor's successors and assigns and by the Indemnitee's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. Indemnitor shall require any successor or assignee (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of such Indemnitor expressly to assume and agree in writing to perform this Agreement in the same manner and to the same extent that such Indemnitor would be required to perform if no such succession or assignment had taken place.

## **9 Notification and Defense of Claim**

- (a) Promptly after receipt by the Indemnitee of notice of the commencement of any Proceeding, the Indemnitee shall, if a claim in respect thereof is to be made against an Indemnitor under this Agreement, notify such Indemnitor of the commencement thereof, but the failure to so notify such Indemnitor will not relieve the Indemnitor from any liability which it may have to the Indemnitee (except to the extent that the Indemnitor is prejudiced by such failure). With respect to any such Proceeding:

- (i) Indemnitor shall be entitled to participate therein at its own expense;
  - (ii) Except with prior written consent of the Indemnitee, the Indemnitor shall not be entitled to assume the defense of any Proceeding;
  - (iii) Indemnitor shall not settle any Proceeding in any manner which would impose any penalty or limitation on the Indemnitee without the Indemnitee's prior written consent (not to be unreasonably withheld or delayed); and
  - (iv) The Indemnitee shall not settle any Proceeding without the Indemnitor's prior written consent (not to be unreasonably withheld or delayed).
- (b) Upon written request by Indemnitee for indemnification pursuant to Section 6 hereof, a determination, if required by applicable law, with respect to Indemnitee's entitlement thereto shall be made by the following person or persons empowered to make such determination:
- (i) the Board of Directors of Indemnitor by a majority vote of a quorum of directors of such Indemnitor who are not and were not parties to the Proceeding in respect of which indemnification is sought by Indemnitee ("Disinterested Directors"); or
  - (ii) if a quorum of the Board of Directors consisting of Disinterested Directors is not obtainable or, even if obtainable, said Disinterested Directors so direct, by a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent:
    - (A) the Indemnitor or Indemnitee in any matter material to either such party; or
    - (B) any other party to the Proceeding giving rise to a claim for indemnification hereunder ("Independent Counsel") (notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Indemnitor or Indemnitee in an action to determine Indemnitee's rights under this Agreement) in a written opinion to the Indemnitor's Board of Directors, a copy of which shall be delivered to Indemnitee; or
  - (iii) if so directed by said Disinterested Directors, by the stockholders of Indemnitor, and, if it is determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within thirty (30) days after such determination.

Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any Independent Counsel, member of the Board of Directors, or stockholder of Indemnitor shall act reasonably and in good faith in making a determination under this Agreement of the Indemnitee's entitlement to

indemnification. Any costs or expenses (including attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by such Indemnitor to the extent allowed by applicable law (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Indemnitor hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

- (c) If the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 9(b) hereof, the Independent Counsel shall be selected as provided in this Section 9(c). The Independent Counsel shall be selected by the Board of Directors (subject to this Section 9(c)), and the Indemnitor shall give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. Indemnitee may, within seven (7) days after receipt of such written notice of selection, deliver to the Indemnitor a written objection to such selection; *provided, however*, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel", as defined in this Section 9, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If a written objection is made and substantiated, the Independent Counsel selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If, within twenty (20) days after submission by Indemnitee of a written request for indemnification pursuant to Section 9(a) hereof, no Independent Counsel shall have been selected and not objected to, the Indemnitor may petition a court of competent jurisdiction for resolution of any objection which shall have been made by Indemnitee to the Indemnitor's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 9(b) hereof. The Indemnitor shall pay any and all reasonable fees and expenses of Independent Counsel incurred by such Independent Counsel in connection with acting pursuant to Section 9(b) hereof, and the Indemnitor shall pay all reasonable fees and expenses incident to the procedures of this Section 9(c), regardless of the manner in which such Independent Counsel was selected or appointed. Upon the due commencement of any judicial proceeding or arbitration pursuant to this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

## 10 Security

To the extent requested by the Indemnitee and approved by the Board of Directors of the Indemnitor, the Indemnitor may at any time and from time to time provide security to the Indemnitee for the Indemnitor's obligations hereunder through a line of credit, funded trust or other collateral. Any such security, once provided to the Indemnitee, may not be revoked or released without the prior written consent of the Indemnitee.

## 11 Enforcement

- (a) Indemnitor has entered into this Agreement and assumed the obligations imposed on Indemnitor hereby in order to induce the Indemnitee to act as a director, officer and/or employee of Indemnitor or the Parent or as an Affiliate Indemnitee and acknowledges that the Indemnitee is relying upon this Agreement in agreeing to serve or continuing in such capacity.

- (b) This Agreement is intended and shall be interpreted to supplement and not diminish any protection otherwise afforded to Indemnitee.
- (c) This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof.
- (d) All expenses incurred by the Indemnitee in connection with the preparation and submission of the Indemnitee's request for indemnification hereunder shall be borne by the Indemnitor. In the event the Indemnitee has requested payment of any amount under this Agreement or under the D&O Insurance and has not received payment thereof within thirty (30) days of such request, the Indemnitee may bring any action to enforce his rights or such collect moneys due, and, if the Indemnitee is successful in such action, the Indemnitor shall reimburse the Indemnitee for all of the Indemnitee's fees and expenses in bringing and pursuing such action. If it is determined that the Indemnitee is entitled to indemnification for part (but not all) of the indemnification so requested, or is entitled to part (but not all) of the amounts claimed under the D&O Insurance, such fees and expenses shall be reasonably prorated. The Indemnitee shall be entitled to the advancement of such amounts to the full extent contemplated by Section 6 hereof in connection with such Proceeding.
- (e) In the event that:
  - (i) Advanced Amounts are not timely provided pursuant to Section 6 of this Agreement;
  - (ii) no determination with respect to the entitlement to indemnification is received by Indemnitee pursuant to Section 9 of this Agreement within twenty (20) days after receipt by the Indemnitor of the request for indemnification; or
  - (iii) payment of indemnification is not made within thirty (30) days after a determination has been made that Indemnitee is entitled to indemnification pursuant to Section 9 of this Agreement, Indemnitee shall be entitled to an adjudication in a court of competent jurisdiction of his entitlement to such indemnification,

alternatively, Indemnitee, at his option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnitee shall commence such proceeding seeking an adjudication or an award in arbitration within 180 days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 11(e). Indemnitor shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration. Indemnitor shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 11 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that Indemnitor is bound by all the provisions of this Agreement.

- (f) In the event that the Indemnitee is subject to or intervenes in any Proceeding in which the validity or enforceability of this Agreement is at issue or seeks an adjudication or award in arbitration to enforce his rights under, or to recover damages for breach of this Agreement, the Indemnitee, if he prevails in whole or in part in such action, will be entitled to recover from the Indemnitor and will be indemnified by the Indemnitor against any actual expenses related thereto incurred by Indemnitee.

## 12 Contribution

If the indemnification provided for herein in respect of any expense, liability or loss incurred by the Indemnitee in connection with any Proceeding is determined by a court of competent jurisdiction in a Final Determination to be prohibited by applicable law or is otherwise unavailable and may not be paid to Indemnitee for any reason other than those set forth in paragraphs (i), (ii), (iii) and (iv) of Section 2(e), then the Indemnitor, in lieu of indemnifying Indemnitee, shall to the fullest extent allowed by law contribute to the amount paid or payable by Indemnitee as a result of such expense, liability or loss in such proportion as is appropriate to reflect:

- (a) the relative benefits received by the Indemnitor, the Parent and/or an Affiliate Indemnitor on the one hand and Indemnitee on the other hand from the events, circumstances, conditions, happenings, actions or transactions from which such Proceeding arose;
- (b) the relative fault of the Indemnitor, the Parent and/or an Affiliate Indemnitor (including their affiliates) on the one hand and of Indemnitee on the other hand in connection with the events, circumstances and happenings which result in such expense, liability or loss (such relative fault to be determined by reference to, among other things, the relative intent, knowledge, access to information and opportunity to correct or prevent the events, circumstances and/or happenings resulting in such expense, liability or loss of the Indemnitor, the Parent and/or an Affiliate Indemnitor on the one hand and of the Indemnitee on the other hand); and
- (c) any other relevant equitable considerations, it being agreed that it would not be just and equitable if such contribution were determined by pro rata or other method of allocation which does not take into account the foregoing equitable considerations.

## 13 Severability

If any provision or provisions of this Agreement shall be held by a court of competent jurisdiction to be invalid, void, illegal or otherwise unenforceable for any reason whatsoever:

- (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including, without limitation, all portions of any sections or subsections of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that are not by themselves invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and
- (b) to the fullest extent possible, the provisions of any section or subsections of this Agreement containing any such provisions held to be invalid, illegal or unenforceable shall be construed so as to give effect to the intent of the Parties that the Indemnitor (or any of them) provide protection to the Indemnitee to the fullest extent enforceable.

#### 14 Non-exclusivity; survival of rights; subrogation

- (a) The rights of indemnification as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, any other document or agreement, a vote of stockholders, a resolution of directors, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee prior to such amendment, alteration or repeal. It is the intent of Indemnitor to provide indemnification to the fullest extent of the law. To the extent that a change in applicable law, whether by statute or judicial decision, would permit greater indemnification than otherwise permitted under this Agreement, it is the intent of the Parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy;
- (b) in the event of payment under this Agreement, the Indemnitor shall be subrogated to the extent of such payment to all of the rights of recovery of the Indemnitee, who shall execute all papers required and shall do everything that may be necessary to secure such rights, including execution of such documents as are necessary to enable the Indemnitor to bring suit to enforce such rights; and
- (c) the Indemnitor shall not be liable under this Agreement to make any payments of amounts otherwise indemnifiable hereunder if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

#### 15 Operation of Previous Deeds

- (a) Those certain agreements by and between Indemnitee and Parent, Indemnitor and/or Affiliate Indemnitor(s), attached hereto as Exhibit B, providing for indemnification of the Indemnitee by the Indemnitor, Parent or an Affiliate Indemnitor (the "Previous Deeds"), to the extent they relate to:
  - (i) any obligation the Indemnitor, Parent or an Affiliate Indemnitor may have to maintain insurance in respect of the Indemnitee, are revoked; and
  - (ii) all other matters, are superseded by this Agreement, from the date hereof (the "Effective Date").
- (b) Section 15(a) of this Agreement does not prejudice any accrued rights, obligations, claims or liabilities of a party arising under the Previous Deeds before the Effective Date with respect to any matter other than any obligation the Indemnitor, Parent and/or an Affiliate Indemnitor may have had under the Previous Deeds to maintain insurance in respect of the Indemnitee.
- (c) Without limiting Section 15(b), Section 15(a) of this Agreement does not affect the indemnities provided by the Previous Deeds in connection with any actual or alleged act, error, statement, misstatement, misleading statement, omission, neglect, conduct

or breach of duty made, committed, omitted or attempted by the Indemnitee (either alone or jointly with one or more other persons) in any way connected with the Indemnitee being a director, officer and/or employee of the Indemnitor or the Parent or serving as an Affiliate Indemnitee of an Affiliate Indemnitor (an "Indemnitee's Act") occurring before the Effective Date. Those indemnities continue in full force and effect in connection with any Indemnitee's Act occurring before the Effective Date even if a claim is made under the Previous Deeds after the Effective Date.

**16 Modifications**

No provision of this Agreement may be modified, waived or discharged unless such modification, waiver or discharge is agreed to in writing by the Indemnitee and an officer of the Indemnitor designated by the Board of Directors of Indemnitor. No waiver by either party at any time of any breach by the other party of, or of compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same time or at any prior or subsequent time.

**17 Governing law**

The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Nevada, without giving effect to the principles of conflicts of laws thereof.

**18 Notices**

For the purposes of this Agreement, notices and all other communications provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered by hand against a receipt therefor, received by facsimile, or five days after being mailed by United States registered mail, return receipt requested, postage prepaid, as follows:

If to the Indemnitee:

If to Indemnitor:

James Hardie Building Products Inc  
26300 La Alameda, Ste. 100  
Mission Viejo, CA 92691  
Facsimile: (949) 348-4534  
Attn: President

With a copy to:

With a copy to:

Facsimile:  
Attn:

Facsimile:  
Attn:

or to such other address as either party may have furnished to the other in writing in accordance herewith, except that notices of change of address shall be effective only upon receipt.



**19 Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

**20 Headings; references; pronouns**

The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof. References herein to section numbers are to sections of this Agreement. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as appropriate.

**21 Consent to jurisdiction; choice of venue**

The Indemnitor and the Indemnitee each agree that any litigation arising directly or indirectly out of, or in any way relating to this Agreement shall commence exclusively in Clark County District Court in the State of Nevada or in the United States District Court located in Clark County, Nevada, and each Party, by this Agreement hereby irrevocably consents to the jurisdiction of these courts.

**22 Effectiveness**

This Agreement shall be effective as of the day and year first above written, and shall apply to any Proceedings relating to matters which occurred prior to, on or after such date.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the day and year first written above.

**JAMES HARDIE BUILDING PRODUCTS, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**INDEMNITEE**

By: \_\_\_\_\_  
Name:

Exhibit A

Schedule of Positions Held by Indemnitee at the Request of Indemnitor, as an Officer, Director  
and/or Employee of Parent or Indemnitor and/or as an Affiliate Indemnitee

Entity

Title

Exhibit B  
Previous Deeds

James Hardie Industries NV  
Atrium, 8<sup>th</sup> Floor, Strawinskylaan 3077  
1077ZX Amsterdam  
The Netherlands

Attention: Russell Chenu

James Hardie 117 Pty Limited  
Level 3, 22 Pitt Street  
Sydney NSW 2000

Attention: Bruce Potts

The State of New South Wales, c/- The Cabinet Office  
Level 39, Governor Macquarie Tower  
Farrer Place  
Sydney NSW 2000

Attention: Leigh Sanderson

**Asbestos Injuries Compensation  
Fund Limited**

ACN 117 363 461

Suite 1, Level 7  
233 Castlereagh Street  
Sydney NSW 2000

PO Box A962  
Sydney South NSW 1235

DX 11548, Sydney Downtown

Telephone: (02) 9277 6600  
Facsimile: (02) 9277 6699

Date: 3 August 2007

Dear Sirs/Madam

**Interest Rate — Amended and Restated Final Funding Agreement Clause 4.7**

Section 36(2) of the James Hardie Former Subsidiaries (Winding up and Administration) Act 2005 provides that where the Asbestos Injuries Compensation Fund Limited (AICFL) in its capacity as trustee of the Asbestos Injuries Compensation Fund makes a payment of compensation on behalf of a liable entity, the liable entity must indemnify the trustee for the amount of the payment, including any relevant interest.

Under clause 4.7 of the Amended and Restated Final Funding Agreement, the interest shall be calculated at the Interest Rate defined in the Amended and Restated Final Funding Agreement or such other rate as is agreed in writing by the Parties to the Amended and Restated Final Funding Agreement.

AICFL is concerned that determining the Interest Rate under the Amended and Restated Final Funding Agreement is unnecessarily complex in this particular case. AICF would therefore prefer that the parties agree to adopt a more straightforward interest rate to apply to the indemnity payments under clause 4.7.

---

The Parties agree that the interest rate payable in each financial year for the purposes of clause 4.7 of the Amended and Restated Final Funding Agreement (and which will therefore apply for the purposes of section 36(5) of the James Hardie Former Subsidiaries (Winding up and Administration) Act 2005) shall be the zero coupon year 1 yield set out in the Annual Actuarial Report as at the end of the preceding financial year prepared by the Approved Actuary pursuant to clause 14 of the Amended and Restated Final Funding Agreement and that the interest will be charged at the end of each calendar month on the amount indemnified by the liable entity at the start of that calendar month.

Yours faithfully,

/s/ Peter W. Baker

Director/Secretary

Duly authorised for and on behalf of Asbestos Injuries Compensation Fund Limited in its capacity as trustee of the Asbestos Injuries Compensation Fund

/s/ Russell Chenu

Director

Duly authorised on behalf of James Hardie Industries N.V.

/s/ Bruce Potts

Director

Duly authorised for and on behalf of James Hardie 117 Pty Limited

/s/ Leigh Sanderson

Duly authorised for and on behalf of the New South Wales Government

6/8/07

**Amendment of the Amended and Restated Final Funding Agreement dated 21 November 2006 (“FFA”)**

In accordance with clause 29 (**Amendment of this Deed**) of the FFA, the parties to the FFA hereby amend clause 20 of the FFA as set out by way of mark-up in Annexure A to this agreement.

For the avoidance of doubt, the parties agree that clause 20 then reads as set out in Annexure B to this agreement.

Clauses 1 (**Definitions and Interpretation**), 26 (**Governing law and Jurisdiction**) and 27 (**Counterparts**) of the FFA apply to this agreement as if those provisions were set out in full in this agreement.

**Executed as a deed. 8 November 2007**

**Signed by James Hardie Industries N.V.**

/s/ Russell Chenu

\_\_\_\_\_  
Name: **Russell Chenu**

Title: **Managing Director/Authorized Proxy**

**Signed by The Honourable John Hatzistergos, MLC,**

**Attorney-General of New South Wales,**

**for The State of New South Wales**

/s/ John Hatzistergos

**Signed by James Hardie 117 Pty Limited**

/s/ Bruce J. W. Potts

\_\_\_\_\_  
Name: **Bruce J. W. Potts**

Title: **Director**

/s/ Donald A. J. Salter

\_\_\_\_\_  
Name: **Donald A. J. Salter**

Title: **Director**

**Signed by Asbestos Injuries Compensation Fund Limited in its capacity as trustee for the Charitable Fund and Discretionary Fund**

/s/ Peter W. Baker

\_\_\_\_\_  
Name: **Peter W Baker**

Title: **Director**

/s/ Joanne Marchione

\_\_\_\_\_  
Name: **Joanne Marchione**

Title: **Director**

## 20 MEDICAL RESEARCH

### 20.1 Medical research

~~Subject to clause 20.3,~~ the Parties agree that:

- (a) JHINV will contribute an amount of \$500,000 per annum for a period of 10 years (starting on the Commencement Date and payable on or by each anniversary thereof) for the purposes of conducting or funding the conduct of medical research into the diagnosis and treatment of Asbestos diseases on the basis that:
  - (i) JHINV administers its own medical research grants scheme with the assistance of relevant experts to review and make recommendations concerning the expressions of interest and research proposals; and
  - (ii) any funds not used in any particular year can be carried over and added to the next year's funding amount;
- (b) JHINV will, within 9 months of the Commencement Date, establish a trust for the purposes of conducting or funding the conduct of medical research into the diagnosis and treatment of Asbestos diseases and ensure that all funds paid to that trust are maintained in one or more bank accounts to be used only for the purposes of the trust;
- (c) the trustee of the medical research trust will at all times be a member of the JHINV Group determined by JHINV in its discretion;
- (d) the awarding of medical research grants from the proceeds of the trust shall be a matter for the trustee to determine in accordance with the purposes of the trust; and
- (e) on and from the time the final payment required under this **clause 20.1** is made, or if for any reason the trust determines earlier than on the tenth anniversary of the Commencement Date, JHINV may at its election, by Notice to the NSW Government determine the medical research trust and in any such case any resulting surplus funds and any amounts not then due and payable under **clause 20.1(a)** shall be paid to one or more medical research institutions selected by agreement between JHINV and the NSW Government which are of good repute and which conduct medical research into the diagnosis and treatment of Asbestos diseases (and on such terms as JHINV may consider reasonable to ensure that such funds are only expended on such medical research into Asbestos diseases).

### 20.2 Reporting obligations

- (a) ~~Subject to clause 20.3,~~ within 20 Business Days after establishing the trust referred to in **clause 20.1(b)**, JHINV shall give Notice to the NSW Government confirming that the trust has been established and attaching a copy of the instrument by which the trust was established.

- (b) Subject to **clause 20.3**, JHINV agrees to promptly provide to the NSW Government copies of the annual reports, financial statements and such other periodic reports as may be produced by the medical research trust from time to time in relation to the granting of medical research grants.
- (c) Subject to **clause 20.3**, JHINV agrees to procure that the trust deed pursuant to which the trust is established shall oblige the trustee to include within its periodical reporting:
  - (i) the amount of each contribution by JHINV under **clause 20.1(a)** and the current balance of the trust funds; and
  - (ii) in respect of each medical research grant from proceeds of the trust, the name and address of the recipient of such grant, the amount of such grant and details of the medical research project to which such grant is to be applied.

**20.3 Deed with NHMRC**

- (a) The parties agree that if:
  - (i) JHINV and the National Health and Medical Research Council (“NHMRC”) enter into a deed in a form acceptable to the NSW Government, acting reasonably (“NHMRC Deed”) within the period of time specified in **clause 20.1(b)**;
  - (ii) each “Annual Amount” that JHINV pays to the NHMRC under the NHMRC Deed is no less than \$500,000;
  - (iii) JHINV pays the first “Annual Amount” to the NHMRC as soon as possible after the “Commencement Date” under the NHMRC Deed and thereafter pays the “Annual Amount” to the NHMRC in February of each year, commencing in February 2008;
  - (iv) JHINV promptly provides to the NSW Government a copy of any receipt it receives from the NHMRC in respect of any “Annual Amount” JHINV pays to the NHMRC under the NHMRC Deed;
  - (v) JHINV promptly provides to the NSW Government a copy of each “Annual Funding Report” it receives from the NHMRC under the NHMRC Deed;
  - (vi) JHINV complies with the NHMRC Deed; and
  - (vii) the NHRMC Deed is not terminated,then, for the period in which all of the above circumstances exist, JHINV’s obligations under **clauses 20.1** and **20.2** are suspended.
- (b) If:
  - (i) the NHMRC Deed is terminated; or



- (ii) for any other reason JHINV does not make ten payments of at least \$500,000 each under the NHMRC Deed within 10 years of the Commencement Date, then JHINV's obligations under **clauses 20.1** and **20.2** will cease to be suspended and JHINV must comply with those obligations in respect of the balance of \$5,000,000, after deducting any payments made to NHMRC under the NHMRC Deed.
- (c) If clause **20.3(b)** applies, JHINV must establish the trust fund required under **clause 20.1** as soon as reasonably practicable after the relevant event in **clauses 20.3(b) (i) or (ii)** occurs, and no later than the date which is 6 months after that event occurs.

## 20 MEDICAL RESEARCH

### 20.1 Medical research

Subject to **clause 20.3**, the Parties agree that:

- (a) JHINV will contribute an amount of \$500,000 per annum for a period of 10 years (starting on the Commencement Date and payable on or by each anniversary thereof) for the purposes of conducting or funding the conduct of medical research into the diagnosis and treatment of Asbestos diseases on the basis that:
  - (i) JHINV administers its own medical research grants scheme with the assistance of relevant experts to review and make recommendations concerning the expressions of interest and research proposals; and
  - (ii) any funds not used in any particular year can be carried over and added to the next year's funding amount;
- (b) JHINV will, within 9 months of the Commencement Date, establish a trust for the purposes of conducting or funding the conduct of medical research into the diagnosis and treatment of Asbestos diseases and ensure that all funds paid to that trust are maintained in one or more bank accounts to be used only for the purposes of the trust;
- (c) the trustee of the medical research trust will at all times be a member of the JHINV Group determined by JHINV in its discretion;
- (d) the awarding of medical research grants from the proceeds of the trust shall be a matter for the trustee to determine in accordance with the purposes of the trust; and
- (e) on and from the time the final payment required under this **clause 20.1** is made, or if for any reason the trust determines earlier than on the tenth anniversary of the Commencement Date, JHINV may at its election, by Notice to the NSW Government determine the medical research trust and in any such case any resulting surplus funds and any amounts not then due and payable under **clause 20.1(a)** shall be paid to one or more medical research institutions selected by agreement between JHINV and the NSW Government which are of good repute and which conduct medical research into the diagnosis and treatment of Asbestos diseases (and on such terms as JHINV may consider reasonable to ensure that such funds are only expended on such medical research into Asbestos diseases).

### 20.3 Reporting obligations

- (a) Subject to **clause 20.3**, within 20 Business Days after establishing the trust referred to in **clause 20.1(b)**, JHINV shall give Notice to the NSW Government confirming that the trust has been established and attaching a copy of the instrument by which the trust was established.

- (b) Subject to **clause 20.3**, JHINV agrees to promptly provide to the NSW Government copies of the annual reports, financial statements and such other periodic reports as may be produced by the medical research trust from time to time in relation to the granting of medical research grants.
- (c) Subject to **clause 20.3**, JHINV agrees to procure that the trust deed pursuant to which the trust is established shall oblige the trustee to include within its periodical reporting:
  - (i) the amount of each contribution by JHINV under **clause 20.1(a)** and the current balance of the trust funds; and
  - (ii) in respect of each medical research grant from proceeds of the trust, the name and address of the recipient of such grant, the amount of such grant and details of the medical research project to which such grant is to be applied.

**20.3 Deed with NHMRC**

- (a) The parties agree that if:
  - (viii) JHINV and the National Health and Medical Research Council (“**NHMRC**”) enter into a deed in a form acceptable to the NSW Government, acting reasonably (“**NHMRC Deed**”) within the period of time specified in **clause 20.1(b)**;
  - (ix) each “Annual Amount” that JHINV pays to the NHMRC under the NHMRC Deed is no less than \$500,000;
  - (x) JHINV pays the first “Annual Amount” to the NHMRC as soon as possible after the “Commencement Date” under the NHMRC Deed and thereafter pays the “Annual Amount” to the NHMRC in February of each year, commencing in February 2008;
  - (xi) JHINV promptly provides to the NSW Government a copy of any receipt it receives from the NHMRC in respect of any “Annual Amount” JHINV pays to the NHMRC under the NHMRC Deed;
  - (xii) JHINV promptly provides to the NSW Government a copy of each “Annual Funding Report” it receives from the NHMRC under the NHMRC Deed;
  - (xiii) JHINV complies with the NHMRC Deed; and
  - (xiv) the NHRMC Deed is not terminated,then, for the period in which all of the above circumstances exist, JHINV’s obligations under **clauses 20.1** and **20.2** are suspended.
- (b) If:
  - (i) the NHMRC Deed is terminated; or

- (iii) for any other reason JHINV does not make ten payments of at least \$500,000 each under the NHMRC Deed within 10 years of the Commencement Date, then JHINV's obligations under **clauses 20.1** and **20.2** will cease to be suspended and JHINV must comply with those obligations in respect of the balance of \$5,000,000, after deducting any payments made to NHMRC under the NHMRC Deed.
- (c) If clause **20.3(b)** applies, JHINV must establish the trust fund required under **clause 20.1** as soon as reasonably practicable after the relevant event in **clauses 20.3(b)(i)** or **(ii)** occurs, and no later than the date which is 6 months after that event occurs.

**Amendment of the Amended and Restated Final Funding Agreement dated 21 November 2006, as amended (“FFA”)**

In accordance with clause 29 (**Amendment of this Deed**) of the FFA, the parties to the FFA hereby amend clause 9.10 of the FFA, with effect from the date of last execution, by inserting “and after excluding the relevant corresponding non-current asset being the amount receivable from the Performing Subsidiary under this deed” after the words “in each case after excluding all Asbestos Liabilities (other than current Proven Claims)” and before the words “and the calculation of the net assets pursuant to **clause 9.10(b)** shall be confirmed by the Approved Auditor.” in clause 9.10.

For the avoidance of doubt, the parties agree that clause 9.10 then reads as follows:

“For the purpose of determining the amounts to be deducted under **clause 9.2(b)** and **9.4(a)(iii)**, the net assets of the Liable Entities shall comprise:

- (a) for the purposes of **clause 9.2(b)**, an amount equal to the sum of:
  - (i) \$26.7 million; and
  - (ii) any amounts (other than by way of loan) received by the Trustee or a Liable Entity from any member of the JHINV Group between 30 September 2006 and the Commencement Date (whether under **clause 17** or otherwise).
- (b) for the purposes of **clause 9.4(a)(iii)** for each Financial Year:
  - (i) the total assets of the Trustee and the Liable Entities as at the end of that Financial Year (including, for the avoidance of doubt, any amounts by way of Insurance and Other Recoveries determined in accordance with **clause 9.13(a)** and properly recognised in the accounts as assets in accordance with relevant accounting standards); less
  - (ii) the liabilities of the Trustee and Liable Entities as at the end of that Financial Year,

in each case after excluding all Asbestos Liabilities (other than current Proven Claims) and after excluding the relevant corresponding non-current asset being the amount receivable from the Performing Subsidiary under this deed and the calculation of the net assets pursuant to **clause 9.10(b)** shall be confirmed by the Approved Auditor.”

A term defined in the FFA, and not defined in this deed, has the same meaning when used in this deed.

Clauses 1 (**Definitions and Interpretation**), 26 (**Governing law and Jurisdiction**) and 27 (**Counterparts**) of the FFA apply to this deed as if those provisions were set out in full in this deed.

---

Executed as a deed: 11 June 2008

Signed by James Hardie Industries N.V.

/s/ Russell Chenu

Name: Russell Chenu  
Title: Managing Director

/s/ Robert Cox

Name: Robert Cox  
Title: Managing Director

Signed by The Honourable John Hatzistergos MLC,  
Attorney-General of New South Wales, for The State of New South Wales

/s/ John Hatzistergos

Signed by James Hardie 117 Pty Limited

/s/ Scott Barnett

Name: Scott Barnett  
Title: Director

/s/ Bruce Potts

Name: Bruce Potts  
Title: Director

Signed by Asbestos Injuries Compensation Fund Limited in its capacity as trustee for the Charitable Fund and the Discretionary Fund

/s/ Peter W. Baker

Name: Peter W. Baker  
Title: Director

/s/ Joanne Marchione

Name: Joanne Marchione  
Title: Director

13 June 2008

Mr Russell Chenu  
Chief Financial Officer  
James Hardie Industries NV  
Atrium, 8<sup>th</sup> Floor  
Strawinskylaan 3077  
1077ZX Amsterdam  
The Netherlands

Ms Leigh Sanderson  
Deputy Director General  
Department of Premier & Cabinet  
Governor Macquarie Tower  
1 Farrer Place  
Sydney NSW 2000

Mr Bruce Potts  
Director  
James Hardie 117 Pty Ltd (Performing Subsidiary)  
Level 3, 22 Pitt Street  
Sydney NSW 2000

**Asbestos Injuries Compensation  
Fund Limited**

ACN 117 363 461

Suite 1, Level 7  
233 Castlereagh Street  
Sydney NSW 2000

PO Box A962  
Sydney South NSW 1235

DX 11548, Sydney Downtown

Telephone: (02) 9277 6600  
Facsimile: (02) 9277 6699

Dear Russell, Leigh and Bruce,

**NOTICE — Address for Service of Notices on Trustee**

In accordance with clause 30(i) of the Amended and Restated Final Funding Agreement (the FFA), I hereby give Notice that the Trustee, Asbestos Injuries Compensation Fund Limited, wishes to vary the address for service of Notices on the Trustee under the FFA.

It would be appreciated if, in future, any Notice to the Trustee could be addressed as follows:

Name: Asbestos Injuries Compensation Fund Limited  
Attention: The Chief Executive Officer  
Address: Suite 1, Level 7, 233 Castlereagh Street, Sydney NSW 2000  
Facsimile: +61 2 9277 6699.

Yours sincerely,  
Asbestos Injuries Compensation Fund Limited

/s/ Peter W. Baker

---

Peter W Baker  
Chairman

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**Deed Poll**

**Asbestos Injuries Compensation Fund  
Limited (ACN 117 363 461)**

**Asbestos Injuries Compensation Fund**

**Baker& McKenzie**  
Solicitors  
Level 27, AMP Centre  
50 Bridge Street  
SYDNEY NSW 2000  
Tel: (02) 9225-0200  
Email: [justin.gross@bakernet.com](mailto:justin.gross@bakernet.com)



Ref: 702411-v2\AUSJGZ

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<b>Clause Number</b>	<b>Heading</b>	<b><u>Page</u></b>
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<b>2</b>	<b>Amendments to Trust Deed</b>	<b>1</b>
<b>3</b>	<b>Effective date of this Deed</b>	<b>2</b>
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<b>5</b>	<b>No Resettlement</b>	<b>2</b>

**Date** 11<sup>th</sup> June 2008

**Deed Poll by** **Asbestos Injuries Compensation Fund Limited** (ACN 117 363 461) a company limited by guarantee having its registered address at Suite 1, Level 7, 233 Castlereagh Street, Sydney NSW 2000 as trustee of the Compensation Funds (*Trustee*).

### **Recitals**

- A The Compensation Funds are evidenced by the Asbestos Injuries Compensation Fund Amended and Restated Trust Deed dated 14 December 2006 (*Trust Deed*).
- B Clause 11(a) of the Trust Deed provides that the Trustee may amend the Trust Deed by deed poll.
- C The Trustee wishes to amend the Trust Deed in the manner set out in this Deed. The Trustee has obtained the consent of the NSW Government and James Hardie Industries N.V. in relation to the proposed amendments.

### **Operative provisions**

#### **1 Definitions and Interpretation**

##### **Definitions**

- 1.1 Unless the subject or context otherwise requires, all words and expressions defined in the Trust Deed have the same meaning in this Deed.

##### **Interpretation**

- 1.2 Unless the subject or context otherwise requires, the provisions of the Trust Deed apply with the necessary changes to this Deed.

#### **2 Amendments to Trust Deed**

- 2.1 The Trust Deed is amended by deleting clause 12.4(b) of the Trust Deed, and replacing it with the following:

“Without limiting or affecting the Trustee’s obligations under clause 4.9 or clause 5.3(g), the Trustee must prepare a set of financial statements for each of the Charitable Fund, the Discretionary Fund and, for so long as all or a majority of the shares in the Liable Entities are owned or controlled by the Trustee, the Liable Entities, which are appropriate to enable each entity to comply with the income tax law applying to it and which enable the Trustee to comply with the provisions of this Deed and the Final Funding Agreement.”

**3 Effective date of this Deed**

3.1 This Deed will be effective from the date of execution.

**4 Governing Law**

4.1 This Deed is governed by the laws of New South Wales.

**5 No Resettlement**

5.1 The Trustee declares that it is not, by this Deed:

- (a) resettling or redeclaring the Compensation Funds; or
- (b) causing the transfer, vesting or accruing of property in any person.

**Execution**

**Executed and delivered** as a deed poll

**Signed sealed and delivered**

for **Asbestos Injuries Compensation  
Fund Limited**

by a director and secretary/director:

/s/ Peter W. Baker  
Signature of director

Peter W. Baker  
Name of director (please print)

/s/ Joanne Marchione  
Signature of director

Joanne Marchione  
Name of director/secretary  
(please print)

**LIST OF SIGNIFICANT SUBSIDIARIES**

The table below sets forth our significant subsidiaries, all of which are 100% owned by James Hardie Industries N.V., either directly or indirectly.

<b><u>Name of Company</u></b>	<b><u>Jurisdiction of Establishment</u></b>
James Hardie 117 Pty Ltd.	Australia
James Hardie Aust Holdings Pty Ltd.	Australia
James Hardie Austgroup Pty Ltd.	Australia
James Hardie Australia Management Pty Ltd.	Australia
James Hardie Australia Pty Ltd.	Australia
James Hardie Building Products Inc.	United States
James Hardie Europe B.V.	Netherlands
James Hardie International Finance B.V.	Netherlands
James Hardie International Finance Holdings Sub I B.V	Netherlands
James Hardie International Finance Holdings Sub II B.V	Netherlands
James Hardie International Holdings B.V.	Netherlands
James Hardie N.V.	Netherlands
James Hardie New Zealand Limited	New Zealand
James Hardie Philippines Inc.	Philippines
James Hardie Research (Holdings) Pty Ltd.	Australia
James Hardie Research Pty Ltd	Australia
James Hardie U.S. Investments Sierra Inc.	United States
N.V. Technology Holdings A Limited Partnership	Australia
RCI Pty Ltd.	Australia

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Louis Gries, certify that:

1. I have reviewed this annual report on Form 20-F of James Hardie Industries N.V.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the company as of, and for, the periods presented in this report;
4. The company's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the company and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the company's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting; and
5. The company's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of the company's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the company's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal control over financial reporting.

/s/ Louis Gries

Louis Gries

*Chief Executive Officer*

Date: July 8, 2008

**CERTIFICATION OF CHIEF FINANCIAL OFFICER  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Russell Chenu, certify that:

1. I have reviewed this annual report on Form 20-F of James Hardie Industries N.V.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the company as of, and for, the periods presented in this report;
4. The company's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the company and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the company's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting; and
5. The company's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of the company's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the company's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal control over financial reporting.

/s/ Russell Chenu

Russell Chenu

*Chief Financial Officer*

Date: July 8, 2008

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002\***

Each of the undersigned hereby certifies, in his capacity as an officer of James Hardie Industries N.V. (the "Company"), for purposes of 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of his knowledge:

- the Annual Report of the Company on Form 20-F for the fiscal year ended March 31, 2008 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- the information contained in such report fairly presents, in all material respects, the financial condition and results of operation of the Company.

Dated: July 8, 2008

/s/ Louis Gries

Louis Gries  
*Chief Executive Officer*

/s/ Russell Chenu

Russell Chenu  
*Chief Financial Officer*

\* The foregoing certification is being furnished as an exhibit pursuant to the rules of Form 20-F and Section 906 of the Sarbanes-Oxley Act of 2002 and, accordingly, is not being filed with the Securities and Exchange Commission as part of the Form 20-F and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933 or the Securities Exchange Act of 1934 (whether made before or after the date of the Form 20-F, irrespective of any general incorporation language contained in such filing).



**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We hereby consent to the incorporation by reference in the Registration Statement on Form S-8 (No. 333-14036) of James Hardie Industries N.V. of our report dated June 27, 2008 relating to the financial statements and the effectiveness of internal control over financial reporting, which appears in this Form 20-F.

/s/ PricewaterhouseCoopers LLP  
PricewaterhouseCoopers LLP  
Los Angeles, California  
July 8, 2008

**Consent of KPMG Actuaries Pty Ltd (“KPMG Actuaries”) in relation to Form 20-F filing**

We hereby consent to your references to KPMG Actuaries Pty Ltd (“KPMG Actuaries”) and to our actuarial valuation report effective as of March 31, 2008, dated May 22, 2008 (the “Report”), and to make use of, or quote, information and analyses contained within that Report for the purpose of James Hardie Industries N.V.’s (“JHI NV”) Annual Report on Form 20-F for fiscal year ended March 31, 2008.

In addition, we hereby consent to your references to past actuarial valuations performed by KPMG Actuaries for the purpose of JHI NV’s Annual Report on Form 20-F for fiscal year ended March 31, 2008.

Your attention is drawn to the Important Note at the beginning of the Executive Summary and Section 1 of the Report.

/s/ Neil Donlevy

Neil Donlevy MA FIA FIAA

Director

KPMG Actuaries Pty Ltd

Fellow of the Institute of Actuaries (London)

Fellow of the Institute of Actuaries of Australia

Sydney, Australia

July 8, 2008

Excerpts of the ASX Settlement and Transfer Corporation  
Pty Ltd as of March 31, 2008  
See [www.asx.com.au/supervision/rules\\_guidance/astc\\_rules.htm](http://www.asx.com.au/supervision/rules_guidance/astc_rules.htm) for up-to-date rules

## **1.2 APPLICATION AND EFFECT OF THESE RULES**

### **1.2.1 Operating Rules of ASTC**

These Rules are the operating rules of the Settlement Facility for the purposes of the Corporations Act. These Rules should be read in conjunction with:

- (a) the Procedures;
- (b) the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook; and
- (c) the Corporations Act.

To the extent of any inconsistency between these Rules and the Procedures, these Rules will prevail.

Introduced 11/03/04 Amended 31/3/08

### **1.2.2 Binding effect of Rules**

These Rules are binding on Issuers, Participants and ASTC in the manner set out in:

- (a) section 822B of the Corporations Act; and
- (b) Rules 1.2.3 and 1.2.4.

Introduced 11/03/04 Origin SCH 1.5.1

### **1.2.3 Covenants to observe Rules**

These Rules (other than a Warranty and Indemnity Provision) have the effect of a contract under seal between ASTC and all Facility Users under which:

- (a) each Facility User covenants with ASTC and each other Facility User to observe the Rules and to perform the obligations which the Rules purport to impose on the Facility User, in the manner provided by the Rules; and
- (b) subject to Rules 3.6.11 to 3.6.18 inclusive, ASTC covenants with each Facility User to observe the Rules and to perform the obligations which the Rules purport to impose on ASTC, in the manner provided by the Rules.

These Rules have the effect of a contract under seal between all RTGS Payments Providers for the time being admitted to participate in that capacity, ASTC and all Facility Users.

Introduced 11/03/04 Origin SCH 1.5.2, 1.5.7

### **1.2.4 Effect of warranty and indemnity provisions**

The Issuer Warranties and Indemnities have the effect of a contract under seal between the Issuer, ASTC and every Participant.

The Participant Warranties and Indemnities have the effect of a contract under seal between the Participant, ASTC, every Issuer and every other Participant.

The ASTC Indemnity has the effect of a contract under seal between ASTC and each Issuer.

Introduced 11/03/04 Origin SCH 1.5.4, 1.5.5, 1.5.6

### **1.2.5 Australian Securities Exchange Disciplinary Processes and Appeals Rulebook**

The Australian Securities Exchange Disciplinary Processes and Appeals Rulebook form part of these Rules for the purposes of the Corporations Act.

Introduced 31/3/08

## **1.3 STATE OF EMERGENCY RULES**

### **1.3.1 Action if a State of Emergency exists**

If ASTC determines that a State of Emergency exists ASTC may take or authorise any action it considers necessary for the purpose of dealing with the State of Emergency, including:

- (a) making State of Emergency Rules (that may be inconsistent with these Rules) for the protection of the interests of ASTC and Facility Users;
- (b) suspending provision of any ASTC facilities and services to one or more persons;
- (c) taking, or refraining from taking, or directing a Participant to take or refrain from taking, any action which ASTC considers is appropriate;
- (d) taking any action in the name of and at the expense of a Participant; or
- (e) other action that is inconsistent with these Rules (other than Rule 1.3).

In the event of conflict between the State of Emergency Rules and these Rules, the State of Emergency Rules will prevail.

Introduced 11/03/04 Origin SCH 1.6.1, 1.6.3

### **1.3.2 Effect of a State of Emergency**

No person bound by the Rules is liable for failure to comply with a Rule (other than a Warranty an Indemnity Provision or a State of Emergency Rule) if, and to the extent to which, compliance has been delayed, interfered with, curtailed or prevented by a State of Emergency.

Introduced 11/03/04 Origin SCH 1.5.3

### **1.3.3 Period for State of Emergency Rules**

ASTC may specify the period during which any State of Emergency Rules remain in force, but the period must not exceed 30 Business Days. If ASTC does not specify a period during which any State of Emergency Rules remain in force, the State of Emergency Rules remain in force for 30 Business Days.

Introduced 11/03/04 Origin SCH 1.6.2

### **1.3.4 Notice to Issuers and Participants**

ASTC must promptly notify Issuers and Participants of the making of any State of Emergency Rules.

Introduced 11/03/04 Origin SCH 1.6.4

### **1.3.5 Facility User must inform ASTC of potential State of Emergency**

A Facility User that becomes aware of any event or condition that may lead to a State of Emergency must immediately inform ASTC.

Introduced 11/03/04 Origin SCH 1.6.5

### **1.3.6 No Liability of ASTC**

Without limiting any other liability provisions in these Rules none of ASTC, its officers, employees, agents or contractors are liable to a Facility User or any other person for:

- (a) any failure or delay in performance in whole or in part of the obligations of ASTC under the Rules or any contract, if that failure or delay is caused directly or indirectly by a State of Emergency which entitles ASTC to act under this Rule 1.3; or
- (b) any loss, liability, damage, cost or expense arising in any way (including, without limitation, by negligence) from the bona fide exercise of any power, right or discretion conferred upon ASTC by this Rule 1.3.

Introduced 11/03/04

## **1.4 SETTLEMENT PROCEDURES**

### **1.4.1 ASTC may approve Procedures**

ASTC may from time to time approve written Procedures relating to the operations of ASTC and the Settlement Facility, the conduct of Facility Users and the structure and operation of electronic communications between ASTC and Facility Users.

Introduced 11/03/04 Origin SCH 1.8.1

### **1.4.2 Procedures are not part of the Rules**

The Procedures do not form part of these Rules. However, if a Rule requires a person to comply with any part of the Procedures, failure by the person to comply with that part of the Procedures is a contravention of the Rule.

Introduced 11/03/04 Origin SCH 1.8.2, 1.8.3

### **1.4.3 Changes to Procedures**

ASTC may approve changes to the Procedures from time to time and must give such notice as is reasonable in the circumstances to Facility Users of any changes to the Procedures before those changes take effect.

Introduced 11/03/04 Origin SCH 1.8.7, 1.8.4

## Section 2 DEFINITIONS AND INTERPRETATION

This Section contains the definitions and sets out a number of general principles by which these Rules are to be interpreted.

### 2.1 GENERAL PRINCIPLES OF INTERPRETATION

In these Rules, unless the context otherwise requires:

- (a) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any regulation or statutory instrument issued under, that legislation or legislative provision;
- (b) a reference to the operating rules of an Approved Clearing Facility, the operating rules of an Approved Market Operator, the Listing Rules, these Rules, the Procedures or the Fees and Charges Schedule is a reference to the operating rules, the Procedures or the Schedule as modified or amended from time to time;
- (c) the singular includes the plural and vice-versa;
- (d) a reference to person, body, corporation, trust, partnership, unincorporated body, firm, association, authority or government includes any of them;
- (e) a word denoting any gender includes all genders;
- (f) if a word or expression is given a particular meaning, another part of speech or grammatical form of that word or expression has a corresponding meaning;
- (g) a reference to power includes a reference to authority and discretion;
- (h) a reference to a Rule (eg Rule 2.4) includes a reference to all sub-Rules included under that Rule (eg Rule 2.5.4);
- (i) a reference to a Section (eg **Section 2**) includes a reference to all Rules and sub-Rules within that Section;
- (j) a reference to any Rule or Procedure is a reference to that Rule or Procedure as amended from time to time;
- (k) a reference to time is to the time in Sydney, Australia;
- (l) a reference to currency is a reference to Australian currency;
- (m) a reference to writing includes typing, printing, lithography, photography, telex, facsimile or any other mode of representing or reproducing words in a visible form;

- (n) where there is a reference to the power of ASTC to make, demand or impose a requirement there is a corresponding obligation of the relevant Participant to comply with that demand or requirement in all respects; and
- (o) a reference to ASTC notifying or giving notice to a Participant or vice-versa is a reference to notifying or giving notice in accordance with Rule 1.10.

Introduced 11/03/04 Origin SCH 21.1

## **2.2 WORDS AND EXPRESSIONS DEFINED IN THE CORPORATIONS ACT**

### **2.2.1 Words and expressions defined have the same meaning in these Rules**

Words and expressions defined in the Constitutions or the Corporations Act will unless otherwise defined or specified in these Rules, or the contrary intention appears, have the same meaning in these Rules.

Introduced 11/03/04 Origin SCH 21.1.2 Amended 04/04/05

## **2.3 HEADINGS AND INTRODUCTORY OVERVIEW**

### **2.3.1 Headings and introductory overview for convenience of reference only**

In these Rules, headings and the introductory overview at the beginning of each Section are for convenience of reference only and do not affect interpretation of the Rules or the Procedures.

Introduced 11/03/04 Origin SCH 21.2.1

## **2.4 CONDUCT, ACTS AND OMISSIONS**

### **2.4.1 References to conduct or doing any act or thing**

In these Rules:

- (a) a reference to conduct or engaging in conduct includes a reference to doing, refusing to do or omitting to do, any act, including the making of, or the giving effect to a provision of, an agreement; and
- (b) unless the contrary intention appears, a reference to doing, refusing or omitting to do any act or thing includes a reference to causing, permitting or authorising:
  - (i) the act or thing to be done; or
  - (ii) the refusal or omission to occur.

Introduced 11/03/04 Origin SCH 21.3.1, 21.3.5

### **2.4.2 Conduct by officers, employees, agents and Third Party Providers**

In these Rules, conduct engaged in on behalf of a person:

- (a) by an officer, employee, Third Party Provider or other agent of the person, and whether or not within the scope of the actual or apparent authority of the officer, employee, Third Party Provider or other agent; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of an officer, employee, Third Party Provider or other agent of the person, and whether or not the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the officer, employee, Third Party Provider or other agent,

is deemed to have been engaged in also by the person.

Introduced 11/03/04 Origin SCH 21.3.2 Amended 31/03/08

#### **2.4.3 State of mind of a person**

If for the purposes of these Rules in respect of conduct engaged in by a person, it is necessary to establish the state of mind of the person, it is sufficient to show that an officer, employee, Third Party Provider or other agent of the person, being an officer, employee, Third Party Provider or other agent by whom the conduct was engaged in and whether or not the conduct was within the scope of the actual or apparent authority of that officer, employee, Third Party Provider or other agent, had that state of mind.

In this Rule 2.4.3, a reference to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the person's intention, opinion, belief or purpose.

Introduced 11/03/04 Origin SCH 21.3.3, 21.3.4 Amended 31/03/08

### **2.5 REGARD TO BE HAD TO PURPOSE OR OBJECT OF RULES**

#### **2.5.1 Construction to promote purpose of Rules**

In the interpretation of a Rule, a construction that would promote the purpose or object underlying the Rules (whether that purpose or object is expressly stated in the Rules or not) is to be preferred to a construction that would not promote that purpose or object.

Introduced 11/03/04 Origin SCH 21.4.1

### **2.6 EXAMPLES AND NOTES**

#### **2.6.1 Use of examples and notes**

If these Rules include an example of, or a note about, the operation of a Rule:



- (a) the example or note is not to be taken to be exhaustive; and
- (b) if the example or note is inconsistent with the Rule, the Rule prevails.

Introduced 11/03/04 Origin SCH 21.5.1

## **2.7 CHANGE OF NAME**

### **2.7.1 Reference to a body or office under a former name**

If:

- (a) the name of a body is changed in accordance with the law (whether or not the body is incorporated); or
- (b) the name of an office is changed by law,

then a reference in these Rules to the body or office under any former name, except in relation to matters that occurred before the change took effect, is taken as a reference to the body or office under the new name.

Introduced 11/03/04 Origin SCH 21.6

### **2.7.2 References to Australian Stock Exchange Limited**

All references to 'Australian Stock Exchange Limited' in the Rules, Procedures, appendices, schedules, guidance notes, circulars, notices, bulletins, explanatory memoranda and other communications issued or made by ASTC under the Rules are as and from 5 December 2006 taken to be references to 'ASX Limited'.

Introduced 20/07/07

## **2.8 EFFECT OF AMENDMENT TO RULES AND PROCEDURES**

### **2.8.1 Where amendments to Rules and Procedures are made**

Unless expressly stated otherwise, where a Rule or Procedure is:

- (a) amended;
- (b) deleted; or
- (c) lapses or otherwise ceases to have effect,

that circumstance does not:

- (d) revive anything not in force or existing at the time at which that circumstance takes effect;
- (e) affect the previous operations of that Rule or Procedure or anything done under that Rule or Procedure;

- (f) affect any right, privilege, obligation or liability acquired, accrued or incurred under that Rule or Procedure;
- (g) affect any penalty, forfeiture, suspension, expulsion or disciplinary action taken or incurred in respect of any contravention of that Rule or Procedure; or
- (h) affect any investigation, disciplinary proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, suspension, expulsion or disciplinary action,

and any such investigation, disciplinary proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture, suspension, expulsion or disciplinary action may be imposed as if the circumstance had not taken effect.

Introduced 11/03/04 Origin OCH 19.2.5

## **2.9 RULES IN FORCE AT TIME OF CONTRAVENTION**

### **2.9.1 Determining a contravention of the Rules**

Unless expressly stated otherwise, in determining whether the act or omission of a party constitutes a contravention of the Rules, the matter will be determined with regard to the Rules in force at the time of the relevant act or omission.

Introduced 11/03/04 Origin OCH 19.2.6 Amended 10/06/04

## **2.10 SPECIFIC DEFINITIONS FOR THE PURPOSE OF THE CORPORATIONS ACT AND OTHER LEGISLATION**

### **2.10.1 ASTC Regulated Transfers**

For the purposes of the definition of “ASTC-regulated transfer” in Regulation 1.0.02 of the Corporations Regulations, any Transfer or purported Transfer of Approved Financial Products, whether or not effected in accordance with the Rules, is an ASTC-regulated transfer. A reference to an ‘SCH regulated transfer’ in any legislation or regulation means an ASTC-regulated transfer. Any ASTC-regulated transfer is, for the purposes of the Corporations Regulations, to be taken, and always to have been, a proper ASTC transfer.

Introduced 11/03/04 Origin SCH 21.9.1

### **2.10.2 CHESS Subregister**

For the purposes of the definition of “ASTC subregister” in Regulation 7.11.01 of the Corporations Regulations, a CHESS Subregister is an ASTC subregister.

Introduced 11/03/04

### **2.10.3 References to SCH**

Where legislation refers to “SCH” or “Securities Clearing House”, references in these Rules to ASTC are taken to be references to “SCH” or “Securities Clearing House” for the purposes only of that legislation.

Introduced 11/03/04

## **2.11 ENTERING AND DEDUCTING FINANCIAL PRODUCTS FROM HOLDINGS**

### **2.11.1 References to entering or deducting Financial Products**

In these Rules, a reference to entering a number of Financial Products into a Holding is a reference to:

- (a) if the Holding does not exist at the time of the entry, establishing the Holding with a Holding Balance equal to that number of Financial Products; or
- (b) if the Holding already exists at the time of the entry, adding that number of Financial Products to the Holding Balance of the Holding.

In these Rules, a reference to deducting a number of Financial Products from a Holding is a reference to:

- (c) if the Holding Balance of the Holding is equal to that number, removing the Holding from the register; and
- (d) if the Holding Balance of the Holding is greater than that number, subtracting that number of Financial Products from the Holding Balance.

Introduced 11/03/04 Origin SCH 21.11

## **2.12 MEANING OF RESERVATION AND RELEASE OF FINANCIAL PRODUCTS FOR SUBPOSITION PURPOSES**

### **2.12.1 Reservation in a Subposition**

For the purposes of these Rules, a number of Financial Products in a CHESS Holding are reserved in a Subposition if:

- (a) the Subposition is created over that number of Financial Products; or
- (b) an existing reservation in a Subposition of Financial Products in that Holding is increased by that number of Financial Products.

Introduced 11/03/04 Origin SCH 21.12.1

### 2.12.2 Release from a Subposition

For the purposes of these Rules, a number of Financial Products in a CHESS Holding are released from a Subposition if:

- (a) the Subposition over that number of Financial Products is removed; or
- (b) where the total number of Financial Products in the Holding that are reserved in the Subposition exceeds the number of Financial Products specified to be released, the Subposition reservation is reduced by that specified number of Financial Products.

Introduced 11/03/04 Origin SCH 21.12.2

## 2.13 DEFINITIONS

### 2.13.1 Definitions used in the Rules

In these Rules, unless the context otherwise requires:

“**ABN**” stands for Australian Business Number and means a person’s number as shown in the Australian Business Register.

“**Acceptance Form**” means a document that enables a person to communicate to an Issuer an election in relation to a Corporate Action, including (without limitation):

- (a) an entitlement & acceptance form;
- (b) a provisional letter of allotment; and
- (c) an application form (whether or not attached to a prospectus).

“**Account Participant**” means a Participant admitted to participate in the Settlement Facility under Rule 4.5.

“**Accountant**” means a member of the Australian Society of Certified Practising Accountants, the Institute of Chartered Accountants in Australia or other body approved by ASTC.

“**Accrued Batch Instruction**” means a Batch Instruction generated by ASTC to effect a distribution of Financial Products arising from a Corporate Action.

“**Accrued DvP Batch Instruction**” means an Accrued Batch Instruction with a Settlement Amount that is scheduled to settle in DvP Batch Settlement.

“**Accrued RTGS Instruction**” mean an RTGS Instruction generated by ASTC to effect a distribution of Financial Products arising from a Corporate Action.

“**Accumulation Account**” means a Holder Record maintained by a Settlement Participant for the purpose of facilitating settlement of transactions in Approved Financial Products with non-Participant clients.

“**Accumulation Holding**” means a Holding of Financial Products for which the Holder Record is an Accumulation Account.

“**ACH**” means Australian Clearing House Pty. Limited (ABN 48 001 314 503).

“**Admission Form**” means an admission form, as specified by ASTC from time to time, for use by a Participant seeking to become a Participant in the Settlement Facility.

“**AIC**” stands for Access Identification Code and means a unique code allocated by ASTC under Rule 16.14.

“**AIF**” stands for Automated Information Facility and means the service so designated that is offered by the Reserve Bank of Australia in connection with RITS/RTGS.

“**AIS**” means ASX International Services Pty Limited (ABN 62 089 068 913).

“**Allocation Component**” means, without limitation, in respect of an Offer:

- (a) a Firm Allocation Component;
- (b) a book-build; or
- (c) a placement.

“**Allocation Interest**” means a journal entry on a CHESS or Issuer operated record:

- (a) representing an Approved Financial Product applied for, or to be applied for, under an Offer; and
- (b) by which the Issuer calculates the number of Approved Financial Products to be issued or disposed under Rule 15.27.

“**Alternative Settlement Facility**” means a CS Facility which, in the opinion of ASTC, has:

- (a) adequate rules or procedures relating to the operation of the facility, including effective risk management procedures;
- (b) adequate arrangements for supervision and regulation of the facility; and
- (c) sufficient resources to conduct the facility and perform its supervisory and regulatory functions.

Introduced 18/12/06

“**Appeal**” means an appeal in accordance with the provisions of the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook.

Amended 31/03/08

“**Applications Close Date**” means the date by which a person must submit an Acceptance Form to an Issuer if the person wishes to subscribe for new or additional Financial Products.

“**Approved Agent**” means a person who has such qualifications for the purposes of Section 12 as ASTC determines and who is appointed by the Managing Director of ASTC.

Amended 18/12/06

“**Approved Clearing Facility**” means a CS Facility approved by ASTC as an Approved Clearing Facility and specified in the Procedures.

“**Approved Clearing House**” means a settlement and deposit system for the safe custody, delivery and payment of Principal Financial Products or Participating International Financial Products, approved by ASTC for the purposes of establishing a Segregated Account.

“**Approved Financial Products**” means a Financial Product approved by ASTC in accordance with Section 8 or Section 13.

“**Approved Market Operator**” means a Market Operator approved by ASTC as an Approved Market Operator and specified in the Procedures.

“**ASTC**” means ASX Settlement and Transfer Corporation Pty Ltd (ABN 49 008 504 532).

“**ASTC Indemnity**” means the indemnity in Rule 3.6.7.

“**ASTC Regulated Transfer**” means any Transfer or purported Transfer of Approved Financial Products.

“**ASX**” means ASX Limited (ABN 98 008 624 691).

Amended 20/07/07

“**ASX Group**” means ASX and its subsidiaries and controlled entities.

“**ASX World Link Agreement**” means the agreement between AIS and a Settlement Participant which is a Market Participant for participation in the ASX World Link Service as displayed on the ASX World Link Website from time to time.

“**ASX World Link Service**” has the same definition as that set out in the ASX World Link Agreement.

“**ASX World Link Website**” means in relation to the ASX World Link Service the information (whether data, text, images, speech or otherwise) concerning the ASX World Link Service displayed from time to time by AIS or a Related Body Corporate of ASX on the internet at the URL: <https://www.asxonline.com>, or at any other additional or replacement URL notified by AIS to Participants from time to time, as that information is varied from time to time.

“**Australian ADI**” has the meaning it has in the Corporations Act.

**“Australian ADI Account”** means an account held with an Australian ADI.

**“Authorised Copy”** in relation to documents specified under Section 6 of these Rules, means a true and complete copy of the document in a form authorised by ASTC.

**“Authorised Person”** means any person who has actual authority of the Facility User to cause Messages to be Transmitted by that Facility User.

**“Available Credit”** in Section 11, has the meaning given in Rule 11.20.3.

**“Available Financial Products”** means Financial Products that are:

- (a) not in a Locked Holding;
- (b) in the case of Financial Products in an Issuer Sponsored Holding, not reserved under the Listing Rules for the benefit of an Offeror in relation to a takeover scheme;
- (c) in the case of Financial Products in a CHESSE Holding, not reserved in a Subposition.

**“Bank”** means the person that operates the clearing facility for inter-bank payments on behalf of ASTC and may, where permitted by the Reserve Bank of Australia, include ASTC and for the purposes of the Standard Payments Provider Deed is known as the CHESSE Bank.

**“Bankruptcy”** means:

- (a) in the case of a body corporate, where:
  - (i) an administrator of the body corporate is appointed under section 436A, 436B or 436C of the Corporations Act;
  - (ii) the body corporate commences to be wound up or ceases to carry on a business;
  - (iii) a receiver, or a receiver and manager, of property of the body corporate is appointed, whether by a court or otherwise; or
  - (iv) the body corporate enters into a compromise or arrangement with its creditors or a class of them; or
- (b) in the case of a natural person, where:
  - (i) a creditor’s petition or a debtor’s petition is presented under Division 2 or 3, as the case may be, of Part IV of the Bankruptcy Act 1966 against the person, the partnership in which the person is a partner, or two or more joint debtors who include the person;

- (ii) the person's property becomes subject to control under Division 2 of Part X of the Bankruptcy Act 1966;
- (iii) the person executes a deed of assignment or deed of arrangement under Part X of the Bankruptcy Act 1966;
- (iv) the person's creditors accept a composition under Part X of the Bankruptcy Act 1966; or
- (v) the person's creditors accept a debt agreement proposal under Part IX of the Bankruptcy Act 1996,

and, where a reference is made to a Division or Part of the Bankruptcy Act 1966, that reference includes a reference to the provisions of a law of an external territory, or a country other than Australia or an external territory, that correspond to that Division or Part.

**"Batch Instruction"** means an instruction to ASTC to effect:

- (a) a Settlement Transfer in Batch Settlement and, if the instruction is for value, payment in DvP Batch Settlement; or
- (b) in respect of a Payment Batch Instruction, payment in Batch Settlement,

and includes:

- (a) a CCP Net Batch Instruction;
- (b) a CCP Gross Batch Instruction;
- (c) a CCP Derivatives Payment Batch Instruction;
- (d) a Dual Entry Batch Instruction;
- (e) a Dual Entry Payment Batch Instruction;
- (f) a Single Entry Batch Instruction; and
- (g) a Direct Batch Instruction.

**"Batch Settlement"** means the process by which transactions are settled in the Settlement Facility in accordance with Section 10 whether or not in DvP Batch Settlement.

**"Business Day"** means a day other than:

- (a) a Saturday, Sunday, New Year's Day, Good Friday, Easter Monday, Christmas Day, Boxing Day; and
- (b) any other day which ASTC notifies Facility Users is not a Business Day.

**"Business Hours"** means the hours between Start of Day and End of Day.



**“Cash Sub-record”** means a CHES record:

- (a) ancillary to a Participant’s Net Position Record; and
- (b) tagged with an RTGS Account Identifier,

that tracks amounts to be debited or credited, on settlement of an RTGS Instruction, to the account of the Participant linked to that RTGS Account Identifier.

**“CCP”** means ACH and any other person nominated by ASTC and approved by the Commission when operating as a central counterparty to a transaction novated in accordance with the operating rules of an Approved Clearing Facility.

**“CCP Batch Instruction”** means either a CCP Gross Batch Instruction or a CCP Net Batch Instruction.

**“CCP Derivatives Payment Batch Instruction”** means an Instruction notified by CCP to ASTC for settlement in relation to a derivatives payment in Batch Settlement on each Business Day;

**“CCP Gross Batch Instruction”** means a Batch Instruction (excluding a Dual Entry Payment Batch Instruction) to give effect to a transaction that has been novated to CCP but that has not been netted in accordance with the operating rules of the Approved Clearing Facility.

**“CCP Gross RTGS Instruction”** means an RTGS Instruction to give effect to a transaction that has been novated to CCP but that has not been netted in accordance with the operating rules of the Approved Clearing Facility.

**“CCP Net Batch Instruction”** means a Batch Instruction (excluding a Dual Entry Payment Batch Instruction) to give effect to a transaction that has been novated to CCP and netted in accordance with the operating rules of the Approved Clearing Facility.

**“CDI”** stands for CHES Depository Interest and means a unit of beneficial ownership in a Principal Financial Product, registered in the name of the Depository Nominee, and includes:

- (a) CUFS; and
- (b) DIs.

**“CDI Register”** means a register of CDI Holdings maintained by a Principal Issuer under the Rules, consisting of:

- (a) an Issuer-Sponsored Subregister of Holders of CDIs and a CHES Subregister of Holders of CDIs; or
- (b) with the consent of ASTC, a CHES Subregister of Holders of CDI.

*Note: ASTC may consent to a CDI Register consisting of a CHES Subregister only, where the relevant offer is limited to institutional Holders.*

**“Certificate”** means any document issued to a Holder of Principal Financial Products or Participating International Financial Products as evidence of that Holder’s title to those Principal Financial Products or Participating International Financial Products, for example, a share certificate, an option certificate, debenture or warrant.

**“Certificate Number”** means a reference number allocated by an Issuer in respect of, and printed on, a Certificate.

**“Certificated Holding”** means a Holding of Principal Financial Products on the Principal Register.

**“Change of Registration Details”** means information altering Registration Details in the electronic records of ASTC.

**“CHES”** stands for the Clearing House Electronic Subregister System operated by:

- (a) ACH for the purpose of clearing Cash Market Transactions and Cash CCP Transactions; and
- (b) ASTC for the purpose of settling transactions in Approved Financial Products, Transferring Financial Products and registering Transfers.

**“CHES Holding”** means a Holding of Financial Products on the CHES Subregister.

**“CHES Provision”** means:

- (a) a provision of these Rules; or
- (b) a provision of Chapter 7 of the Corporations Act which is material to the operation of CHES.

**“CHES Renounceable Rights Subregister”** means the Subregister administered by ASTC that records Holdings of rights.

**“CHES Software”** means all systems and applications programs relevant to the operation of CHES including (without limitation) all of the computer software maintained and used by ASTC for the purposes of CHES (other than software used by a Facility User to communicate with CHES).

**“CHES Subregister”** means:

- (a) that part of an Issuer’s register;
- (b) that part of a Foreign Issuer’s CDI Register, for a class of the Issuer’s Approved Financial Products; or

(c) the FDI Register for a class of Participating International Financial Products, that is administered by ASTC.

**“CHESS to Certificated”** means a Transfer or Conversion of Principal Financial Products from a CHESS Holding to a certificated register administered by the Principal Issuer.

**“CHESS to CHESS”** means a Transfer of Financial Products from one CHESS Holding to another CHESS Holding.

**“CHESS to Issuer Sponsored”** means a Transfer or Conversion of Financial Products from a CHESS Holding to an Issuer Sponsored Holding.

**“Clearing Account”** means a Settlement Account or an Accumulation Account.

**“Clearing Holding”** means a Settlement Holding or an Accumulation Holding.

**“Clearing Participant”** means a person admitted as a participant in an Approved Clearing Facility under the operating rules of that facility.

**“Commencement Date”** in relation to a class of an Issuer’s Financial Products, means the date on which Financial Products in that class become Approved Financial Products.

**“Commission”** means the Australian Securities and Investments Commission.

**“Communication”** means an electronic communication within CHESS which may affect the balance of a CHESS Holding.

**“Complete Corporate Action Record”** means a record of information relating to a Corporate Action that includes all relevant dates.

**“Confirmed FOR Indicator”** means, when specified in a Message transmitted by a Participant, that the Participant is seeking to effect a Transfer or Conversion as a Foreign to Foreign Allocation.

*Note: the indicator to be set in such instances is “OR”*

**“Confirmed FOR Financial Products”** means the lesser of either:

- (a) the number of FOR Financial Products in a Holding whose Residency Indicator is recorded by ASTC as “F”, calculated as the current Holding Balance of FOR Financial Products; or

- (b) the number of FOR Financial Products in a Holding whose Residency Indicator is recorded as “ F”, at Start of Day, adjusted by:
  - (i) those Financial Products transferred into the Holding pursuant to a Foreign to Foreign Allocation during that Business Day; and
  - (ii) any Conversions of those Financial Products into or out of the Holding; and
  - (iii) those Holding Adjustments initiated by an Issuer pursuant to Rule 5.12.4; less

- (iv) that number of Financial Products transferred out of the Holding pursuant to a Foreign to Foreign Allocation during that Business Day.

**“Contravention Notice”** means a Notice given by ASTC to a Facility User under Section 12.

**“Controlling Participant”** in relation to a CHES Holding, means the Participant that has the capacity in CHES to either:

- (a) Transfer or Convert Financial Products from the Holding; or
- (b) transfer in terms of Rule 13.19.2; or
- (c) Transmute FDIs from the Holding.

**“Conversion”** means a movement of Financial Products from a Holding on one Subregister to a Holding on another Subregister without any change in legal ownership.

**“Convertible Form”** means when the Participant has received all the necessary documentation such that:

- (a) the registry is satisfied that the Registration Details for the Certificates, SRN or other form of Source Holding match the Registration Details for the Target Holding; and
- (b) the Participant is able to initiate the Conversion message.

**“Corporate Action”** means:

- (a) action taken by an Issuer of Financial Products for the purpose of giving an Entitlement to Holders of a class of the Issuer’s Financial Products;
- (b) action taken by a Principal Issuer for the purpose of giving an Entitlement in respect of Principal Financial Products held by a Depository Nominee to Holders of CDIs; and
- (c) in relation to Section 13 action taken by an issuer of Participating International Financial Products for the purposes of giving an Entitlement in respect to Participating International Financial Products, held by a Depository Nominee.

**“CS Facility”** means a CS facility licensed as such under the Corporations Act or a Foreign Clearing House.

“**CUFS**” stands for CHES Units of Foreign Securities and means a unit of beneficial ownership in a Financial Product of a Foreign Issuer, registered in the name of the Depository Nominee.

“**Cum Entitlement**” in relation to a Transfer or a Conversion, means a Transfer or Conversion of Parent Financial Products together with the Entitlement to a Corporate Action.

“**Cum Entitlement Balance**” means, in respect of a Corporate Action, the number of Parent Financial Products to be used by the Issuer to calculate the Entitlement of a Holder or a former Holder of Parent Financial Products.

“**Cum Processing**” means processing of Cum Entitlement Transfers and Conversions by deducting Financial Products from or entering Financial Products into the Cum Entitlement Balance for a Holding.

“**Current Valuation**” means the current market valuation of Financial Products, being the last sale price for the Financial Products at the close of business on the previous Business Day, or if a higher offer price or lower bid price exists at that time, that price.

“**Custodial Purposes**” for the purposes of Rule 6.3.4 means in relation to Financial Products in a Clearing Holding, any purpose other than the purpose of facilitating:

- (a) the execution of outstanding orders; or
- (b) the clearing and settlement of outstanding transactions.

“**Debit Cap**” in relation to a Net Position Record for an RTGS Participant, means a facility within the Feeder System that, if activated, enables the Participant’s Net Position Record to go into debit up to the Debit Limit, at any time when the relevant RTGS Payments Provider is deemed to have made the election set out in Rule 11.9.2.

“**Debit Cap Compliant**” in Section 11, has the meaning given in Rule 11.20.2.

“**Debit Cap Status**” means at any time the status of a Debit Cap as authorised at that time by the RTGS Payments Provider for the relevant RTGS Participant, being either:

- (a) active; or
- (b) null (inactive).

“**Debit Limit**” in relation to a Debit Cap at any time, means the dollar amount:

- (a) most recently notified in accordance with Rules 11.9.1(c) and 11.9.3(c); and

(b) recorded by ASTC against the Net Position Record to which that Debit Cap applies.

**“Delivery Obligation”** in relation to an RTGS Instruction, means an obligation on the part of one party to deliver certain Financial Products to the other on settlement.

**“Demand Report”** means a Message Transmitted by ASTC to a Facility User to provide information about CHES Holdings or CHES Subregister movements in accordance with parameters specified by the Facility User.

**“Demand Transfer”** means a Transfer other than a Settlement Transfer.

**“Demand Transfer Settlement”** means settlement of a Batch Instruction is effected by the counterparties by Demand Transfer

**“Depository Nominee”** means the person appointed under these Rules, being either:

- (a) CHES Depository Nominees Pty Ltd (as long as it remains admitted to participate in CHES under Rule 4.3.1); or
- (b) a person admitted as a General Settlement Participant under Rule 4.3.1, whose function is to hold Title or Other Interest to Principal Financial Products or Participating International Financial Products.

**“Derivatives”** means derivatives entered into on a market in a derivatives instrument that is operated by an Approved Market Operator.

**“Derivatives Cover”** means Financial Products lodged with, or otherwise made available to, an Approved Clearing Facility as security for deposits or margins payable in relation to Derivatives transactions.

**“Despatch”** in relation to Financial Products to be entered into a CHES Holding pursuant to a Corporate Action, means Transmit a Message to enter the Financial Products into the Holding.

**“Despatch Date”** means the date by which an Issuer is required to have despatched Certificates (or in the case of rights, entitlement and acceptance forms in relation to those rights) or to have entered Financial Products (including rights) into Holders’ uncertificated Holdings in accordance with Listing Rules or otherwise as determined by the relevant Approved Market Operator and notified from time to time.

**“DI”** stands for Depository Interest and means a unit of beneficial ownership in a Financial Product which is not a Financial Product of a Foreign Issuer, registered in the name of the Depository Nominee.

**“DI Issuer”** means an Issuer of Financial Products quoted on ASX, a condition of the issue being that the Financial Products are held by investors in Australia in the form of DIs.

**“Direct Batch Instruction”** means a Batch Instruction under which the obligations are effected by the counterparties directly.

**“Direct Holding”** means a CHESS Holding where the Holder is:

- (a) the Controlling Participant; or
- (b) if the Controlling Participant is an incorporated entity, a Related Body Corporate of that Participant; or
- (c) if the Controlling Participant is a partnership, a nominee company provided all of its issued capital is owned by the partners.

**“Disciplinary Register”** means the register maintained by ASTC under Rule 12.6.1.

**“Disciplinary Tribunal”** means the tribunal established under Rule 12.4.

**“Divestment”** means action taken by an Issuer to require or effect the disposal of Financial Products.

**“Dual Entry Batch Instruction”** means a Batch Instruction that results from Matched Dual Entry Settlement Messages.

**“Dual Entry Batch Message”** means a Message that complies with Rule 10.9.2.

**“Dual Entry Demand Message”** means a Message that complies with Rule 9.5.1.

**“Dual Entry Demand Transfer”** means a Demand Transfer of Financial Products that gives effect to a Dual Entry Demand Message.

**“Dual Entry Payment Batch Instruction”** means a Batch Instruction that results from Matched Dual Entry Payment Batch Messages.

**“Dual Entry Payment Batch Message”** means a Message that complies with Rule 10.9.2.

**“Dual Entry RTGS Instruction”** means an RTGS Instruction that results from Matched Dual Entry RTGS Messages.

**“Dual Entry RTGS Message”** means an RTGS Message that relates to a DvP RTGS Transaction.

**“Dual Entry Switch to Batch Settlement Message”** in relation to a Dual Entry RTGS Instruction, means a Message that, in accordance with the requirements of the EIS, requests that an RTGS Instruction be removed from Real Time Gross Settlement and included in Batch Settlement under Section 10.

**“Dual Entry Switch to RTGS Message”** means a Message that, in accordance with the requirements of the EIS, requests that an Batch Instruction be removed from DvP Batch Settlement and included in Real Time Gross Settlement under Section 11.

**“DvP Batch Instruction”** means a Batch Instruction to be settled in DvP Batch Settlement.

**“DvP Batch Settlement”** means a component of Batch Settlement in which irrevocable payment is made through the funds transfer procedures or alternative payment arrangements specified in Rule 10.7.1 or 10.7.2 in exchange for the irrevocable Transfer of Financial Products.

**“DvP Declaration”** means the time when all the registered payment instructions in the CHES Payments Provider User Group are simultaneously effected for the purposes of Batch Settlement.

**“DvP Instruction”** means:

- (a) a DvP Batch Instruction; or
- (b) a DvP RTGS Instruction.

**“DvP Notification”** means the notification of DvP Declaration to be given by ASTC to a Payments Provider under the Standard Client Bank Deed.

**“DvP Real Time Gross Settlement”** means a component of Real Time Gross Settlement in CHES in which the Payment Obligation and the Delivery Obligation identified in a DvP RTGS Instruction are irrevocably and simultaneously settled in accordance with Rule 11.25.

**“DvP RTGS”** stands for DvP Real Time Gross Settlement.

**“DvP RTGS Instruction”** means an RTGS Instruction that identifies a Payment Obligation and a Delivery Obligation.

**“DvP Settlement”** means:

- (a) DvP Batch Settlement; or
- (b) DvP Real Time Gross Settlement.

**“Effective Date”** means the date referred to in a Participant Change Notice on which the novation of a Client Agreement is deemed to have occurred.

**“EIS”** stands for External Interface Specification, and means a document, made by ASTC, that provides detailed information about protocols, message formats and security features for communications between Facility Users and ASTC.

**“Election Date”** means the date by which a person must instruct an Issuer if the person wishes to convert or exercise Financial Products in accordance with the terms of a Corporate Action.



**“Employee”** includes a director, partner, employee, officer, consultant, agent, representative, advisor or an independent contractor who acts for or by arrangement with a Participant or Issuer in the conduct of its business.

**“End of Day”** means on any Trading Day, 7:00pm Sydney time or such other time as ASTC may from time to time determine.

**“End of Day Processing Phase”** means on any Trading Day, the time period after End of Day during which various scheduled processing and system administration tasks are completed (for example, financial products maintenance, corporate action processing, archiving and system backup).

**“Entitlement”** means a security benefit as defined in Regulation 7.5.01 of the Corporations Regulations and includes (without limitation):

- (a) rights;
- (b) bonus issues;
- (c) dividend, interest and trust distribution payments;
- (d) priority issues;
- (e) offers under an equal access scheme; and
- (f) in relation to Participating International Financial Products means any equivalent or similar benefit (however described) provided or offered by the issuer of the Participating International Financial Products.

**“Entitlement Date”** in relation to Section 13 means, a date specified by the Depositary Nominee as the date by reference to which the Depositary Nominee will identify the persons entitled to the benefit of a Corporate Action.

**“ETF Application”** means the application required by an Issuer to enable new ETF Financial Products to be created and despatched to a subscriber.

**“ETF Financial Products”** means Financial Products of a registered managed investment scheme:

- (a) listed on an Approved Market Operator;
- (b) with power and approval to continually issue and have quoted on an Approved Market Operator, Financial Products in the scheme; and
- (c) which provides for the issue of new Financial Products in return for the subscriber transferring to the scheme a portfolio of Financial Products.

**“Event of Non-Compliance”** means an event for which Notice must be given under Rule 12.18.

**“Ex Date”** means the date on which the relevant Approved Market Operator changes the basis of quotation for a class of Parent Financial Products to signify that trading in that class no longer carries the entitlement.

**“Ex Entitlement”** in relation to a Transfer or a Conversion, means a Transfer or Conversion of Parent Financial Products without the Entitlement to a Corporate Action.

**“Ex Period”** means the Period from Start of Day on the Ex Date to End of Day on the Record Date in respect of a Corporate Action.

**“Excess Financial Products”** means:

- (a) those FOR Financial Products determined by an Issuer that cause the Foreign Ownership Percentage Level to be exceeded; or
- (b) with the exception of a Foreign to Foreign Allocation, those FOR Financial Products determined by an Issuer, where the Issuer is authorised to do so under its constitution or governing legislation, to have been transferred into a Holding with a Residency Indicator of “F”, on the day when the Foreign Ownership Percentage Level Foreign Holder Percentage Level is exceeded.

**“Excluded Class of Financial Products”** means a class of Financial Products declared by ASTC from time to time as a class of Financial Products that is not eligible for processing in CHES.

**“Excluded Cash Sub-record”** means a Cash Sub-record so designated by an RTGS Participant for the purposes of Rule 11.20.

**“Exemption Code”** means a numeric code in the form approved by the Australian Taxation Office for the purpose of TFN exemption reporting.

**“Facility User”** means:

- (a) a Participant; or
- (b) an Issuer of Approved Financial Products.

**“Fail”** means the removal under the Rules of the whole or part of an Instruction from Batch Settlement or Real Time Gross Settlement, on a Business Day.

**“FDI”** stands for Foreign Depository Interest and which comprises a beneficial interest or Other Interest in a Participating International Financial Product held by a Depository Nominee.

**“FDI Register”** means the record of Holders of FDIs containing the information required by Rule 13.19.4.

**“FDI Transaction”** means a transaction where on transfer of clear funds the Depository Nominee records or removes FDIs in the FDI Register, as the case requires.

**“Feeder System”** in relation to CHES, means collectively the systems and procedures to effect Real Time Gross Settlement utilising an electronic interface to RITS/RTGS and, when appropriate, the AIF.

**“Feeder System Queue”** means the facility within the Feeder System to:

- (a) test RTGS Instructions within CHES in the manner contemplated by Rules 11.18, 11.19 and 11.20; and
- (b) hold and allow ASTC to monitor unsettled RTGS Instructions during the RTGS Settling Phase.

**“Fees and Charges Schedule”** means the Fees and Charges Schedule made by ASTC under Rule 1.6.

**“Financial Products”** means:

- (a) Division 4 financial products as defined in Regulation 7.11.03 of the Corporations Regulations; or
- (b) For the purposes of Rule 8.3.2, financial products issued under an employee incentive scheme and company issued options.

**“Financial Products Code”** means the code that is assigned to a class of Approved Financial Products by an Approved Market Operator.

**“Financial Products Shortfall”** means (the number that is greater than zero, where the number is calculated by the total number of Financial Products of a class projected to be delivered from a Holding in Scheduled Settlement on a Business Day) less the sum of the number of Financial Products of that class in that Holding at Settlement Cut-Off on that Business Day and of the total number of Financial Products of that class projected to be received into that Holding in Scheduled Settlement on that Business Day where:

$SS = D - (H + R)$  and:

SS is the Financial Products Shortfall

D is the total number of Financial Products of a class projected to be delivered from the Holding

H is the number of Financial Products of a class in the Holding

R is the total number of Financial Products of a class projected to be received into the Holding.

**“Financial Products Transformation”** means either:

- (a) an adjustment to the Holding Balance of a CHESS Holding initiated by the Issuer because Financial Products in the Holding have:
  - (i) been absorbed into an existing class of Financial Products (for example, Financial Products that do not rank for a Dividend to Financial Products that do); or
  - (ii) been assigned a new Financial Product Code (for example, because of a Reconstruction); or
- (b) in respect of Allocation Interests, an adjustment to a Holding of Allocation Interests initiated by the Issuer in order to despatch Approved Financial Products under Rule 15.27.

**“Firm Allocation Component”** means that part of an Offer which is reserved for clients of a Participant under an agreement between the Issuer and a Participant.

**“FOR Financial Products”** means a class of Approved Financial Products included in Schedule 1, pursuant to Rule 5.18.2.

**“Foreign Clearing House”** means a person which:

- (a) has its principal place of business in a country other than Australia;
- (b) is authorised to provide clearing and settlement services in the country in which it has its principal place of business; and
- (c) is subject to prudential and/or other regulatory supervision in the country in which it has its principal place of business by a regulatory authority that has entered into an information sharing arrangement dealing with market matters with the Commission.

**“Foreign Confirmed Holding Net Movement Report”** means a report that:

- (a) for the specified period; and
- (b) in respect of each CHESS Holding containing Confirmed FOR Financial Products in the specified sets out a summary on a daily basis of:
  - (c) total units added to the Holding pursuant to Foreign to Foreign Allocations;
  - (d) total units deducted from the Holding pursuant to Foreign to Foreign Allocations;
  - (e) total units added to the Holding of Confirmed FOR Financial Products as a result of registry authorised transactions;

- (f) total units deducted from the Holding of Confirmed FOR Financial Products as a result of registry authorised transactions; and
- (g) the end of day closing balance for the Holding.

**“Foreign Issuer”** means an Issuer whose place of incorporation does not recognise CHES as a system that can transfer and register legal Title to Financial Products.

**“Foreign Ownership Percentage Level”** means the aggregate limit of foreign ownership, pursuant to the constitution or governing legislation of an Issuer whose Financial Products are included in Schedule 1.

**“Foreign Person”** means, where specified pursuant to Rule 8.7.2, that the Holder has notified the Controlling Participant that the beneficial owner of the Financial Products in the Holding, for the purposes of legislation or under the constitution of an Issuer whose Financial Products are included in Schedule 1:

- (a) is a foreign person;
- (b) is an associate of a foreign person; or
- (c) has a beneficial interest in the Financial Products, part of that beneficial interest vesting in a Foreign Person, other than persons, associates or interests which the legislation or constitution ignores or excludes for the purposes of aggregate foreign ownership restrictions.

*Note: a Residency Indicator of “F” denotes a Foreign Person*

**“Foreign Register”** means a register of an Issuer that is located outside Australia.

**“Foreign Financial Products”** means financial products issued or made available by a Foreign Issuer.

**“Foreign to Foreign Allocation”** means a Transfer or Conversion of Confirmed FOR Financial Products, including a Transfer pursuant to a transaction effected in accordance with the operating rules of an Approved Market Operator, where the Residency Indicator of both the Source and Target Holdings is “F”, thus resulting in a Holding of Confirmed FOR Financial Products.

Amended 18/12/06

**“Full Download”** in relation to the CHES Subregister for a class of an Issuer’s Financial Products, means a Demand Report Transmitted to the Issuer of:

- (a) the HINs of all Holders on the Subregister; and
- (b) the Holding Balances of all Holdings; and/or

(c) the Cum Entitlement Balances for all Holdings or former Holdings.

**“General Settlement Participant”** means a Participant admitted to participate in the Settlement Facility under Rule 4.3 but does not include a Recognised Market Operator under Rule 4.3.13.

**“Held Balance”** means the number of Financial Products that remain in a Certificated Holding after a Transfer by a Participant of only some of the Financial Products represented by a Certificate or Marked Transfer.

**“Held Balance Reference Number”** means the number allocated by an Issuer to identify a Held Balance.

**“HIN”** stands for Holder Identification Number and means a number used to:

- (a) identify a Holder of Financial Products on the CHESSE Subregister; and
- (b) link the Holding details maintained on the CHESSE Subregister with the Holder’s Registration Details.

**“Holder”** means:

- (a) a person registered as the legal owner of Financial Products in a Holding;
- (b) a person who is recorded as holding CDIs on the CDI Register;
- (c) a person who is recorded on a record of Allocation Interests; or
- (d) a person who is recorded as holding FDIs on the FDI Register.

**“Holder Record”** means the Registration Details, the HIN and the Holder Type as recorded by ASTC in CHESSE for the purpose of operating one or more CHESSE Holdings.

**“Holder Record Lock”** means a facility that prevents Financial Products from being deducted from any current Holding to which the relevant Holder Record applies, pursuant to a Transfer or Conversion.

**“Holder Type”** means a code used to indicate the capacity in which a Participant:

- (a) establishes a Holder Record;
- (b) controls a CHESSE Holding, (for example, Direct, Participant Sponsored or Clearing Account).

**“Holding”** means:

- (a) a number of Financial Products of an Issuer held by a Holder on the Issuer’s register;
- (b) a number of CDIs held by a Holder on the CDI Register;
- (c) a number of Allocation Interests recorded in respect of a Holder; or
- (d) a number of FDIs recorded as held by a Holder on an FDI Register.

**“Holding Adjustment”** means a movement of Financial Products to or from a CHES Holding that is initiated by an Issuer Transmitting a Message to ASTC to:

- (a) give effect to a Corporate Action or Reconstruction in relation to a class of the Issuer’s Financial Products;
- (b) establish a CHES Holding pursuant to a new issue of Approved Financial Products;
- (c) move Financial Products from a CHES Holding for the purpose of Divestment or forfeiture; or
- (d) move Financial Products to or from a CHES Holding in such other circumstances as:
  - (i) are permitted by these Rules; or
  - (ii) may be agreed between ASTC and the Issuer.

**“Holding Balance”** means the number of Financial Products in a Holding.

**“Holding Lock”** means, in relation to a Holding on either the CHES Subregister or an Issuer Operated Subregister, a facility that prevents Financial Products from being deducted from, or entered into, a Holding pursuant to a Transfer or Conversion.

**“Holding Net Movement Report”** means a report that:

- (a) for the specified period; and
- (b) in respect of each CHES Holding of Financial Products in the specified class that has undergone a Holding Balance change during the specified period,
- (c) sets out, a summary on a daily basis of:
  - (i) total units added to the Holding;
  - (ii) total units deducted from the Holding;
  - (iii) total units added to the Holding as a result of registry authorised transactions;
  - (iv) total units deducted from the Holding as a result of registry authorised transactions; and
  - (v) the End of Day closing balance for the Holding.

**“Incapacity Law”** means a law relating to the administration of the estates of persons who, through mental or physical incapacity, are incapable of managing their affairs.

**“Industry Group”** means one of the following groups:

- (a) Participants or senior officers of Participants; or
- (b) senior officers of Issuers or of Issuers’ Third Party Providers.

**“Instruction”** means a Batch Instruction or an RTGS Instruction.

**“Issuer”** means a person who issues or makes available or proposes to issue or make available, Approved Financial Products and includes (without limitation):

- (a) a listed company or company whose Financial Products are quoted by a market licensee or by a financial market or type of financial market exempted under section 791C of the Corporations Act;
- (b) a warrant issuer;
- (c) the responsible entity of a managed investment scheme;
- (d) a Foreign Issuer.

**“Issuer Operated Subregister”** means an Issuer Sponsored Subregister.

**“Issuer Sponsored Holding”** means a Holding of Financial Products on the Issuer Sponsored Subregister.

**“Issuer Sponsored Subregister”** means:

- (a) that part of an Issuer’s register that records uncertificated Holdings of Financial Products in accordance with Listing Rule 8.2; or
- (b) that part of a CDI Register, that is administered by the Issuer (and not ASTC).

**“Issuer Sponsored to CHESS”** means a Transfer or Conversion of Financial Products from an Issuer Sponsored Holding to a CHESS Holding.

**“Issuer Warranties and Indemnities”** means warranties and indemnities given by an Issuer under these Rules.

**“Last Corporate Action Event Date”** means in the case of an Entitlement under a Corporate Action that involves:

- (a) the issue of Financial Products only, the Despatch Date;
- (b) the payment of money only, the due date of payment; or



(c) a combination of the issue of Financial Products and the payment of money, the later of the Despatch Date and the due date of payment, where, before the date when the Issuer must have completed its obligation to pay money or issue Financial Products is unknown or unclear the Last Corporate Action Event Date will be a date ASTC reasonably determines is appropriate in the circumstances and notifies the Issuer and each Participant.

“**Listing Rules**” means the Listing Rules of an Approved Market Operator.

“**Locked**” in relation to a Holding, means subject to a Holding Lock or a Holder Record Lock.

“**MAC**” stands for Message Authentication Code, and means a code appended to a Message by ASTC or a Facility User for the purpose of enabling the recipient of the Message to confirm the identity of the Facility User Transmitting the Message.

“**Marked Transfer**” means a Registrable Transfer Document that has been marked by the Issuer or a marking body.

“**Market Operator**” means:

- (a) ASX; or
- (b) in the Rules made from time to time pursuant to arrangements entered into under section 798C of the Corporations Act, in relation to quoted financial products issued by ASX, “the Commission”; or
- (c) in relation to:
  - (i) a class of financial products quoted, or to be quoted by; or
  - (ii) a participant of a market licensee under the Corporations Act other than ASX, that market licensee; or
- (d) the operator of a financial market or type of financial market exempted under section 791C of the Corporations Act.

“**Market Participant**” means a participant of an Approved Market Operator.

“**Marketable Parcel**” means in relation to a Financial Product, the number determined by an Approved Market Operator to be a marketable parcel.

Introduced 18/12/06

“**Marking Number**” means the unique reference number allocated to a Marked Transfer by the Issuer or a marking body.

**“Match and Matched”** in relation to Messages Transmitted to ASTC by a Participant, means that the Message contains, or under the Rules may be taken to contain, the same details for message fields that require mandatory matching.

**“Matched Messages”** means:

- (a) in relation to Dual Entry RTGS Messages, Messages that are Matched under Rule 11.13.3;
- (b) in relation to Dual Entry Batch Messages, Messages that are Matched under Rule 9.5.2 or 10.9.3;
- (c) in relation to Dual Entry Switch to Batch Settlement Messages, Messages that are Matched under Rule 11.12.3;
- (d) in relation to Dual Entry Switch to RTGS Messages, Messages that are Matched under Rule 10.6.1 or 10.11.8; and
- (e) in relation to Dual Entry Payment Batch Messages, Messages that are Matched under Rule 10.8.3,

and in any other case means Valid Messages that are Matched.

**“Maximum Percentage”** means 10% or such other percentage prescribed by ASTC.

**“Maximum Value”** means \$350,000 or such other amount prescribed by ASTC.

**“Message”** means an electronic message of a kind specified in the EIS for use in CHES.

**“Net Position Record”** in relation to an RTGS Participant, means a facility established within CHES through which ASTC tracks and records the outcome of RTGS Instructions due for settlement on any RTGS Business Day, that relate to a particular Payment Facility of that Participant.

**“Net Position Record Status”** means at any time the status of a Net Position Record as authorised at that time by the RTGS Payments Provider that maintains the Payment Facility to which that Net Position Record is linked, being either:

- (a) active; or
- (b) inactive.

**“Nominee Company”** means a body corporate controlled and operated by a Participant admitted under Rule 4.3.1 that carries on the business of holding Financial Products as a trustee or nominee.

**“Notice”** has a meaning given by Rule 1.10.

**“Notice of Death”** means a death certificate or any other formal document that is acceptable by ASTC as evidence of a Holder’s death.

**“Off Market Transaction”** means a transaction in Approved Financial Products that is not an On Market Transaction.

**“Offer”** means:

- (a) an offer for subscription or an invitation to subscribe for Financial Products, under which an Issuer must issue; or
- (b) an offer under which an Issuer must dispose of, Approved Financial Products to successful applicants.

**“Offer Accepted Subposition”** means a Subposition for the reservation of Financial Products in a CHES Holding which are the subject of an acceptance under a takeover bid.

**“Old Corporations Act”** means the Corporations Act as in force immediately before 11 March 2002.

**“On Market Transaction”** means a transaction in Approved Financial Products in relation to which one of the following conditions is satisfied:

- (a) the transaction was entered into in the ordinary course of trading on an Approved Market Operator’s market; or
- (b) the transaction is, under the operating rules of an Approved Market Operator, described, or to be described, as ‘special’ when it is reported to the Approved Market Operator; or
- (c) in relation to a transaction between a Participant and a Participant who is not a Market Participant, a confirmation is issued in relation to a transaction under paragraph (a) or (b); or
- (d) in relation to a transaction between two Participants that are not Market Participants, the transaction is entered into solely for the purpose of facilitating settlement of a transaction of a kind referred to in paragraph (a) or (b).

**“Originating Message”** means a Message Transmitted to ASTC by the Controlling Participant for a CHES Holding which (as a consequence of that Message being processed) results in ASTC or a Facility User Transmitting another Message (whether or not that consequential Message also results from the processing of any intervening Message).

**“Other Interest”** means any right or interest whether legal or equitable in the Participating International Financial Product and includes an option to acquire a right or interest in the Participating International Financial Product.

**“Parent Batch Instruction”** means a Batch Instruction that gives rise to an Accrued Batch Instruction as a result of a Corporate Action.

**“Parent DvP Batch Instruction”** means a Parent Batch Instruction with a Settlement Amount scheduled to settle in DvP Batch Settlement.

**“Parent DvP RTGS Instruction”** means a Parent RTGS Instruction with a Settlement Amount scheduled to settle in DvP Real Time Gross Settlement.

**“Parent Financial Products”** means a class of Approved Financial Products to which an Entitlement to cash or Financial Products attaches that, during an Ex Period, may be Transferred with or without the Entitlement.

**“Parent Participant”** means:

- (a) in relation to a group of Participants within paragraph (a) of the definition of Participant Group, any Participant within that group that is notified to ASTC by all the Participants within that group; or
- (b) in relation to a group of Participants within paragraph (b) of the definition of Participant Group, the Settlement Participant that is notified to ASTC by all the Participants within that group.

Amended 18/12/06

**“Parent RTGS Instruction”** means an RTGS Instruction that gives rise to an Accrued RTGS Instruction as a result of a Corporate Action.

**“Participant”** means an Account Participant, a Specialist Settlement Participant, or a General Settlement Participant.

**“Participant Bidder”** means a Participant entitled or authorised (whether as the bidder or on behalf of the bidder) to receive acceptances of bids made under a takeover bid in accordance with these Rules.

**“Participant Change Notice”** means the Notice sent to a Participant Sponsored Holder which complies with the requirements of Rule 7.1.10(a)

**“Participant Group”** means:

- (a) a group of Participants that are related bodies corporate within the meaning of section 50 of the Corporations Act; or
- (b) a Settlement Participant which has a written agreement with one or more Account Participants and each of those Account Participants with whom it has a written agreement.

Amended 18/12/06

**“Participant Managed”** in relation to the attributes of a Net Position Record, means any of the matters set out in Rule 11.9.11.

**“Participant Sponsored Holder”** means a person that has a current Sponsorship Agreement with a Participant as required or permitted under these Rules.

**“Participant Sponsored Holding”** means a CHESS Holding of a Participant Sponsored Holder.

**“Participant Warranties and Indemnities”** means warranties and indemnities given by a Participant under these Rules.

**“Participation Requirements”** means matters set out in Section 4 in relation to which ASTC must be satisfied in order for a person to be admitted to participate in CHESS in any capacity.

**“Participating International Financial Products”** mean financial products:

- (a) traded on a market other than in Australia; and
- (b) declared by ASTC under Rule 13.15 from time to time to be available for settlement by means of FDIs.

*Note: financial products in this definition are not restricted by jurisdictional limits in the Corporations Act.*

**“Party”** in relation to a Proceeding or Appeal, means:

- (a) the Facility User to whom a Contravention Notice was given in the Proceeding; or,
- (b) ASTC or the Facility User to or by whom an Appeal Notice was given in the Appeal,

as the case requires.

**“Payment Batch Instruction”** means:

- (a) a CCP Derivatives Payment Batch Instruction; or
- (b) a Dual Entry Payment Batch Instruction.

**“Payment Facility”** means a Facility operated for a Participant at a Payments Provider for the purposes of paying and receiving payments in Batch Settlement.

**“Payment Obligation”** in relation to an RTGS Instruction means an obligation on the part of one party to pay a cash amount to the other on settlement.

**“Payment Shortfall”** for a Payment Facility, means:

- (a) if the Participant’s net obligation to make payment is not authorised, the amount of the net obligation for which authorisation is sought; or
- (b) if the Participant’s net obligation to make payment is not authorised, the difference between the amount of the net obligation to make the payment that has already been

authorised by the Payments Provider and the amount of the net obligation to make a payment for which further authorisation is sought from the Payments Provider.

**“Payment Systems and Netting Act”** means the Payment Systems and Netting Act 1998 (Cth).

**“Payments Provider”** means a person that:

- (a) operates an exchange settlement account with the Reserve Bank of Australia in its own name;
- (b) has the operational capacity to:
  - (i) authorise and make payments on behalf of Participants;
  - (ii) make payments to Participants; and
  - (iii) register entries in the Payments Provider User Group for the purpose of discharging its net obligation to make payment to the Bank or its net entitlement to receive payment from the Bank in accordance with the Standard Payments Provider Deed;
- (c) meets the technical and performance requirements prescribed by ASTC to ensure that the person does not affect the integrity or orderly operation of CHESSE; and
- (d) is a person who facilitates Batch Settlement by approving or making payments in accordance with the terms and conditions of the relevant Standard Payment Providers Deed.

**“Payments Provider Managed”** in relation to the attributes of a Net Position Record, means any of the matters set out in Rule 11.9.3(a) to (f).

**“Payments Provider User Group”** means the subsystem within the interbank payments system, operated by the Reserve Bank of Australia, established to enable financial institutions to satisfy payment obligations of CHESSE Participants on behalf of CHESSE Participants.

**“PID”** stands for participant identifier and means a UIC allocated by ASTC to a Participant that is:

- (a) used as the identification code of the Participant that controls a Holding on the CHESSE Subregister; and
- (b) included in a Message header to identify the source and/or destination of CHESSE Data Messages.

**“Pre-Cash Settlement Period”** means, for the purposes of Regulation 7.5.44 of the Corporations Regulations 15 Business Days.

**“Pre-commencement Testing”** means testing at the direction of ASTC to establish whether a Facility User meets the Technical and Performance Requirements.

**“Prescribed Percentage”** means 50% or such other percentage determined by ASTC.

**“Prescribed Person”** means the person from time to time notified as such by ASTC to Participants and RTGS Payments Providers.

**“Principal”** in relation to a body, means each of:

- (a) any parent body of the body;
- (b) each Director or person in the position of a Director;
- (c) where the body consists of two or more partners or trustees, each principal (within the meaning of paragraphs (a) and (b)) of each of those partners or trustees.

**“Principal Financial Products”** means Financial Products issued or made available by a Principal Issuer.

**“Principal Issuer”** means:

- (a) a Foreign Issuer; or
- (b) a DI Issuer.

**“Principal Register”** means the register of those Holdings of Principal Financial Products maintained by a Principal Issuer in Australia under these Rules.

**“Procedures”** means any document, electronic file or other information (recorded by any mode of representing words or reproducing words) approved by ASTC and given where applicable to Participants, Issuers and third party service providers in accordance with Rule 1.4 and, without limitation, includes any EIS and the ASTC Settlement Procedures as amended from time to time.

Amended 18/12/06

**“Proceeding”** means proceedings taken under Section 12 by ASTC against a Facility User and commenced by a Contravention Notice.

**“Publish a Notice”** means to publish a Notice in at least one national newspaper and at least one state or territory based newspaper in each state and territory.

**“Real Time Gross Settlement”** means the processing and settling of payment and delivery obligations in real time and on a gross, not net, basis, the fundamental characteristic of which is that the payment and delivery components of a transaction become irrevocable at the time of settlement and, in relation to CHES, is effected in accordance with systems and procedures contained in Section 11.

**“Reciprocal Arrangement”** means any agreement or arrangement between ASTC and any governmental agency or regulatory authority (including, without limitation, a market, clearing house or clearing and settlement facility), in Australia or elsewhere, whose functions include the regulation of trading in, or clearing and settlement of, financial products (in Australia or elsewhere) which provides for the disclosure of information between ASTC and the other party in relation to dealings in, or clearing and settlement of, financial products (in Australia or elsewhere).

**“Recognised Market Operator”** means a Market Operator admitted as a Participant under Rule 4.3.1 and which is recognised under Rule 4.3.13.

**“Recognised Physical Access Point”** means:

- (a) in the case of a Facility User, the physical location of an application system that the Facility User employs to operate an interface with CHESSE; or
- (b) in the case of ASTC, the physical location of the application system that operates CHESSE.

**“Reconstruction”** means an alteration to the issued capital of an Issuer, which affects the number, or nature, of Financial Products held by a Holder and includes ( without limitation) a reorganisation or a merger.

**“Record Date”** means 5:00pm (or, in the case of a ASTC-Regulated Transfer, a later time permitted by the Rules) on the date specified by an Issuer as the date by reference to which the Issuer will establish Cum Entitlement Balances for the purpose of identifying the persons entitled to the benefit of a Corporate Action.

**“Recorded”** in relation to an RTGS Instruction, means that its details have been stored in CHESSE in accordance with Rule 11.15.

**“Records”** means books, computer software, information processing equipment and any other item on which information is stored or recorded in any manner.

**“Registrable Transfer Document”** means any document that an Issuer is entitled to accept as a valid instrument of transfer or a Transfer Request Document.

**“Registration Details”** means the name, address and Residency Indicator of a Holder.

**“Related Body Corporate”** has the meaning set out in Section 50 of the Corporations Act.

**“Related Party”** means each entity in the ASX Group.



**“Remove”** means to move a Holding between a Principal Register and a CHES or an Issuer Operated Subregister without a change of legal ownership.

**“Renounceable Rights Record”** means the record maintained by an Issuer of Holders of renounceable rights not held on the CHES Rights Subregister.

**“Report”** means a Standing Report or a Demand Report.

**“Reporting Point”** means a particular point during a Business Day when information is stored by CHES for the purposes of reporting data to Facility Users; Acceptable values comprise:

- (a) end of Settlement Processing Phase;
- (b) Trade Instruction Cut-Off;
- (c) End of Day.

**“Reserve”** in Section 11 in relation to Financial Products, has the meaning given in Rule 11.19.1(d).

**“Reserved Processing Period”** means the End of Day Processing Phase.

**“Residency Indicator”** means a code used to indicate the status of the ultimate beneficial owner or owners of FOR Financial Products in a Holding on the CHES Subregister or an Issuer Operated Subregister, for the purposes of settling transactions in FOR Financial Products. (i.e. “D” for Domestic, “F” for Foreign Person, and in the case of Holdings of Financial Products where beneficial ownership is both domestic and foreign, “M” for Mixed).

**“Restricted Financial Products”** means Financial Products that are subject to a restriction agreement under Listing Rule 9.1.

**“Restriction”** in relation to the participation of a Participant, means any limitation on the entitlement of the Participant to send a Message or a class of Messages to ASTC.

**“Rights Period”** means the period from Start of Day on the date that rights trading begins on an Approved Market Operator to End of Day on the date that application money to take up those rights must be paid to the Issuer.

**“RITS”** means the Reserve Bank Information and Transfer System.

**“RITS Postsettlement Advice”** means a settlement confirmation, elected to be received by an RTGS Payments Provider, that is generated by RITS/RTGS and sent through the AIF to that RTGS Payments Provider.

**“RITS Presettlement Advice”** means an advice, elected to be received by an RTGS Payments Provider to enable it to make a credit decision in connection with the performance of a Payment Obligation, that is generated by RITS/RTGS and sent through the AIF to that RTGS Payments Provider.

**“RITS/RTGS”** means RITS, as operated by the Reserve Bank of Australia for Real Time Gross Settlement.

**“RITS Regulations”** means the regulations and conditions of operation that govern RITS as published from time to time by the Reserve Bank of Australia.

**“Routine Reporting”** means electronic reporting that is generated automatically by CHES as transactions are processed.

**“RTGS”** stands for Real Time Gross Settlement.

**“RTGS Account Identifier”** means a numeric identifier (that may, but need not, be an account number) agreed between an RTGS Participant and an RTGS Payments Provider to uniquely identify the Participant’s account that is to be debited, or credited, with the amount of any Payment Obligation, on settlement of an RTGS Instruction in accordance with Rule 11.25.

**“RTGS Accredited”** in relation to a Participant, has the meaning set out in Rule 11.5.2.

**“RTGS Business Day”** means a Settlement Day within the meaning of the RITS Regulations, or any other day declared by the Reserve Bank as a day on which RITS/RTGS will operate that is notified by ASTC to Participants.

**“RTGS Contingency Report”** means a report of the settlement status of CHES-related funds transfer requests sent to RITS/RTGS that is provided to ASTC by the Reserve Bank of Australia in manner and form as agreed between them.

**“RTGS Cut-Off”** means on any RTGS Business Day, 4.30pm Sydney time or such other time as ASTC may from time to time determine.

**“RTGS Delivery Shortfall”** in relation to Financial Products of a particular class in a Holding at any time on the RTGS Settlement Date for a particular RTGS Instruction, means that the sum of:

- (a) the number of Financial Products of that class required to be delivered from that Holding in Real Time Gross Settlement under that RTGS Instruction on that day;
- (b) the number of Financial Products of that class Reserved against that Holding in relation to RTGS Instructions at that time in the RTGS Settling Phase, and
- (c) prior to ASTC recording under Rule 10.12.1(f)(ii) a movement of Financial Products of that class against that Holding to effect DvP Net Settlement on that day, the number of Financial Products of that class that ASTC has determined at Settlement Cut-off will be so recorded as a movement against that holding at DvP Notification on that day,

is greater than:

(d) the total number of Available Financial Products at that time in the Holding.

**“RTGS Eligible”** in relation to Financial Products, has the meaning set out in Rule 11.1.1.

**“RTGS End of Day”** means on any RTGS Business Day, 5.00pm Sydney time or such other time as ASTC may from time to time determine.

**“RTGS Instruction”** means an instruction to ASTC to settle an RTGS Transaction in Real Time Gross Settlement through the CHESSE Feeder System, and includes a DvP RTGS Instruction, a CCP Gross RTGS Instruction and a Dual Entry RTGS Instruction.

**“RTGS Instruction Cut-off”** on any RTGS Business Day means 4.25pm Sydney time or such other time as ASTC may from time to time determine.

**“RTGS Mandatory”** in relation to an RTGS Transaction, has the meaning set out in Rule 11.3.1.

**“RTGS Message”** means a Message that, in accordance with the requirements of the EIS, instructs ASTC to settle an RTGS Transaction in Real Time Gross Settlement.

**“RTGS Participant”** means a Participant:

(a) that satisfies the criteria for participation in Real Time Gross Settlement set out in Rule 11.5; and

(b) for which a Net Position Record has been established under the Rules that records the Net Position Record Status as active.

**“RTGS Participation Requirements”** in relation to a Participant, means any technical and performance requirements notified by ASTC to the Participant to ensure that it is capable of operating in Real Time Gross Settlement.

**“RTGS Payments Provider”** means a Payments Provider that:

(a) satisfies the criteria for participation in Real Time Gross Settlement in CHESSE set out in Rule 11.6.1; and

(b) has been admitted to participate in Real Time Gross Settlement in CHESSE in that capacity.

**“RTGS Pre-commencement Testing”** means testing at the direction of ASTC to establish whether a prospective RTGS Participant meets the RTGS Participation Requirements.

**“RTGS Settlement Date”** means the RTGS Business Day specified, or taken to be specified, in an “RTGS Instruction as the date on which the counterparties intend that RTGS Instruction to settle in Real Time Gross Settlement.

**“RTGS Settlement Report”** means a report required to be made available by ASTC to an RTGS Payments Provider in accordance with Rule 11.30.

**“RTGS Settling Phase”** in relation to an RTGS Instruction, means the time period that commences in accordance with Rule 11.22.1 and ends when all components of that RTGS Instruction have been settled in CHES in accordance with Rule 11.25.

**“Rules”** means the operating rules of the Settlement Facility in accordance with Rule 1.2 including the appendices, schedules and any State of Emergency Rules.

**“Scheduled Time”** means the time within or by which a requirement under these Rules must be complied with as specified in Appendix 1 to these Rules.

**“Section”** means a section of these Rules.

**“Security Key”** means an electronic code that is:

- (a) generated by ASTC; and
- (b) used to ensure secure communications between ASTC and Facility Users.

**“SEGC”** means Securities Exchanges Guarantee Corporation Ltd (ABN 19 008 626 793).

**“Segregated Account”** means an account maintained in accordance with these Rules with an Approved Clearing House which contains Principal Financial Products or Participating International Financial Products held solely on behalf of the Depository Nominee.

**“Settlement Account”** means a Holder Record maintained in CHES by a Participant for the purpose of facilitating settlement of transactions in Approved Financial Products with other Participants.

**“Settlement Adjustment”** means an adjustment to the Settlement Amount of a DvP Batch Instruction or a DvP RTGS Instruction.

**“Settlement Agent”** means a General Settlement Participant that is has a Settlement Agreement with a Clearing Participant.

**“Settlement Agreement”** means an agreement between a General Settlement Participant and a Clearing Participant under which the General Settlement Participant agrees to act as Settlement Agent for the Clearing Participant.

**“Settlement Amount”** means the consideration for an Instruction.

“**Settlement Amount Tolerance**” means \$1.00 or such other amount that ASTC prescribes.

“**Settlement Bond**” means a bond issued to ASTC at the request of a Participant in accordance with Rule 4.9.1.

“**Settlement Cut-off**” means, on any Business Day, 10.30 am Sydney time or such other time as ASTC may from time to time determine.

“**Settlement Date**” means the Business Day on which an Instruction is scheduled to settle.

“**Settlement Facility**” means the facility provided by ASTC as described in Rules 1.1.1 and 1.1.2.

“**Settlement Holding**” means a Holding of Financial Products for which the Holder Record is a Settlement Account.

“**Settlement Participant**” means:

(a) a Participant that has been admitted to participate in the Settlement Facility as a General Settlement Participant; or

(b) a person that has been admitted to participate in the Settlement Facility as a Specialist Settlement Participant.

“**Settlement Processing Phase**” in relation to DvP Net Settlement, means, on any Business Day, the time period commencing after Settlement Cut-off during which Settlement Transfers are processed by ASTC against CHES Holdings.

“**Settlement Transfer**” means a Transfer of Financial Products that gives effect to an Instruction.

“**Single Entry Batch Message**” means a Message that complies with Rule 10.9.11.

“**Single Entry Batch Instruction**” means a Batch Instruction that gives effect to a Single Entry Batch Message.

“**Single Entry Demand Message**” means a Message that complies with Rule 9.4.1 or Rule 9.13.1.

“**Single Entry Transfer Request**” means a Demand Transfer of Financial Products that gives effect to a Single Entry Demand Message.

“**Source Holding**” means the Holding from which Financial Products will be deducted in giving effect to a Transfer, Conversion, Corporate Action or other transaction.

“**Specialist Settlement Participant**” means a Participant admitted under Rule 4.4.

“**Sponsoring Participant**” means a Participant that establishes and maintains a Participant Sponsored Holding.

**“Sponsorship Agreement”** means a written agreement between the Sponsoring Participant and another person, signed by both parties, as required under Section 7 of these Rules.

**“Sponsorship Bond”** means a bond issued to ASTC at the request of a Participant in accordance with Rule 4.9.3.

**“SRN”** stands for Security holder Reference Number and means a number allocated by an Issuer to identify a Holder on an Issuer Operated Subregister.

**“Standard Acceptance Form”** means a standard entitlement and acceptance form in respect of renounceable rights as specified by ASTC from time to time.

**“Standard Client Bank Deed”** means a standard deed executed by ASTC and a bank.

**“Standard Conversion Form”** means a standard form, as specified by ASTC from time to time, for the conversion of convertible Financial Products.

**“Standard Exercise Form”** means a standard form of notice of exercise, as specified by ASTC from time to time, for options and other Financial Products that carry exercisable rights.

**“Standard Payments Provider Deed”** means a standard deed executed by ASTC and a Payments Provider and includes a Standard Client Bank Deed.

**“Standing Buy Account Identifier”** means an RTGS Account Identifier that is notified to ASTC under Rule 11.9.11 or Rule 11.9.15 for the purposes of an RTGS Instruction where the Participant will, on settlement, be the payer of the Payment Obligation identified in that RTGS Instruction.

**“Standing HIN”** means a HIN that is notified to ASTC under Rule 6.4.2.

**“Standing Instructions”** means a Holder’s instructions to an Issuer in relation to matters relevant to Holdings, including (without limitation) TFN notification, Residency Indicator, direct credit of dividends or interest payments, annual report elections and elections in respect of shareholders’ dividend plans.

**“Standing Report”** means one of a series of Messages periodically Transmitted by ASTC to a Facility User, each of which provides information about CHES Holdings or CHES Subregister movements in accordance with parameters specified by the Facility User.

**“Standing Sell Account Identifier”** means an RTGS Sell Account Identifier that is notified to ASTC under Rule 11.9.11 or Rule 11.9.15 for the purposes of an RTGS Instruction where the Participant will, on settlement, be the payee of the Payment Obligation identified in that RTGS Instruction.

“**Standing Settlement HIN**” means a HIN notified to ASTC under Rule 6.4.2.

“**Start of Day**” means, on any Trading Day, 8.00 am Sydney time or such other time as ASTC may from time to time determine.

“**State of Emergency**” means any of the following:

- (a) fire, power failure or restriction, communication breakdown, accident, flood, embargo, boycott, labour dispute, unavailability of data processing or any other computer system or facility, act of God; or
- (b) act of war (whether declared or undeclared) or an outbreak or escalation of hostilities in any region of the world which in the opinion of ASTC prevents or significantly hinders the operation of the Settlement Facility; or
- (c) an act of terrorism; or
- (d) other event which, in the opinion of ASTC, prevents or significantly hinders the operations of the Settlement Facility.

“**State of Emergency Rules**” means any Rules made by ASTC under Rule 1.3.

“**Subposition**” means a facility in CHES by which in accordance with Rule 14.1.3:

- (a) activity in relation to Financial Products held in a CHES Holding may be restricted; and
- (b) access to those Financial Products for limited purposes may be given to a Participant other than the Controlling Participant.

“**Subregister**” means:

- (a) in the case of Financial Products other than CDIs, a CHES Subregister or an Issuer Operated Subregister; or
- (b) in the case of CDIs, a CDI Register.

“**Surveillance Report**” means a report generated by CHES that identifies changes to:

- (a) Batch Instructions notified to ASTC by an Approved Market Operator under Rule 10.9.1; and
- (b) Batch Instructions that result from Matched Dual Entry Batch Messages,
- (c) to assist ASTC in monitoring compliance with these Rules.

“**Switch to Batch Settlement Message**” means a Message that, in accordance with the requirements of the EIS, requests that an RTGS Instruction be removed from Real Time Gross Settlement in CHES and settled in Batch Settlement.

**“Takeover Consideration Code”** means a unique code allocated by an Approved Market Operator in respect of each alternate form of consideration offered under a takeover.

**“Takeover Transfer”** means a Transfer of Financial Products from a CHES Holding pursuant to acceptance of an offer for the Financial Products made under a takeover scheme.

**“Takeover Transferee Holding”** means a CHES Holding to which Financial Products are to be Transferred pursuant to acceptances of offers made under a takeover bid.

**“Target Holding”** means the Holding into which Financial Products will be entered in giving effect to a Transfer, Conversion, Corporate Action or other transaction.

**“Target Transaction Identifier”** means a reference number identifying a transaction which is the target of another transaction.

**“Tax”** means any present or future tax, levy, impost, duty, charge, fee, deduction, or withholding of whatever nature, levied, collected, assessed or imposed by any government or semi-government authority and any amount imposed in respect of any of the above.

**“Technical and Performance Requirements”** means the requirements on Facility Users set out in Section 16.

**“Terms and Conditions for FDI Controlling Participants”** means those terms and conditions between AIS, CDN and the Controlling Participant of FDIs from time to time displayed on the ASX World Link Website.

**“TFN”** stands for Tax File Number and means a numeric code allocated by the Australian Taxation Office for taxation purposes.

**“Third Party Provider”** means a person that:

- (a) operates an interface with CHES;
- (b) performs any obligations of a Facility User under these Rules; or
- (c) uses facilities provided by ASTC,

on behalf of a Facility User.

**“Title”** in relation to Financial Products, means:

- (a) legal title where the Financial Products can be owned at law, and
- (b) equitable or beneficial title where the Financial Products can be owned only in equity.



**“Total Security Balance Report”** means a report that sets out the aggregate of all Holding Balances held on the CHESSE Subregister for a class of Financial Products as at a specified point in time.

**“Trade Date”** means the date on which an agreement or arrangement for the purchase or sale of Financial Products was executed.

**“Trade Instruction Cut-Off”** means, on any Business Day, 10.30am Sydney Time or such other time as ASTC may from time to time determine.

**“Trading Day”** means a day other than:

(a) a Saturday, Sunday, New Year’s Day, Good Friday, Easter Monday, Christmas Day, Boxing Day; and

(b) any other day that ASTC may declare and publish is not a trading day.

**“Transaction Identifier”** means a reference number identifying a Message Transmitted through CHESSE.

**“Transaction Statement”** means a transaction statement for an Issuer Sponsored Holding as referred to in Listing Rules 8.5, 8.6 and 8.7.

**“Transfer”** means a transfer of Financial Products, or for the purposes of Section 15, a transfer of Allocation Interests:

(a) from a CHESSE Holding to any other Holding; or

(b) from any Holding to a CHESSE Holding.

**“Transfer Request Document”** means a document supplied by a Settlement Participant which is not a Market Participant to an Issuer that entitles the Issuer to authorise a Transfer of Financial Products from an Issuer Sponsored Holding to a CHESSE Holding.

**“Transition Period”** means the period from 11 March 2002 to 10 March 2004 or such later date as determined by the Commission.

**“Transmit”** means cause a Message to be made available for collection in the Message collection facility provided in CHESSE for Messages passing between ASTC and Facility Users.

*Note: Rule 16.17 specifies when a Facility User or ASTC is taken to have Transmitted a Message.*

**“Transmute”** means to cause:

(a) Principal Financial Products to be converted into CDIs, or CDIs to be converted into Principal Financial Products; or

(b) Participating International Financial Products to be converted into FDIs, or FDIs to be converted into Participating International Financial Products; under these Rules, without any change in beneficial ownership.

“**Transmutation Ratio**” means the ratio which identifies the number or fraction of CDIs into which a Principal Financial Product may be converted, and the number or fraction of Principal Financial Products into which a CDI may be converted.

“**Tribunal**” means the Disciplinary Tribunal or the Appeal Tribunal, as applicable.

“**Tribunal Panel**” means the panel established under Rule 12.10.1.

“**Trustee Company**” means a trustee company within the meaning of State or Territory Trustee Companies legislation or a Public Trustee of a State or Territory.

“**UIC**” stands for User Identification Code and means a unique numeric code allocated by ASTC to ASTC and each Facility User for the purpose of identifying the source and destination of Messages and which may be:

- (a) the UIC of an Issuer;
- (b) a PID; or
- (c) such other numeric code allocated by ASTC.

“**Valid**” in relation to a Message, means a Message that:

- (a) identifies the source of the Message in the Message header by specifying a current source UIC that is compatible with the specified AIC;
- (b) correctly identifies the destination of the Message in the Message header by specifying the current UIC for the targeted Message recipient;
- (c) is formatted in accordance with and contains all the mandatory data requirements specified in the EIS;
- (d) has been properly authenticated, (determined by reference to the MAC); and
- (e) meets CHES encryption requirements specified in the EIS.

“**Warranty and Indemnity Provision**” means a provision of:

- (a) the Participant Warranties and Indemnities;
- (b) the Issuer Warranties and Indemnities; or
- (c) the ASTC Indemnity.

**“Withdrawal Instructions”** means written or oral instructions from a Participant Sponsored Holder to the Controlling Participant for the withdrawal of Financial Products from a Participant Sponsored Holding and includes instructions:

- (a) for the Conversion of Financial Products in a Participant Sponsored Holding to any other mode of Holding;
- (b) to initiate a change of sponsorship for the Financial Products;
- (c) to endorse or initiate an off market transfer of Financial Products; or
- (d) to accept a takeover offer for the Financial Products on behalf of the Participant Sponsored Holder;
- (e) to accept a takeover offer for the Securities on behalf of the Participant Sponsored Holder.

Introduced 11/03/04 Origin SCH 21.13 Amended 09/05/05, 06/06/05, 20/07/07, 31/03/08

## **SECTION 8 ► HOLDING FINANCIAL PRODUCTS IN THE SETTLEMENT FACILITY**

### **SECTION 8 ► HOLDING FINANCIAL PRODUCTS IN THE SETTLEMENT FACILITY**

In order to participate in the Settlement Facility, an Issuer’s Financial Products must be Approved by ASTC under these Rules. This Section sets out the requirements which Financial Products must satisfy in order to be Approved, including the Technical and Performance Requirements which an Issuer must satisfy and also contains provisions in relation to:

- (a) suspension and revocation of Approval;
- (b) establishing and dealing with Holdings of Financial Products and CHES Subregisters; and
- (c) other provisions affecting Holdings (such as confidentiality, Holding Locks, reporting, recording details, Corporate Actions and correction of errors).

### **8.6 CHES SUBREGISTERS**

#### **8.6.1 Status of CHES Subregister**

ASTC must administer, as agent of an Issuer in accordance with these Rules, a CHES Subregister for each class of the Issuer’s Approved Financial Products to which the following provisions apply:

- (a) subject to paragraph (b), the CHESS Subregister for a class of an Issuer's Approved Financial Products forms part of the Issuer's principal register for that class of Financial Products; and
- (b) if an Issuer's principal register for a class of Approved Financial Products is located outside Australia, the CHESS Subregister forms part of the Issuer's principal Australian register, notwithstanding the fact that the Australian register is a branch register and forms a part of the Issuer's principal register outside Australia.

Introduced 11/03/04 Origin SCH 5.1

#### **8.6.2 Information recorded and maintained on a CHESS Subregister**

ASTC must record and maintain on a CHESS Subregister for a class of Approved Financial Products:

- (a) the Registration Details and HIN of each person with a CHESS Holding of Financial Products in that class; and
- (b) in relation to each such person, the number of Financial Products held.

Introduced 11/03/04 Origin SCH 5.2.1

#### **8.6.3 HIN not to be taken to be included in a register**

Except to the extent required by these Rules or the law, an Issuer must not include a HIN in a register for the purpose of:

- (a) the register being open for inspection; or
- (b) furnishing a copy of the register or any part of the register.

Introduced 11/03/04 Origin SCH 5.2.2

#### **8.6.4 Notice of location of stored information**

As soon as a class of an Issuer's Financial Products are Approved, the Issuer must:

- (a) give notice to the Commission in accordance with Section 1301(1) of the Corporations Act specifying (subject to Rule 8.6.5) the registered office of ASTC as the situation of the place of storage of the information maintained by ASTC on a CHESS Sub-register;
- (b) give a copy of that notice to ASTC; and
- (c) give a copy of that notice to the exempt or special stock market or exempt financial market where the Issuer's Financial Products are quoted.

Introduced 11/03/04 Origin SCH 5.2.3, 5.2.4

#### **8.6.5 Change of location of stored information**

If the situation of the place of storage in relation to information maintained by ASTC on a CHESSE Subregister changes:

- (a) ASTC must promptly give Notice to the Issuer of the new place of storage; and
- (b) the Issuer must give notice to the Commission of the new place of storage in accordance with Section 1301(4) of the Corporations Act.

Introduced 11/03/04 Origin SCH 5.2.5

#### **8.6.6 Classes of Holdings on a CHESSE Subregister**

Holdings that may be maintained on a CHESSE Subregister are:

- (a) Holdings that are controlled by a Participant; or
- (b) such other Holdings as are determined by ASTC, from time to time.

Introduced 11/03/04 Origin SCH 5.3.1

### **8.7 ESTABLISHING A HOLDER RECORD**

#### **8.7.1 Restrictions on establishing a Holder Record**

A Participant must not Transmit a Message to establish a Holder Record in relation to a person under Rule 8.7.2 unless:

- (a) the person is a Related Body Corporate of the Participant; or
- (b) the Participant holds a current Sponsorship Agreement executed by the Participant and the person.

Introduced 11/03/04 Origin SCH 5.4.1A

#### **8.7.2 Establishing a Holder Record**

If a Participant Transmits a Valid Message to ASTC requesting ASTC to establish a Holder Record that includes the matters specified in the Procedures, ASTC must:

- (a) establish a Holder Record on CHESSE for that person;
- (b) allocate a HIN to that Holder; and
- (c) if the Holder Record has been established for a Participant Sponsored Holder, promptly send a Notice in relation to that Holder Record to that Participant Sponsored Holder.

If the Holder Record is in relation to a person that is a Participant Sponsored Holder, the Participant must, in the absence of any specific alternative written authority from that other person specify as the current Registration Details in the Message, the name and address details for the person as recorded in the Sponsorship Agreement.

Introduced 11/03/04 Origin SCH 5.4.1, 5.4.1B

### 8.7.3 Holder Record for Holding of FOR Financial Products

A Participant must determine whether the Residency Indicator of a Holder Record is applicable to any new Holding of FOR Financial Products, and if it is not applicable to the new Holding of FOR Financial Products and there is no existing Holder Record with the appropriate Residency Indicator, the Participant must:

- (a) establish a separate Holder Record for that new Holding with the appropriate Residency Indicator; and
- (b) transfer that Holding to that Holder Record.

*Note: Because of differing definitions of "Foreign Person" under the governing legislation or constitution of different Issuers with aggregate foreign ownership restrictions, a Holder's status (for the purposes of settling transactions in FOR Financial Products) may differ between Issuers.*

*Where these circumstances apply, Holders must have two distinct Holder Records in CHES; one with a Residency Indicator of "F" and another with a Residency Indicator of "D". Holdings of particular Financial Products must then be linked to the appropriate Holder Record.*

Introduced 11/03/04 Origin SCH 5.4.3

### 8.7.4 Indemnity by Participant where Holder Record established incorrectly

If, under Rule 8.7.2, a Participant has Transmitted a Valid Message requesting ASTC to establish a Holder Record and that Message specifies the Holder Type as Participant Sponsored Holder or specifies a Residency Indicator and any of the following apply:

- (a) the Participant is not authorised to establish the Holder Record;
- (b) the Participant has provided incorrect details in the Message; or
- (c) the Participant has provided an incorrect Residency Indicator in the Message,

subject to Rule 8.7.5 the Participant indemnifies:

- (d) ASTC from and against all losses, damages, costs and expenses which ASTC may suffer or incur by reason of that unauthorised request or that Transmission of incorrect Holder Record details or an incorrect Residency Indicator; and
- (e) if a Holding is established using incorrect Holder Record details or an incorrect Residency Indicator, the Issuer from and against all losses, damages, costs and expenses which the Issuer may suffer or incur by reason of that Holding being established.

Introduced 11/03/04 Origin SCH 5.4.4, 5.4.5

### **8.7.5 Limitation on Participant indemnity**

A Participant is not liable to indemnify ASTC or an Issuer under Rule 8.7.4 if the Participant has provided details which are consistent with the directions of the relevant Holder for the purposes of holding FOR Financial Products and the Participant had no reason to believe that those directions were incorrect.

Introduced 11/03/04 Origin SCH 5.4.6

## **8.8 ESTABLISHING A CHESS HOLDING**

### **8.8.1 A CHESS Holding may be established**

If a Holder Record for a person has been established and a HIN allocated and a Message specifying that HIN to identify the Target Holding is Transmitted in any of the following circumstances:

- (a) a Participant Transmits a Valid Originating Message that initiates a Demand Transfer or Conversion;
- (b) ASTC Transmits a Valid Originating Message that initiates a Settlement Transfer; or
- (c) an Issuer Transmits a Valid Message to initiate a Holding Adjustment or a Financial Products Transformation,

a CHESS Holding may be established by entering the Financial Products specified in the Message into the Target Holding and, if a new CHESS Holding is established ASTC must notify the Issuer:

- (d) that a new Holding has been established; and
- (e) of the Holder Record details.

Introduced 11/03/04 Origin SCH 5.5

## **8.9 REPORTING TO PARTICIPANT SPONSORED HOLDERS IN RESPECT OF DESPATCHED FINANCIAL PRODUCTS**

### **8.9.1 Issuer to send Holder a Notice**

If:

- (a) an Issuer makes available forms of application for an Offer of Approved Financial Products; and
- (b) an Approved Market Operator gives that Issuer approval for quotation of those Financial Products,

the Issuer must, within 5 Business Days of receiving notification from ASTC that a new CHES Holding has been established under Rule 5.3.2, and provided the Registration Details specified in the notification from ASTC match the Registration Details specified in the application for the person to whom the Financial Products have been allocated, send to the Holder of that Holding a Notice that sets out:

- (c) the HIN;
- (d) the Registration Details; and
- (e) the Holding Balance,

for the CHES Holding as specified in the notification from ASTC.

Introduced 11/03/04 Origin SCH 5.4B

## **8.10 RESTRICTION ON CHES HOLDINGS**

### **8.10.1 Restrictions on number of joint holders**

Unless permitted under an Issuer's constitution, a Participant must not establish a CHES Holding that would be held jointly by more than 3 persons.

Introduced 11/03/04 Origin SCH 5.6.1

### **8.10.2 Prohibition on Holdings of Less than a Marketable Parcel**

A Participant must not initiate a Transfer of Financial Products if, by giving effect to that Transfer, a new CHES or Issuer Sponsored Holding of less than a Marketable Parcel will be established unless:

- (a) the Holding of less than a Marketable Parcel is expressly permitted under an Issuer's constitution; or
- (b) the Transfer establishes a new Settlement Holding or Accumulation Holding.

Introduced 11/03/04 Origin SCH 5.7 Amended 18/12/06

### **8.10.3 Equitable Interests**

Unless required by these Rules or the law, ASTC need not record on the CHES Subregister, and is not required to recognise:

- (a) any equitable, contingent, future or partial interest in any Financial Product; or
- (b) any other right in respect of a Financial Product, except an absolute right of legal ownership in the registered Holder.

Introduced 11/03/04 Origin SCH 5.8



## **8.11 CONFIDENTIALITY**

### **8.11.1 No disclosure except in certain circumstances**

Unless required by these Rules or the law, or with the express consent of the Holder, or of the duly appointed attorney, agent or legal personal representative of that Holder, neither an Issuer nor a Participant may disclose:

- (a) the HIN of a CHES Holding;
- (b) the PID of the Controlling Participant of a CHES Holding; or
- (c) the SRN for the Holder of an Issuer Sponsored Holding,  
other than to:
  - (d) the Holder of that Holding;
  - (e) the Holder's duly appointed attorney, agent or legal personal representative;
  - (f) if the Holding is a CHES Holding, the Controlling Participant for that Holding; or
  - (g) ASTC.

Introduced 11/03/04 Origin SCH 5.9.1

### **8.11.2 Request for information by a Participant**

For the purpose of Rule 8.11.1(e), if a Participant provides a request to an Issuer in acceptable form or a written request to another Participant for:

- (a) details of the SRN of a Holding on the Issuer Sponsored Subregister;
- (b) the Holding Balance of a Holding on the Issuer Sponsored Subregister;
- (c) the HIN of a CHES Holder; or
- (d) the PID of the Controlling Participant of the CHES Holding,

the requesting Participant:

- (e) is taken to have warranted to the Issuer or the other Participant that it is the duly appointed agent of the Holder for the purposes of obtaining the details requested;
- (f) indemnifies the Issuer or the other Participant in respect of any loss which the Issuer or the other Participant may suffer as a result of the requesting Participant not being authorised to request the information provided; and

(g) is, in the case of a request to the Issuer, taken to have acknowledged that:

- (i) the details provided by the Issuer represent information currently available to the Issuer at the time of response and excludes unregistered transactions; and
- (ii) the Issuer will not be liable for any loss incurred by the Holder or the Participant as a result of reliance on the details provided, in the absence of information not available to the Issuer at the time of providing those details.

*Note: A Participant may request SRN and Issuer Sponsored Holding Balance details from an Issuer via CHES message where the Participant is permitted to establish and maintain Sponsored Holdings under Rule 6.3 and has provided ASTC with a Sponsorship Bond of \$500,000, refer Rule 6.7.*

Introduced 11/03/04 Origin SCH 5.9.2, 5.9.3 Amended 04/04/05

#### **8.11.3 Disclosure of information regarding Financial Products**

Subject to Rule 8.11.4, or unless otherwise required by these Rules or the law, ASTC must not disclose any information regarding Financial Products in a CHES Holding other than to:

- (a) the Holder of that Holding;
- (b) the Controlling Participant for that Holding;
- (c) the Issuer of the Financial Products; or
- (d) if Rule 14.13 applies in relation to a takeover bid any of the following:
  - (i) the bidder;
  - (ii) the CHES Bidder; or
  - (iii) any agent that the bidder or the CHES Bidder engages to prepare and distribute offer documentation or process takeover acceptances.

Introduced 11/03/04 Origin SCH 5.9.4

#### **8.11.4 Circumstances where ASTC may disclose information**

ASTC may disclose information regarding Financial Products in a CHES Holding, including information in relation to deductions from or transfers to a CHES Holding, any relevant Source or Target Holdings and Holder Record details, to:

- (a) the Commission;
- (b) the Reserve Bank of Australia;
- (c) an Approved Market Operator;

- (d) an Approved Clearing Facility;
- (e) the home regulator of a Foreign Clearing House; or
- (f) SEGC

where that body, in the proper exercise of its powers and in order to assist it in the performance of its regulatory functions (or in the case of SEGC, its regulatory or other functions), requests that ASTC provide the information to it.

Without limiting the above, ASTC may disclose to the Reserve Bank of Australia any confidential information of a Facility User that is supplied to ASTC in connection with the Real Time Gross Settlement of a transaction and that is required, in accordance with interface specifications, to be included by ASTC in any message sent to the Reserve Bank of Australia across the Feeder System interface with RITS/RTGS.

Introduced 11/03/04 Origin SCH 5.9.6

#### **8.11.5 Copyright information supplied to ASTC**

To the extent that a Participant or an Issuer has copyright in the information supplied to ASTC under these Rules, then, subject to Rule 8.11.1 or 8.11.2, the Participant or the Issuer, as the case requires, grants ASTC a licence to reproduce that information to the extent deemed necessary by ASTC.

Introduced 11/03/04 Origin SCH 5.9.5

#### **8.11.6 Request by Participant for PID**

If a Participant provides a request to ASTC for the PID of the Controlling Participant in relation to a particular HIN ASTC may disclose:

- (a) the PID of the Controlling Participant;
- (b) the status of the Controlling Participant; and
- (c) the status of the HIN.

The requesting Participant:

- (d) is taken to have warranted to ASTC and the Controlling Participant that it is the duly appointed agent of the Holder for the purposes of obtaining the details requested; and
- (e) indemnifies ASTC or any other Participant in respect of any loss which ASTC or the other Participant may suffer as a result of the requesting Participant not being authorised to request the information provided.

Introduced 09/05/05

## **8.12 REGISTRATION DATE**

### **8.12.1 The date to be recorded for registration purposes**

If a Transfer is not a CHES to CHES Transfer, the date to be recorded as the date Financial Products are entered into a Target Holding for registration purposes is:

- (a) if the Source Holding is a CHES Holding, the date, as evidenced by the CHES processing timestamp, that ASTC Transmits to the Issuer the Message to Transfer the Financial Products; or
- (b) if the Source Holding is an Issuer Sponsored Holding, the date the Issuer Transmits to ASTC the Message authorising the Transfer of the Financial Products.

Introduced 11/03/04 Origin SCH 5.10

## **8.13 CHES SUBREGISTER TO REMAIN OPEN ON EACH BUSINESS DAY**

### **8.13.1 ASTC to keep CHES Subregister open and must process Messages**

On any Business Day, ASTC:

- (a) unless otherwise provided in these Rules, must not close a CHES Subregister; and
- (b) must process Messages in accordance with these Rules.

Introduced 11/03/04 Origin SCH 5.11

## **8.14 CLOSURE OF A CHES SUBREGISTER**

### **8.14.1 Closure of a CHES Subregister — other than where Financial Products lapse, expire, mature etc.**

Unless Rule 8.14.2 applies, if:

- (a) ASTC revokes Approval of a class of an Issuer's Financial Products under Rule 8.4.1(e) or 8.5.4; or
- (b) Approval of a class of an Issuer's Financial Products ceases under Rule 8.4.8,

ASTC and the Issuer must take such steps as may be necessary to effect the orderly closure of any affected CHES Subregister, including without limitation:

- (c) ASTC giving such Notice as is reasonably practicable to the Issuer and each Participant of:
  - (i) the date of closure of the CHES Subregister; and
  - (ii) the last day on which ASTC will process Messages or classes of Messages Transmitted by the Issuer or Participants;

- (d) the Issuer using its best endeavours to ensure that all outstanding processing that affects CHESSE Holdings in that class is completed prior to the date of closure of the CHESSE Subregister;
- (e) ASTC, on the date of closure of the CHESSE Subregister:
  - (i) removing all Holdings on that Subregister to an Issuer Sponsored Subregister; and
  - (ii) giving Notice to the Issuer that the CHESSE Subregister has been closed;
- (f) ASTC sending a Holding statement in accordance with Rule 8.18.6 to each Participant Sponsored Holder of Financial Products on the CHESSE Subregister advising that the Holding has been Converted to an Issuer Operated Subregister; and
- (g) on the day of such closure or on any subsequent Business Day ASTC may archive that CHESSE Subregister provided that on the archiving day it must notify the Issuer and Participants confirming the archival of that Subregister.

Introduced 11/03/04 Origin SCH 5.12.1, 5.12.2

**8.14.2 Closure of a CHESSE Subregister — where Financial Products lapse, expire, mature etc.**

If a class of Approved Financial Products ceases to be quoted because the Financial Products have lapsed, expired, matured or have been redeemed, paid up or Reconstructed, subject to Rules 8.14.3 and 14.21.4, ASTC may archive the CHESSE Subregister for that class of Financial Products:

- (a) in the case of the class of Approved Financial Products being warrants eligible to be traded under the operating rules of an Approved Market Operator not less than 10 Business Days after the date on which the cessation occurred;
  - (b) in the case of any other class of Approved Financial Products not less than 20 Business Days after the date on which the cessation occurred; and
- if ASTC archives a CHESSE Subregister under this Rule 8.14.2, ASTC must:
- (c) subject to Rule 8.14.3, reject all Messages Transmitted by the Issuer or Participants that affect a CHESSE Holding on that Subregister; and
  - (d) notify the Issuer, and each Participant confirming the archival of that Subregister.

Introduced 11/03/04 Origin SCH 5.13.1, 5.13.2 Amended 10/06/04

### **8.14.3 Report facilities to be provided by ASTC**

ASTC must provide Report facilities to the Issuer and Participants for a period of not less than 10 Business Days for warrants eligible to be traded under the operating rules of an Approved Market Operator and not less than 20 Business Days in the case of any other class of Approved Financial Products following the cessation of a CHES Subregister under Rule 8.14.2.

Introduced 11/03/04 Origin SCH 5.13.3 Amended 10/06/04

## **13.1 APPLICATION OF CDI RULES**

### **13.1.1 Effect of Rules 13.1 to 13.13**

Rules 13.1 to 13.13 only apply to, and have effect in relation to, CDIs issued in respect of a class of Principal Financial Products.

The Rules, to the extent that they are not inconsistent with Rules 13.1 to 13.13, have full force and effect in relation to CDIs other than as specifically modified by the provisions of these Rules 13.1 to 13.13.

Introduced 11/03/04 Origin SCH 3A.1.1, 3A.1.2 Amended 06/06/05

## **13.2 PREREQUISITES FOR SETTLEMENT OF INSTRUCTIONS IN PRINCIPAL FINANCIAL PRODUCTS**

### **13.2.1 Approval of person as Principal Issuer**

A person who has applied for:

- (a) a class of Principal Financial Products; or
- (b) CDIs issued over a class of Principal Financial Products,

to be quoted on the market of an Approved Market Operator may apply to ASTC in the form prescribed in the Procedures to:

- (c) act as Principal Issuer in relation to CDIs issued or to be issued in respect of those Principal Financial Products; and
- (d) to have those CDIs approved.

Introduced 11/03/04 Origin SCH 3A.2.1 Amended 10/06/04, 06/06/05

### **13.2.2 Appointment of Depository Nominee and issue of CDIs**

If ASTC determines to accept an application under rule 13.2.1, the Principal Issuer must:

- (a) appoint a Depository Nominee for the purpose of complying with these Rules;
- (b) give Notice to ASTC of:
  - (i) the identity of the Depository Nominee appointed by the Principal Issuer; and
  - (ii) the Transmutation Ratio for the Principal Financial Products;

- (c) make arrangements satisfactory to ASTC to enable the Principal Issuer to comply with the requirements of Rules 13.4.3 and 13.5; and
- (d) make arrangements satisfactory to ASTC to issue CDIs or make them available in respect of that class of Principal Financial Products to each person who has:
  - (i) an entitlement to those CDIs or Principal Financial Products; and
  - (ii) where applicable, not elected to take a document of Title to those Principal Financial Products.

Introduced 11/03/04 Origin SCH 3A.2.2 Amended 06/06/05

### **13.2.3 Vesting arrangements for Principal Financial Products**

If Rule 13.2.2 applies, the Principal Issuer must, either not later than End of Day on the Despatch Date for the new Principal Financial Products, or such other time as ASTC requires:

- (a) cause the Title to any Principal Financial Products that are to be held in the form of CDIs to be vested in the Depository Nominee nominated by the Principal Issuer under Rule 13.2.2, in a manner recognised by Australian law and all applicable foreign laws;
- (b) immediately give Notice to ASTC that Title to the Principal Financial Products has vested in the Depository Nominee; and
- (c) record:
  - (i) the CDIs corresponding to the Principal Financial Products on the CHESSE Subregister or the Issuer Sponsored Subregister, as the case requires; and
  - (ii) the information required to be recorded under these Rules in such manner as to identify each Holder of the CDIs, whether on the CHESSE Subregister or the Issuer Sponsored Subregister.

Introduced 11/03/04 Origin SCH 3A.2.3 Amended 06/06/05

### **13.2.4 Effective date of approval — CDIs as Approved Financial Products**

Where ASTC determines to accept an application made under Rule 13.2.1, the Commencement Date for CDIs issued in respect of the class of Principal Financial Products will be the date that ASTC notifies the Principal Issuer that those CDIs are Approved Financial Products, or such other date determined by ASTC.

Introduced 06/06/05

### **13.2.5 CDIs as Approved Financial Products — transitional provision**

From the date on which this rule 13.2.5 comes into effect, all CDIs issued by a Principal Issuer over a class of previously approved Principal Financial Products will be taken to be Approved Financial Products.

Introduced 06/06/05

### **13.3 TRANSMUTATION AND ALTERATIONS OF PRINCIPAL FINANCIAL PRODUCTS**

#### **13.3.1 Transmutation of Principal Financial Products to CDIs at Election of Holder**

If a Holder of Financial Products that forms part of a class of Principal Financial Products in respect of which CDIs have been approved gives Notice to the Principal Issuer, at any time after the date of quotation of the Principal Financial Products, requesting the Transmutation of a quantity of those Principal Financial Products to CDIs, the Principal Issuer must, provided the Notice is accompanied by any corresponding documents of Title:

- (a) as soon as possible, cause Title to the quantity of Principal Financial Products specified in the Notice to be vested in the Depository Nominee for those Principal Financial Products;
- (b) record:
  - (i) the CDIs corresponding to the Principal Financial Products on the CDI Register; and
  - (ii) the information required to be recorded under these Rules in such manner as to identify each Holder of the CDIs, on the CDI Register; and
- (c) give Notice to the Holder that the Transmutation has been effected.

Introduced 11/03/04 Origin SCH 3A.3.1 Amended 06/06/05

#### **13.3.2 Transmutation of Principal Financial Products to CDIs for Settlement Purposes**

Each Participant that is obliged to deliver a quantity of Principal Financial Products to another Participant must, unless otherwise agreed with that Participant, do so by initiating a Message to Transfer the corresponding quantity of CDIs in respect of those Principal Financial Products.

A Participant must not deliver a paper-based transfer of Principal Financial Products to another Participant unless otherwise agreed with that other Participant.

Introduced 11/03/04 Origin SCH 3A.3.2, 3A.3.3

#### **13.3.3 Participant may initiate a Transmutation on behalf of a person**

A Participant that is authorised by a person to do so, may Transmute Principal Financial Products to CDIs or CDIs to Principal Financial Products on behalf of the person in any circumstance where Transmutation by that person is permitted under these Rules.

Introduced 11/03/04 Origin SCH 3A.3.4

### **13.4 CONSEQUENCES OF VESTING TITLE IN DEPOSITARY NOMINEE**

#### **13.4.1 Trust for holders of CDIs**

When Title to Principal Financial Products is vested in a Depository Nominee under these Rules, all right, title and interest in those Principal Financial Products is held by the Depository Nominee subject to the right of any person identified, in accordance with these Rules, as a Holder of CDIs in respect of those Principal Financial Products to receive all direct economic benefits and any other entitlements in relation to those Principal Financial Products.

Introduced 11/03/04 Origin SCH 3A.4.1 Amended 17/03/08

#### **13.4.2 Identification of CDI Holders**

For the purposes of Rule 13.4.1, a person is (subject to any subsequent disposition) entitled to all direct economic benefits and any other entitlements in relation to Principal Financial Products vested in a Depository Nominee under these Rules if:



- (a) in accordance with Rule 13.2.3, the Principal Issuer has recorded the person in the CDI Register as the holder of CDIs for those Principal Financial Products; or
- (b) under Rule 13.3.1, the person is the former Holder of the Principal Financial Products to which the CDIs relate, or that person's nominee.

Introduced 11/03/04 Origin SCH 3A.4.2

#### **13.4.3 Immobilisation of Principal Financial Products**

A Depository Nominee that holds Principal Financial Products under these Rules must:

- (a)
  - (i) where a Certificate is issued as evidence of Title to those Financial Products, make arrangements satisfactory to ASTC for any Certificate representing its holding of Principal Financial Products to be held by the Principal Issuer for safekeeping; or
  - (ii) where the Financial Products are held on account in an Approved Clearing House, ensure that a Segregated Account is maintained in respect of those Financial Products, which must constitute the Principal Register for the purposes of these Rules;
- (b) not dispose of any of those Principal Financial Products unless authorised by these Rules; and
- (c) not create any interest (including a security interest) which is inconsistent with the Title of the Depository Nominee to the Principal Financial Products and the interests of the Holders of CDIs in respect of the Principal Financial Products unless authorised by these Rules.

Introduced 11/03/04 Origin SCH 3A.4.3

### **13.5 REGISTERS AND PROCESSING OF TRANSFERS AND TRANSMUTATIONS**

#### **13.5.1 Issuer to establish and maintain Principal Register and CDI Register**

If CDIs in respect of a class of Principal Financial Products are approved, the Principal Issuer must establish and maintain:

- (a) a Principal Register in Australia which contains all of the information that would otherwise be required to be kept by the Principal Issuer if it maintained an Australian branch register for those Financial Products; and
- (b) a CDI Register in Australia that contains all of the information that would otherwise be required to be kept under the Corporations Act as if the Principal Issuer were an Australian listed public company and the CDIs were Financial Products of that company.

Introduced 11/03/04 Origin SCH 3A.5.1, 3A.5.2 Amended 06/06/05

#### **13.5.2 Reconciliation of Registers**

The Principal Issuer must ensure, at all times that:

- (a) the total number of CDIs on the CDI Register reconciles to the total number of Principal Financial Products registered in the name of the Depository Nominee on the Principal Register; and

- (b) where applicable, it has one or more Certificates registered in the name of the Depository Nominee in its possession which represent the same number of Principal Financial Products as are registered in the name of the Depository Nominee on the Principal Register.

Introduced 11/03/04 Origin SCH 3A.5.3 Amended 06/06/05

### **13.5.3 Right of Inspection of Principal Register and CDI Register**

If:

- (a) a Principal Register; or  
(b) a CDI Register,

is required to be established and maintained by a Principal Issuer under Rule 13.5.1, the Principal Issuer must make that Principal Register or that CDI Register, as the case requires, available for inspection to the same extent and in the same manner as if that register were a register of Financial Products of an Australian listed public company.

This Rule 13.5.3 does not apply in respect of a class of Principal Financial Products issued by a DI Issuer to the extent that the Principal Register need not be available for inspection where that Principal Register is located in a foreign jurisdiction.

Introduced 11/03/04 Origin SCH 3A.5.4A

### **13.5.4 Issuer Sponsored Subregisters and CHES Subregisters for CDIs**

If CDIs in respect of a class of Principal Financial Products are approved, the Principal Issuer must establish and maintain:

- (a) an Issuer Sponsored Subregister; and  
(b) a CHES Subregister,

of CDIs in respect of the Principal Financial Products as if the CDIs were Financial Products of an Australian Issuer, issued wholly in uncertificated form.

Introduced 11/03/04 Origin SCH 3A.5.5 Amended 06/06/05

### **13.5.5 Third Party Provider as Agent — [Deleted]**

Introduced 11/03/04 Origin SCH 3A.5.6 Deleted 06/06/05

### **13.5.6 Agents of Principal Issuer**

If a Principal Issuer employs or retains a Third Party Provider to establish and maintain a Principal Register or a CDI Register in respect of a class of its Principal Financial Products, then for the purposes of these Rules, the Third Party Provider is taken to perform those services as the agent of the Principal Issuer.

Introduced 11/03/04 Origin SCH 3A.5.7 Amended 06/06/05

### **13.5.7 Depository Nominee obliged to ensure information is provided to Principal Issuer**

Notwithstanding Rule 13.5.2, if a Depository Nominee employs or retains a Third Party Provider to administer the Principal Register, which is not the same Third Party Provider as that retained by the Principal Issuer to establish and maintain a CDI Register under Rule 13.5.6, then the Depository Nominee must ensure that its Third Party Provider provides such information to the Principal Issuer at such times as the Principal Issuer requires for performance of its obligations under Rules 13.1 to 13.13.

Introduced 11/03/04 Origin SCH 3A.5.8

### **13.5.8 Power of Attorney**

The Depository Nominee appoints the Principal Issuer to be the Depository Nominee's attorney and in the name of the Depository Nominee (or in the name of the Principal Issuer or its delegate) and on the Depository Nominee's behalf:

- (a) to execute any transfer for the purposes of Rule 13.3; and
  - (b) to do all things necessary or desirable to give full effect to the rights and obligations of the Depository Nominee in Rules 13.1 to 13.13;
- and the Depository Nominee undertakes to ratify and confirm anything done under this power of attorney by the Principal Issuer.

Introduced 11/03/04 Origin SCH 3A.5.9

### **13.5.9 Delegation by Principal Issuer under Power of Attorney**

The Principal Issuer may in writing:

- (a) delegate its powers to any person for any period;
- (b) at its discretion, revoke any such delegation; and
- (c) exercise or concur in exercising any power despite the Principal Issuer or a delegate of the Principal Issuer having a direct or personal interest in the mode or result of the exercise of that power.

Introduced 11/03/04 Origin SCH 3A.5.9A

### **13.5.10 Indemnity**

If a Principal Issuer or its Third Party Provider executes a transfer of Principal Financial Products on behalf of a Depository Nominee as transferor or transferee, other than a Transfer which is supported by a Message initiated by a Participant under these Rules, the Principal Issuer warrants to ASTC that it indemnifies:

- (a) the Depository Nominee;
- (b) ASTC;
- (c) the transferor or the beneficial owner of the Principal Financial Products, as the case requires; and
- (d) each Participant,

against all losses, damages, costs and expenses that they or any of them may suffer or incur as a result of the transfer not being authorised by the transferor or by the beneficial owner of the Principal Financial Products.

Introduced 11/03/04 Origin SCH 3A.5.10

### **13.5.11 ASTC holds benefit of warranties for Depositary Nominee**

ASTC holds the benefit of any warranties and indemnities given to it by the Principal Issuer under Rules 13.1 to 13.13 in trust for the benefit of the Depositary Nominee.

Introduced 11/03/04 Origin SCH 3A.5.10A

### **13.5.12 Principal Issuer and Depositary Nominee not to interfere in Transfer and Transmutation**

Unless otherwise permitted under these Rules or the Listing Rules, a Principal Issuer or a Depositary Nominee must not refuse or fail to register, or give effect to, or otherwise interfere with the processing and registration of:

- (a) a paper-based transfer of Principal Financial Products;
- (b) a Transfer of CDIs;
- (c) a Transmutation of Principal Financial Products to CDIs;
- (d) a Transmutation of CDIs to Principal Financial Products;
- (e) a shunt from a DI Register to a Principal Register; or
- (f) a shunt from a Principal Register to a DI Register.

Introduced 11/03/04 Origin SCH 3A.5.11, 3A.5.12 Amended 06/06/05

### **13.5.13 No Notice of Unregistered Interests**

For the purposes of all relevant Australian and foreign laws, neither ASTC nor any Depositary Nominee is affected by actual, implied or constructive notice of any interest in CDIs other than the Holdings on the CDI Register.

A Depositary Nominee may deal with the registered Holder of CDIs as if, for all purposes, the Holder of CDIs is the absolute beneficial owner of the Principal Financial Products to which the CDIs relate, without any liability whatsoever to any other person who asserts an interest in the CDIs or in the Principal Financial Products to which the CDIs relate.

Introduced 11/03/04 Origin SCH 3A.5.13, 3A.5.14

## **13.5A TERMINATION OF CDI HOLDING BY THE DEPOSITARY NOMINEE**

### **13.5A.1 Termination of trust over Principal Financial Products**

If approval of CDIs in respect of a class of Principal Financial Products is revoked by ASTC, the Depositary Nominee may, by resolution of its board of directors, revoke the trust under which it holds the Principal Financial Products on a date specified in the resolution. The Depositary Nominee must notify the affected Holders of CDIs of the revocation in accordance with the Procedures.

From the date of revocation specified in the resolution:

- (a) the Depositary Nominee holds the Principal Financial Products and any other relevant property on trust for distribution to each Holder of CDIs and otherwise on the same terms as far as practicable as it held the Principal Financial Products and other relevant property before such revocation of trust;
- (b) the Depositary Nominee may, in its absolute discretion, continue to hold on trust the Principal Financial Products and any other relevant property for any period determined by the Depositary Nominee instead of distributing that property to the Holder of CDIs and, in doing so, the Depositary Nominee will not be liable for any loss, cost, damage or expense suffered by the Holder of CDIs (except where such loss, cost, damage or expense is directly caused by the Depositary Nominee's actual fraud or dishonesty); and

- (c) the Depositary Nominee may appoint a custodian or agent (including the Principal Issuer) for the purpose of holding Principal Financial Products and any other relevant property (including, without limitation, net proceeds referred to in Rule 13.5A.2(c)) or performing any of its duties relating to the distribution or holding of property or for any other purpose for which a trustee may appoint an agent.

Introduced 17/03/08

### **13.5A.2 Distribution of Principal Financial Products and power of sale**

If a Depositary Nominee revokes the trust under which it holds a class of Principal Financial Products in accordance with Rule 13.5A.1:

- (a) the Depositary Nominee may, in its absolute discretion, notify the affected Holders of CDIs in accordance with the Procedures of a procedure by which the Principal Financial Products and any other relevant property will be distributed to Holders;
- (b) subject to any law or rule of any financial market where the Principal Financial Products are listed or quoted, the Principal Issuer must use all reasonable endeavours to assist the Depositary Nominee to distribute the Principal Financial Products and any other relevant property to Holders of CDIs in accordance with the procedure notified by the Depositary Nominee; and
- (c) if the Depositary Nominee, after taking any steps specified in the Procedures, has been unable to distribute the Principal Financial Products and any other relevant property to a Holder of CDIs, then the Depositary Nominee may sell the Principal Financial Products and any other relevant property and hold the net proceeds on trust for distribution to the Holder of CDIs and may, after any period specified by law for holding unclaimed moneys, remit those monies to a regulatory authority in accordance with relevant law.

Introduced 17/03/08

### **13.5A.3 Exercise of power of sale**

In exercising the power of sale in Rule 13.5A.2, the Depositary Nominee may do any of the following:

- (a) sell, dispose of, transfer or otherwise deal with the Principal Financial Products and any other relevant property to any person including without limitation to an associate of any of the Principal Issuer, the Holder of CDIs or the Depositary Nominee;
- (b) effect any sale by a single contract or in separate lots or parcels or in any other manner that the Depositary Nominee may in its absolute discretion think fit, with power to the Depositary Nominee to apportion the sale price and all costs, expenses, purchase money and fees between the Principal Financial Products so dealt with, provided the apportionment is fair and equitable;
- (c) subject to any contrary rule of law or equity, allow a purchaser of the Principal Financial Products any time for payment of the whole or any part of the purchase money either with interest at any rate or without interest and either upon the security of the property sold or any part or upon any other security or without any security and the conditions of sale may include such special conditions as the Depositary Nominee may in its absolute discretion think fit;
- (d) receive and retain the proceeds of any sale and issue receipts in respect of such proceeds; or

- (e) sign deeds of sale with respect to the sale of any Principal Financial Product and any other relevant property, and execute any other documents as may be required to transfer the rights of such Principal Financial Products or any other relevant property.

Introduced 17/03/08

#### **13A.5A.4 Limitation of liability**

If a Depository Nominee exercises the power of sale in accordance with this Rule 13.5A, the exercise of that power does not involve on the part of the Depository Nominee:

- (a) incurring any personal liability in connection with that exercise or its consequences unless it is committed, made or omitted in bad faith or as a result of negligence or wilful default; and
- (b) any breach of duty or trust whatsoever, unless it is committed, made omitted in bad faith or as a result of negligence or wilful default.

Introduced 17/03/08

#### **13.5A.5 Appointment of custodian or agent**

If the Depository Nominee appoints a custodian or agent in accordance with this Rule 13.5A, the following will apply to such appointment:

- (a) the Depository Nominee may in its absolute discretion appoint one or more persons whom the Depository Nominee determines to be properly qualified to act as the custodian or agent in respect of the Principal Financial Products and any other relevant property (including, without limitation, net proceeds referred to in Rule 13.5A.2(c)) (“Relevant Property”);
- (b) the Depository Nominee and the custodian or agent must execute a written agreement setting out the terms and conditions in relation to the appointment of the custodian or agent which provides among other things:
  - (i) that the appointment of the custodian or agent will be subject to such conditions as the Depository Nominee may from time to time determine, and the Depository Nominee may delegate to and confer upon the appointed custodian or agent any authorities, powers and discretions as the Depository Nominee sees fit;
  - (ii) a representation from the custodian or agent to the Depository Nominee that it has the skill, facilities, capacity and staff to carry out the duties of a custodian or agent;
  - (iii) a representation that the custodian or agent agrees to follow any proper instructions or communications from the Depository Nominee or any relevant regulatory authority in relation to the transfer, disposal or remittance of the Relevant Property;
  - (iv) for such other matters that by law are required to be specified in the written agreement between the Depository Nominee and the custodian or agent;
- (c) any consideration or fees applying to the provision of custodian or agency services under this Rule 13.5A will be deducted from the Relevant Property by the custodian or agent (or as otherwise determined in accordance with the relevant custody or agency agreement referred to in this Rule 13.5A); and
- (d) where the Depository Nominee appoints a custodian or agent in accordance with this clause 13.5A, the exercise of that power does not involve on the part of the Depository Nominee:

- (i) incurring any personal liability in connection with that exercise or its consequences unless it is committed, made or omitted in bad faith or as a result of negligence or wilful default; and
- (ii) any breach of duty or trust whatsoever unless it is committed, made or omitted in bad faith or as a result of negligence or willful default.

Introduced 17/03/08

## **13.6 CORPORATE ACTIONS**

### **13.6.1 Application of Rules**

The purpose of the following Rules is to ensure that, to the extent permitted by the laws of the Principal Issuer's jurisdiction of incorporation, the benefit of all Corporate Actions of a Principal Issuer will enure to the benefit of the relevant Holders of CDIs as if they were Holders of the corresponding Principal Financial Products, where Principal Financial Products are held by a Depositary Nominee under these Rules.

Introduced 11/03/04 Origin SCH 3A.6.1 Amended 06/06/05, 17/03/08

### **13.6.2 Distribution of Dividends to Holders of CDIs**

If CDIs in respect of a class of Principal Financial Products are approved under Rule 13.2, the Principal Issuer must distribute any dividend declared in respect of the corresponding Principal Financial Products to Holders of CDIs based on relevant Cum Entitlement Balances as at End of Day on the Record Date for the dividend in proportions as determined by the Transmutation Ratio.

Introduced 11/03/04 Origin SCH 3A.6.2 Amended 06/06/05

### **13.6.3 Direction and Acknowledgment by Depositary Nominee**

For the purposes of:

- (a) the Principal Issuer's constitution; and
- (b) all laws governing the entitlement to dividends of a Depositary Nominee of the Principal Issuer,

the Depositary Nominee is taken to have directed the Principal Issuer to distribute any dividend, that would otherwise be payable to it under the Principal Issuer's constitution, in accordance with these Rules.

Introduced 11/03/04 Origin SCH 3A.6.3

### **13.6.4 Discharge of Principal Issuer's obligation to pay dividend to Depositary Nominee**

A Depositary Nominee for a Principal Issuer acknowledges that distribution of a dividend in accordance with these Rules discharges the Principal Issuer's obligation to pay the dividend to the Depositary Nominee.

Introduced 11/03/04 Origin SCH 3A.6.4

### **13.6.5 Payment by Depositary Interest Issuer**

Rules 13.6.2, 13.6.3 and 13.6.4 apply in respect of a DI as if a reference to "dividend" is a reference to any distribution or payment, whether principal, premium or interest, as defined in the offering memorandum in respect of the Principal Financial Products.

Introduced 11/03/04 Origin SCH 3A.6.4A

### 13.6.6 Payment Obligations

Where a DI Issuer makes a payment pursuant to Rule 13.6.2, that payment must be made to all Holders of DIs as soon as reasonably practicable.

Introduced 11/03/04 Origin SCH 3A.6.4B Amended 04/04/05

### 13.6.7 Corporate Actions

- (a) Subject to paragraph (d), if CDIs in respect of a class of Principal Financial Products are approved under Rule 13.2, the Principal Isser must administer all Corporate Actions that result in:
  - (i) the issue of additional or replacement Financial Products in respect of the Principal Financial Products; or
  - (ii) the cancellation, buy back or other reduction in number by whatever means of the Principal Financial Products (whether in whole or part), as if each Holder of CDIs with respect to the Depository Nominee's Holding is a Holder of a corresponding number of Principal Financial Products, so that the Holding of each Holder of CDIs is adjusted as a result of the Corporate Action (whether by issuing additional or replacement CDIs to Holders of CDIs, or by cancelling or otherwise reducing the number of CDIs in the existing Holdings of Holders of CDIs, as the case may be) based on relevant Cum Entitlement Balances as at End of Day on the Record Date for the Corporate Action on the same terms as would otherwise have applied if the Holders of CDIs were Holders of the Principal Financial Products.
- (b) If the benefits conferred in the Corporate Action are additional or replacement Financial Products as described in paragraph (a)(i), the Principal Issuer must ensure that those Financial Products are vested in the Depository Nominee as Holder of the Principal Financial Products and the benefits are distributed to Holders of CDIs in the form of CDIs corresponding to those Principal Financial Products.
- (c) The Principal Issuer must ensure that the benefit of Corporate Actions is conferred on Holders of CDIs in proportions determined by the Transmutation Ratio.
- (d) If:
  - (i) the laws of the Principal Issuer's jurisdiction of incorporation do not permit the Principal Issuer to administer a Corporate Action as if each Holder of CDIs with respect to the Depository Nominee's Holding is the Holder of a corresponding number of Principal Financial Products in the manner described in paragraph (a); and
  - (ii) the Principal Issuer has:
    - (A) so notified ASTC in writing;
    - (B) given ASTC:
      - a. written details of an alternative proposal ("Alternative Proposal") under which the number of Principal Financial Products held by the Depository Nominee (when adjusted in accordance with the Alternative Proposal), combined with any other benefits (if any) to be conferred on the Depository



Nominee pursuant to the Alternative Proposal (such as cash), will result in each CDI Holder being placed as nearly as practicable in the same economic position as a result of the Corporate Action as if the Principal Issuer had administered the Corporate Action in the manner described in paragraph (a); or

- b. if the laws of the Principal Issuer's jurisdiction of incorporation require the Corporate Action, so far as it concerns the Depository Nominee and the Holders of CDIs with respect to the Depository Nominee's Holding, to be administered having regard only to the Depository Nominee's holding of Principal Financial Products at that time, to the exclusion of all other considerations, and such laws do not admit of any alternative proposal under which the interests of Holders of CDIs with respect to the Depository Nominee's Holding may be taken into account (including, without limitation, by the payment of cash consideration in lieu of any additional CDIs to which the Holders of CDIs would have been entitled if the Principal Issuer had administered the Corporate Action in the manner described in paragraph (a)), a statement to that effect ("Statement");
  - (C) provided an undertaking to ASTC that it has disclosed the details of the Corporate Action (including details of any Alternative Proposal or Statement, as applicable) to Holders of CDIs in accordance with all applicable laws; and
  - (D) provided to ASTC any additional information or documents which ASTC requests for the purpose of evaluating the Corporate Action (as it affects CDI Holders) and the Alternative Proposal or Statement (as applicable) including, without limitation, a legal opinion satisfactory to ASTC confirming the matters referred to in paragraph (d)(i) and such other matters related to the Corporate Action and the Alternative Proposal or Statement (as applicable) as ASTC in its discretion may nominate; and
- (iii) ASTC has confirmed in writing its acceptance of the Alternative Proposal or Statement (as applicable),
- the Principal Issuer must ensure that:
- (iv) the Corporate Action is administered in accordance with the Alternative Proposal or Statement (as applicable); and
  - (v) the Holding of each Holder of CDIs is adjusted as a result of the Corporate Action accordingly.

For the purpose of evaluating the Corporate Action (as it affects CDI Holders) and the Alternative Proposal or Statement (as applicable), and in confirming its acceptance of the Alternative Proposal or Statement (as applicable), ASTC relies and is entitled to rely on all information, opinions and other documents provided to it by the Principal Issuer. By confirming its acceptance of the Alternative Proposal or Statement (as applicable), ASTC does not and shall not be taken for any purpose to:

- (vi) endorse, promote or otherwise support the Alternative Proposal or Statement;
- (vii) express any view about the merits or the correctness of the legal and factual basis of the Alternative Proposal or Statement or any other matter connected with them; or

(viii) accept any liability in connection with the Corporate Action, Alternative Proposal or Statement.

For the purposes of this Rule 13.6.7, "Corporate Action" includes (but is not limited to) bonus issues, rights issues, mergers and reconstructions (including any action taken by a Principal Issuer to reduce (or that will have the effect of reducing) the number of Principal Financial Products held by a Depository Nominee).

Introduced 11/03/04 Origin SCH 3A.6.6 Amended 06/06/05, 17/03/08

#### **13.6.8 Dividend Reinvestment and Bonus Share Plans**

If CDIs in respect of a class of Principal Financial Products are approved under Rule 13.2, the Principal Issuer must, in relation to any dividend investment scheme or bonus share plan in respect of those Principal Financial Products:

- (a) make available to Holders of CDIs, based on relevant Cum Entitlement Balances as at End of Day on the Record Date for determining entitlements, all benefits and entitlements arising under the dividend reinvestment scheme or bonus share plan, as the case requires;
- (b) distribute all benefits and entitlements arising under the dividend reinvestment scheme or bonus share plan, as the case requires, to Holders of CDIs in proportions determined by the Transmutation Ratio;
- (c) ensure that any right under such a plan to elect to receive financial products rather than cash is exercised by Holders of CDIs rather than the Depository Nominee; and
- (d) if a Holder of CDIs elects to receive financial products, issue Principal Financial Products to the Depository Nominee and distribute corresponding CDIs to the Holder of CDIs.

Introduced 11/03/04 Origin SCH 3A.6.6 Amended 06/06/05

#### **13.6.9 Exercise of Holder rights**

If CDIs in respect of a class of Principal Financial Products are approved under Rule 13.2, the Depository Nominee must exercise any rights vested in it as the Holder of the Principal Financial Products under any law (including any right to institute legal proceedings as a holder of Financial Products), in accordance with:

- (a) any direction given by a Holder of CDIs; or
- (b) any direction of Holders of CDIs given by ordinary resolution at a meeting of Holders of CDIs.

Introduced 11/03/04 Origin SCH 3A.6.7 Amended 06/06/05

#### **13.6.10 Fractional Entitlements**

- (a) Subject to paragraph (b), if a Corporate Action would give Holders of CDIs a fractional entitlement to additional or replacement Principal Financial Products (if they held Principal Financial Products directly), the Principal Issuer must ensure that:
  - (i) the number of additional or replacement Principal Financial Products issued to the Depository Nominee is calculated as if each Holder of CDIs with respect to the Depository Nominee's Holding is a Holder of a corresponding number of Principal Financial Products; and

- (ii) Holders of CDIs receive additional or replacement CDIs reflecting the entitlements so calculated.
- (b) If:
- (i) the laws of the Principal Issuer’s jurisdiction of incorporation do not permit the Principal Issuer to calculate the number of additional or replacement Principal Financial Products issued to the Depositary Nominee in the manner described in paragraph (a)(i) and to ensure that Holders of CDIs receive additional or replacement CDIs reflecting the entitlements so calculated; and
  - (ii) the Principal Issuer has:
    - (A) so notified ASTC in writing;
    - (B) given ASTC:
      - a. written details of an alternative proposal (“Alternative Proposal”) under which the number of additional or replacement Principal Financial Products issued to the Depositary Nominee, combined with any other benefits (if any) to be conferred on the Depositary Nominee pursuant to the Alternative Proposal (such as cash), will result in each CDI Holder receiving as nearly as practicable the same economic benefit as a result of the Corporate Action as if the number of additional or replacement Principal Financial Products issued to the Depositary Nominee had been calculated in the manner described in paragraph (a)(i) and the Principal Issuer had ensured that Holders of CDIs received additional or replacement CDIs reflecting the entitlements so calculated; or
      - b. if the laws of the Principal Issuer’s jurisdiction of incorporation require the number of additional or replacement Principal Financial Products issued to the Depositary Nominee to be calculated having regard only to the Depositary Nominee’s holding of Principal Financial Products at that time, to the exclusion of all other considerations, and such laws do not admit of any alternative proposal under which the interests of Holders of CDIs with respect to the Depositary Nominee’s Holding may be taken into account (including, without limitation, by the payment of cash consideration in lieu of such additional or replacement CDIs as the Holders of CDIs would have received if the number of additional or replacement Principal Financial Products issued to the Depositary Nominee had been calculated in the manner described in paragraph (a)(i)), a statement to that effect (“Statement”);
    - (C) provided an undertaking to ASTC that it has disclosed the details of the Corporate Action (including details of any Alternative Proposal or Statement, as applicable) to Holders of CDIs in accordance with all applicable laws; and
    - (D) provided to ASTC any additional information or documents which ASTC requests for the purpose of evaluating the Corporate Action (as it affects CDI Holders) and the Alternative Proposal or Statement (as applicable) including, without limitation, a legal opinion satisfactory to ASTC confirming the matters referred to in paragraph (b)(i) and such other matters related to the Corporate Action and the Alternative Proposal or Statement (as applicable) as ASTC in its discretion may nominate; and

(iii) ASTC has confirmed in writing its acceptance of the Alternative Proposal or Statement (as applicable),

the Principal Issuer must ensure that:

(iv) the number of additional or replacement Principal Financial Products issued to the Depository Nominee is calculated in accordance with the Alternative Proposal or Statement (as applicable); and

(v) Holders of CDIs receive additional or replacement CDIs reflecting the entitlements so calculated.

For the purpose of evaluating the Corporate Action (as it affects CDI Holders) and the Alternative Proposal or Statement (as applicable), and in confirming its acceptance of the Alternative Proposal or Statement (as applicable), ASTC relies and is entitled to rely on all information, opinions and other documents provided to it by the Principal Issuer. By confirming its acceptance of the Alternative Proposal or Statement (as applicable), ASTC does not and shall not be taken for any purpose to:

(vi) endorse, promote or otherwise support the Alternative Proposal or Statement;

(vii) express any view about the merits or the correctness of the legal and factual basis of the Alternative Proposal or Statement or any other matter connected with them; or

(viii) accept any liability in connection with the Corporate Action, Alternative Proposal or Statement or any other matter connected with them; or

(viii) accept any liability in connection with the corporate Action, Alternative Proposal or Statement.

For the purposes of this Rule 13.6.10, "Corporate Action" includes (but is not limited to) bonus issues, rights issues, mergers and reconstructions (including any action taken by a Principal Issuer to reduce (or that will have the effect of reducing) the number of Principal Financial Products held by a Depository Nominee).

Introduced 11/03/04 Origin SCH 3A.6.8 Amended 06/06/05, 17/03/08

#### **13.6.10A Disposal of surplus Principal Financial Products**

If:

(a) the Depository Nominee receives Principal Financial Products in connection with a Corporate Action; and

(b) following receipt of the Principal Financial Products, the Depository Nominee's Holding of Principal Financial Products exceeds the aggregate of each CDI Holder's entitlement to a whole number of Principal Financial Products,

the Depository Nominee must sell such surplus Principal Financial Products and distribute the proceeds of sale (less transaction costs) to Holders of CDIs in proportion to their respective Holdings.

Introduced 17/03/08

### **13.6.11 General Direction and Acknowledgment by Depositary Nominee**

A Depositary Nominee for a Principal Issuer:

- (a) is taken to have directed the Principal Issuer to administer all Corporate Actions of the Principal Issuer in the manner provided in these Rules; and
- (b) acknowledges that compliance with these Rules discharges the Principal Issuer's obligation to make the benefit of a Corporate Action available to the Depositary Nominee.

Introduced 11/03/04 Origin SCH 3A.6.9, 3A.6.10

### **13.6.12 Transmutations of Financial Products and associated Entitlements**

Where, during an ex-period for a Corporate Action, Principal Financial Products under Rules 13.1 to 13.13 are Transmuted in order to give effect to a transfer of those Principal Financial Products, the transmutation of those Principal Financial Products must be effected together with any associated Entitlement.

Introduced 11/03/04 Origin SCH 3A.6.11 Amended 06/06/05

### **13.6.13 Divestment of small Holdings**

If CDIs in respect of a class of Principal Financial Products are approved and:

- (a) in accordance with the Listing Rules, a Holder of less than a specified number of Principal Financial Products can be subject to divestment or sale of those Principal Financial Products by the Principal Issuer; and

- (b) a Holder of CDIs would be subject to divestment or sale if it held the corresponding number of Principal Financial Products directly,

the Principal Issuer may give a Notice of Divestment in accordance with Rule 5.12.2 to the Holder of CDIs. The Principal Issuer must also give a Holder of CDIs the benefit of any notice and consent procedure that may be contained in the constitution of the Principal Issuer, the Listing Rules and the rules of any financial market on which the Principal Financial Products are listed or quoted to which the Holder of CDIs would be entitled if it held the Principal Financial Products directly.

Introduced 17/03/08

### **13.6.14 Depositary Nominee may consent to sale or divestment**

If the Depositary Nominee is reasonably satisfied that the Principal Issuer has complied with its obligations under Rule 13.6.13, the Depositary Nominee is authorised to consent to the sale or divestment of the number of Principal Financial Products which correspond to the Holder's CDIs.

Introduced 17/03/08

### **13.6.15 Principal Issuer must distribute proceeds**

The Principal Issuer must distribute to the Holder of CDIs any proceeds of a sale made pursuant to a notice given under Rule 13.6.13 (net of transaction costs). If the Principal Issuer is required under the laws of its jurisdiction of incorporation to distribute the net proceeds to the Depositary Nominee in its capacity as the Holder of the Principal Financial Products, the Depositary Nominee shall be taken to have directed the Principal Issuer to distribute the net proceeds to the Holder of CDIs. Upon distribution of the net proceeds to the Holder of CDIs, the Principal Issuer must cancel the Holder's CDIs corresponding to the Principal Financial Products which have been sold.

Introduced 17/03/08

### **13.6.16 Indemnity by Principal Issuer**

By giving a Notice of Divestment, a Principal Issuer indemnifies the Depository Nominee and ASTC against any loss, cost, damage, expense or liability which they may suffer or incur as a result of any sale or divestment of Principal Financial Products and the cancellation of CDIs under this Rule.

Introduced 17/03/08

## **13.7 TAKEOVERS**

### **13.7.1 Depository Nominee to accept only if authorised by Holders of CDIs**

If a takeover offer in respect of Principal Financial Products is received by a Depository Nominee, the Depository Nominee must not accept the offer except to the extent that acceptance is authorised by Holders of CDIs with respect to the Principal Financial Products under these Rules.

Introduced 11/03/04 Origin SCH 3A.7.1 Amended 06/06/05

### **13.7.2 Acceptance with respect to Holders of CDIs on CHESSE Subregister**

If:

- (a) Principal Financial Products are held by a Depository Nominee; and
- (b) the corresponding CDIs are held on a CHESSE Subregister,

then the provisions of the Rules governing the processing of takeover acceptances of Financial Products held on a CHESSE Subregister apply as if the CDIs were Financial Products of a listed public company and the Depository Nominee must accept a takeover offer with respect to Principal Financial Products which it holds if and to the extent to which acceptances are received and processed pursuant to the Rules.

Introduced 11/03/04 Origin SCH 3A.7.2 Amended 06/06/05

### **13.7.3 Acceptance with respect to Holders of CDIs on Issuer-Sponsored Subregister**

If:

- (a) Principal Financial Products are held by a Depository Nominee; and
- (b) corresponding CDIs are held on the Issuer Sponsored Subregister,

then the Depository Nominee must:

- (c) as soon as possible after the date of receipt of the takeover offer from the offeror, despatch to each Holder of CDIs registered on the CDI Register at the date of the offer, copies of the offer documentation, together with any other documents despatched to target holders of the Principal Financial Products; and
- (d) ensure that the offer documentation despatched to Holders of CDIs includes a Notice in a form acceptable to ASTC in accordance with the Procedures.

Introduced 11/03/04 Origin SCH 3A.7.3 Amended 06/06/05

### **13.7.4 Processing of acceptances from Holders of CDIs**

Where the provisions of Rule 13.7.3 apply, the Depository Nominee must ensure that:

- (a) the offeror receives and processes acceptances from Holders of CDIs or appoints a receiving agent in Australia to receive and process acceptances with respect to Holders of CDIs on the Issuer Sponsored Subregister; and
- (b) either the offeror or the offeror's receiving agent provides the Depository Nominee with a clear statement of the number of Principal Financial Products held by the Depository Nominee with respect to which acceptances of Holders of CDIs have been received, in sufficient time to enable the Depository Nominee to lodge a valid acceptance of the offer with the offeror as holder of the Principal Financial Products.

Introduced 11/03/04 Origin SCH 3A.7.4

### **13.7.5 Liability of Depository Nominee**

The Depository Nominee has no liability to:

- (a) the Principal Issuer;
- (b) Holders of Principal Financial Products;
- (c) Holders of CDIs;
- (d) any person claiming an interest in Principal Financial Products or CDIs; or
- (e) the takeover offeror,

with respect to lodging or not lodging takeover acceptances for the whole or any part of its Holding of Principal Financial Products unless it:

- (f) acts contrary to a statement of a receiving agent given under Rule 13.7.4(b) or contrary to the information supplied to it by ASTC regarding takeover acceptances with respect to Holdings on the CHES Subregister for the CDIs;
- (g) acts negligently or in breach of these Rules; or
- (h) negligently fails to lodge the acceptance or acceptances before the close of the offer period.

Introduced 11/03/04 Origin SCH 3A.7.5 Amended 06/06/05

## **13.8 VOTING ARRANGEMENTS**

### **13.8.1 Interpretation**

For the purposes of Rule 13.8, "constitution of a Principal Issuer" means:

- (a) in respect of a share, constitution as defined in the Corporations Act; or
- (b) in respect of a Financial Product other than a share, the document which creates the right for a holder of Financial Products to attend and vote at meetings of holders of Financial Products of that class and to appoint proxies in respect of that voting.

Introduced 11/03/04 Origin SCH 3A.1.3

### **13.8.2 Principal Issuer to notify Holders of CDIs**

If a meeting is convened of Holders of a class of Principal Financial Products vested in a Depositary Nominee for a Principal Issuer, the Principal Issuer must give a Notice of the meeting to each Holder of CDIs at the same time as Notice of the meeting is sent to Holders of the Principal Financial Products.

For the purposes of this Rule 13.8.2, a Principal Issuer may give a Notice of the meeting to a Holder of CDIs in any manner provided for in the Corporations Act.

*Note: this Rule 13.8.2 is intended to cover the means by which a notice of meeting may be given under section 249J of the Corporations Act.*

Introduced 11/03/04 Origin SCH 3A.8.1 Amended 18/12/06

### **13.8.3 Holders of CDIs may give Directions to Depositary Nominee**

Subject to Rule 13.8.8, the Depositary Nominee must appoint two proxies even if under the constitution of the Principal Issuer, a Depositary Nominee has a right to:

- (a) appoint more than one proxy for the purpose of voting at a meeting of the Principal Issuer; and
- (b) cast different proxy votes for different parts of the Holding.

Introduced 11/03/04 Origin SCH 3A.8.2

### **13.8.4 Proxies to indicate results of resolution**

One of the two proxies so appointed in accordance with Rule 13.8.3 must indicate the number of Principal Financial Products in favour of the resolution described in the proxy, and the second proxy must indicate the number of Principal Financial Products against the resolution described in the proxy.

Introduced 11/03/04 Origin SCH 3A.8.3 Amended 06/06/05

### **13.8.5 Determining the number of Financial Products for each proxy**

The manner in which the number of Principal Financial Products is determined for each proxy is by:

- (a) taking the number of CDIs in favour of the resolution;
- (b) taking the number of CDIs against the resolution;
- (c) applying the transmutation ratio to those CDIs; and
- (d) entering the resultant number of Principal Financial Products on the appropriate proxy.

Introduced 11/03/04 Origin SCH 3A.8.4 Amended 06/06/05

### **13.8.6 Depositary Nominee appointing a single proxy**

If under the constitution of the Principal Issuer, a Depositary Nominee can only appoint a single proxy, the Depositary Nominee must:

- (a) take the number of CDIs in favour of the resolution;
- (b) take the number of CDIs against the resolution;
- (c) determine the net voting position either in favour of or against the resolution;



- (d) apply the transmutation ratio to those CDIs; and
- (e) accordingly enter the resultant number of Principal Financial Products on the proxy.

Introduced 11/03/04 Origin SCH 3A.8.5 Amended 06/06/05

#### **13.8.7 Voting instructions by Depositary Nominee**

Where the appointed proxy or proxies are required to vote on multiple resolutions, the Depositary Nominee must instruct the proxy or proxies to vote in such manner as will in the reasonable opinion of the Depositary Nominee best represent the wishes of the majority of Holders of CDIs.

Introduced 11/03/04 Origin SCH 3A.8.5A

#### **13.8.8 Depositary Nominee to appoint Holders of CDIs as proxy**

The Depositary Nominee must appoint a Holder of CDIs or a person nominated by a Holder of CDIs as its proxy for the purpose of attending and voting at a meeting of the Principal Issuer where:

- (a) the constitution of the Principal Issuer allows the Depositary Nominee to appoint Holders of CDIs or a person nominated by a Holder of CDIs as its proxy; and
- (b) the Holder of CDIs has informed the Principal Issuer that the Holder wishes to nominate another person to be appointed as the Depositary Nominee's proxy.

Introduced 11/03/04 Origin SCH 3A.8.1

#### **13.8.9 Principal Issuer must notify Holders of CDIs of their Rights**

The Principal Issuer must:

- (a) include with the Notice of meeting given under Rule 13.8.2 a Notice in a form acceptable to ASTC in accordance with the Procedures; and
- (b) make appropriate arrangements to:
  - (i) collect and process any directions by Holders of CDIs;
  - (ii) provide the Depositary Nominee with a report in writing that clearly shows how the Depositary Nominee must exercise its right to vote by proxy at the meeting, in sufficient time to enable the Depositary Nominee to lodge a proxy for the meeting; and
  - (iii) where a Holder of CDIs, or a person nominated by a Holder of CDIs, is to be appointed the Depositary Nominee's proxy in accordance with Rule 13.8.8, collect and process all relevant proxy forms in sufficient time to enable the Depositary Nominee to lodge a proxy or proxies for the meeting.

Introduced 11/03/04 Origin SCH 3A.8.6 Amended 18/12/06

#### **13.8.10 Depositary Nominee to call for a poll**

To the extent that it is able to do so, the Depositary Nominee must make or join in any demand for a poll in respect of any matter at a meeting of the Principal Issuer in accordance with any report in writing supplied by the Principal Issuer under Rule 13.8.9(b)(ii).

Introduced 11/03/04 Origin SCH 3A.8.7

### 13.8.11 Meetings of Holders of CDIs

If it is necessary or appropriate for a meeting of Holders of CDIs to be convened for any purpose, including a purpose specified in these Rules:

- (a) the meeting may be convened by the directors of the Principal Issuer to which the CDIs relate, or in any other manner in which a meeting of holders of Financial Products of the Principal Issuer may be convened under the law of the place of formation of the Principal Issuer;
- (b) the rights of Holders of CDIs to appoint a proxy, to vote on a show of hands, to call for a poll and vote on a poll must be determined as if the meeting were a meeting of holders of Financial Products of the Principal Issuer;
- (c) the requirements for Notice of the meeting and the rules and procedures for a meeting of Holders of CDIs must be the requirements, rules and procedures that would apply to a meeting of holders of Financial Products of the Principal Issuer.

Introduced 11/03/04 Origin SCH 3A.8.8

### 13.8.12 Liability of Depositary Nominees

The Depositary Nominee has no liability to:

- (a) the Principal Issuer;
- (b) Holders of Principal Financial Products;
- (c) Holders of CDIs; or
- (d) any person claiming an interest in Principal Financial Products or CDIs,

with respect to any conduct or omission of the Depositary Nominee at or connected with a meeting of Holders of Financial Products of a Principal Issuer, unless the Depositary Nominee:

- (e) acts contrary to a report of the Principal Issuer given under Rule 13.8.9(b)(ii);
- (f) acts negligently or in breach of these Rules; or
- (g) negligently fails to vote or lodge forms of proxy before the close of the period within which proxies for the meeting may be lodged.

Introduced 11/03/04 Origin SCH 3A.8.9

## 13.9 SPECIFIC MODIFICATIONS TO RULES

### 13.9.1 Modifications

The following modifications are made to the Rules in respect of the operation of Section **13**:

- (a) Rule 8.1 does not apply.
- (b) Rule 8.2.1(a) is varied by the insertion of the words “ or CDIs that are to be approved under Rules 13.1 to 13.13;” after Rule” 8.1”.
- (c) Rules 8.6.4 and 8.6.5 should be read as if references to the “Commission” were references to “ASTC” and references to the “Corporations Act” were references to “these Rules”.

- (d) The provisions of Rule 8.12 are modified by the provisions of Rules 13.9.2 to 13.9.6 below.
- (e) Rule 5.2.1 is amended by insertion of the words “or CDIs that are to be approved under Rules 13.1 to 13.13” after “8.1” in Rule 5.2.1.
- (f) Rules 5.2.2 and 5.4.1 do not apply to a class of CDIs that is Approved under Rules 13.1 to 13.13.
- (g) Rule 5.4.2 is to be read as if the following provision is added to the end of Rule 5.4.2, “ A Principal Issuer may not cease to operate its Issuer Sponsored Subregister unless ASTC agrees in writing.”
- (h) Rule 5.9 only applies where a Transfer is initiated by a Participant which has the effect of a Conversion.
- (i) Rules 5.13.1 and 5.13.3 are modified so that the references to “total issued capital” must be read as references to “ total number of CDIs”.
- (j) The provisions of Section 14 are taken to apply to CDIs as if the CDIs were Financial Products in an Australian listed public company and the takeover bid with respect to the Principal Financial Products was a takeover under the Corporations Act.

Introduced 11/03/04 Origin SCH 3A.9.1 to 3A.9.5, 3A.9.8 to 3A.9.12, 3A.9.12A to 3A.9.19

Amended 04/04/05, 06/06/05

### **13.9.2 CDI to Principal Financial Product Transmutation**

A CDI to Principal Financial Product Transmutation may be initiated by a Participant that Transmits a Valid Originating Message to ASTC in accordance with the Procedures.

Introduced 11/03/04 Origin SCH 3A.9.6.1 Amended 06/06/05

### **13.9.3 Actions of ASTC**

If an Originating Message Transmitted to ASTC complies with Rule 13.9.2 and there are sufficient available CDIs in the Source Holding, ASTC must:

- (a) deduct the number of CDIs specified in the Originating Message from the Source Holding; and
- (b) Transmit a Message to the Principal Issuer to transfer Principal Financial Products in accordance with the Originating Message.

Introduced 11/03/04 Origin SCH 3A.9.6.2 Amended 04/04/05, 06/06/05

### **13.9.4 Principal Issuer to generate Trustee Transfer Forms**

If a Principal Issuer receives a Valid Message under Rule 13.9.3(b), the Principal Issuer must, within the Scheduled Time:

- (a) generate a Trustee Transfer Form in accordance with the Procedures; and
- (b) register that Transfer in the Principal Register.

Introduced 11/03/04 Origin SCH 3A.9.6.3 Amended 04/04/05, 06/06/05

### **13.9.5 Time at which Transfer takes effect**

A Transfer initiated under Rule 13.9.4(a) is deemed to take effect at the time ASTC deducts the number of CDIs specified in the Originating Message from the Source Holding.

Introduced 11/03/04 Origin SCH 3A.9.6.4 Amended 06/06/05

### **13.9.6 Authority of Holder of CDI required**

A Participant must not transmit a Valid Originating Message which has the effect of Transmuting CDIs to Principal Financial Products without the prior authority of the Holder of CDIs.

Introduced 11/03/04 Origin SCH 3A.9.6.5

### **13.9.7 Principal Financial Product to CDI Transmutation**

A Principal Financial Product to CDI Transmutation may be initiated by a Participant that:

- (a) lodges a properly completed document of Transfer and Certificate or Marked Transfer with the Principal Issuer within the Scheduled Time; and
- (b) Transmits a Valid Originating Message to ASTC in accordance with the Procedures.

Introduced 11/03/04 Origin SCH 3A.9.7.1 Amended 06/06/05

### **13.9.8 ASTC to request Principal Issuer to authorise the Transmutation**

If an Originating Message Transmitted to ASTC complies with Rule 13.9.7(b), ASTC will:

- (a) Transmit to the Principal Issuer a Message requesting the Principal Issuer to authorise the Transmutation of Principal Financial Products to CDIs in accordance with that Originating Message; and
- (b) specify the Registration Details in the Message to the Issuer to enable the Issuer to validate the Registration Details, where applicable.

Introduced 11/03/04 Origin SCH 3A.9.7.2 Amended 04/04/05, 06/06/05

### **13.9.9 Principal Issuer to process the Transfer**

If a Principal Issuer receives:

- (a) a properly completed document of Transfer and Certificate or Marked Transfer; and
- (b) a Valid Message under Rule 13.9.8 from ASTC pursuant to an Originating Message, the Principal Issuer must, within the Scheduled Time:
  - (c) enter the Transfer in the Principal Register;
  - (d) Transmit a Message to ASTC to Transfer the Financial Products in accordance with the Originating Message; and
  - (e) in the case of a Message requesting the Principal Issuer to authorise a Transfer where the Transfer has the effect of a Conversion, ensure the Registration Details specified in the Message for the Target Holding match the Registration Details maintained by the Principal Issuer for the Source Holding.

Introduced 11/03/04 Origin SCH 3A.9.7.3 Amended 04/04/05

### **13.9.10 ASTC to enter Financial Products into Target Holding**

If ASTC receives a Valid Message under Rule 13.9.9(d), ASTC must enter Financial Products into the Target Holding in accordance with the Originating Message.

Introduced 11/03/04 Origin SCH 3A.9.7.4

### **13.9.11 Conditions for Issuer's authorisation of a Transfer not met**

If the conditions for authorisation by the Issuer of a Transfer as stipulated in Rule 13.9.9 are not met, the Issuer must, within the Scheduled Time:

- (a) reject the Message; and/or
- (b) return the properly completed document of Transfer and Certificate or Marked Transfer to the Participant that lodged it without entering the Transfer in the Principal Register,

whichever is relevant.

Introduced 11/03/04 Origin SCH 3A.9.7.5 Amended 09/05/05

### **13.9.12 Time at which Transfer takes effect**

A Transfer initiated under Rule 13.9.7 takes effect when both the actions described in Rule 13.9.9(c) and (d) are completed.

Introduced 11/03/04 Origin SCH 3A.9.7.6

### **13.9.13 ASTC may purge unactioned Messages**

If a Principal Issuer receives a Message from ASTC under Rule 13.9.8 and does not respond to ASTC under either Rule 13.9.9 or Rule 13.9.11 within the relevant Scheduled Time for response, ASTC may purge the unactioned Message from the Settlement Facility.

Introduced 09/05/05

## **13.10 SHUNTING BETWEEN REGISTERS**

### **13.10.1 Shunt from DI Register to Principal Register**

Where a Holder gives Notice requesting that the Principal Issuer shunt all or part of a Holding of DIs into Principal Financial Products, the Principal Issuer must reduce that Holding by the number specified in the Notice and take such steps as are necessary to shunt the same number of Principal Financial Products from the relevant Segregated Account to the Approved Clearing House account nominated in the Notice, within 3 Business Days of receipt of that Notice.

Introduced 11/03/04 Origin SCH 3A.10.1

### **13.10.2 Shunt from Principal Register to DI Register**

Where a Holder gives Notice requesting that the Principal Issuer shunt all or part of a Holding of Principal Financial Products into DIs, the Principal Issuer must take all necessary steps to shunt those Principal Financial Products to the Segregated Account and enter the same number of DIs into a Holding in accordance with the instructions given in the Notice, within 3 Business Days of receipt of that Notice.

Introduced 11/03/04 Origin SCH 3A.10.2

### **13.11 TAX LAWS**

#### **13.11.1 Principal Issuer to company with Tax laws**

The Principal Issuer will use its best endeavours to:

- (a) comply with all applicable Tax laws as agent and attorney of the Depositary Nominee;
- (b) ensure that the Depositary Nominee complies with all applicable Tax laws; and
- (c) not do any act or thing which creates a Tax liability, or not omit to do any act or thing, the omission of which creates a Tax liability, which must be discharged by the Depositary Nominee, unless provision has been made for the discharge of the liability by some person other than the Depositary Nominee.

The obligations of the Principal Issuer and the Depositary Nominee are subject to all relevant Tax laws.

Introduced 11/03/04 Origin SCH 3A.11.1, 3A.11.2

### **13.12 NOTICE**

#### **13.12.1 Notice to Holders of CDIs**

Any obligation to give notice to Holders of CDIs under Rules 13.1 to 13.13 must be discharged upon the Depositary Nominee giving notice to the Holder of CDIs at the address of the Holder of CDIs noted on the CDI Register.

Introduced 11/03/04 Origin SCH 3A.12.1

### **13.13 GENERAL INDEMNITY**

#### **13.13.1 Principal Issuer to indemnify the Depositary Nominee**

The Principal Issuer indemnifies the Depositary Nominee against all expenses, losses, damages and costs that the Depositary Nominee may sustain or incur in connection with:

- (a) CDIs;
- (b) its capacity as holder of Principal Financial Products;
- (c) any act done, or required to be done, by the Principal Issuer (whether or not on behalf of the Depositary Nominee) under Rules 13.1 to 13.13 of the Rules; and
- (d) any act otherwise done or required to be done by the Depositary Nominee under Rules 13.1 to 13.13 of the Rules.

Introduced 11/03/04 Origin SCH 3A.13.1