OVERSEAS SHIPHOLDING GROUP INC
Form 10-Q
May 01, 2008

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-Q

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

For the quarterly period ended MARCH 31, 2008

OR

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

For the transition period from to

Commission File Number 1-6479-1

OVERSEAS SHIPHOLDING GROUP, INC.

(Exact name of registrant as specified in its charter)

DELAWARE	**13-2637623**
(State or other jurisdiction of incorporation or organization)	(IRS Employer Identification No.)
666 Third Avenue, New York, New York	**10017**
(Address of principal executive offices)	(Zip Code)

(212) 953-4100
Registrant s telephone number, including area code

No Change
Former name, former address and former fiscal year, if changed since last report

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

YES x NO o

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

Large accelerated filer x

Accelerated filer o

Non-accelerated filer o

Smaller reporting company o

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

YES o NO x

APPLICABLE ONLY TO CORPORATE ISSUERS

Indicate the number of shares outstanding of each of the issuer s classes of common stock, as of the latest practical date.

Common Shares outstanding as of April 29, 2008 30,793,238

OVERSEAS SHIPHOLDING GROUP, INC. AND SUBSIDIARIES

CONDENSED CONSOLIDATED BALANCE SHEETS

DOLLARS IN THOUSANDS

	March 31, 2008 (Unaudited)	December 31, 2007
ASSETS		
Current Assets:		
Cash and cash equivalents	$ 578,646	$ 502,420
Voyage receivables, including unbilled of $151,280 and $135,210	190,731	180,406
Other receivables, including federal income taxes recoverable	74,635	84,627
Inventories, prepaid expenses and other current assets	57,506	37,300
Total Current Assets	901,518	804,753
Capital Construction Fund	137,556	151,174
Vessels and other property, less accumulated depreciation of $529,542 and $492,357	2,656,440	2,691,005
Vessels under capital leases, less accumulated amortization of $87,449 and $85,580	22,554	24,399
Vessels held for sale	33,779	
Deferred drydock expenditures, net	85,830	81,619
Total Vessels, Deferred Drydock and Other Property	2,798,603	2,797,023
Investments in Affiliated Companies	110,736	131,905
Intangible Assets, less accumulated amortization of $9,637 and $7,748	112,195	114,077
Goodwill	72,463	72,463
Other Assets	79,334	87,522
Total Assets	$ 4,212,405	$ 4,158,917
LIABILITIES AND STOCKHOLDERS EQUITY		
Current Liabilities:		
Accounts payable, sundry liabilities and accrued expenses	$ 151,741	$ 178,837
Current installments of long-term debt	26,100	26,058
Current obligations under capital leases	8,599	8,406
Total Current Liabilities	186,440	213,301
Long-term Debt	1,529,049	1,506,396
Obligations under Capital Leases	22,572	24,938
Deferred Gain on Sale and Leaseback of Vessels	181,904	182,076
Deferred Federal Income Taxes ($227,656 and $230,924) and Other Liabilities	287,413	281,711
Minority Interest	131,928	132,470
Stockholders Equity	1,873,099	1,818,025
Total Liabilities and Stockholders Equity	$ 4,212,405	$ 4,158,917

See notes to condensed consolidated financial statements.

OVERSEAS SHIPHOLDING GROUP, INC. AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

DOLLARS IN THOUSANDS, EXCEPT PER SHARE AMOUNTS

(UNAUDITED)

	Three Months Ended March 31,			
		2008		2007
Shipping Revenues:				
Pool revenues including $30,178 and $16,925 received from companies accounted for by the equity method	$	225,000	$	137,803
Time and bareboat charter revenues		92,487		84,934
Voyage charter revenues		93,189		52,547
		410,676		275,284
Operating Expenses:				
Voyage expenses		34,842		16,100
Vessel expenses		72,869		60,814
Charter hire expenses, including $20,877 in 2007 paid to a company accounted for by the equity method		90,671		49,416
Depreciation and amortization		47,591		42,483
General and administrative		37,285		29,038
(Gain)/loss on disposal of vessels		(5)		3
Total Operating Expenses		283,253		197,854
Income from Vessel Operations		127,423		77,430
Equity in Income of Affiliated Companies		1,329		3,384
Operating Income		128,752		80,814
Other Income		2,969		22,758
		131,721		103,572
Interest Expense		(18,363)		(13,168)
Income before Minority Interest and Federal Income taxes		113,358		90,404
Minority Interest		(923)		
Income before Federal Income Taxes		112,435		90,404
Provision for Federal Income Taxes				(5,752)
Net Income	$	112,435	$	84,652
Weighted Average Number of Common Shares Outstanding:				
Basic		31,107,499		39,062,855
Diluted		31,250,086		39,167,371
Per Share Amounts:				
Basic net income	$	3.61	$	2.17
Diluted net income	$	3.60	$	2.16
Cash dividends declared	$	0.3125	$	0.25

See notes to condensed consolidated financial statements.

OVERSEAS SHIPHOLDING GROUP, INC. AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

DOLLARS IN THOUSANDS

(UNAUDITED)

	Three Months Ended March 31, 2008	2007
Cash Flows from Operating Activities:		
Net income	$ 112,435	$ 84,652
Items included in net income not affecting cash flows:		
Depreciation and amortization	47,591	42,483
Amortization of deferred gain on sale and leasebacks	(12,236)	(11,689)
Deferred compensation relating to restricted stock and stock option grants	3,035	2,033
Provision/(credit) for deferred federal income taxes	(283)	2,834
Undistributed earnings of affiliated companies	4,427	7,277
Other net	(530)	386
Items included in net income related to investing and financing activities:		
Gain on sale of securities net		(15,015)
(Gain)/loss on disposal of vessels	(5)	3
Payments for drydocking	(16,058)	(7,838)
Distributions from subsidiaries to minority owners	(1,407)	
Changes in operating assets and liabilities	(39,751)	(26,862)
Net cash provided by operating activities	97,218	78,264
Cash Flows from Investing Activities:		
Purchases of marketable securities	(8,690)	
Expenditures for vessels	(144,442)	(57,673)
Withdrawals from Capital Construction Fund	15,050	98,500
Proceeds from disposal of vessels	135,110	79,664
Expenditures for other property	(3,390)	(2,392)
Investments in and advances to affiliated companies	(1,183)	(25,869)
Proceeds from disposal of investments in affiliated companies		69,276
Other net	(14)	749
Net cash provided by/(used in) investing activities	(7,559)	162,255
Cash Flows from Financing Activities:		
Purchases of treasury stock	(24,238)	(62,511)
Issuance of debt, net of issuance costs	30,000	
Payments on debt and obligations under capital leases	(9,480)	(183,113)
Cash dividends paid	(9,757)	(9,853)
Issuance of common stock upon exercise of stock options	281	180
Other net	(239)	2
Net cash used in financing activities	(13,433)	(255,295)
Net increase/(decrease) in cash and cash equivalents	76,226	(14,776)
Cash and cash equivalents at beginning of year	502,420	606,758
Cash and cash equivalents at end of period	$ 578,646	$ 591,982

See notes to condensed consolidated financial statements.

OVERSEAS SHIPHOLDING GROUP, INC. AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS EQUITY

DOLLARS IN THOUSANDS

(UNAUDITED)

	Common Stock*	Paid-in Additional Capital	Retained Earnings	Treasury Stock Shares	Treasury Stock Amount	Accumulated Other Comprehensive Income/(Loss)**	Total
Balance at January 1, 2008	$ 40,791	$ 208,817	$ 2,170,098	9,697,620	$ (583,708)	$ (17,973)	$ 1,818,025
Net Income			112,435				112,435
Net Unrealized Holding Gain on Available-for-Sale Securities						574	574
Effect of Derivative Instruments						(26,939)	(26,939)
Effect of Pension and Other Postretirement Benefit Plans						(134)	(134)
Comprehensive Income							85,936
Cash Dividends Declared			(9,757)				(9,757)
Deferred Compensation Related to Options Granted		1,215					1,215
Issuance of Restricted Stock Awards		(1,277)		(116,651)	1,277		
Amortization of Restricted Stock Awards		1,820					1,820
Options Exercised and Employee Stock Purchase Plan		222		(4,612)	59		281
Purchases of Treasury Stock				420,989	(24,238)		(24,238)
Increase in Loss on Public Offering of OSG America L.P. Units		(183)					(183)
Balance at March 31, 2008	$ 40,791	$ 210,614	$ 2,272,776	9,997,346	$ (606,610)	$ (44,472)	$ 1,873,099
Balance at January 1, 2007	$ 40,791	$ 202,712	$ 1,996,826	1,565,559	$ (34,522)	$ 1,504	$ 2,207,311
Net Income			84,652				84,652
Effect of Derivative Instruments						1,985	1,985
Effect of Pension and Other Postretirement Benefit Plans						(191)	(191)
Comprehensive Income							86,446
Cash Dividends Declared			(9,853)				(9,853)
Deferred Compensation Related to Options Granted		756					756
Issuance of Restricted Stock Awards		(1,662)		(139,708)	1,662		
Amortization of Restricted Stock Awards		1,277					1,277
Options Exercised and Employee Stock Purchase Plan		137		(3,404)	43		180
Purchases of Treasury Stock				1,052,373	(62,511)		(62,511)
Balance at March 31, 2007	$ 40,791	$ 203,220	$ 2,071,625	2,474,820	$ (95,328)	$ 3,298	$ 2,223,606

* Par value $1 per share; 120,000,000 shares authorized; 40,790,759 shares issued.

** Amounts are net of tax.

See notes to condensed consolidated financial statements.

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Notes to Condensed Consolidated Financial Statements:

Note A Basis of Presentation:

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. They do not include all of the information and footnotes required by generally accepted accounting principles. In the opinion of management, all adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation have been included. Operating results for the three months ended March 31, 2008 are not necessarily indicative of the results that may be expected for the year ending December 31, 2008.

The consolidated balance sheet as of December 31, 2007 has been derived from the audited financial statements at that date, but does not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements.

For further information, refer to the consolidated financial statements and footnotes thereto included in the Company s Annual Report on Form 10-K for the year ended December 31, 2007.

Vessels, deferred drydocking expenditures and other property Vessels are recorded at cost and are depreciated to their estimated salvage value on the straight-line basis over the lives of the vessels, which are generally 25 years. Each vessel s salvage value is equal to the product of its lightweight tonnage and an estimated scrap rate. Effective January 1, 2008, the Company effected a change in estimate related to the estimated scrap rate for substantially all of its vessels from $150 per lightweight ton to $300 per lightweight ton. The resulting increase in salvage value will be applied prospectively and will reduce depreciation by approximately $10,900,000 for the year ended December 31, 2008 and by approximately $2,700,000 for each quarter in 2008.

Newly Issued Accounting Standards

In September 2006, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 158 (FAS 158), Employers Accounting for Defined Benefit Pension and Other Postretirement Plans, an amendment of FASB Statements No. 87, 88, 106 and 132(R). FAS 158 requires companies to:

- recognize in its statement of financial position an asset for a defined benefit postretirement plan s overfunded status or a liability for a plan s underfunded status,
- measure a defined benefit postretirement plan s assets and obligations that determine its funded status as of the end of the employer s fiscal year, and
- recognize changes in the funded status of a defined benefit postretirement plan in comprehensive income in the year in which the changes occur.

FAS 158 does not change the amount of net periodic benefit cost included in net income or address the various measurement issues associated with postretirement benefit plan accounting. The requirement to recognize the funded status of a defined benefit postretirement plan and the disclosure requirements was effective for OSG for the year ended December 31, 2006. The requirement to measure plan assets and benefit obligations as of the date of the employer s fiscal year-end statement of financial position is

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Note A Basis of Presentation (continued):

effective for fiscal years ending after December 15, 2008. Earlier application of the measurement date provisions is encouraged; however, early application must be for all of an employer s benefit plans. The adoption of the measurement date provisions of FAS 158 will not have a material effect on the Company s financial position.

In December 2007, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 141 (revised 2007), Business Combinations (FAS 141R). FAS 141R establishes principles and requirements for how an acquirer recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, any noncontrolling interest in the acquiree and the goodwill acquired. FAS 141R also establishes disclosure requirements to enable the evaluation of the nature and financial effects of the business combination. FAS 141R applies prospectively to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. An entity may not apply it before that date.

In December 2007, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 160, Noncontrolling Interests in Consolidated Financial Statements an amendment of Accounting Research Bulletin No. 51 (FAS 160). FAS 160 establishes accounting and reporting standards for ownership interests in subsidiaries held by parties other than the parent, the amount of consolidated net income attributable to the parent and to the noncontrolling interest, changes in a parent s ownership interest and the valuation of retained noncontrolling equity investments when a subsidiary is deconsolidated. FAS160 also establishes disclosure requirements that clearly identify and distinguish between the interests of the parent and the interests of the noncontrolling owners. FAS 160 is effective for fiscal years, and interim periods within those fiscal years, beginning on or after December 15, 2008. Earlier adoption is prohibited. This statement is required to be applied prospectively as of the beginning of the fiscal year in which it initially applied, except for the presentation and disclosure requirements, which must be applied retrospectively for all periods presented.

In March 2008, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 161, Disclosures about Derivative Instruments and Hedging Activities, an amendment of Statement of Financial Accounting Standards No. 133 (FAS 161). FAS 161 requires qualitative disclosures about an entity s objectives and strategies for using derivatives and quantitative disclosures about how derivative instruments and related hedged items affect an entity s financial position, financial performance and cash flows. FAS 161 is effective for fiscal years, and interim periods within those fiscal years, beginning after November 15, 2008, with early application allowed. FAS 161 allows but does not require, comparative disclosures for earlier periods at initial adoption.

OVERSEAS SHIPHOLDING GROUP, INC. AND SUBSIDIARIES

Note B Earnings per Common Share:

The computation of basic earnings per share is based on the weighted average number of common shares outstanding during the period. The computation of diluted earnings per share assumes the exercise of all dilutive stock options and restricted stock units using the treasury stock method. The components of the calculation of basic earnings per share and diluted earnings per share are as follows:

Dollars in thousands	Three Months Ended March 31, 2008	2007
Net income	$ 112,435	$ 84,652
Common shares outstanding, basic:		
Weighted average shares outstanding, basic	31,107,499	39,062,855
Common shares outstanding, diluted:		
Weighted average shares outstanding, basic	31,107,499	39,062,855
Dilutive equity awards	142,587	104,516
Weighted average shares outstanding, diluted	31,250,086	39,167,371

The anti-dilutive effects of equity awards that were excluded from the calculation of diluted earnings per share were not material.

Note C Acquisitions:

Heidmar Lightering

In April 2007, OSG acquired the Heidmar Lightering business from a subsidiary of Morgan Stanley Capital Group Inc. for cash of approximately $41,000,000. The operation provided crude oil lightering services to refiners, oil companies and trading companies primarily in the U.S. Gulf with a fleet of four International Flag Aframaxes and two U.S. Flag workboats. The business managed a portfolio of one-to-three year fixed rate cargo contracts. Under the agreement, OSG acquired the lightering fleet, which was time chartered-in, including a 50% residual interest in two specialized lightering Aframaxes. The operating results of the Heidmar Lightering business have been included in the Company s financial statements commencing April 1, 2007.

Note D Business and Segment Reporting:

The Company has three reportable segments: International Crude Tankers, International Product Carriers and U.S. vessels. Segment results are evaluated based on income from vessel operations before general and administrative expenses and gain or loss on disposal of vessels. The accounting policies followed by the reportable segments are the same as those followed in the preparation of the Company s consolidated financial statements.

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Note D Business and Segment Reporting (continued):

Information about the Company s reportable segments as of and for the three months ended March 31, 2008 and 2007 follows:

In thousands	Crude Tankers	International Product Carriers	Other	U.S.	Totals
Three months ended March 31, 2008:					
Shipping revenues	$ 264,373	$ 74,921	$ 8,087	$ 63,295	$ 410,676
Time charter equivalent revenues	248,860	66,406	7,780	52,788	375,834
Depreciation and amortization	18,534	13,797	1,594	13,666	47,591
Gain on disposal of vessels	5				5
Income from vessel operations	136,505	15,375	2,381	10,442	164,703
Equity in income of affiliated companies	(882)		1,618	593	1,329
Investments in affiliated companies at March 31, 2008	26,821	900	82,384	631	110,736
Total assets at March 31, 2008	1,646,467	787,494	104,271	864,827	3,403,059
Expenditures for vessels	96,830	15,014		32,598	144,442
Payments for drydocking	3,625	7,245		5,188	16,058
Three months ended March 31, 2007:					
Shipping revenues	148,239	64,178	5,149	57,718	275,284
Time charter equivalent revenues	146,802	57,898	4,882	49,602	259,184
Depreciation and amortization	17,067	11,359	1,334	12,723	42,483
Loss on disposal of vessels	5		(8)		(3)
Income from vessel operations	76,241	16,583	157	13,490	106,471
Equity in income of affiliated companies	2,355		170	859	3,384
Investments in affiliated companies at March 31, 2007	126,957	600	111,929	897	240,383
Total assets at March 31, 2007	1,624,145	644,087	112,764	729,135	3,110,131
Expenditures for vessels	14,095	10,094	64	33,420	57,673
Payments for drydocking	3,069	4,755		14	7,838

Reconciliations of time charter equivalent revenues of the segments to shipping revenues as reported in the consolidated statements of operations follow:

	Three Months Ended March 31,	
In thousands	2008	2007
Time charter equivalent revenues	$ 375,834	$ 259,184
Add: Voyage expenses	34,842	16,100
Shipping revenues	$ 410,676	$ 275,284

Consistent with general practice in the shipping industry, the Company uses time charter equivalent revenues, which represents shipping revenues less voyage expenses, as a measure to compare revenue generated from a voyage charter to revenue generated from a time charter. Time charter equivalent revenues, a non-GAAP measure, provides additional meaningful information in conjunction with

OVERSEAS SHIPHOLDING GROUP, INC. AND SUBSIDIARIES

Note D Business and Segment Reporting (continued):

shipping revenues, the most directly comparable GAAP measure, because it assists Company management in making decisions regarding the deployment and use of its vessels and in evaluating their financial performance.

Reconciliations of income from vessel operations of the segments to income before federal income taxes as reported in the consolidated income statements follow:

In thousands	Three Months Ended March 31, 2008	2007
Total income from vessel operations of all segments	$ 164,703	$ 106,471
General and administrative expenses	(37,285)	(29,038)
Gain/(loss) on disposal of vessels	5	(3)
Consolidated income from vessel operations	127,423	77,430
Equity in income of affiliated companies	1,329	3,384
Other income	2,969	22,758
Interest expense	(18,363)	(13,168)
Minority interest	(923)	
Income before federal income taxes	$ 112,435	$ 90,404

Reconciliations of total assets of the segments to amounts included in the consolidated balance sheets follow:

In thousands	March 31, 2008	March 31, 2007
Total assets of all segments	$ 3,403,059	$ 3,110,131
Corporate cash and securities, including Capital Construction Fund	716,202	813,167
Other unallocated amounts	93,144	115,149
Consolidated total assets	$ 4,212,405	$ 4,038,447

Note E Equity Method Investments:

Investments in affiliated companies include joint ventures and other investments accounted for using the equity method. As of March 31, 2008, the Company had approximately a 50% interest in two joint ventures. One joint venture has four LNG Carriers and the other joint venture has two VLCCs under construction.

Floating Storage and Offloading Service Vessels (FSO)

In February 2008, OSG announced that Maersk Oil Qatar AS has awarded two charters to a joint venture between OSG and Euronav NV for eight year terms. The Company has a 50% interest in this joint venture. The charters provide for two V-Pluses, the TI Africa (currently wholly owned by OSG) and the TI Asia (currently wholly owned by Euronav), to be contributed to the joint venture and then converted to FSOs at an approximate cost of $150 million each, excluding lost revenue during the conversion period. The FSOs are expected to commence service in the second half of 2009. The joint venture expects to finance the conversion costs with bank borrowings.

OVERSEAS SHIPHOLDING GROUP, INC. AND SUBSIDIARIES

Note E   Equity Method Investments (continued):

Double Hull Tankers, Inc.

In October 2005, OSG sold seven tankers (three VLCCs and four Aframaxes) to Double Hull Tankers, Inc. (DHT) in connection with DHT s initial public offering. In consideration, the Company received $412,580,000 in cash and 14,000,000 shares in DHT, representing a 46.7% equity stake in the new tanker concern. In November 2005, the Company sold 648,500 shares of DHT, pursuant to the exercise of the over-allotment option granted to the underwriters of DHT s initial public offering, and received net cash proceeds of $7,315,000. During 2007, the Company sold the remaining 13,351,500 shares of DHT and received net cash proceeds of $194,706,000 ($69,276,000 in the first quarter of 2007). Such sales reduced the Company s interest in DHT to 0.0% as of June 30, 2007 (29.2% as of March 31, 2007) from 44.5% as of December 31, 2006. OSG has time chartered the vessels back from DHT for initial periods of five to six and one-half years with various renewal options of up to an additional five to eight years, depending on the vessel. The charters provide for profit sharing with DHT when the aggregate TCE revenues earned by the vessels exceed the aggregate basic charter hire defined in the agreement. Under related agreements, a subsidiary of the Company technically manages these vessels for DHT for amounts that have been fixed (except for vessel insurance premiums) over the term of the agreements.

VLCC Joint Venture

In January 2007, the Company acquired a 49.99% interest in a company, which is constructing two VLCCs, for approximately $24,100,000. The vessels are scheduled to be delivered to the joint venture in 2009 and 2010. The remaining commitments under the construction contracts will be financed by the joint venture through advances from the partners. The Company expects to make additional advances aggregating approximately $86,000,000 during the period from 2008 to 2010.

LNG Joint Venture

In November 2004, the Company formed a joint venture with Qatar Gas Transport Company Limited (Nakilat) whereby companies in which OSG holds a 49.9% interest ordered four 216,000 cbm LNG Carriers. Upon delivery in late 2007 and early 2008, these vessels commenced 25-year time charters to Qatar Liquefied Gas Company Limited (II). The aggregate construction cost for such newbuildings of $918,026,000 was financed by the joint venture through long-term bank financing that is nonrecourse to the partners and partner contributions. The joint venture has entered into floating-to-fixed interest rate swaps with a group of major financial institutions that are being accounted for as cash flow hedges. The interest rate swaps cover notional amounts aggregating approximately $877,659,000 pursuant to which it will pay fixed rates of approximately 4.9% and receive a floating rate based on LIBOR. These agreements have maturity dates ranging from July to November 2022. As of March 31, 2008, the joint venture has recorded a liability of $53,956,000 for the fair value of these swaps. The Company s share of such amount is included in accumulated other comprehensive income/(loss) in the accompanying balance sheet.

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Note E Equity Method Investments (continued):

A condensed summary of the results of operations of the equity method investments follows:

In thousands	Three Months Ended March 31, 2008	2007
Time charter equivalent revenues	$ 54,109	$ 52,436
Ship operating expenses	(40,922)	(39,255)
Income from vessel operations	13,187	13,181
Other income	741	451
Interest expense *	(8,935)	(3,233)
Net income	$ 4,993	$ 10,399

*** Interest is net of amounts capitalized in connection with vessel construction of $3,033 (2008) and $4,587 (2007).**

Note F Derivatives and Fair Value Disclosures:

Forward Freight Agreements and Bunker Swaps

The Company enters into tanker Forward Freight Agreements (FFAs), FFA options and bunker swaps with an objective to utilize them as both: (i) economic hedging instruments that reduce its exposure to changes in the spot market rates earned by some of its vessels in the normal course of its shipping business; or (ii) for trading purposes to take advantage of short term fluctuations in the market.

Certain FFAs and bunker swap trades qualified as cash flow hedges for accounting purposes at March 31, 2008 with the change in fair value of the effective portions being recorded in accumulated other comprehensive income/(loss) as a loss amounting to $7,804,000. All qualifying hedges together with FFAs that do not qualify for hedge accounting are shown at fair value in the balance sheet.

As of March 31, 2008, the Company recorded a net liability of $19,614,000 related to the fair values of all of these agreements representing positions that extend to December 2010. For the three months ended March 31, 2008 and 2007, OSG recognized net losses of $4,809,000 and $2,602,000, respectively, from transactions involving FFAs, FFA options and bunker swaps.

The following table presents the amounts, which are net of taxes, that the Company expects to reclassify from accumulated other comprehensive income/(loss) as of March 31, 2008 related to the effective portions of FFAs and bunker swap trades that will affect earnings for the balance of 2008, 2009 and 2010:

In thousands as of March 31, 2008		**Income/(Loss)**
2008	$	545
2009		(7,673)
2010		(676)
	$	(7,804)

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Note F Derivatives and Fair Value Disclosures (continued):

Interest Rate Swaps

As of March 31, 2008, the Company is a party to floating-to-fixed interest rate swaps, which are being accounted for as cash flow hedges, with various major financial institutions covering notional amounts aggregating approximately $376,700,000 pursuant to which it pays fixed rates ranging from 2.9% to 5.4% and receives floating rates based on LIBOR (approximately 2.7% as of March 31, 2008). These agreements contain no leverage features and have maturity dates ranging from December 2008 to August 2014. As of March 31, 2008, the Company has recorded a liability of $4,905,000 related to the fair values of these swaps.

The following table presents the fair values, which are pre tax, for assets and liabilities measured on a recurring basis as of March 31, 2008 (in thousands):

Description	**Fair Value**	**Level 1: Quoted prices in active markets for identical liabilities**	**Level 2: Significant other observable inputs**
Liabilities:			
Derivatives	$ 24,519	$ 13,154(1)	$ 11,365(2)
Assets:			
Available-for-sale marketable securities	$ 9,573	$ 9,573	

(1) Forward Freight Agreements and bunker swaps

(2) Standard interest rate swaps ($4,905) and FFA options ($6,460)

Note G Debt:

In November 2007, OSG America L.P., a subsidiary of OSG, entered into a $200 million five-year senior secured revolving credit agreement, which is nonrecourse to the Company. Borrowings under this facility bear interest at a rate based on LIBOR. The facility may be extended by 24 months subject to approval by lenders.

During the first quarter of 2008, the Company repurchased principal amounts of $2,500,000 of its 8.75% debentures that were due in December 2013 and recognized a loss of approximately $100,000. In addition, in April 2008, the Company announced it would redeem, at a premium, its outstanding 8.25% Senior Notes due March 2013 with a principal amount of $176,115,000. The Company expects to complete the purchase on May 15, 2008 at which time it will recognize a loss of $7,265,000, equal to the premium paid, in other income, and will write off, as

additional interest expense, the balance of the unamortized deferred debt expense in the approximate amount of $2,150,000.

As of March 31, 2008, the Company had unused long-term unsecured credit availability of approximately $1,195,000,000 which reflects $48,333,000 of letters of credit issued principally in connection with the construction of four Aframaxes.

OVERSEAS SHIPHOLDING GROUP, INC. AND SUBSIDIARIES

Note G Debt (continued):

Agreements related to long-term debt provide for prepayment privileges (in certain instances with penalties), limitations on the amount of total borrowings and secured debt, and acceleration of payment under certain circumstances, including failure to satisfy certain financial covenants.

As of March 31, 2008, approximately 29.0% of the net book value of the Company s vessels is pledged as collateral under certain debt agreements.

Interest paid, excluding capitalized interest, amounted to $26,989,000 and $16,325,000 for the three month periods ended March 31, 2008 and 2007, respectively.

Note H Taxes:

On October 22, 2004, the President of the U.S. signed into law the American Jobs Creation Act of 2004. The Jobs Creation Act reinstated tax deferral for OSG s foreign shipping income for years beginning after December 31, 2004. Effective January 1, 2005, the earnings from shipping operations of the Company s foreign subsidiaries are not subject to U.S. income taxation as long as such earnings are not repatriated to the U.S. The Company intends to permanently reinvest these earnings, as well as the undistributed income of its foreign companies accumulated through December 31, 1986, in foreign operations. Accordingly, no provision for U.S. income taxes on the shipping income of its foreign subsidiaries was required in 2008 and 2007. Further, no provision for U.S. income taxes on the Company s share of the undistributed earnings of its less than 50%-owned foreign shipping joint ventures was required as of March 31, 2008, because the Company intends to indefinitely reinvest such earnings ($80,000,000 at March 31, 2008). The unrecognized deferred U.S. income taxes attributable thereto approximated $27,900,000.

As of March 31 2008, undistributed earnings on which U.S. income taxes have not been provided aggregated approximately $2,134,000,000, including $119,000,000 earned prior to 1976; the unrecognized deferred U.S. income tax attributable to such undistributed earnings approximated $746,000,000.

The components of the provision/(credit) for federal income taxes follow:

	Three Months Ended March 31,			
In thousands		**2008**		**2007**
Current	$	283	$	2,918
Deferred		(283)		2,834
	$		$	5,752

At December 31, 2007, the Company had a reserve of approximately $5,400,000 for benefits attributable to tax positions taken during the current and prior tax periods for which the probability of recognition is considered less than more likely than not. There was no material change in the reserve during the three months ended March 31, 2008.

OVERSEAS SHIPHOLDING GROUP, INC. AND SUBSIDIARIES

Note I Capital Stock and Stock Compensation:

In April 2007, the Company s Board of Directors authorized a new share repurchase program of $200,000,000. Such purchases of the Company s common stock will be made at the Company s discretion and take into account such factors as price and prevailing market conditions. As of March 31, 2008, the Company had repurchased 2,532,385 shares of its common stock under the 2007 program.

In the first three months of 2008 and 2007, the Company awarded a total of 117,541 and 143,351 shares, respectively, of restricted common stock at no cost to certain of its employees, including senior officers. Restrictions limit the sale or transfer of these shares until they vest, which occurs over a four or five-year period. During the restriction period, the shares will have voting rights and cash dividends will be paid if declared. The weighted average fair value of the restricted stock issued during the three months ended March 31, 2008 and 2007 was $64.92 and $56.42 per share, respectively. In addition, in the first three months of 2008 and 2007, options covering 254,991 and 346,391 shares were granted, respectively, at the market prices at the date of the grant. Such options were valued using the Black-Scholes option pricing model and expire ten years from the grant date. The weighted average exercise prices of options granted during the three months ended March 31, 2008 and 2007 were $64.92 and $58.78 per share, respectively (the market prices at dates of grant). The weighted average grant date fair values of options granted during the three months ended March 31, 2008 and 2007 were $18.32 and $17.96 per share, respectively.

In the first three months of 2007, the Company granted a total of 278,083 performance related restricted stock units and performance related options covering 146,270 shares to certain of its employees, including senior officers. Each performance stock unit represents a contingent right to receive one share of common stock if certain market related performance goals are met and the covered employees are continuously employed through the end of the period over which the performance goals are measured. The performance stock units have no voting rights and may not be transferred or otherwise disposed of until they vest. In certain instances, cash dividends, if declared, will be held uninvested and without interest and paid in cash if and when such performance stock units vest. The weighted average grant-date market prices of the performance stock units awarded during the first three months of 2007 was $56.46 per share. The estimated weighted average grant-date fair value of performance stock units awarded during the first three months of 2007 was $20.41 per share. The weighted average exercise price of the performance options awarded during the first three months of 2007 was $63.44 per share (the market price at date of grant). The estimated weighted average grant-date fair value of performance options awarded during the first three months of 2007 was $17.23 per share.

Compensation expense is recognized over the vesting period, contingent or otherwise, applicable to each grant, using the straight-line method.

OVERSEAS SHIPHOLDING GROUP, INC. AND SUBSIDIARIES

Note J Accumulated Other Comprehensive Income/(Loss):

The components of accumulated other comprehensive income/(loss), net of related taxes, in the consolidated balance sheets follow:

In thousands as of		March 31, 2008		December 31, 2007
Unrealized gains on available-for-sale securities	$	574	$	
Unrealized losses on derivative instruments		(39,634)		(12,695)
Items not yet recognized as a component of net periodic benefit cost (pension and other postretirement plans)		(5,412)		(5,278)
	$	(44,472)	$	(17,973)

Included in accumulated other comprehensive income/(loss) at March 31, 2008 are the following amounts that have not yet been recognized in net periodic cost: unrecognized transition obligation of $1,640,000 ($1,144,000 net of tax), unrecognized prior service costs of $456,000 ($375,000 net of tax) and unrecognized actuarial losses of $5,677,000 ($3,893,000 net of tax). The transition obligation, prior service credit and actuarial loss previously included in accumulated other comprehensive income/(loss) recognized in net periodic cost during the three months ended March 31, 2008 were $50,000, $21,000 and $123,000, respectively.

Note K Leases:

1. Charters-in:

As of March 31, 2008, the Company had commitments to charter-in 76 vessels. Seventy-three of such charter-ins are, or will be, accounted for as operating leases, of which 36 are bareboat charters and 37 are time charters. The future minimum commitments and related number of operating days under these operating leases are as follows:

Bareboat Charters-in:

Dollars in thousands at March 31, 2008		Amount	Operating Days
2008	$	94,714	7,218
2009		134,084	8,193
2010		142,573	7,182
2011		152,067	7,273
2012		153,561	7,320
Thereafter		561,523	24,744
Net minimum lease payments	$	1,238,522	61,930

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OVERSEAS SHIPHOLDING GROUP, INC. AND SUBSIDIARIES

Note K Leases (continued):

Time Charters-in:

Dollars in thousands at March 31, 2008		Amount	Operating Days
2008	$	174,057	7,474
2009		243,974	9,556
2010		231,685	9,055
2011		174,098	7,094
2012		90,694	4,610
Thereafter		242,187	14,561
Net minimum lease payments	$	1,156,695	52,350

The future minimum commitments for time charters-in have been reduced to reflect estimated days that the vessels will not be available for employment due to drydock.

The future minimum commitments under three bareboat charters-in that are classified as capital leases are as follows:

Dollars in thousands at March 31, 2008		
2008	$	8,110
2009		10,808
2010		9,692
2011		8,103
Net minimum lease payments		36,713
Less amount representing interest		(5,542)
Present value of net minimum lease payments	$	31,171

During the three months ended March 31, 2008, the Company sold and chartered back one International Flag Product Carrier, which bareboat charter is classified as an operating lease. The aggregate gain on the transaction of approximately $12,100,000 was deferred and is being amortized over the seven and one-half year term of the lease as a reduction of charter hire expenses. The lease provides the Company with certain purchase options.

OVERSEAS SHIPHOLDING GROUP, INC. AND SUBSIDIARIES

Note K Leases (continued):

2. Charters-out:

The future minimum revenues, before reduction for brokerage commissions, expected to be received on noncancelable time charters and the related revenue days (revenue days represent calendar days, less days that vessels are not available for employment due to repairs, drydock or lay-up) are as follows:

Dollars in thousands at March 31, 2008		Amount	Revenue Days
2008	$	270,106	10,364
2009		248,399	8,258
2010		228,385	5,832
2011		205,482	4,336
2012		143,891	2,818
Thereafter		179,895	2,967
Net minimum lease payments	$	1,276,158	34,575

Future minimum revenues do not include the Company s share of time charters entered into by the pools in which it participates. Revenues from a time charter are not generally received when a vessel is off-hire, including time required for normal periodic maintenance of the vessel. In arriving at the minimum future charter revenues, an estimated time off-hire to perform periodic maintenance on each vessel has been deducted, although there is no assurance that such estimate will be reflective of the actual off-hire in the future.

Charters on two vessels provide the charterer with options to buy the vessels at the end of the charters in June 2009 at fixed prices, which will approximate their expected book values. As of March 31, 2008, the charterer has exercised its purchase option for one of the two vessels.

Note L Pension and Other Postretirement Benefit Plans:

The net periodic benefit cost for the Company s domestic defined benefit pension, and postretirement health care and life insurance plans was not material during the three months ended March 31, 2008 and 2007.

There has been no material contribution to the Company s domestic defined benefit plans for the 2007 plan year, and the Company believes that there will be no material contribution for the 2008 plan year.

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OVERSEAS SHIPHOLDING GROUP, INC. AND SUBSIDIARIES

Note M Other Income:

Other income consists of:

In thousands	Three Months Ended March 31, 2008	2007
Investment income:		
Interest and dividends	$ 6,297	$ 6,920
Gain/(loss) on sale of securities and other investments	(7)	15,015
	6,290	21,935
Loss on repurchases of debt	(100)	
Loss on derivative transactions	(3,255)	(200)
Miscellaneous net	34	1,023
	$ 2,969	$ 22,758

Note N Commitments:

As of March 31, 2008, the Company had remaining commitments for vessels to be wholly owned by the Company of $1,007,047,000 on non-cancelable contracts for the construction or rebuilding of 19 vessels (four Aframaxes, six Panamax Product Carriers, two Handysize Product Carriers and seven ATBs, including a contract for the double hulling of one existing ATB) and the purchase of another two newbuilding Panamax Product Carriers upon their delivery from the shipyard, which are scheduled for delivery between 2008 and 2011.

The Company has entered into agreements to sell two of the above Aframax and two of the Panamax Product Carrier newbuildings upon each vessel s delivery from the shipyard, at prices that should approximate each vessel s delivered cost. These four newbuildings will then be chartered back for periods of 10 and 12 years. Three of such agreements provide the Company with certain purchase options.

Note O Vessel Sales:

During the three months ended March 31, 2008, OSG entered into agreements to sell two vessels, one International Flag Handysize Product Carrier and its remaining single hull U.S. Flag barge (M 215) for delivery during the second quarter of 2008. Such vessels were classified as held for sale in the consolidated balance sheet as of March 31, 2008. In addition, in April 2008, the Company entered into an agreement to sell one of its 1994-built International Flag Aframaxes, also for delivery to the buyer during the second quarter of 2008. A gain of approximately $24,000,000 will be recognized in the second quarter attributable to the sale of these three vessels.

The Company has entered into an agreement to sell one of its 2000-built VLCCs for forward delivery. At the discretion of the purchaser, the vessel will be delivered no later than July 2009, at which time OSG expects to recognize a gain on the sale of a minimum of $75,000,000. The agreement also provides for profit sharing with the purchaser, effective through the date of delivery of the vessel, when time charter equivalent

rates earned exceed a base rate defined in the agreement.

OVERSEAS SHIPHOLDING GROUP, INC. AND SUBSIDIARIES

Note P Subsequent Events:

Effective April 1, 2008, OSG entered into a term charter agreement with a subsidiary, OSG America L.P. for the charter-out of the OSG Liberty/OSG 300 and the OSG Constitution/OSG400, two ATBs currently working in the U.S. Flag lightering business, at fixed daily rates. The agreement assigns the charter contracts on these two ATBs to OSG America L.P. The terms of each of the charters are coterminus with the completion of each unit s lightering service, which is expected to occur through 2009. In addition, also effective April 1, 2008, the Company entered into term charter agreements with OSG America L.P. to charter-in five vessels, three of which are currently employed by OSG America L.P. in the spot market (two ATBs, the OSG 242/Columbia and the OSG 243/Independence, and one Product Carrier, the Overseas New Orleans) and two Product Carriers (the Overseas Philadelphia and Overseas Puget Sound) upon the completion of their current time charters in 2009. All five of these charter-in agreements are at fixed daily rates for terms commencing either on April 1, 2008 or upon the expiry of such vessel s current time charter and ending on or about December 31, 2009. Management believes that the fixed daily rates in the above charter-in agreements are at rates that approximate market rates.

OVERSEAS SHIPHOLDING GROUP, INC. AND SUBSIDIARIES

MANAGEMENT S DISCUSSION AND ANALYSIS OF

FINANCIAL CONDITION AND RESULTS OF OPERATIONS

General:

The Company is one of the largest independent bulk shipping companies in the world. The Company s operating fleet as of March 31, 2008 consisted of 116 vessels aggregating 12.4 million dwt and 864,800 cbm, including three vessels that have been chartered-in under capital leases and 53 vessels that have been chartered-in under operating leases. In addition to its operating fleet of 116 vessels, charters-in for 20 vessels are scheduled to commence upon delivery of the vessels between 2008 and 2011 and 21 newbuilds (including one U.S. Flag ATB that is being converted to a double hull configuration) are scheduled for delivery between 2008 and 2011, bringing the total operating and newbuild fleet to 157 vessels.

Operations:

The Company s revenues are highly sensitive to patterns of supply and demand for vessels of the size and design configurations owned and operated by the Company and the trades in which those vessels operate. Rates for the transportation of crude oil and refined petroleum products from which the Company earns a substantial majority of its revenue are determined by market forces such as the supply and demand for oil, the distance that cargoes must be transported, and the number of vessels expected to be available at the time such cargoes need to be transported. The demand for oil shipments is significantly affected by the state of the global economy and level of OPEC s exports. The number of vessels is affected by newbuilding deliveries and by the removal of existing vessels from service, principally because of scrapings or conversions. The Company s revenues are also affected by the mix of charters between spot (Voyage Charter) and long-term (Time Charter). Because shipping revenues and voyage expenses are significantly affected by the mix between voyage charters and time charters, the Company manages its vessels based on TCE revenues. Management makes economic decisions based on anticipated TCE rates and evaluates financial performance based on TCE rates achieved.

Overview

Average spot rates during the first quarter of 2008 for VLCCs were significantly higher than rates realized in the first quarter of 2007 while rates for crude Panamaxes and Aframaxes were slightly below last year s first quarter levels. First quarter 2008 Product Carrier rates were significantly below the comparable quarter last year.

OPEC production, excluding Ecuador, rose 5.2% to 31.8 million barrels per day (b/d) relative to the first quarter of 2007 and was a major factor behind the strong performance in the crude oil tanker markets during the first quarter of 2008. There were also increased shipments of West African crude oil to China as refiners there maintained a high refining utilization rate to meet their growing domestic demand. Weather related delays in the Black Sea and in the Caribbean led to increased tanker utilization rates, bolstering freight rates in the Suezmax, Aframax and Panamax sectors. Lower clean product rates reflected a reduction in trans-Atlantic shipments from Europe to the U.S. as gasoline demand

declined relative to the first quarter of 2007, resulting in an increase in gasoline inventory levels on both sides of the Atlantic, closing the gasoline arbitrage window.

OVERSEAS SHIPHOLDING GROUP, INC. AND SUBSIDIARIES

Operations (continued):

Worldwide oil demand during the first quarter of 2008 was approximately 87.3 million b/d, an increase of 1.3 million b/d, or 1.5%, compared with the first quarter of 2007. Demand in Non-OECD countries increased by 4.0% against an OECD decline of 0.4%. The demand increase in non-OECD countries was centered in China where demand grew by 410,000 b/d, or 5.6%, led by increased gasoline, aviation fuel and diesel fuel consumption, and in the Middle East, where demand expanded by 320,000 b/d, or 5.0%. Demand in North America, the largest consuming area in the world, declined by 2.6% as gasoline use fell below last year s levels while demand in both OECD Europe and OECD Asia increased slightly.

Production in Middle East OPEC countries during the first quarter of 2008 increased by approximately 1.4 million b/d over the first quarter of 2007 and by approximately 400,000 b/d over the fourth quarter of 2007. Higher first quarter production compared with the first quarter of 2007 reflects a 500,000 b/d increase in the official OPEC production quota as well as an increase of 500,000 b/d in Iraqi production, which is not currently subject to production quotas. A lower level of field maintenance in the UAE relative to the fourth quarter of 2007 accounted for much of the first quarter increase in overall Middle East OPEC production. The higher Middle East liftings enhanced tanker utilization rates for VLCCs and had a positive impact on rates in all crude tanker sectors.

Crude oil inventories increased by approximately 29.6 million barrels in the U.S. from beginning-of-the year levels as total U.S. refining utilization rates declined to 85.5% in the first quarter from 87.9% in the fourth quarter of 2007. The increase in crude oil inventories was primarily due to planned refinery maintenance activity as well as unplanned downtime at a few U.S. Gulf Coast refineries.

Crude oil imports into China increased by approximately 12% during the first quarter 2008 compared with the first quarter of 2007. This increase was sourced from long-haul areas such as the Middle East and North and West Africa, providing a boost to tonne-mile demand.

Newbuilding prices remained strong during the first quarter of 2008 due to higher raw material costs and the continuation of a substantial amount of contracting for tanker and dry cargo newbuildings. Newbuilding prices increased by approximately 3.5% for VLCCs since the beginning of the year while prices for Product Carriers remained stable. Prices for modern second hand vessels have also remained strong.

Scrap prices reached record high levels in the first quarter of 2008. As a result of the high scrap prices as well as the strong dry cargo markets there were approximately 30 tankers that were either scrapped or converted to dry bulk carriers.

The tables below show the daily TCE rates that prevailed in markets in which the Company s vessels operated for the periods indicated. It is important to note that the spot market is quoted in Worldscale rates. The conversion of Worldscale rates to the following TCE rates required the Company to make certain assumptions as to brokerage commissions, port time, port costs, speed and fuel consumption, all of which will vary in actual usage. In each case, the rates may differ from the actual TCE rates achieved by the Company in the period indicated because of the timing and length of voyages, waiting time and the portion of revenue generated from long-term charters. For example, TCE rates for VLCCs are reflected in the earnings of the Company approximately one month after such rates are reflected in the tables below calculated on the basis of fixture dates.

OVERSEAS SHIPHOLDING GROUP, INC. AND SUBSIDIARIES

Operations (continued):

International Flag VLCCs

	Spot Market TCE Rates VLCCs in the Arabian Gulf* Three Months Ended March 31,			
	2008		2007	
Average	$	83,600	$	44,200
High	$	250,000	$	75,600
Low	$	46,200	$	26,900

** Based on 60% Arabian Gulf to Eastern destinations and 40% Arabian Gulf to Western destinations*

Rates for VLCCs trading out of the Arabian Gulf in the first quarter of 2008 averaged $83,600 per day, an increase of 89% over first quarter 2007 rates and approximately 12% higher than rates in the last quarter of 2007. Higher first quarter 2008 rates reflect additional movements of Middle East crude oil as well as a net reduction in the size of the VLCC fleet.

Movements of Middle East crudes to China increased by over 200,000 b/d during the first quarter of 2008 compared with the first quarter of 2007. China s West African crude oil imports also increased with record volumes delivered in February 2008. West African crudes yield a high level of middle distillates, particularly diesel, which is in short supply in China. Demand for diesel in China is highest during the planting season in the second quarter.

Additionally, Venezuelan crude and fuel oil exports to China significantly increased in the first quarter from the same quarter in 2007. Venezuela s disagreement with ExxonMobil resulted in an increase in crude oil shipments to Asia, specifically China. This change in supply pattern is favorable to tonne-mile demand given both the length of the Venezuela-to-Asia voyage and the additional tonne miles generated by ExxonMobil sourcing alternative crudes to be processed at their U.S. Gulf Coast refinery.

In response to the Hebei Spirit accident, the use of single hull tankers into South Korea declined from an average of 50% during the first quarter of 2007 to approximately 30% during the first quarter of 2008. This has increased the demand for double hull tankers and has resulted in a daily rate differential of approximately $17,000 per day between double and single hull tankers.

There was also a reduction in the VLCC fleet during the first quarter as there were six deliveries compared with 11 conversions or deletions. Lower available tonnage combined with additional tonne-mile demand provided the environment for strong first quarter VLCC rates.

The number of VLCCs in service as of April 1, 2008 was 499 vessels (147.2 million dwt). The world VLCC tanker fleet is expected to further decline during the second quarter of 2008 as tanker conversions and scrappings are forecast to exceed deliveries. The number of deliveries during the second half of 2008, however, is forecast to exceed conversions and scrappings. The VLCC orderbook totaled 196 vessels (60.4 million dwt) at April 1, 2008 equivalent to 41.0% of the existing VLCC fleet, based on deadweight tons.

OVERSEAS SHIPHOLDING GROUP, INC. AND SUBSIDIARIES

Operations (continued):

International Flag Suezmaxes

Spot Market TCE Rates
Suezmaxes in the Atlantic*
Three Months Ended March 31,

	2008	**2007**
Average	$ 47,600	$ 47,400
High	$ 82,500	$ 79,200
Low	$ 27,000	$ 35,900

** 2008 rates based on West Africa toU.S. Gulf Coast: 2007 rates based on West Africa to U.S. East Coast*

Rates during the first quarter of 2008 averaged $47,600 per day. Suezmax rates were positively influenced by a 16% increase in long haul North African crude oil shipments to China relative to the first quarter of 2007 and from an increase in long haul cargo movements from the Caribbean to Far East destinations. The longer ballast legs resulting from these long haul movements reduced available Suezmax tonnage in the West African and Black Sea cargo trades.

Ten to 12 day days of weather-related delays in the Turkish Straits in February had a favorable impact on Suezmax rates in the first quarter. Additionally, there was a decline in relatively short-haul crude oil exports from Russia to Europe in the first quarter due to an increase in Russia s own demand and to higher export taxes. These short-haul supplies were replaced by shipments from longer-haul OPEC sources, including West Africa and the Middle East.

Refinery utilization rates on the U.S. East and Gulf Coasts in the first quarter of 2008 averaged about 83%, well below historical levels and were the primary reason for the increase in crude oil inventory levels in the U.S. since the beginning of the year. Refinery utilization rates are forecast to increase in the coming months with the restart of a number of Gulf Coast refineries and waning refinery maintenance activities, which should have peaked in March.

The world Suezmax fleet increased by one vessel during the first quarter of 2008 to 366 vessels (55.4 million dwt) at April 1, 2008. The Suezmax orderbook of 140 vessels (22.1 million dwt) at April 1, 2008 represented 39.9% of the existing Suezmax fleet, based on deadweight tons.

International Flag Aframaxes

Spot Market TCE Rates
Aframaxes in the Caribbean*
Three Months Ended March 31,

	2008		2007	
Average	$	35,900	$	37,400
High	$	73,100	$	51,000
Low	$	5,200	$	26,000

** Based on Caribbean to the U.S .Gulf and Atlantic Coasts*

OVERSEAS SHIPHOLDING GROUP, INC. AND SUBSIDIARIES

Operations (continued):

Rates for Aframaxes operating in the Caribbean during the first quarter of 2008 averaged $35,900 per day, a decrease of 4% from the first quarter of 2007 and 1% below the average for the fourth quarter of 2007.

Aframax rates were strong in the Caribbean during the first quarter as weather-related delays on Mexico s East Coast and along the U.S. Gulf Coast tied up tonnage, which improved tanker utilization rates. Lightering activity also picked up in the first quarter as the large quantity of Middle East cargoes that were loaded late in the fourth quarter of 2007 arrived at the U.S. Gulf.

Aframax rates in the Mediterranean were not as strong as those realized in the Caribbean. Refiners in Europe reduced discretionary crude runs as margins weakened significantly due to the closing of both the gasoline arbitrage window to the U.S. and the heavy fuel oil arbitrage window to Asia. Moreover, a decline in first quarter 2008 North Sea production of approximately 300,000 b/d compared with the comparable period a year ago negatively impacted Aframax demand.

Strong demand for larger tonnage, particularly for long haul voyages to Eastern destinations, had a beneficial knock-on effect on rates for Aframaxes operating in the Black Sea. Weather delays in the Turkish Straits also boosted tanker utilization rates, which had a positive effect on freight rates.

The world Aframax fleet expanded by five vessels since December 31, 2007 and reached 760 vessels (78.1 million dwt) at April 1, 2008. The Aframax orderbook was 285 vessels (31.4 million dwt) at April 1, 2008, representing 40.2% of the existing Aframax fleet, based on deadweight tons.

International Flag Panamaxes

Spot Market TCE Rates
Panamaxes Crude and Residual

Oils*
Three Months Ended March 31,

	2008	2007
Average	$ 28,500	$ 31,300
High	$ 53,800	$ 39,000
Low	$ 14,300	$ 19,500

**Based on 50% Caribbean to U.S. Gulf and Atlantic Coasts and 50% Ecuador to U.S. West Coast*

Rates for Panamaxes that move crude and residual oils averaged $28,500 per day during the first quarter of 2008, 20% higher than the previous quarter but 9% below the corresponding quarter in 2007. In March, there were extended delays in the Panama Canal and in Puerto Rico, which constrained tonnage and lifted freight rates relative to the previous quarter. Rates relative to the fourth quarter were also buoyed by an increase in fuel oil shipments from Brazil to Europe.

OVERSEAS SHIPHOLDING GROUP, INC. AND SUBSIDIARIES

Operations (continued):

Fuel oil inventory levels in the U.S. stood at 39.7 million barrels at the end of the first quarter of 2008 compared with 39.6 million barrels at the end of December 2007. It is unlikely that inventory levels or fuel oil demand will increase in the near-term since fuel oil prices currently remain above natural gas prices on a BTU basis.

The world Panamax fleet at April 1, 2008 stood at 388 vessels (26.7 million dwt). The fleet increased by five tankers during the first quarter of 2008. The orderbook of 130 vessels (9.5 million dwt) at April 1, 2008 represented 35.6% of the existing Panamax fleet, based on deadweight tons.

International Flag Handysize Product Carriers

	Spot Market TCE Rates Handysize Product Carriers* Three Months Ended March 31,			
	2008		2007	
Average	$	17,300	$	28,300
High	$	23,300	$	39,000
Low	$	13,200	$	19,100

** Based on 60% trans-Atlantic and 40% Caribbean to U.S. Atlantic Coast*

Rates for Product Carriers operating in the Caribbean and trans-Atlantic trades averaged $17,300 per day during the first quarter of 2008, about 39% below rates in the first quarter of 2007, but 30% above rates in the last quarter of 2007.

U.S. gasoline demand declined in the first quarter relative to the first quarter of 2007 as gasoline inventories increased by approximately 17 million barrels compared with an inventory decline of approximately four million barrels during the first quarter of 2007. The combined effect of reduced gasoline demand and rising inventory levels effectively closed the gasoline arbitrage window, which curtailed trans-Atlantic product movements and negatively impacted Product Carrier freight rates.

Despite a significant increase in product imports into China, especially diesel, Product Carrier rates in Asia remained relatively weak. Weak refining margins in Asia resulted in discretionary refining cuts in Japan and South Korea, reducing intra-Asian product movements just as additional tonnage arrived in the region. A decline in naphtha imports into Asia from the Middle East also exerted pressure on Asian Product Carrier rates.

Due to a strike by farmers in Argentina that affected soybean oil production, there was a reduction in long haul Argentine soybean oil exports to China in the first quarter. This also had an adverse impact on triangulation opportunities for movements of palm oil. Specifically, after unloading Argentine soybean oil in China, Product Carriers frequently ballast to Malaysia to take on palm oil, which is then delivered to Europe.

The world Handysize fleet increased by 29 vessels during the first quarter of 2008 and reached 1,369 vessels (56.9 million dwt) at April 1, 2008. The orderbook stands at 579 vessels (26.7 million dwt) at April 1, 2008, equivalent to 47.0% of the existing Handysize fleet, based on deadweight tons.

OVERSEAS SHIPHOLDING GROUP, INC. AND SUBSIDIARIES

Operations (continued):

U.S. Flag Jones Act Product Carriers

	Average Spot Market TCE Rates Jones Act Product Carriers and Product Articulated Barges (ATBs) Three Months Ended March 31,	
	2008	**2007**
40,000 dwt Tankers	$ 51,000	$ 64,800
30,000 dwt ATBs	$ 31,500	$ 41,900

Rates for Jones Act Product Carriers and ATBs averaged $51,000 per day and $31,500 per day respectively during the first quarter of 2008. Rates for both vessel types reflected a decline of about 25% relative to the first quarter of 2007 and a decline of 2% and 6%, respectively, relative to the fourth quarter of 2007.

Lower first quarter 2008 rates reflect an increase in waiting time for cargoes as U.S. Gulf Coast refinery utilization rates declined from 87.4% during the first quarter of 2007 to 82.9% in the first quarter of 2008. Lower refinery utilization reduced product shipments from the Gulf Coast areas.

The Delaware Bay lightering business transported an average of 249,000 b/d during the quarter, which was 3% below the first quarter of 2007 and 7% below the fourth quarter of 2007. Lower lightering volumes were due to reduced crude runs at East Coast refineries as some refineries, such as Valero s refinery in Paulsboro, underwent planned maintenance work.

One rebuilt vessel entered the market during the first quarter and one other vessel remained out of the market undergoing conversion to double hull. As of March 31, 2008, the total Jones Act Product Carrier fleet of tankers, ATBs and ITBs (Integrated Tug Barges) consisted of 62 vessels (2.4 million dwt).

The March 31, 2008 Jones Act Product Carrier orderbook consisted of 31 tankers and barges in the 160,000 to 420,000 barrel size range, which are scheduled for delivery through 2011, and an additional two vessels scheduled for delivery beyond 2011, resulting in a total orderbook of 33 vessels. These additions will be partially offset by deletions as there are 22 vessels that will be phased out during the next nine years in accordance with OPA 90 regulations. An additional seven double-hull tankers that are over 35 years old will also likely be retired, resulting in a total of 30 vessels to be phased out.

Outlook

According to the International Energy Agency, world oil demand in 2008 is expected to average 87.2 million b/d, an increase of 1.5%, or 1.3 million b/d over 2007. Demand growth is forecast to increase by 1.4% during the second quarter and by 1.5% in both the third and fourth quarters of 2008 relative to the comparable 2007 periods.

OVERSEAS SHIPHOLDING GROUP, INC. AND SUBSIDIARIES

Operations (continued):

Similar to the first quarter of 2008, demand growth for all of 2008 is forecast to be highest in China (about 4.7%), the Middle East (about 5.7%) and other Asia (about 3%). Meeting the demand growth in Asia during the remainder of this year will likely necessitate additional long-haul movements from both the Middle East and Africa that will increase tonne-mile demand.

OPEC producers maintained existing quota levels at their March 5, 2008 meeting believing that the market is currently well supplied and that crude oil prices of over $100 per barrel are primarily the result of a weak dollar and market speculation. Maintaining their production quota supports Middle East long-haul exports at current levels. There will also be additional seaborne movements as new production commences in West Africa, Brazil and the Caspian Sea area during the last half of 2008.

Worldwide refinery throughput levels and utilization rates are forecast to increase during the second and third quarters of this year, although refinery throughput in China during the second quarter is forecast to be slightly below first quarter levels, as maintenance occurs on units where work had been deferred from the fourth quarter of 2007 in order to meet distillate demand. Refinery runs in China are forecast to increase in the third quarter following the start-up of Sinopec s new 200,000 b/d refinery at Qingdao late in the second quarter and before the start of the Olympics in Beijing in August 2008.

A slowdown in the world s economy could restrain demand growth during the remainder of this year from forecast levels. The IMF has recently lowered to 3.7% their prediction for 2008 global economic growth. While growth in the U.S. was reduced from 1.5% to 0.5% for 2008, changes in emerging economies were less pronounced with some countries now showing higher forecasted growth.

Current oil prices continue to be higher than prices in the futures market resulting in a backwardation market. Inventories usually build-up when the market is in contango (when the price of oil in the futures market is higher than the current market price) and a move from backwardation to a contango position could support freight rates during the remainder of 2008.

Freight rates remain highly sensitive to severe weather and geopolitical events. Hurricanes in the Gulf of Mexico could have a pronounced effect on freight rates for both crude oil and product movements depending on the extent to which upstream and downstream facilities are affected. Geopolitical events, such as ongoing violence in Nigeria s oil producing Niger delta, escalating tensions with Iran and other regional conflicts in the Middle East, could also cause changes in supply patterns that could significantly impact rates.

The growth in tanker supply for 2008 is forecast to be below 2007 levels at approximately 5% to 6%, depending on the actual numbers of single hull tankers that are converted to very large ore carriers for the dry bulk market or scrapped.

OVERSEAS SHIPHOLDING GROUP, INC. AND SUBSIDIARIES

Update on Critical Accounting Policies:

The Company s consolidated financial statements are prepared in accordance with accounting principles generally accepted in the United States, which require the Company to make estimates in the application of its accounting policies based on the best assumptions, judgments, and opinions of management. For a description of all of the Company s material accounting policies, see Note A to the Company s consolidated financial statements included in the Company s Annual Report on Form 10-K for the year ended December 31, 2007.

Vessel Lives and Impairment

The carrying value of each of the Company s vessels represents its original cost at the time it was delivered or purchased less depreciation calculated using an estimated useful life of 25 years (except for LNG Carriers for which an estimated useful life of 35 years is used) from the date such vessel was originally delivered from the shipyard or 20 years from the date the Company s ATBs were rebuilt. Effective January 1, 2008, the Company effected a change in estimate related to the estimated scrap rate for substantially all of its vessels from $150 per lightweight ton to $300 per lightweight ton. The resulting increase in salvage value will reduce depreciation by approximately $10,900,000 for the year ended December 31, 2008 and by approximately $2,700,000 for each quarter in 2008. The Company s assumptions used in the determination of estimated salvage value took into account current scrap prices, which are in excess of $700 per lightweight ton, the historic pattern of scrap rates over the four years ended December 31, 2007, which ranged from $250 to over $500 per lightweight ton, estimated changes in future market demand for scrap steel and estimated future demand for vessels. Although management believes that the assumptions used to determine the scrap rate are reasonable and appropriate, such assumptions are highly subjective, in part, because of the cyclicality of the nature of future demand for scrap steel.

Newly Issued Accounting Standards

In September 2006, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 158 (FAS 158), Employers Accounting for Defined Benefit Pension and Other Postretirement Plans, an amendment of FASB Statements No. 87, 88, 106 and 132(R). FAS 158 requires companies to:

- recognize in its statement of financial position an asset for a defined benefit postretirement plan s overfunded status or a liability for a plan s underfunded status,

- measure a defined benefit postretirement plan s assets and obligations that determine its funded status as of the end of the employer s fiscal year, and

- recognize changes in the funded status of a defined benefit postretirement plan in comprehensive income in the year in which the changes occur.

FAS 158 does not change the amount of net periodic benefit cost included in net income or address the various measurement issues associated with postretirement benefit plan accounting. The requirement to recognize the funded status of a defined benefit postretirement plan and the disclosure requirements was effective for OSG for the year ended December 31, 2006. The requirement to measure plan assets and

OVERSEAS SHIPHOLDING GROUP, INC. AND SUBSIDIARIES

Update on Critical Accounting Policies (continued):

benefit obligations as of the date of the employer s fiscal year-end statement of financial position is effective for fiscal years ending after December 15, 2008. Earlier application of the measurement date provisions is encouraged; however, early application must be for all of an employer s benefit plans. The adoption of the measurement date provisions of FAS 158 will not have a material effect on the Company s financial position.

In December 2007, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 141 (revised 2007), Business Combinations (FAS 141R). FAS 141R establishes principles and requirements for how an acquirer recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, any noncontrolling interest in the acquiree and the goodwill acquired. FAS 141R also establishes disclosure requirements to enable the evaluation of the nature and financial effects of the business combination. FAS 141R applies prospectively to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. An entity may not apply it before that date.

In December 2007, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 160, Noncontrolling Interests in Consolidated Financial Statements an amendment of Accounting Research Bulletin No. 51 (FAS 160). FAS 160 establishes accounting and reporting standards for ownership interests in subsidiaries held by parties other than the parent, the amount of consolidated net income attributable to the parent and to the noncontrolling interest, changes in a parent s ownership interest and the valuation of retained noncontrolling equity investments when a subsidiary is deconsolidated. FAS 160 also establishes disclosure requirements that clearly identify and distinguish between the interests of the parent and the interests of the noncontrolling owners. FAS 160 is effective for fiscal years, and interim periods within those fiscal years, beginning on or after December 15, 2008. Earlier adoption is prohibited. This statement is required to be applied prospectively as of the beginning of the fiscal year in which it initially applied, except for the presentation and disclosure requirements, which must be applied retrospectively for all periods presented.

In March 2008, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 161, Disclosures about Derivative Instruments and Hedging Activities, an amendment of Statement of Financial Accounting Standards No. 133 (FAS 161). FAS 161 requires qualitative disclosures about an entity s objectives and strategies for using derivatives and quantitative disclosures about how derivative and related hedged items affect an entity s financial position, financial performance and cash flows. FAS 161 is effective for fiscal years, and interim periods within those fiscal years beginning after November 15, 2008, with early application allowed. FAS 161 allows but does not require, comparative disclosures for earlier periods at initial adoption.

OVERSEAS SHIPHOLDING GROUP, INC. AND SUBSIDIARIES

Income from Vessel Operations:

During the first quarter of 2008, TCE revenues increased by $116,650,000 or approximately 45%, to $375,834,000 from $259,184,000 in the first quarter of 2007 mainly due to a 1,052 day increase in revenue days and an increase in the daily TCE rates earned by the Company s VLCCs. During the first quarter of 2008, approximately 73% of the Company s TCE revenues were derived in the spot market compared with 64% in the first quarter of 2007. In the first quarter of 2008, approximately 27% of TCE revenues were generated from time or bareboat charters (term) compared with 36% in the first quarter of 2007.

Reliance on the spot market contributes to fluctuations in the Company s revenue, cash flow, and net income, but affords the Company greater opportunity to increase income from vessel operations when rates rise. On the other hand, time and bareboat charters provide the Company with a predictable level of revenues.

During the first quarter of 2008, income from vessel operations increased by $49,993,000, or 65%, to $127,423,000 from $77,430,000 in the first quarter of 2007. See Note E to the condensed financial statements for additional information on the Company s segments, including equity in income of affiliated companies and reconciliations of (i) time charter equivalent revenues to shipping revenues and (ii) income from vessel operations for the segments to income before federal income taxes, as reported in the consolidated statements of operations. Information with respect to the Company s proportionate share of revenue days for vessels operating in companies accounted for using the equity method is shown below in the discussion of Equity in Income of Affiliated Companies.

International Crude Tankers (dollars in thousands)

	Three Months Ended March 31,			
		2008		2007
TCE revenues	$	248,860	$	146,802
Vessel expenses		(28,796)		(20,057)
Charter hire expenses		(65,025)		(33,437)
Depreciation and amortization		(18,534)		(17,067)
Income from vessel operations (a)	$	136,505	$	76,241
Average daily TCE rate	$	54,659	$	38,767
Average number of owned vessels (b)		26.0		26.0
Average number of vessels chartered-in under operating leases		24.4		16.8
Number of revenue days (c)		4,553		3,786
Number of ship-operating days:(d)				
Owned vessels		2,366		2,340
Vessels bareboat chartered-in under operating leases		518		360
Vessels time chartered-in under operating leases		1,517		1,154
Vessels spot chartered-in under operating leases		188		

(a) Income from vessel operations by segment is before general and administrative expenses and gain on disposal of vessels.

(b) The average is calculated to reflect the addition and disposal of vessels during the period.

(c) Revenue days represent ship-operating days less days that vessels were not available for employment due to repairs, drydock or lay-up. Revenue days are weighted to reflect the Company s interest in chartered-in vessels.

(d) Ship-operating days represent calendar days.

OVERSEAS SHIPHOLDING GROUP, INC. AND SUBSIDIARIES

Income from Vessel Operations (continued):

The following tables provide a breakdown of TCE rates achieved for the three months ended March 31, 2007 and 2008 between spot and time charter rates. The information is based, in part, on information provided by the pools or commercial joint ventures in which the segment s vessels participate.

Three months ended March 31,	2008 Spot Charter	2008 Time Charter	2007 Spot Charter	2007 Time Charter
VLCCs: (a)				
Average rate	$ 98,565	$	$ 47,861	$
Revenue days	1,471		1,376	
Suezmaxes:				
Average rate	$ 31,788	$	$	$
Revenue days	154			
Aframaxes: (b)				
Average rate	$ 35,859	$ 30,825	$ 42,172	$ 29,140
Revenue days	1,543	233	954	319
Panamaxes:				
Average rate	$ 35,289	$ 26,638	$ 31,634	$ 25,059
Revenue days	543	451	419	538

(a) Spot charter TCE results include the effect of forward freight agreements. Excluding such effect, the average spot charter TCE rate for the three months ended March 31, 2008 would have been $99,021 per day. The above information excludes the Company s two V-Pluses, 158 days for the three months ended March 31, 2008 and 180 days for the three months ended March 31, 2007.

(b) Spot charter TCE results include the effect of forward freight agreements. Excluding such effect, the average spot charter TCE rate for the three months ended March 31, 2008 and 2007 would have been $36,421 and $42,704 per day, respectively.

During the first quarter of 2008, TCE revenues for the International Crude Tankers segment increased by $102,058,000, or 70%, to $248,860,000 from $146,802,000 in the first quarter of 2007 reflecting a significant increase in average rates earned on the VLCCs and a 766 increase in revenue days. The International Crude Tankers segment includes the operating results of the Heidmar lightering business from April 1, 2007, the effective date of the transaction. The acquisition of the lightering business added TCE revenues of $18,700,000 and 508 revenue days to results for the three months ended March 31, 2008. TCE revenues for the first quarter of 2008 reflect a loss of $1,554,000 generated by forward freight agreements, compared with a loss of $507,000 for the three months ended March 31, 2007.

Vessel expenses increased by $8,739,000 to $28,796,000 in the first three months of 2008 from $20,057,000 in the first three months of 2007 reflecting an increase of 184 owned and bareboat chartered-in days. This increase was principally attributable to the commencement of bareboat charters on two Suezmaxes in December 2007 and January 2008. In addition, average daily vessel expenses increased by $1,784 per day, principally as a result of increases in crew costs and repairs and the timing of fees and services. Charter hire expenses increased by $31,588,000 to $65,025,000 in the first three months of 2008 from $33,437,000 in the first three months of 2007, principally as a result of (i) the acquisition of the Heidmar lightering business, which added $14,255,000, (ii) additional profit sharing due to the owners of chartered-in VLCC tonnage because of the increase in the TCE rates earned in the 2008 quarter compared with the first quarter of 2007, and (iii) additional VLCCs and Aframaxes

(a) Spot charter TCE results include the effect of forward freight agreements. Excluding such effect, the avera

OVERSEAS SHIPHOLDING GROUP, INC. AND SUBSIDIARIES

Income from Vessel Operations (continued):

chartered-in in conjunction with the Company s pool partners. Depreciation and amortization increased by $1,467,000 to $18,534,000 from $17,067,000 in the first three months of 2007 principally due to the inclusion of amounts attributable to the Heidmar lightering business, partially offset by the impact on depreciation of the increase in salvage values effective on January 1, 2008.

International Product Carriers (dollars in thousands)	**Three Months Ended March 31,**			
		2008		**2007**
TCE revenues	$	66,406	$	57,898
Vessel expenses		(21,431)		(18,874)
Charter hire expenses		(15,803)		(11,082)
Depreciation and amortization		(13,797)		(11,359)
Income from vessel operations	$	15,375	$	16,583
Average daily TCE rate	$	21,059	$	20,298
Average number of owned vessels		16.0		17.0
Average number of vessels chartered-in under operating leases		19.7		15.7
Number of revenue days		3,153		2,881
Number of ship-operating days:				
Owned vessels		1,456		1,529
Vessels bareboat chartered-in under operating leases		1,427		1,171
Vessels time chartered-in under operating leases		364		244

The following tables provide a breakdown of TCE rates achieved for the three months ended March 31, 2008 and 2007 between spot and time charter rates. The information is based, in part, on information provided by the commercial joint ventures in which certain of the segment s vessels participate.

	2008				**2007**			
Three months ended March 31,	**Spot Charter**		**Time Charter**		**Spot Charter**		**Time Charter**	
Panamax Product Carriers:								
Average rate	$	35,099	$	18,640	$		$	17,654
Revenue days		182		182				180
Handysize Product Carriers: (a)								
Average rate	$	24,500	$	19,417	$	27,495	$	18,092
Revenue days		832		1,957		723		1,978

(a) Spot charter TCE results include the effect of forward freight agreements. Excluding such effect, the average spot charter TCE rate for the three months ended March 31, 2007 would have been $30,148 per day.

(a) Spot charter TCE results include the effect of forward freight agreements. Excluding such effect, the avera

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(a) Spot charter TCE results include the effect of forward freight agreements. Excluding such effect, the avera

OVERSEAS SHIPHOLDING GROUP, INC. AND SUBSIDIARIES

Income from Vessel Operations (continued):

During the first quarter of 2008, TCE revenues for the International Product Carriers segment increased by $8,508,000, or 15%, to $66,406,000 from $57,898,000 in the first quarter of 2007. This increase in TCE revenues resulted from an increase in revenue days principally attributable to an increase in time chartered-in Handysize Product Carriers, reflecting the delivery of two vessels since January 1, 2007, and the acquisition of two Panamax Product Carriers, the Overseas Luzon and the Overseas Visayas, during 2007. TCE revenues for the first quarter of 2007 reflect a loss of $1,918,000 generated by forward freight agreements.

Vessel expenses increased by $2,557,000 to $21,431,000 in the first quarter of 2008 from $18,874,000 in the prior year s first quarter principally due to an increase in operating days, attributable to the purchase of the two Panamax Product Carriers, and a $443 per day increase in average daily vessel expenses. The increase was principally the result of increases in crew and environmental compliance costs and the timing of delivery of spares. Charter hire expenses increased by $4,721,000 to $15,803,000 in the first quarter of 2008 from $11,082,000 in the first quarter of 2007 due to the delivery of two time chartered-in vessels and the sale and bareboat charter back of three Handysize Product Carriers (Overseas Limar, Overseas Nedimar and Overseas Rimar) since January 1, 2007. Depreciation and amortization increased by $2,438,000 to $13,797,000 in the first quarter of 2008 from $11,359,000 in the first quarter of 2007 principally due to the delivery of the two Panamax Product Carriers referred to above and increased amortization associated with older vessels that drydocked during 2008 and 2007. A number of the Handysize Product Carriers that drydocked in 2007, for the first time following the acquisition of Stelmar, are operating on bareboat charters that expire in mid 2009, thus shortening the period over which such drydock costs are amortized.

	Three Months Ended March 31,			
Other International (dollars in thousands)		**2008**		**2007**
TCE revenues	$	7,780	$	4,882
Vessel expenses		(639)		(206)
Charter hire expenses		(3,166)		(3,185)
Depreciation and amortization		(1,594)		(1,334)
Income from vessel operations	$	2,381	$	157
Average daily TCE rate	$	28,604	$	27,122
Average number of owned vessels		1.0		
Average number of vessels chartered-in under operating leases		2.0		2.0
Number of revenue days		272		180
Number of ship-operating days:				
Owned vessels		91		
Vessels time chartered-in under operating leases		181		180

As of March 31, 2008, the Company operated three Other International Flag vessels: two Dry Bulk Carriers and one Pure Car Carrier that was reflagged from the U.S. Flag in late October 2007. All three vessels are employed on long-term charters.

OVERSEAS SHIPHOLDING GROUP, INC. AND SUBSIDIARIES

Income from Vessel Operations (continued):

U. S. Segment (dollars in thousands)	Three Months Ended March 31, 2008	2007
TCE revenues	$ 52,788	$ 49,602
Vessel expenses	(22,003)	(21,677)
Charter hire expenses	(6,677)	(1,712)
Depreciation and amortization	(13,666)	(12,723)
Income from vessel operations	$ 10,442	$ 13,490
Average daily TCE rate	$ 33,355	$ 29,846
Average number of owned vessels	17.0	19.6
Average number of vessels chartered-in under operating leases	3.0	1.6
Number of revenue days	1,583	1,662
Number of ship-operating days:		
Owned vessels	1,547	1,767
Vessels bareboat chartered-in under operating leases	273	140

During the first quarter of 2008, TCE revenues for the U.S. segment increased by $3,186,000, or 6%, to $52,788,000 from $49,602,000 in the first quarter of 2007. The increase is mainly due to the delivery in 2007 of the first three vessels (Overseas Houston, Overseas Long Beach and the Overseas Los Angeles) in a series of twelve Jones Act Product Carriers to be constructed by Aker Philadelphia Shipyard and bareboat chartered to the Company. The delivery of these ships, which accounted for an increase of 243 revenue days, was partially offset by the sale of two Dry Bulk Carriers and the transfer of the Pure Car Carrier, Overseas Joyce, to Marshall Islands Flag during the fourth quarter of 2007. In addition, the Company s only single hull barge, which was sold for delivery in the second quarter, was in lay-up for the entire first quarter of 2008.

Vessel expenses increased by $326,000 to $22,003,000 in the first quarter of 2008 from $21,677,000 in the first quarter of 2008 principally due to an increase in average daily vessel expenses of $1,358 per day. This increase was principally attributable to increases in crew costs. In addition, the reflagging of the Overseas Joyce to International Flag had the effect of increasing the average daily vessel expenses since this vessel was receiving a subsidy under the U.S. Maritime Security Program that was intended to offset the increased cost of operating such vessel under the U.S. Flag. Charter hire expenses increased by $4,965,000 to $6,677,000 in the first quarter of 2008 from $1,712,000 in the first quarter of 2007 principally due to the delivery of the three vessels referred to above. Depreciation and amortization increased by $943,000 to $13,666,000 in the first quarter of 2008 from $12,723,000 in the first quarter of 2007 principally due to the amortization of costs incurred on vessels in the former Maritrans fleet that drydocked for the first time since the November 2006 acquisition.

OVERSEAS SHIPHOLDING GROUP, INC. AND SUBSIDIARIES

Income from Vessel Operations (continued):

General and Administrative Expenses

During the first quarter of 2008, general and administrative expenses increased by $8,247,000 to $37,285,000 from $29,038,000 in the first quarter of 2007 principally because of the following:

- an increase in compensation and benefits paid to shore-based staff of $3,500,000, including $1,002,000 related to non cash stock compensation;
- higher legal and consultancy costs of $1,825,000 and;
- incremental costs associated with the Houston and Manila offices of $1,139,000.

Equity in Income of Affiliated Companies:

During the first quarter of 2008, equity in income of affiliated companies decreased by $2,055,000 to $1,329,000 from $3,384,000 in the first quarter of 2007. The above decline reflects, in part, the Company s sale of its remaining interest in DHT during the first six months of 2007. Such sales reduced OSG s interest first to 29.2% in January 2007 and then to 0.0% in June 2007 from 44.5% as of December 31, 2006. In addition, from November 2007 to February 2008, four LNG Carriers delivered to a joint venture in which the company has a 49.9% interest. After a ballast voyage to the Middle East, the cost of which was expensed in accordance with current accounting rules, each vessel commenced 25-year time charters. Results for the first quarter of 2008 include the OSG s share, $1,400,000, of a severance arrangement recorded by a company that is accounted for using the equity method.

Additionally, the Company has a 37.5% interest in ATC, a company that operates U.S. Flag tankers to transport Alaskan crude oil for BP. ATC earns additional income (in the form of incentive hire paid by BP) based on meeting certain predetermined performance standards. Such income is included in the U.S. segment.

The following table is a summary of the Company s interest in its equity method investments, excluding ATC, and OSG s proportionate share of the revenue days for the respective vessels. Revenue days are adjusted for OSG s percentage ownership in order to state the revenue days on a basis comparable to that of a wholly-owned vessel. The ownership percentages reflected below are the Company s actual ownership percentages as of March 31, 2008 and 2007.

	2008		2007	
Three months ended March 31,	**Revenue Days**	**% of Ownership**	**Revenue Days**	**% of Ownership**
VLCCs operating on long-term charters			79	29.2%
Aframaxes operating on long-term charters			102	29.2%
LNG Carriers operating on long-term charters	135	49.9%		
Total	135	49.9%	181	29.2%

OVERSEAS SHIPHOLDING GROUP, INC. AND SUBSIDIARIES

Interest Expense:

The components of interest expense are as follows (in thousands):

	Three Months Ended March 31,	
	2008	2007
Interest before impact of swaps and capitalized interest	$ 24,617	$ 17,428
Impact of swaps	107	(15)
Capitalized interest	(6,361)	(4,245)
Interest expense	$ 18,363	$ 13,168

Interest expense increased by $5,195,000 to $18,363,000 in the first quarter of 2008 from $13,168,000 in the first quarter of 2007 as a result of an increase in the average amount of debt outstanding of $669,000,000 (substantially all of which was floating rate debt), which is principally attributable to the funding of share repurchases in 2007. This increase was partially offset by a decrease in the average rate paid on floating rate debt of close to 90 basis points to 5.0% from 5.8% in the first quarter of 2007 and an increase in the amount of interest capitalized in the first quarter of 2008 compared with the first quarter of 2007. The weighted average effective interest rate for debt (excluding capital lease obligations) outstanding at March 31, 2008 and 2007 was 5.3% and 6.7%, respectively. Such rates take into consideration related interest rate swaps.

Provision/(Credit) for Federal Income Taxes:

The income tax provisions for the three months ended March 31, 2008 and 2007 were based on the pre-tax results of the Company s U.S. subsidiaries, adjusted to include non-shipping income of the Company s foreign subsidiaries. The change in the income tax provision for the three months ended March 31, 2008 compared with the first three months of 2007 was principally the result of a decrease in non-shipping income of the Company s foreign subsidiaries in 2008.

On October 22, 2004, the President of the U.S. signed into law the American Jobs Creation Act of 2004. The Jobs Creation Act reinstated tax deferral for OSG s foreign shipping income for years beginning after December 31, 2004. Effective January 1, 2005, the earnings from shipping operations of the Company s foreign subsidiaries are not subject to U.S. income taxation as long as such earnings are not repatriated to the U.S. Because the Company intends to permanently reinvest these earnings in foreign operations, no provision for U.S. income taxes on such earnings of its foreign subsidiaries is required after December 31, 2004.

EBITDA:

EBITDA represents operating earnings, which is before interest expense and income taxes, plus other income and depreciation and amortization expense. EBITDA is presented to provide investors with meaningful additional information that management uses to monitor ongoing operating

results and evaluate trends over comparative periods. EBITDA should not be considered a substitute for net income or cash flow from operating activities prepared in accordance with accounting principles generally

OVERSEAS SHIPHOLDING GROUP, INC. AND SUBSIDIARIES

EBITDA (continued):

accepted in the United States or as a measure of profitability or liquidity. While EBITDA is frequently used as a measure of operating results and performance, it is not necessarily comparable to other similarly titled captions of other companies due to differences in methods of calculation. The following table reconciles net income, as reflected in the condensed consolidated statements of operations, to EBITDA (in thousands):

	Three Months Ended March 31,			
		2008		2007
Net income	$	112,435	$	84,652
Provision for federal income taxes				5,752
Interest expense		18,363		13,168
Depreciation and amortization		47,591		42,483
EBITDA	$	178,389	$	146,055

Liquidity and Sources of Capital:

Working capital at March 31, 2008 was approximately $715,000,000 compared with $591,000,000 at December 31, 2007. Current assets are highly liquid, consisting principally of cash, interest-bearing deposits and receivables. In addition, the Company maintains a Capital Construction Fund with a market value of $137,556,000 at March 31, 2008. Net cash provided by operating activities in the first three months of 2008 was more than $97,000,000 (which is not necessarily indicative of the cash to be provided by operating activities for the year ending December 31, 2008) compared with $78,000,000 in the first three months of 2007. Current financial resources, together with cash anticipated to be generated from operations, are expected to be adequate to meet requirements in the next year. The Company s reliance on the spot market contributes to fluctuations in cash flows from operating activities. Any decrease in the average TCE rates earned by the Company s vessels in quarters subsequent to March 31, 2008, compared with the actual TCE rates achieved during the first three months of 2008, will have a negative comparative impact on the amount of cash provided by operating activities.

In order to increase liquidity, the Company periodically evaluates transactions which may result in either the sale or the sale and leaseback of certain vessels in its fleet.

During the second quarter of 2008, OSG will redeem, at a premium, its outstanding 8.25% Senior Notes due March 2013 with an aggregate principal amount of $176,115,000. The Company will borrow the full amount needed for the purchase under its long-term revolving credit facility. In addition, the Company has entered into forward start floating-to-fixed interest rate swaps at a weighted average rate of approximately 3.3% covering the full amount to be borrowed, enabling it to lock-in a reduction in interest expense of approximately $7,000,000 per annum through March 2013.

OVERSEAS SHIPHOLDING GROUP, INC. AND SUBSIDIARIES

Liquidity and Sources of Capital (continued):

In May 2007, OSG formed OSG America L.P., a master limited partnership (MLP), and on November 15, 2007, completed an initial public offering, issuing 7,500,000 common units (representing a 24.5% limited partner interest), priced at $19.00 per unit. OSG America L.P. trades on the New York Stock Exchange under the ticker OSP . The transaction generated approximately $129,300,000 in proceeds to OSG, which the Company used to pay down debt in the fourth quarter of 2007.

In November 2007, OSG America L.P., a subsidiary of OSG, entered into a $200 million five-year senior secured revolving credit agreement, which is nonrecourse to the Company. Borrowings under this facility bear interest at a rate based on LIBOR. The facility may be extended by 24 months subject to approval by the lenders.

The indentures pursuant to which the Company s senior unsecured notes were issued require the Company to secure the senior unsecured notes equally and comparably with any other unsecured indebtedness in the event OSG is required to secure such debt.

As of March 31, 2008, OSG had $2,000,000,000 of long-term unsecured credit availability, of which $757,000,000 had been borrowed and an additional $48,333,000 had been used for letters of credit issued principally in conjunction with the construction of four Aframaxes. The Company s two long-term revolving credit facilities mature as follows: $150,000,000 (2011), $350,000,000 (2012) and $1,500,000,000 (2013).

The Company was in compliance with all of the financial covenants contained in the Company s debt agreements as of March 31, 2008. The financing agreements impose operating restrictions and establish minimum financial covenants. Failure to comply with any of the covenants in the financing agreements could result in a default under those agreements and under other agreements containing cross-default provisions. A default would permit lenders to accelerate the maturity of the debt under these agreements and to foreclose upon any collateral securing that debt. Under those circumstances, the Company might not have sufficient funds or other resources to satisfy its obligations. Because a portion of OSG s debt is secured and because of limitations imposed by financing agreements on the ability to secure additional debt and to take other actions, the Company s ability to obtain other financing might be impaired.

Off-Balance Sheet Arrangements

As of March 31, 2008, the affiliated companies in which OSG held an equity interest had total bank debt outstanding of $917,915,000. Such debt is nonrecourse to the Company.

In November 2004, the Company formed a joint venture with Qatar Gas Transport Company Limited (Nakilat) whereby companies in which OSG holds a 49.9% interest ordered four 216,000 cbm LNG Carriers. Upon delivery in 2007 and 2008, these vessels commenced 25-year time charters to Qatar Liquefied Gas Company Limited (II). The aggregate construction cost for such newbuildings of $918,026,000 was financed by the joint venture through long-term bank financing that is nonrecourse to the partners and partner contributions. The joint venture has entered

into floating-to-fixed interest rate swaps with a group of major financial institutions that are being accounted for as cash flow

OVERSEAS SHIPHOLDING GROUP, INC. AND SUBSIDIARIES

Liquidity and Sources of Capital (continued):

hedges. The interest rate swaps cover notional amounts aggregating approximately $877,659,000, pursuant to which it will pay fixed rates of approximately 4.9% and receive a floating rate based on LIBOR. These agreements have maturity dates ranging from July to November 2022.

Aggregate Contractual Obligations

A summary of the Company s long-term contractual obligations, excluding operating lease obligations for office space, as March 31, 2008 follows (in thousands):

	Balance of 2008	2009	2010	2011	2012	Beyond 2012	T
Debt (1)	$ 76,330	$ 99,251	$ 98,646	$ 97,863	$ 111,544	$ 1,592,083	$ 2,0
Obligations under capital leases (1)	8,110	10,808	9,692	8,103			
Operating lease obligations (chartered-in vessels) (2)	268,771	378,058	374,258	326,165	244,255	803,710	2,3
Advances to affiliated companies	16,197	43,191	26,995				
Construction contracts and vessel purchase agreements (3)	273,160	277,648	292,911	151,336	11,992		1,0

For purposes of this document, acquisition agreement means any letter of intent, memorandum of understanding, agreement in principle, merger agreement, acquisition agreement, option agreement, joint venture agreement, partnership agreement or other similar agreement constituting or related to, or that is intended to or would reasonably be expected to lead to, any company takeover proposal (other than a confidentiality agreement referred to above).

Multifoods has agreed to promptly (but in any event within one calendar day) advise Smucker and Acquisition Sub in writing of the receipt, directly or indirectly, of any company takeover proposal, or any request for nonpublic information relating to Multifoods by any person that informs Multifoods or its representatives that the person is considering making, or has made, a company takeover proposal, or an inquiry from a person seeking to have

discussions or negotiations relating to a possible company takeover proposal. In addition, Multifoods has agreed to keep Smucker reasonably informed of the status and details (including amendments or proposed amendments) of the request, company takeover proposal or inquiry and to keep Smucker reasonably informed as to discussions or negotiations with respect to the request, company takeover proposal or inquiry.

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Termination of the Merger Agreement

Before the effective time of the merger, the merger agreement may be terminated:

by the mutual written consent of Smucker and Multifoods;

by either Smucker or Multifoods:

if the merger has not been consummated by December 31, 2004 or a later date, if any, upon which Smucker and Multifoods agree (referred to in this document as the termination date), provided that the right to terminate the merger agreement is not available to any party whose material breach of any provision of the merger agreement results in or causes the failure of the merger to be consummated by that time;

if the Smucker shareholders meeting (including any adjournment or postponement of the meeting) has concluded and the Smucker shareholder approval described in this document was not obtained;

if the Multifoods shareholder meeting (including any adjournment or postponement of the meeting) has concluded and the Multifoods shareholder approval described in this document was not obtained; or

if any restraint having the effect described above in the section entitled Conditions Precedent Conditions to each Party s Obligation to Effect the Merger has become final and nonappealable, provided that the right to terminate the merger agreement is not available to any party whose material breach of any provision of the merger agreement results in or causes the restraint or the failure of the restraint to be removed.

by Smucker:

if any of the conditions described above in the section entitled Conditions Precedent Conditions to each Party s Obligation to Effect the Merger or the section entitled Conditions Precedent Conditions to Obligations of Smucker shall become incapable of being fulfilled at any time on or before the termination date and shall not have been waived by Smucker and Smucker has provided Multifoods with written notice of its intent to terminate the merger agreement at least five business days prior to the effective date of the termination, provided that the inability to fulfill the condition is not due to the failure of Smucker or Acquisition Sub to comply in all material respects with its obligations under the merger agreement; or

if Multifoods board of directors or any committee of Multifoods board of directors has:

made an adverse recommendation;

approved or recommended, or proposed to or announced any intention to approve or recommend, any company takeover proposal;

proposed or announced any intention to enter into or entered into any acquisition agreement, other than a customary confidentiality agreement in compliance with Multifoods non-solicitation obligations set forth in the merger agreement, with respect to any company takeover proposal except to the extent required (as described below with respect to Multifoods termination rights) prior to the termination of the merger agreement by Multifoods; or

materially breached Multifoods non-solicitation obligations as set forth in the merger agreement or Multifoods obligations with respect to the Multifoods shareholders meeting set forth in the merger agreement.

by Multifoods:

if any of the conditions described above in the section entitled Conditions Precedent Conditions to each Party s Obligation to Effect the Merger or the section entitled Conditions Precedent Conditions to Obligations of Multifoods shall become incapable of being fulfilled at any time on or

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before the termination date and shall not have been waived by Multifoods and Multifoods has provided Smucker with written notice of its intention to terminate the merger agreement at least five business days prior to the effective date of the termination, provided that the inability to fulfill the condition is not due to the failure of Multifoods to comply in all material respects with its obligations under the merger agreement; or

if, at any time prior to obtaining the Multifoods shareholder approval (as described in this document):

Multifoods board of directors receives a superior proposal;

three business days have elapsed following Smucker s receipt of written notice from Multifoods advising Smucker that Multifoods board of directors intends to terminate the merger agreement and concurrently enter into an acquisition agreement with respect to the superior proposal and specifying the terms and conditions of the superior proposal and the identity of the party making the superior proposal that is the basis of the proposed action by Multifoods board of directors;

during the three business day period Multifoods affords Smucker a reasonable opportunity to make adjustments to the terms and conditions of the merger agreement as would enable Multifoods to proceed with the transactions contemplated by the merger agreement (as modified by such adjustments) because the company takeover proposal is no longer a superior proposal compared to the merger on the adjusted terms;

at the end of the three business day period (or periods, as applicable), Multifoods board of directors continues reasonably to believe that the company takeover proposal (as adjusted through any subsequent negotiations) that triggered the notice to Smucker of the superior proposal constitutes a superior proposal as compared to the merger (including any adjustments made to the merger);

Multifoods board of directors concurrently approves, and Multifoods concurrently enters into, a definitive agreement with respect to the superior proposal; and

at or prior to any termination by Multifoods in connection with its entering into a definitive agreement with respect to a superior proposal, Multifoods pays to Smucker the termination fee (described below).

Termination Fees and Expenses

Multifoods must pay Smucker a $17 million termination fee if prior to the Multifoods shareholders meeting a company takeover proposal has been made to Multifoods and has become known publicly or has been made directly to Multifoods shareholders generally or any person has publicly announced an intention (whether or not conditional) to make a company takeover proposal and:

the merger agreement is terminated by Smucker or Multifoods because the merger has not been consummated by the termination date and within 12 months after termination Multifoods consummates a company takeover proposal or enters into a definitive agreement with respect to a company takeover proposal that is subsequently consummated within or after this 12 month period;

the merger agreement is terminated by Smucker or Multifoods because the Multifoods shareholders meeting has concluded and the Multifoods shareholder approval is not obtained and within 12 months of termination Multifoods consummates a company takeover proposal or enters into a definitive agreement with respect to a company takeover proposal that is subsequently consummated within or after this 12-month period; or

the merger agreement is terminated by Smucker because the condition to closing relating to the accuracy of Multifoods representations and warranties or the performance of its obligations under the merger agreement has not been satisfied or waived, and within 12 months of termination Multifoods consummates a company takeover proposal or enters into a definitive agreement with respect to a company takeover proposal that is subsequently consummated within or after this 12-month period.

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In addition, Multifoods must pay Smucker a $17 million termination fee if:

- Smucker terminates the merger agreement because Multifoods board of directors or any committee of Multifoods board of directors has:
  - made an adverse recommendation;
  - approved or recommended, or proposed to or announced any intention to approve or recommend, any company takeover proposal;
  - proposed or announced any intention to enter into or entered into any acquisition agreement (other than a customary confidentiality agreement in compliance with Multifoods non-solicitation obligations) with respect to a company takeover proposal except to the extent required by the merger agreement in connection with Multifoods termination rights; or
  - materially breached its non-solicitation obligations or obligations with respect to the Multifoods shareholders meeting.
- Multifoods exercises its right described above to terminate the merger agreement to enter into a definitive agreement with respect to a superior proposal.

For purposes of determining whether a company takeover proposal has occurred that may entitle Smucker to the termination fee described above, references to 10% or more or 25% or more in the definition of company takeover proposal will be deemed to be 50% or more.

In general, each of Smucker, Acquisition Sub and Multifoods will bear its own expenses in connection with the merger agreement and the related transactions except that Smucker and Multifoods will share equally the costs and expenses in connection with filing the registration statement and printing and mailing this document.

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THE SHAREHOLDERS AGREEMENT

The following is a summary of the shareholders agreement, as amended, a copy of which is attached as Annex B to this document and is incorporated into this document by reference. We urge you to read carefully this entire document, including the annexes and the other documents to which we have referred you. See Where You Can Find More Information beginning on page 136.

Agreement To Vote and Proxy

In connection with the merger agreement, Multifoods, Tim Smucker and Richard Smucker, each individually and as a trustee for specified family trusts, entered into a shareholders agreement. The shareholders agreement applies to an aggregate 2,807,783 Smucker common shares held by Tim Smucker and Richard Smucker, individually and as a trustee for specified family trusts, who are parties to the shareholders agreement. Each of the Smucker common shares covered by the shareholders agreement is entitled to exercise ten votes with respect to the proposal relating to the issuance of Smucker common shares in the merger to be voted upon at the Smucker special meeting. Tim Smucker and Richard Smucker, each individually and as a trustee for specified family trusts, agreed that prior to the earlier to occur of the effective time of the merger or the termination of the merger agreement, at any meeting (whether annual or special and whether or not an adjourned or postponed meeting) of the Smucker shareholders, however called, and in any action taken by the written consent of Smucker shareholders without a meeting, unless otherwise directed in writing by Multifoods, he would appear at the meeting or otherwise cause his respective Smucker common shares covered by the shareholders agreement to be counted as present for purposes of establishing a quorum and vote or consent or cause to be voted or consented their respective shares covered by the shareholders agreement:

in favor of the proposal relating to the issuance of Smucker common shares in the merger, and to the extent that a vote is solicited in connection with the shareholders agreement or the merger agreement, any other action required or desirable in furtherance of the shareholders agreement or the merger agreement;

to the extent a vote is solicited in connection with the approval of any action, agreement or proposal that would result in a breach of any representation, warranty, covenant or obligation of Smucker or Acquisition Sub in the merger agreement or that would delay or hinder the consummation of the merger or that would preclude fulfillment of a condition precedent under the merger agreement to Smucker s, Acquisition Sub s or Multifoods obligation to consummate the merger, against the approval of the action, agreement or proposal; and

against approval of any action, agreement or proposal made in opposition to or in competition with the issuance of Smucker common shares pursuant to the merger and the consummation of the merger.

Tim Smucker and Richard Smucker, each individually and as a trustee for specified family trusts, also agreed not to enter into any agreement or understanding with any person to vote or give instructions in any manner inconsistent with their obligations described above.

In addition, Tim Smucker and Richard Smucker, each individually and as a trustee for specified family trusts, have delivered to Multifoods a proxy in the form specified in the shareholders agreement with respect to their Smucker common shares covered by the shareholders agreement. Each proxy delivered is irrevocable to the fullest extent permitted by applicable law, except that it will automatically be revoked upon termination of the shareholders agreement in accordance with its terms.

Restrictions on Transfer

Tim Smucker and Richard Smucker, each individually and as a trustee for specified family trusts, agreed until the termination of the shareholders agreement not to, directly or indirectly:

except pursuant to the terms of the merger agreement or as provided in the shareholders agreement, transfer any or all of their respective Smucker common shares covered by the shareholders agreement or any interest in those shares;

grant any proxy, power of attorney, deposit any Smucker common shares covered by the shareholders agreement into a voting trust or enter into a voting agreement or arrangement with respect to the Smucker common shares covered by the shareholders agreement, except as provided in the shareholders agreement; or

take any other action, or make any representation or warranty of the shareholder contained in the shareholders agreement untrue or incorrect or have the effect of preventing or disabling the shareholder from performing his or its obligations under the shareholders agreement.

Termination of the Shareholders Agreement

The shareholders agreement and proxy contemplated by the shareholders agreement will terminate upon the earlier to occur of the effective time of the merger or the termination of the merger agreement in accordance with its terms.

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INFORMATION ABOUT SMUCKER

General Development of Smucker s Business

Smucker was established in 1897 and was incorporated in Ohio in 1921. Smucker, often referred to as Smucker s (a registered trademark), operates principally in one industry, the manufacturing and marketing of branded food products on a worldwide basis, although the majority of Smucker s sales are in the United States. Smucker s distribution outside the United States is principally in Canada, Australia and Brazil although products are exported to other countries as well. International sales represent less than 10% of total consolidated Smucker sales for fiscal 2003.

On June 1, 2002, Smucker merged the *Jif* peanut butter and *Crisco* shortening and oils businesses of The Procter & Gamble Company with and into Smucker. As a result of the *Jif* and *Crisco* merger, Smucker realigned its reportable business segment structure resulting in two new segments: U.S. retail market and special markets. The U.S. retail market includes the consumer and consumer oils businesses and represents the primary strategic focus area for Smucker the sale of branded food products with leadership positions to consumers through mainstream domestic retail outlets. The special markets segment represents the aggregation of the foodservice, international, industrial and beverage businesses.

During fiscal 2003, Smucker announced plans to restructure certain operations as part of its ongoing efforts to optimize its production capacity, improve productivity and operating efficiencies, and lower Smucker s overall cost base. These initiatives include reducing Smucker s involvement in fruit processing, centralizing production and distribution of the *Uncrustables* product line, and significantly reducing the number of items available for sale. The program calls for the closing of three of Smucker s plants Watsonville, California; Woodburn, Oregon; and West Fargo, North Dakota. In addition, Smucker is consolidating operations of its two plants in Ripon, Wisconsin into one operation. These restructuring actions will result in the elimination of approximately 335 full-time positions. The restructurings are proceeding as planned.

Smucker expects to record a total restructuring charge of approximately $18 million, of which approximately $2.5 million was recorded in the fourth quarter of fiscal 2003 and $8.8 million was recorded in the first nine months of fiscal 2004. Smucker expects to record additional restructuring charges of approximately $3.2 million and make cash payments of approximately $2 million during the last three months of fiscal 2004. The balance of the restructuring charge will be incurred in the first half of fiscal 2005. The remaining cash payments, estimated to be approximately $7 million, will be paid through the third quarter of fiscal 2005.

U.S. Retail Market

The U.S. retail market, Smucker s largest segment, experienced a 175% sales growth for fiscal year 2003 and an additional 17% sales growth for the first nine months of fiscal 2004. The U.S. retail market includes the sales of *Smucker s*, *Jif* and *Crisco* products to grocery, club, drug, mass market and warehouse channels. A significant portion of the segment s growth resulted from addition of *Jif* and *Crisco* to Smucker s existing business, but even without these brands, segment sales were up more than 10% for the first nine months of fiscal 2004.

The *Smucker s* brand grew by 12% in the first nine months of 2004 through Smucker s leadership in fruit spreads and natural peanut butter, as well as through growth in the distribution and sales of *Uncrustables*. *Smucker s* continues to lead the fruit spread category, with a record share of approximately 41% in fiscal 2003 in this category.

For the first nine months of 2004, *Jif* and *Crisco* sales accounted for $503.4 million of the total compared to $414.7 million last year. The first nine months of fiscal 2004 benefited from an additional month of *Jif* and *Crisco* sales, as the merger of The Procter & Gamble Ohio Brands Company with and into Smucker closed one month into fiscal 2003. Excluding the benefit of the additional month of *Jif* and *Crisco* sales, sales in the segment were up over ten percent for the first nine months. *Jif* sales were up 7%, with tonnage up 15%, reflecting a 6% price decrease that was effective in January, 2003. Sales of *Crisco* branded products were up 3% and 14%, in volume and dollars respectively, reflecting price increases taken last year resulting from increased soybean oil costs. Results of both *Jif* and *Crisco* exclude the additional month of sales.

Smucker remains extremely excited about its *Uncrustables* product. In 2003, Smucker rolled out its peanut butter and jelly *Uncrustables* sandwich to retail stores across approximately 70% of the United States. Also in fiscal 2003, Smucker introduced its pre-toasted grilled cheese *Uncrustables* product to the retail market, and it too has been well received. This new offering is consistent with Smucker s aim to provide consumers with convenient, wholesome, tasty foods in this case, a grilled cheese sandwich that is ready to eat after just a minute or less in the microwave. Smucker brought both *Uncrustables* products to the majority of the country in the first quarter of fiscal 2004. Smucker supported the launch with considerable advertising, especially during the back-to-school period.

Due to the strong demand in both the retail and schools channels, Smucker continues to experience short-term capacity constraints at its two *Uncrustables* manufacturing facilities. Smucker has been working to minimize the impact of the shortages and to alleviate these capacity constraints. The situation is expected to be fully-addressed in time for the important back-to-school period later this summer with the start-up of the new *Uncrustables* facility in Scottsville, Kentucky. While this capacity situation will have some near-term effect on the pace at which Smucker expands the *Uncrustables* business, it is expected to have neither a significant impact on this year s sales and earnings results nor a material effect on the future growth of the *Uncrustables* business.

The entire peanut butter category expanded by approximately 4% in 2003 as consumers turn to peanut butter as a healthy and inexpensive source of protein. In 2003, Smucker significantly increased the amount of consumer advertising behind *Jif* and is extremely pleased with the way *Jif* sales outpaced the category s overall growth rate. The *Jif* brand commanded approximately 35% of the peanut butter category for fiscal 2003. This share, combined with Smucker s other peanut butter brands *Smucker s* natural peanut butter, *Laura Scudder s*, *Adam s* and *Goober* gave Smucker approximately 42% of the total category for fiscal 2003. In October 2002, the U.S. Congress approved the Farm Bill, resulting in lower peanut prices. Smucker passed along a portion of those savings to its consumers and invested the balance of the savings in the *Jif* brand, primarily in advertising. Smucker s *Jif* plant in Lexington, Kentucky achieved record production results and did an outstanding job meeting Smucker s customers demands in fiscal 2003. Smucker is investing in the Lexington plant to further increase its capacity.

For Smucker, cooking oil is a relatively new category that presents a unique set of opportunities. As with *Jif*, Smucker s primary emphasis is on revitalizing the *Crisco* brand. Smucker s share of the oils and shortening category on a 52-week basis has been increasing in response to consumer initiatives, including the first television advertising of *Crisco* in five years.

In the first nine months of fiscal 2004, selling, distribution and administrative expenses were up one-half a percentage point of sales compared with the first nine months of fiscal 2003 due primarily to a planned increase in marketing efforts behind the *Jif* and *Crisco* brands.

Special Markets

Smucker s beverages business set a new record in fiscal 2003, with a double-digit increase in sales of *The R.W. Knudsen Family*, *Santa Cruz Organic* and *Smucker s* powdered lemonades. Beverage sales were also up 14% for the third quarter of fiscal 2004 compared to the third quarter of fiscal 2003. Sales of Smucker s natural foods brands in the health and natural foods channel are outpacing the category s growth, and Smucker continues to gain placement in mainstream grocery stores as they expand their offerings of leading natural food brands.

Despite weaknesses in the travel and leisure industry, Smucker saw very good growth in Smucker s portion control lines in fiscal 2003. Smucker believes sales of *Smucker s* and *Dickinson s* portion control products to hotels, restaurants, airlines and healthcare institutions have never been stronger.

Smucker s foodservice group is also responsible for managing the sales of *Smucker s Uncrustables* to schools and restaurants. *Uncrustables* sales in this channel increased 38% in fiscal 2003, making it the fastest-growing line in its foodservice area. With the recent introduction of a pre-toasted grilled cheese sandwich,

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Smucker anticipates continued significant growth opportunities for this sandwich platform. *Uncrustables* are now enjoyed by children in more than 4,000 school systems throughout the United States.

Foodservice sales were down slightly for the third quarter of fiscal 2004, decreasing 2% from the third quarter of fiscal 2003. The decrease was due to the impact of Smucker s previously announced decision to discontinue as master distributor for the *Lea & Perrins* brand this year. Excluding this impact, sales in the foodservice area were up 5% for the third quarter of fiscal 2004. Sales of traditional portion control items, primarily under the *Smucker s* brand, were up over last year as were sales in the schools market. Sales of *Uncrustables* increased 12% for the third quarter of fiscal 2004 in the schools market despite tight capacity throughout the quarter.

Sales and profits in Smucker s industrial business area also exceeded expectations for fiscal 2003, primarily due to growth in the business Smucker acquired in 2001 from International Flavors and Fragrances. The U.S. portion of that business is now fully integrated into Smucker s production facilities. Smucker s strategy for the industrial business is to focus on Smucker s current bakery and dairy customers, doing all Smucker can to secure its place as their preferred supplier of formulated ingredients while maximizing the utilization of existing assets.

Industrial sales, however, were down 19% in the third quarter 2004 compared to third quarter 2003. Approximately $4.5 million in sales of now discontinued business were included in third quarter 2003, bringing the year-to-date total to approximately $16 million. Sales in the remaining industrial business reversed trends of the previous quarters, ending slightly positive for the third quarter of fiscal 2004.

The majority of sales in Smucker s international business area are in Canada and Australia. Smucker s Canadian business has performed well in fiscal 2003, while its Australian operations remain challenged. In 2003, a significant contributor to growth in Canada was the addition of *Crisco* brand sales. In Canada, as in the United States, Smucker has dedicated resources to revitalizing this brand, and it is seeing positive results. *Jif* peanut butter was also launched in Canada in 2003. As measured in local currency, Canada sales were up 4% for the third quarter of fiscal 2004.

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Directors of Smucker

The members of Smucker s board of directors, with information as to each of them based on data furnished to Smucker by these persons as of April 30, 2004, are as follows:

VINCENT C. BYRD	Mr. Byrd, 49, has been a director since April 1999. He has been senior vice president, consumer market since February 2004. Prior to that time he was vice president and general manager, consumer market, of Smucker since January 1995. Mr. Byrd also is a director of Spangler Candy Company, a manufacturer of confectionery products, and serves on the advisory board of the University of Arkansas Center for Retailing Excellence Business College. His term will expire in 2005.
R. DOUGLAS COWAN	Mr. Cowan, 63, has been a director since January 2003. He has been the chairman and chief executive officer of The Davey Tree Expert Company, an employee-owned company providing horticultural services throughout the United States and Canada, since May 1997. Mr. Cowan is a member of the audit committee. Mr. Cowan also serves as Vice-Chairman of the Board of Trustees of Kent State University. His term will expire in 2005.
KATHRYN W. DINDO	Ms. Dindo, 54, has been a director since February 1996. She has been vice president since 1998 and chief risk officer since November 2001 of FirstEnergy Corp., a utility holding company. Prior to that time, she was vice president and controller of Caliber System, Inc., a subsidiary of FDX Corporation, a transportation services company, since January 1996. Ms. Dindo is chair of the audit committee and a member of the executive compensation committee. Her term will expire in 2004.
FRED A. DUNCAN	Mr. Duncan, 57, has been a director since April 1999. He has been senior vice president, special markets since February 2004. Prior to that time he was vice president, special markets since November 2001 and vice president and general manager, industrial market, of Smucker since February 1995. Mr. Duncan also is a director of Bush Brothers and Company, a food processing and manufacturing company. His term will expire in 2006.
ELIZABETH VALK LONG	Ms. Long, 54, has been a director since May 1997. She was executive vice president of Time Inc., the magazine publishing subsidiary of Time Warner, from May 1995 until her retirement in August 2001. She is also a director of Jefferson-Pilot Corporation, an insurance, financial services, and

	communications company, and Steelcase Corporation, a furniture and office systems manufacturer. Ms. Long is chair of the executive compensation committee and a member of the audit committee. Her term will expire in 2005.
CHARLES S. MECHEM, JR.	Mr. Mechem, 73, has been a director since 1982. He retired as chairman of Convergys Corporation, a provider of customer management products and services, in 2000, a post he was elected to in 1999. He has been commissioner emeritus of the Ladies Professional Golf Association, since 1995. He also is a director of the Ladies Professional Golf Association, Royal Associates, Inc., a manufacturer of steel golf shafts, and Myers Y. Cooper, a commercial real estate broker and construction manager. Mr. Mechem is chair of the nominating and corporate governance committee and a member of the executive compensation committee. His term will expire in 2006.

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GARY A. OATEY	Mr. Oatey, 55, has been a director since January 2003. He is the chairman and chief executive officer of Oatey Co., a privately owned manufacturer of plumbing products, since January 1995. Mr. Oatey is a member of the nominating and corporate governance committee. His term will expire in 2006.
RICHARD K. SMUCKER	Mr. Smucker, 55, has been a director since 1975. He has been the president since 1987, co-chief executive officer since February 2001, and chief financial officer since June 2003 of Smucker. Mr. Smucker also is a director of Wm. Wrigley Jr. Company, a manufacturer of confectionery, primarily chewing gum, products, The Sherwin-Williams Company, a manufacturer of coatings and related products, and serves as advisor to the board of directors of Buttonwood Capital Partners, an asset management firm. In addition, Mr. Smucker was appointed to the board of trustees of the University of Miami (of Ohio) in May 2003. Mr. Smucker is the brother of Tim Smucker and the uncle of both Mark Smucker and Paul Smucker Wagstaff, the latter two being vice presidents of Smucker. His term will expire in 2004.
TIMOTHY P. SMUCKER	Mr. Smucker, 59, has been a director since 1973. He has been the chairman since 1987 and co-chief executive officer since February 2001 of Smucker. Mr. Smucker also is a director of Dreyer s Grand Ice Cream Inc., a manufacturer and distributor of premium ice cream products. Mr. Smucker is the brother of Richard Smucker, the father of Mark Smucker, and the uncle of Paul Smucker Wagstaff, the latter two being vice presidents of Smucker. His term will expire in 2006.
WILLIAM H. STEINBRINK	Mr. Steinbrink, 61, has been a director since 1994. He has been associated with the law firm of Jones Day since September 2001. He is the former president and chief executive officer of CSM Industries, Inc., a manufacturer of specialty metals, a position he held between November 1996 and November 2000. Mr. Steinbrink is a member of the nominating and corporate governance committee. Jones Day has provided legal services on behalf of Smucker on a variety of matters, and it is anticipated that Jones Day will continue to provide services to Smucker. His term will expire in 2004.

Director Compensation

Directors of Smucker who are not also employees are compensated for services as a director on the basis of $30,000 per year, plus $2,000 per year ($4,000 per year for the chair) for each committee on which the director serves. Nonemployee directors may elect to receive all or 50% of their annual retainer and committee fees in the form of units under Smucker s

Nonemployee Director Stock Plan. All units, together with dividends credited thereon, are paid out in the form of common shares upon termination of service as a director.

In 2001, the shareholders of Smucker approved the implementation of a Nonemployee Director Stock Option Plan. The plan is designed to provide additional compensation for nonemployee directors of Smucker and to attract and retain candidates of the highest quality to serve on the board. It provides for an annual grant of 1,500 stock options to each eligible nonemployee director, unless otherwise determined by the executive compensation committee. The options granted under this plan will fully vest six months after the date of grant and will have a term of ten years. Because the *Jif* and *Crisco* transaction was pending, the September 2001 grants were deferred and were reconsidered in conjunction with the 2002 awards. In September 2002, stock options for 5,000 common shares of Smucker were granted to each nonemployee director.

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Executive Officers of Smucker

The names, ages as of April 30, 2004, and current positions of the executive officers of Smucker are listed below. All executive officers serve at the pleasure of the Board of Directors, with no fixed term of office. Unless otherwise indicated, each individual has served as an executive officer of the Company for more than five years.

Name	Age	Years with the Company	Position	Officer Since
Timothy P. Smucker	59	35	Chairman and Co-Chief Executive Officer	1973
Richard K. Smucker	55	31	President, Co-Chief Executive Officer and Chief Financial Officer	1974
Mark R. Belgya	43	19	Vice President and Treasurer (1)	1997
Vincent C. Byrd	49	27	Senior Vice President, Consumer Market (2)	1988
Barry C. Dunaway	41	17	Vice President, Corporate Development (3)	2001
Fred A. Duncan	57	26	Senior Vice President, Special Markets (4)	1984
Robert E. Ellis	57	26	Vice President, Human Resources	1996
M. Ann Harlan	44	5	Vice President, General Counsel and Secretary (5)	2002
Donald D. Hurrle, Sr.	55	27	Vice President, Sales, Grocery Market (6)	2001
Richard G. Jirsa	58	29	Vice President and Controller (7)	1978
Andrew G. Platt	47	21	Vice President, Information Services and Chief Information Officer (8)	2004
John D. Milliken	58	30	Vice President, Logistics and Western Operations	1981
Steve Oakland	43	21	Vice President and General Manager, Consumer Oils (9)	1999
Mark T. Smucker	34	6	Vice President and General Manager, International Market (10)	2001
Richard F. Troyak	56	25	Vice President, Operations	1998
Paul Smucker Wagstaff	34	7	Vice President and General Manager, Foodservice Market (11)	2001

(1) Mr. Belgya was elected to his present position in February 2004, having served from June 2001 to January 2004 as Treasurer, and from August 1997 to May 2001 as Corporate Controller.
(2) Mr. Byrd was elected to his present position in February 2004, having served as Vice President and General Manager, Consumer Market from January 1995 to January 2004.
(3) Mr. Dunaway was elected to his present position in November 2001, having served as Director, Corporate Development and Strategic Planning since February 2000. Prior to that time, he served as Director, Business Development, Europe and Middle East, since January 1997.
(4) Mr. Duncan was elected to his present position in February 2004, having served as Vice President, Special Markets from November 2001 to January 2004. Prior to that time, he served as Vice President and General Manager, Industrial Market, since February 1995.
(5) Ms. Harlan was elected a Vice President in February 2004. She was elected Secretary in June 2003, having served as Assistant Secretary, since August 2000. She was elected General Counsel in April 2002, having served as Assistant General Counsel since January 1999. Before joining the Company, Ms. Harlan was a partner at the law firm of Calfee, Halter & Griswold LLP.
(6) Mr. Hurrle was elected to his present position in April 2001, having served as National Sales Manager, Grocery since November 1990.
(7) Mr. Jirsa was elected to his present position in February 2004, having served as Vice President, Information Services and Corporate Controller since June 2001. Prior to that time, he served as Vice President, Information Systems.
(8) Mr. Platt was elected to his present position in February 2004, having served as Director of Business Technology from August 2002 to January 2004. Prior to that time, he served as Director, Customer Service, since February 1997.
(9) Mr. Oakland was elected to his present position in November 2001, having served as Vice President and General Manager, Foodservice Market since, February 1999. Prior to that time, he served as General Manager, JM Smucker (Canada) Inc., since July 1995.
(10) Mr. Mark Smucker was elected to his present position in November 2001, having served as General Manager and Managing Director, Smucker do Brasil, since January 2000. Prior to that time, he served as Director, Business Development, South American since January 1997.
(11) Mr. Wagstaff was elected to his present position in November 2001, having served as General Manager, Uncrustables Market, since May 2000. Prior to that time, he served as Product Manager, Toppings, Peanut Butter, and Specialties, since January 1997.

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Compensation of Smucker s Executive Officers

Consulting and Non-Compete Arrangements

Smucker s board of directors believes that a significant portion of the value of Smucker and the success of its business is attributable to the public image of the *Smucker s* brand and the integral identification of the Smucker family and its values with that brand. Therefore, the board has authorized Smucker to enter into agreements with each of Tim Smucker and Richard Smucker securing their continuing public representation of Smucker when they are no longer active executives.

Under these agreements, each of Tim Smucker and Richard Smucker have committed to maintain their public representation of Smucker for three years when either of them ends full-time employment with Smucker. The board also believed that it was crucial to the strength of the Smucker brand that neither Tim nor Richard Smucker should undertake activities after the end of their employment with Smucker that might be to the competitive disadvantage of Smucker. In particular, the board wished to ensure that neither Tim nor Richard Smucker would in any event provide the benefit of their experience in the food industry to competitors of Smucker.

Therefore, the agreements with Tim and Richard Smucker provide that for three years from the date of their respective termination of employment or for three years after the end of the public representation period, whichever is later, they will not enter into any relationships that might be to Smucker s competitive disadvantage. During the three-year public representation period the former executive will receive annual compensation in an amount equal to his base salary as of the time his active employment with Smucker ended, plus benefits. He will also receive each year during that period an amount equal to fifty percent of his target award applicable under the Management Incentive Plan at the date of termination.

The agreements further provide to Tim and Richard Smucker certain benefits while they remain employees of Smucker. Specifically, in the event of either death or disability, they (or their estates) will be entitled to receive for three years after the event annual compensation equal to the base salary they were receiving at the time the event occurred, plus benefits. They (or their estates) also will receive an amount equal to fifty percent of their target bonus awards in effect at the time of the event. Also, any unvested options and restricted shares will vest immediately. At the end of the three-year period following the death or disability, they (or their spouse) will be eligible for retirement benefits without application of early retirement reduction factors. Each of them also would be eligible for retirement benefits without application of early retirement reduction factors at the end of the three-year public representation period if, but only if, he has not prior to that time elected to begin receiving such benefits with reduction factors applied.

In the event that Tim or Richard Smucker is terminated by Smucker without cause or if he resigns for cause (as specifically defined in the agreements), he will receive the same benefits as in the case of death or disability. If Smucker terminates Tim or Richard Smucker for cause, however, he will receive only that compensation to which he is otherwise entitled as of the date of termination.

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Summary Compensation Table

The following table sets forth a summary of the compensation over the past three fiscal years for our co-chief executive officers and the other five most highly compensated executive officers.

		Annual Compensation		Long Term Compensation — Awards		
Name and Principal Position	Year	Salary ($)	Bonus ($)	Restricted Stock Awards ($)(2)	Securities Underlying Options (#)(3)	All Other Compensation ($)
Timothy P. Smucker, Chairman and Co-Chief Executive Officer	2004	$ 609,752	$ 11,700(1)	$ 0	30,000	$ 6,150(4)
	2003	593,426	788,100	1,088,400	140,000	8,342
	2002	475,617	434,160	0	0	8,004
Richard K. Smucker, President, Co-Chief Executive Officer and Chief Financial Officer	2004	585,000	11,700(1)	0	30,000	6,300(4)
	2003	555,000	788,100	1,088,400	140,000	8,420
	2002	458,000	434,160	0	0	7,678
Vincent C. Byrd, Senior Vice President, Consumer Market	2004	270,000	5,400(1)	0	10,000	6,032(4)
	2003	258,923	234,600	290,240	50,000	7,907
	2002	213,020	124,180	0	0	7,635
Fred A. Duncan, Senior Vice President, Special Markets	2004	268,862	5,140(1)	0	10,000	6,024(4)
	2003	260,078	225,400	290,240	50,000	8,111
	2002	203,393	113,860	0	0	7,648
Richard G. Jirsa, Vice President	2004	230,000	4,600(1)	0	7,000	6,024(4)

and Controller	2003	222,539	180,400	217,680	35,000	7,826
	2002	189,500	93,800	0	0	7,506
John D. Milliken, Vice President,	2004	230,000	4,600(1)	0	7,000	6,100(4)
Logistics and Western	2003	220,000	180,400	217,680	35,000	7,750
Operations	2002	190,000	93,800	0	0	7,525
Richard F. Troyak,	2004	230,000	4,600(1)	0	7,000	6,100(4)
Vice President, Operations	2003	220,000	180,400	217,680	35,000	7,709
	2002	180,693	93,480	0	0	7,769

(1) Additional bonus amounts under Smucker s management incentive plan for the fiscal year ended 2004 have not yet been determined. It is anticipated that these amounts will be determined in June 2004 and will be based on the levels of achievement of company and individual performance in relation to pre-established targeted awards that are established based on salary grade level and competitive award levels for similar positions at comparable manufacturing companies.

(2) Smucker s Restricted Stock Bonus Plan was implemented in 1981 and its 1998 Equity and Performance Incentive Plan was implemented in 1998. Shares awarded under the plan are entitled to dividends at the same rate and on the same terms as unrestricted shares of the same class. The aggregate number and value of restricted shares held by the individuals listed above, valued as of April 30, 2004 are as follows: Timothy P. Smucker, 43,231 shares ($2,260,981); Richard K. Smucker, 43,231 shares ($2,260,981); Vincent C. Byrd, 11,781 shares ($616,146); Fred A. Duncan, 11,781 shares ($616,146); Richard G. Jirsa, 8,363 shares ($437,385); John D. Milliken, 8,363 shares ($437,385); and Richard F. Troyak, 8,363 shares ($437,385).

(3) All options are for common shares. The Company does not award stock appreciation rights (SARs).

(4) These amounts represent contributions by Smucker on behalf of the individual indicated under Smucker s 401(k) Savings Plan. The value of allocations during the year under Smucker s Employee Stock Ownership Plan have not yet been determined. It is anticipated that these amounts will be determined in June 2004 and will be based on Smucker s contribution to the Plan and the individual s compensation relative to the compensation of all Plan participants.

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Stock Option Plans

The first of the following tables summarizes options granted during fiscal 2004 to the officers listed in the Summary Compensation Table (on page 102) under Smucker s 1998 Equity and Performance Incentive Plan. The second table summarizes options exercised by the officers listed in the preceding table during the 2004 fiscal year, along with the number of unexercised options held by such officers at fiscal year-end and the value of their unexercised, in-the-money options.

Option Grants in Last Fiscal Year(1)

	Individual Grants				Potential Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option Term	
Name	Options Granted (#)	% of Total Options Granted to Employees in Fiscal Year	Exercise or Base Price ($/Sh)	Expiration Date	5%	10%
Timothy P. Smucker	30,000	7.9%	43.38000	10/28/13	$ 818,400	$ 2,074,100
Richard K. Smucker	30,000	7.9%	43.38000	10/28/13	818,400	2,074,100
Vincent C. Byrd	10,000	2.6%	43.38000	10/28/13	272,800	691,400
Fred A. Duncan	10,000	2.6%	43.38000	10/28/13	272,800	691,400
Richard G. Jirsa	7,000	1.8%	43.38000	10/28/13	191,000	484,000
John D. Milliken	7,000	1.8%	43.38000	10/28/13	191,000	484,000
Richard F. Troyak	7,000	1.8%	43.38000	10/28/13	191,000	484,000

(1) No option granted is transferable except by will or the laws of descent and distribution. Options are exercisable to the extent of one-third of the shares covered by the option after the optionee has been in the continuous employ of Smucker or one of its subsidiaries for one full year from the date of grant, and to the extent of an additional one-third after each of the next two years of continuous employment. Options also become immediately

exercisable upon the occurrence of certain events related to a change of control of Smucker.

Aggregated Option Exercises in Last Fiscal Year and FY-End Option Values

			Number of Securities Underlying Unexercised Options at FY-End (#)		Value of Unexercised In-the-Money Options at FY-End ($)	
Name	**Acquired on Exercise (#)**	**Value Realized ($)**	**Exercisable/ Unexercisable**		**Exercisable/ Unexercisable**	
Timothy P. Smucker	41,584	$ 780,964	228,121	123,333	$ 6,355,328	$ 2,007,327
Richard K. Smucker	41,584	786,266	228,121	123,333	6,355,328	2,007,327
Vincent C. Byrd	3,780	59,391	84,709	43,333	2,399,881	710,527
Fred A. Duncan	3,780	55,611	84,709	43,333	2,399,881	710,527
Richard G. Jirsa	7,560	170,908	24,897	30,333	570,157	497,367
John D. Milliken	6,614	121,194	60,807	30,333	1,744,168	497,367
Richard F. Troyak	2,834	62,642	30,565	30,333	741,968	497,367

Pension Plan

Under The J. M. Smucker Company Employees Retirement Plan (the Plan), retirement benefits are payable to all eligible employees of Smucker and its subsidiaries, including officers. The present executive officers of Smucker, including those named in the Summary Compensation Table, are also eligible upon retirement to receive a benefit from a nonqualified supplemental retirement plan (the Supplemental Plan). The amounts set forth in the Pension Plan Table below assume participation in the Supplemental Plan and set forth the estimated annual benefit, computed as a straight-life annuity, payable under the Plan, as amended, at normal retirement (age 65):

Pension Plan Table

	Years of Service				
Remuneration	**15**	**20**	**25**	**30**	**35**
$125,000	$ 25,500	$ 41,000	$ 47,500	$ 47,500	$ 47,500
150,000	35,000	53,500	61,000	61,000	61,000
175,000	44,000	66,000	75,000	75,000	75,000
200,000	53,500	78,500	88,500	88,500	88,500
225,000	63,000	91,000	102,500	102,500	102,500
250,000	72,500	103,500	116,000	116,000	116,000
300,000	91,000	128,500	143,500	143,500	143,500
400,000	128,500	178,500	198,500	198,500	198,500
450,000	147,500	203,500	226,000	226,000	226,000
500,000	166,000	228,500	253,500	253,500	253,500
650,000	222,500	303,500	336,000	336,000	336,000
800,000	278,500	378,500	418,500	418,500	418,500

The Plan provides a pension based upon years of service with Smucker and upon final average pay (average base compensation (*i.e.*, salary only) for the five highest consecutive years of employment). Benefits under the Plan are one percent of final average pay times the participant s years of service with Smucker. Benefits under the Supplemental Plan at retirement, based upon years of service (maximum 25 years), are 55 percent of the average total compensation (*i.e.,* all compensation including salary and bonus) for the five highest consecutive years of employment, offset by the benefits derived from the Plan and by 100 percent of the Social Security benefit.

Messrs. Timothy P. Smucker, Richard K. Smucker, Vincent C. Byrd, Fred A. Duncan, Richard G. Jirsa, John D. Milliken and Richard F. Troyak were credited under the Plan with 34, 31, 27, 26, 28, 30 and 25 full years of benefit service, respectively, at April 30, 2004.

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Beneficial Ownership of Smucker Common Shares

The following table sets forth, as of April 30, 2004 (unless otherwise noted), certain information with respect to:

all shareholders known to Smucker to be the beneficial owners of more than 5% of Smucker common shares;

the beneficial ownership of Smucker common shares by each director and certain executive officers of Smucker; and

all directors and executive officers of Smucker as a group.

Unless otherwise noted, the shareholders listed in the table have sole voting and investment powers with respect to the Smucker common shares beneficially owned by them. As of April 30, 2004, there were 50,174,707 Smucker common shares outstanding.

Name	Number of Common Shares Beneficially Owned(1)(2)	Percent of Outstanding Common Shares(3)
Ariel Capital Management, Inc. (4)	3,713,881	7.40%
Timothy P. Smucker (5)	2,486,342	4.93%
Richard K. Smucker (5)	2,394,662	4.75%
International Multifoods Corporation (6)	2,807,783	5.60%
Vincent C. Byrd	116,467	0.23%
R. Douglas Cowan	3,697	*
Kathryn W. Dindo	19,301	*
Fred A. Duncan	137,525	0.27%
Richard G. Jirsa (5)	56,796	0.11%
Elizabeth Valk Long	18,346	*
Charles S. Mechem, Jr.	22,497	*
John D. Milliken	81,738	0.16%
Gary A. Oatey	5,477	*
William H. Steinbrink	24,948	*
Richard F. Troyak	50,054	0.10%
22 directors and executive officers as a group (5)	4,548,550	8.91%

* Less than 0.1%.

(1)

Includes restricted stock and also includes shares covered by outstanding stock options exercisable within 60 days, as follows: Timothy P. Smucker, 228,121; Richard K. Smucker, 228,121; Vincent C. Byrd, 84,709; Fred A. Duncan, 84,709; Richard G. Jirsa, 24,897; John D. Milliken, 60,807; Richard F. Troyak, 30,565; and all directors and executive officers as a group, 889,110.

(2) Includes shares held for the benefit of the individual named under the terms of Smucker s Nonemployee Directors Stock Plan as follows: R. Douglas Cowan, 1,397; Kathryn W. Dindo, 11,337; Elizabeth Valk Long, 10,901; Charles S. Mechem, Jr., 12,895; Gary A. Oatey, 1,977; and William H. Steinbrink, 16,381. The shares indicated are held in trust for the directors named and are voted pursuant to their direction.

(3) Because under Smucker s amended articles of incorporation shareholders may be entitled on certain matters to cast ten votes per share with regard to certain common shares and only one vote per share with regard to others, there may not be a correlation between the percent of outstanding common shares owned and the voting power represented by those shares. The total voting power of all the common shares can be determined only at the time of a shareholder meeting due to the need to obtain certifications as to beneficial ownership on shares not held as of record in the name of individuals. It is management s expectation, however, that the common shares shown in the above table as owned by the directors and officers as a group will represent a percentage of Smucker s total voting power on a ten-vote basis that is slightly greater than the percentage of total voting power represented by those shares on a one-vote basis.

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The voting power of Timothy P. Smucker and Richard K. Smucker includes some duplication with respect to entities for which they are co-trustees. See footnote (2), above.

The voting power of all directors and executive officers as a group has been computed to eliminate duplication of beneficial ownership.

Smucker has entered into agreements with Timothy P. Smucker and Richard K. Smucker and members of their immediate families, including Mrs. H. Ray Clark, Timothy P. Smucker s and Richard K. Smucker s aunt, and members of her immediate family, and with all executive officers of Smucker relating to the disposition of common shares held by them. These shareholders are the beneficial owners of an aggregate of 5,712,479 common shares, approximately 11% of the class, of which 4,454,284 common shares are included in the above table. Under the agreements, which have no expiration date, Smucker has a purchase option with respect to any proposed transfers of these common shares, except for gifts and bequests to or for the benefit of family members, and sales pursuant to any offer, merger, or similar transaction that is approved or recommended by Smucker s board of directors.

The agreements provide that Smucker may assign its purchase rights to Smucker s employee stock ownership plan or any of its other employee benefit plans. The agreements reflect the practice followed by Smucker for a number of years of providing for the purchase of common shares at prices at or somewhat below market with the effect of establishing a method for the orderly disposition of blocks of shares that could not otherwise be readily absorbed by the public market. The shares so acquired by Smucker have generally been used for purposes of Smucker employee benefit plans, and shares have also been so acquired directly by the ESOP.

(4) According to an amended Schedule 13G filed by Ariel Capital Management, Inc., 200 E. Randolph Drive, Chicago, IL 60601, on February 13, 2004, Ariel is a U.S. corporation organized under the laws of the State of Illinois. As of December 31, 2003 Ariel had sole voting power of 3,028,489 common shares and sole dispositive power of 3,713,881 common shares.

(5) Beneficial ownership of the following shares included in the table is disclaimed by Timothy P. Smucker: 1,064,336 common shares held by trusts for the benefit of family members of which Timothy P. Smucker is a trustee with sole investment power or a co-trustee with shared investment power; 202,062 common shares owned by the Willard E. Smucker Foundation of which Timothy P. Smucker is a trustee with shared investment power; and 123,676 common shares with respect to which Timothy P. Smucker disclaims voting or investment power.

Beneficial ownership of the following shares included in the table is disclaimed by Richard K. Smucker: 1,447,607 common shares held by trusts for the benefit of family members (including Timothy P. Smucker) of which Richard K. Smucker is a trustee with sole investment power or a co-trustee with shared investment power; 202,062 common shares owned by the Willard E. Smucker Foundation of which Richard K. Smucker is a trustee with shared investment power; and 90,417 common shares with respect to which Richard K. Smucker disclaims voting or investment power.

Beneficial ownership of 2,245 shares included in the table is disclaimed by Richard G. Jirsa, and beneficial ownership of 5,435 shares is disclaimed by John D. Milliken.

The number of shares beneficially owned by all directors and executive officers as a group has been computed to eliminate duplication of beneficial ownership.

(6) Multifoods has shared voting power and no dispositive power over 2,807,783 Smucker common shares pursuant to the shareholders agreement between Multifoods, Tim Smucker and Richard Smucker, each individually and as a trustee for specified family trusts. See The Shareholders Agreement on page 93.

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INFORMATION ABOUT MULTIFOODS

General Development of Multifoods Business

Multifoods was incorporated in Delaware in 1969 as the successor to a business founded in 1892 and operates food manufacturing businesses in the United States and Canada. Multifoods manages its businesses through three operating segments: U.S. Consumer Products, Foodservice Products and Canadian Foods. In September 2002, Multifoods completed the sale of its foodservice distribution business. Multifoods has classified its foodservice distribution business as a discontinued operation.

U.S. Consumer Products

Through Multifoods U.S. Consumer Products segment, Multifoods markets and distributes flour and scratch ingredients, dessert and baking mixes, ready-to-spread frostings, potato mixes, dry breakfast mixes and syrups primarily under the *Pillsbury*, *Martha White*, *Jim Dandy*, *Gladiola*, *Robin Hood*, *La Piña*, *Red Band*, *Softasilk*, *Hungry Jack* and *Idaho Spuds* brand names for sale through retail channels in the United States. In addition, Multifoods markets and sells evaporated milk products under its *Pet* brand name and flavored rice and pasta side-dish products under its *Farmhouse* brand name. Products in its portfolio are strong brands in the packaged foods industry, some having operating histories of more than 100 years.

Multifoods *Pillsbury* branded products currently include 129 stock-keeping units, which Multifoods refers to as SKUs, in seven general subcategories: cake mix, ready-to-spread frosting, brownie mix, muffin mix, cookie mix, quickbread mix and flour and scratch ingredients. Multifoods *Martha White* branded products are primarily marketed under three major subcategories of muffin mixes, brownie mixes and scratch ingredients. Multifoods also markets cornbread mix under the *Gladiola* brand name and grits under the *Jim Dandy* brand name. Presently, Multifoods markets a total of 88 SKUs under its *Martha White*, *Gladiola* and *Jim Dandy* brands. Multifoods currently markets 51 SKUs primarily under the *Hungry Jack* brand, including 14 pancake mix SKUs, six syrup SKUs and 31 potato mix SKUs. The 31 potato mix SKUs include products across three product lines: core mashed potatoes, specialty potatoes and mashed potatoes with gravy. Multifoods markets 12 SKUs in the flour and scratch subcategory under its *Robin Hood*, *La Piña*, *Red Band* and *Softasilk* brands. Multifoods also markets ten evaporated milk products under its *Pet* brand and 27 pasta and rice side-dish SKUs under its *Farmhouse* brand. Approximately half of the products of the U.S. Consumer Products segment are manufactured at Multifoods Toledo, Ohio manufacturing facility, while third-party co-packers manufacture and package the remainder of this segment s products.

The Pillsbury Company has licensed to Multifoods the exclusive right to use certain *Pillsbury* trademarks, including the *Pillsbury* barrelhead and doughboy related trademarks, on a royalty-free basis for an initial term of 20 years. After the initial 20-year term, the license is automatically renewable for unlimited additional 20-year terms on a royalty-free basis. This license allows Multifoods to use the licensed marks on certain dessert and baking mix and flour products and other baking related products in retail channels in the United States and its territories and commonwealths, including Puerto Rico. Multifoods also has the non-exclusive right to sell covered products bearing these trademarks to stores of United States-based retailers in Mexico and Canada.

Multifoods U.S. Consumer Products segment sells its products to supermarket chains, retail wholesalers and other retail channels. Multifoods customers include Wal-Mart Stores, Inc., Kroger Co. and SuperValu, Inc. CROSSMARK, Inc., a privately held, nationwide sales and marketing organization, provides retail sales and marketing services for Multifoods U.S. Consumer Products brands. Multifoods also employs a direct sales force.

Multifoods U.S. Consumer Products segment competes in the United States retail food manufacturing industry. Multifoods *Pillsbury* and *Martha White* brands compete primarily within the dessert and baking mixes, or DBM, market. The DBM market includes mixes for cakes, cookies, brownies, muffins and quickbread, as well as ready-to-spread frosting and ingredients used in scratch baking such as flour. Within the DBM category, Multifoods competes primarily with *Betty Crocker*, which is produced by General Mills, and *Duncan Hines*,

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which is produced by Pinnacle Foods Group, Inc. Multifoods *Hungry Jack* brand competes in three primary market categories: pancake mix, dehydrated potatoes and table syrup. Multifoods competes primarily with *Aunt Jemima*, which is produced by PepsiCo s Quaker Foods North America segment, in pancake mix and *Betty Crocker* in dehydrated potatoes. Multifoods competes on the basis of product quality, product convenience, the ability to identify and satisfy emerging consumer preferences, brand loyalty, timely delivery and customer service, as well as price.

Foodservice Products

Multifoods Foodservice Products segment produces approximately 1,200 products for retail, wholesale and in-store bakeries and foodservice customers primarily in the United States. Through this segment, Multifoods produces baking mix products, including mixes for breads, rolls, bagels, donuts, muffins, Danishes, cakes, cookies, brownies, bars and pizza crusts, as well as fillings, icings and frostings. Baking mix products are marketed under Multifoods *Multifoods, Pillsbury* and *Jamco* brands. In addition, Multifoods manufactures and markets frozen batters, doughs and desserts under *Multifoods*, *Gourmet Baker* and *Fantasia* brands. Multifoods products are marketed through its own direct sales force of sales and technical support personnel, as well as through a network of brokers and bakery distributors, which in turn sell Multifoods products to retail bakers and other customers. Multifoods customers include Ahold USA, Inc., Costco Wholesale Corporation, Dunkin Donuts, Pizza Hut, Inc., Sysco Corporation and U.S. Foodservice, Inc.

Under a foodservice trademark license agreement with The Pillsbury Company, Multifoods has the exclusive right to use certain *Pillsbury* trademarks, including the *Pillsbury* barrelhead and doughboy related trademarks, on a royalty-free basis until November 2008 on certain non-custom dry mix products in packages of seven pounds or less and non-custom frosting products in packages of 11 pounds or less in foodservice channels in the United States and its territories and commonwealths, including Puerto Rico, and in certain limited instances and on a non-exclusive basis, Mexico and Canada. This license is non-renewable.

Multifoods Foodservice Products segment encounters significant competition in the bakery products market. Multifoods is a leading supplier of baking mixes to foodservice operators and retail and in-store bakeries in the United States and competes with several large corporations and regional producers of baking mixes. With respect to frozen bakery products, Multifoods competes primarily in the foodservice and in-store bakery markets with several large corporations and numerous regional suppliers that have select product offerings. Multifoods largest competitor in both of the baking mixes and frozen bakery products categories is General Mills, Inc. Multifoods competes on the basis of product quality and uniqueness, product convenience, brand loyalty, timely delivery and customer service, as well as price.

Canadian Foods

Multifoods Canadian Foods segment consists of its retail and commercial foods businesses in Canada. Canadian Foods manufactures flour and baking mixes, primarily under the *Robin Hood* brand, and pickles and relish condiments, primarily under the *Bick s* brand, for sale through retail and commercial channels in the United States and Canada. Thirty retail baking mixes are sold in Canada under Multifoods *Robin Hood* brand, while retail flour is sold in Canada under the *Robin Hood*, *Golden Temple*, *Brodie*, *Cream of the West*, and *Monarch* brands. In the United States, Multifoods sells retail flour under its *Golden Temple* brand. Multifoods also sells hot cereals in Canada under its *Robin Hood*, *Old Mill*, *Red River* and *Purity* brands. In addition, Multifoods manufactures and markets pickles and relish condiments to consumers in Canada, where its *Bick s* brand is the market leader. Multifoods also sells condiments in Canada under the *Habitant*, *Gattuso*, *Woodman s* and *McLaren s* labels.

The commercial foods business of Multifoods Canadian Foods segment produces pickles and relish condiments, baking mix products, wheat flour and oat products for retail, in-store and wholesale bakeries and foodservice customers in Canada and the United States. Such products are sold primarily under Multifoods *Robin Hood* and *Bick s* brands.

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The products of Multifoods Canadian Foods segment are marketed primarily through Multifoods own sales organization, supported by advertising and other promotional activities. Multifoods customers include Loblaw Companies Limited, The TDL Group Limited and Sobeys Inc. Multifoods competitors in Canada include both large corporations and regional producers. Multifoods competes on the basis of product quality, product convenience, the ability to identify and satisfy emerging consumer preferences, brand loyalty, timely delivery and customer service, as well as price.

Beneficial Ownership of Multifoods Common Stock

The following table sets forth, as of April 29, 2004 (unless otherwise noted), certain information with respect to:

all shareholders known to Multifoods to be the beneficial owners of more than 5% of Multifoods common stock;

the beneficial ownership of Multifoods common stock by each director and certain executive officers of Multifoods; and

all directors and executive officers of Multifoods as a group.

Unless otherwise noted, the shareholders listed in the table have sole voting and investment powers with respect to the shares of Multifoods common stock beneficially owned by them. As of April 29, 2004, there were 19,459,886 shares of Multifoods common stock outstanding.

Name	Number of Shares of Multifoods Common Stock Beneficially Owned	Percent of Outstanding Shares of Multifoods Common Stock
Archer Daniels Midland Company	1,621,650(1)	8.38%
GAMCO Investors, Inc.	1,456,100(2)	7.48%
Putnam, LLC. d/b/a Putnam Investments	1,414,857(3)	7.27%
Castlerigg Master Investments Ltd.	1,131,800(4)	5.82%
Gary E. Costley, Ph.D.	504,223(5)(6)	2.53%
Frank W. Bonvino	124,158(5)(6)	*
Ralph P. Hargrow	82,278(5)(6)	*
Dan C. Swander	75,686(5)(6)(7)	*
John E. Byom	61,900(5)(6)	*

Nicholas L. Reding	36,406(5)	*
Claire L. Arnold	27,268(5)	*
Dolph W. von Arx	27,131(5)	*
James M. Jenness	7,902(5)	*
Joseph G. Parham, Jr.	4,050(5)	*
Isaiah Ike Harris, Jr.	3,917(5)	*
J. David Pierson	2,885(5)	*
All Executive Officers and Directors as a Group (18 persons)	1,156,106(8)	5.67%

* Less than 1.0%

(1) The information was reported by Archer Daniels Midland Company, 4666 Faries Parkway, Decatur, IL 62526, on an amended Schedule 13D, dated June 4, 1993.

(2) GAMCO Investors, Inc. (GAMCO), One Corporate Center, Rye, New York 10580, in a joint filing with Gabelli Funds, LLC (Gabelli Funds), Gabelli Securities, Inc. (GSI) and MJG Associates, Inc. (MJG Associates), reported on a Schedule 13D, dated March 26, 2004, filed with the Securities and Exchange Commission, that GAMCO beneficially owns and has sole dispositive power with respect to 1,184,500 of the shares and has sole voting power with respect to 1,046,500 of the shares; that Gabelli Funds beneficially owns and has sole dispositive power and sole voting power with respect to 130,000 of the shares that GSI beneficially owns and has sole dispositive power and sole voting power with respect to 141,000 of the shares; and that MJG Associates beneficially owns and has sole dispositive power and sole voting power with respect to 500 of the shares. GAMCO reported that it does not have the authority to vote 138,000 of the shares. Gabelli Funds reported that it has sole dispositive power and voting power with respect to the shares held by Gabelli Funds so long as the aggregate voting interest of all joint filers does not exceed 25% of their total voting interest in the Issuer.

(3) Putnam, LLC. d/b/a Putnam Investments (PI), One Post Office Square, Boston, MA 02109, in a joint filing with Marsh & McLennan Companies, Inc. (MMC), Putnam Investment Management, LLC (PIM) and The Putnam Advisory Company, LLC (PAC), reported on a Schedule 13G, dated February 9, 2004, filed with the Securities and Exchange Commission, that PI has shared voting power with respect to 581,410 of the shares and shared dispositive power with respect to all of the shares; that PIM beneficially owns, and has shared dispositive power with respect to, 710,200 of the shares; and that PAC beneficially owns, and has shared dispositive power with respect to, 704,657 of the shares and has shared voting power with respect to 581,410 of the shares. PI, MMC, PIM and PAC reported that no single person other than the persons filing the Schedule 13G have an economic interest in the shares which relates to more than 5% of the class of shares. In addition, PI and MMC disclaim beneficial ownership of all of the shares reported on the Schedule 13G and further reported that neither of them have any power to vote or dispose of, or direct the voting or disposition of, any of such shares.

(4) Castlerigg Master Investments Ltd. c/o Citco Fund Services, Kaya Flamboyan 9, Curacao, Netherlands Antilles, in a joint filing with Sandell Asset Management Corp., Castlerigg Master Investments Ltd., Castlerigg International Limited, Castlerigg International Holdings Limited and Thomas E. Sandell, reported on a Schedule 13G, dated April 21, 2004, filed with the Securities and Exchange Commission, that each of the referenced reporting persons has shared voting power and shared dispositive power with respect to 1,131,800 shares. Each of Sandell Asset Management Corp., by virtue of its position as investment manager of Castlerigg Master Investments Ltd., and Thomas Sandell, by virtue of his position as principal of Sandell Asset Management Corp., may be deemed to share dispositive and voting power over these shares.

(5)

The total number of shares beneficially owned by the following persons includes the following number of shares issuable pursuant to stock options that are currently exercisable or will be exercisable within 60 days of April 29, 2004: Dr. Costley 431,584; Mr. Bonvino 96,167; Mr. Swander 50,000; Mr. Hargrow 78,000; Mr. Byom 54,634; Mr. Reding 17,000; Mr. von Arx 20,554; Ms. Arnold 21,944; Mr. Jenness 5,000; Mr. Parham 2,858; Mr. Harris 2,500; and Mr. Pierson 2,500. Certain of these persons also beneficially own restricted stock, the shares of which are also included in the total number of shares beneficially owned.

(6) The total number of shares beneficially owned by the following persons includes the following number of shares held in trust for the benefit of the participant under the Employees Voluntary Investment Savings Plan of Multifoods (the Savings Plan): Dr. Costley 5,407; Mr. Bonvino 10,697; Mr. Swander 686; Mr. Byom 6,116; and Mr. Hargrow 1,241.

(7) Dan C. Swander ceased to be an executive officer of Multifoods effective as of February 28, 2004.

(8) Includes 941,629 shares issuable pursuant to stock options that are currently exercisable or will be exercisable within 60 days of April 29, 2004 and 41,610 shares held in trust for the benefit of the executive officers under the Savings Plan. Certain of these persons also beneficially own restricted stock, the shares of which are also included in the total number of shares beneficially owned.

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PRO FORMA FINANCIAL DATA

UNAUDITED CONDENSED COMBINED PRO FORMA FINANCIAL STATEMENTS

The following unaudited condensed combined pro forma financial statements and explanatory notes have been prepared to give effect to the proposed merger and the consummation of Smucker s financing transactions related to the proposed merger. At the effective time of the proposed merger, Multifoods will be merged with and into a wholly owned acquisition subsidiary of Smucker. The transaction will be accounted for as a purchase business combination with Smucker treated as the accounting acquirer. Under this method of accounting, the purchase price will be allocated to Multifoods assets acquired and liabilities assumed based upon their estimated fair values at the date of acquisition.

The process of valuing Multifoods tangible and intangible assets and liabilities as well as reviewing accounting policies for conformity is still in the preliminary stages. Accordingly, the purchase price allocation pro forma adjustments are preliminary and have been made solely for the purpose of providing unaudited condensed combined pro forma financial data. Material revisions to Smucker s current estimates could be necessary as the valuation process and accounting policy review are finalized. As a result, the actual amount of depreciation and amortization expense may be materially different from that presented in the Unaudited Condensed Combined Pro Forma Statements of Income. Smucker currently expects that the process of determining fair values of the tangible and intangible assets acquired (including independent appraisals) and liabilities assumed will be completed within one year of the closing of the merger.

The Unaudited Condensed Combined Pro Forma Statements of Income combine Multifoods historical Consolidated Statement of Operations for the year ended March 1, 2003 and Unaudited Consolidated Condensed Statement of Operations for the nine months ended February 28, 2004 with Smucker s historical Statement of Consolidated Income for the year ended April 30, 2003 and Unaudited Condensed Consolidated Statement of Income for the nine months ended January 31, 2004, as if the merger had occurred on May 1, 2002. Smucker operates on a calendar quarter reporting basis while Multifoods operates on a 13-week accounting quarter reporting basis. The Unaudited Condensed Combined Pro Forma Balance Sheet combines the historical Consolidated Condensed Balance Sheet of Multifoods as of February 28, 2004 with Smucker s Unaudited Condensed Consolidated Balance Sheet as of January 31, 2004 adjusted to reflect the proposed merger and the consummation of Smucker s financing transactions related to the proposed merger, as if each had occurred at January 31, 2004. The historical consolidated financial information has been adjusted to give effect to pro forma adjustments that are (1) factually supportable, (2) directly attributable to the merger, and (3) are expected to have a continuing impact on the financial statements. The historical consolidated financial information has also been

adjusted to conform Multifoods presentation with that of Smucker and to reflect financing transactions that will be executed in connection with the transaction. The unaudited condensed combined pro forma financial statements should be read in conjunction with:

accompanying notes to the unaudited condensed combined pro forma financial statements;

Smucker s historical audited consolidated financial statements for the year ended April 30, 2003, and its unaudited condensed consolidated financial statements as of January 31, 2004 and the nine months then ended; and

Multifoods historical audited consolidated financial statements for the years ended March 1, 2003 and February 28, 2004.

The unaudited condensed combined pro forma financial statements are prepared for illustrative purposes only, and are not necessarily indicative of the operating results or financial position that would have occurred if the merger transaction described above had been consummated at the beginning of the periods or the dates indicated, nor are they necessarily indicative of any future operating results or financial position. The unaudited condensed combined pro forma financial statements do not include any adjustments related to any restructuring charges, profit improvements, potential cost savings or one-time charges which may result from the proposed merger, or the result of final valuations of tangible and intangible assets and liabilities. Smucker is currently

developing plans to integrate the operations of the companies, which may involve costs including severance and other charges, which may be material. The anticipated profit improvements generated from these actions as well as other synergies are expected to be approximately $40 to $60 million annually and are anticipated to be realized within the third year following the date of closing. Profit improvements are expected to come from efficiencies of combining the two companies, supply-chain enhancements and leveraging the current selling, marketing and distribution networks. Integration teams will be formed to develop detailed implementation programs, the related costs of which have not been determined.

The merger has not been consummated as of the date of the preparation of these unaudited condensed combined pro forma financial statements and there can be no assurances that the merger will be consummated in the future. See Risk Factors The unaudited condensed combined pro forma financial data included in this document is preliminary and Smucker s actual financial position and results of operations may differ significantly from the unaudited condensed combined pro forma financial data included in this document on page 26 for additional discussion of risk factors associated with the unaudited condensed combined pro forma financial data.

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UNAUDITED CONDENSED COMBINED PRO FORMA BALANCE SHEET

AT JANUARY 31, 2004 FOR SMUCKER AND

FEBRUARY 28, 2004 FOR MULTIFOODS

	Historical		Pro Forma		
	Smucker (at January 31, 2004)	Multifoods (at February 28, 2004)	Adjustments		Combined
	(in thousands)				
ASSETS					
Current Assets:					
Cash and cash equivalents	$ 118,320	$ 2,866	$ (96,655)	(A)	$ 24,531
Available-for-sale securities	24,253				24,253
Trade receivables, less allowances	91,525	73,020			164,545
Inventories	185,157	116,426	3,649	(B)	305,232
Other current assets	24,755	29,192	(1,847)	(C)	47,729
			(4,371)	(D)	
Total Current Assets	444,010	221,504	(99,224)		566,290
Net property and equipment	311,932	247,915	37,187	(E)	597,034
Goodwill	527,107	64,122	315,037	(F)	842,144
			(64,122)	(G)	
Other intangible assets, net	320,829	135,044	59,659	(H)	515,829
			297	(I)	
Available-for-sale securities	40,722				40,722
Other assets	32,510	115,697	(7,549)	(C)	138,715
			(62,625)	(J)	
			60,682	(K)	
Total Assets	$ 1,677,110	$ 784,282	$ 239,342		$ 2,700,734
LIABILITIES AND SHAREHOLDERS EQUITY					
Current Liabilities:					
Accounts payable	$ 56,480	$ 74,609	$		$ 131,089
Other current and accrued liabilities	100,730	119,275	36,800	(L)	231,565
			13,200	(M)	

			42,239	(N)	
			(80,679)	(O)	
Total Current Liabilities	157,210	193,884	11,560		362,654
Long-term Liabilities:					
Long-term debt, less current portion	135,000	261,560	22,000	(C)	457,000
			100,000	(N)	
			(61,560)	(O)	
Other noncurrent liabilities	188,625	60,847	43,976	(K)	276,970
			(16,478)	(J)	
Total Noncurrent Liabilities	323,625	322,407	87,938		733,970
Total Shareholders Equity	1,196,275	267,991	(267,991)	(P)	1,604,110
			13,426	(Q)	
			394,409	(R)	
Total Liabilities and Shareholders Equity	$ 1,677,110	$ 784,282	$ 239,342		$ 2,700,734

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UNAUDITED CONDENSED COMBINED PRO FORMA STATEMENT OF INCOME

FOR THE YEAR ENDED APRIL 30, 2003 FOR SMUCKER AND

MARCH 1, 2003 FOR MULTIFOODS

	Historical		Pro Forma			
	Smucker (for the year ended April 30, 2003)	Multifoods (for the year ended March 1, 2003)	(S) Reclassification	Adjustments		Combined
	(in thousands, except per share data)					
Net sales	$ 1,311,744	$ 939,275	$ 5,720	$ (8,356)	(D)	$ 2,248,383
Cost of products sold	854,407	755,310	(28,150)	2,480	(T)	1,584,047
Cost of products sold restructuring	1,256					1,256
Gross Profit	456,081	183,965	33,870	(10,836)		663,080
Selling, distribution, and administrative expenses	279,760	110,753	33,870	(198)	(U)	424,185
Merger and integration costs	10,511					10,511
Other restructuring costs	1,281					1,281
Operating Income	164,529	73,212		(10,638)		227,103
Interest income	2,039	350		(967)	(V)	1,422
Interest expense	(8,752)	(24,914)		5,379	(W)	(28,287)
Other expense net	(2,426)	(4,671)				(7,097)
Income From Continuing Operations Before Income Taxes	155,390	43,977		(6,226)		193,141
Income taxes	59,048	16,278		(2,335)	(X)	72,991
	$ 96,342	$ 27,699	$	$ (3,891)		$ 120,150

Income From Continuing Operations					
Pro Forma Earnings per Share Data (Y):					
Weighted average shares outstanding:					
Basic	47,309	19,107			55,006
Diluted	47,765	19,415			55,676
Earnings per common share:					
Basic	$ 2.04	$ 1.45			$ 2.18
Diluted	$ 2.02	$ 1.43			$ 2.16

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UNAUDITED CONDENSED COMBINED PRO FORMA STATEMENT OF INCOME

FOR THE NINE MONTHS ENDED JANUARY 31, 2004 FOR SMUCKER

AND FEBRUARY 28, 2004 FOR MULTIFOODS

	Historical		Pro Forma			
	Smucker (for the nine months ended January 31, 2004)	Multifoods (for the nine months ended February 28, 2004)	(S) Reclassification	Adjustments		Combined
	(in thousands, except per share data)					
Net sales	$ 1,091,602	$ 694,117	$ 4,994	$ 1,873	(D)	$ 1,792,586
Cost of products sold	702,647	561,235	(21,023)	1,859	(T)	1,244,718
Cost of products sold restructuring	3,619					3,619
Gross Profit	385,336	132,882	26,017	14		544,249
Selling, distribution and administrative expenses	234,663	82,036	26,017	(111)	(U)	342,605
Other restructuring costs	5,200	4,914				10,114
Operating Income	145,473	45,932		125		191,530
Interest income	2,430	73		(725)	(V)	1,778
Interest expense	(5,101)	(16,256)		2,119	(W)	(19,238)
Other expense net	(130)	(4,453)				(4,583)
Income Before Income Taxes	142,672	25,296		1,519		169,487
Income taxes	53,502	7,468		570	(X)	61,540
Net Income	$ 89,170	$ 17,828	$	$ 949		$ 107,947
Pro Forma Earnings per						

Share Data (Y):			
Weighted average shares outstanding:			
Basic	49,776	19,295	57,473
Diluted	50,310	19,565	58,221
Earnings per common share:			
Basic	$ 1.79	$ 0.92	$ 1.88
Diluted	$ 1.77	$ 0.91	$ 1.85

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NOTES TO UNAUDITED CONDENSED COMBINED

PRO FORMA FINANCIAL STATEMENTS

(in thousands, except per share data)

Note 1 Basis of Pro Forma Presentation

The unaudited condensed combined pro forma financial information related to the merger is included for the year ended April 30, 2003 and as of and for the nine months ended January 31, 2004. At the effective time of the proposed merger, Multifoods will be merged with and into a wholly owned acquisition subsidiary of Smucker. In the merger, Multifoods shareholders will receive for each share of Multifoods common stock:

- the number of Smucker common shares that is equal to $20 in value based on the average closing price of Smucker common shares for the 20 consecutive trading days ending on the trading day immediately preceding the closing date of the merger; and

- $5 per share in cash, without interest.

The merger agreement provides that if, based on the exchange ratio ($20 divided by the average closing price), Smucker is required to issue more than 19.9% of the Smucker common shares that are outstanding immediately prior to the issuance of Smucker common shares in the merger, the exchange ratio will be adjusted so that the number of Smucker common shares issued in the merger will not exceed 19.9% of the Smucker common shares outstanding immediately prior to the issuance of such shares in the merger and the cash portion of the merger consideration will be increased so that the value of the merger consideration paid to Multifoods shareholders will be $25 per share based on the average closing price.

The transaction will be accounted for as a purchase business combination with Smucker treated as the accounting acquirer. Accordingly, Smucker s cost to purchase Multifoods will be allocated to the assets acquired and the liabilities assumed based upon their respective fair values on the date the merger is completed. The estimated total purchase price of the merger based upon the $25 per share merger consideration and the assumption of approximately $342 million of debt is as follows:

	$ 394,409

Fair value of Smucker s common shares to be issued	
Cash to be paid to Multifoods shareholders	96,655
Fair value of Smucker s stock options to be issued in exchange for Multifoods stock options	13,426
Assumption of Multifoods debt	342,000
Total estimated purchase price	$ 846,490

Under the purchase method of accounting, the total estimated purchase price as shown in the table above, is allocated to Multifoods tangible and intangible assets and liabilities based on their estimated fair values as of the date of the completed merger. The pro forma adjustments included herein may be revised as additional information becomes available and as additional analyses are performed. The final allocation of the purchase price will be determined after the merger is completed and after completion of a final analysis to determine the fair values of Multifoods tangible assets, intangible assets and liabilities as of the completion date. Accordingly, the final purchase accounting adjustments and integration charges may be materially different from the pro forma adjustments presented in this document. Increases or decreases in the fair value of the net assets acquired may change the amount of the purchase price allocated to goodwill and other assets and liabilities. This may impact the Unaudited Condensed Combined Pro Forma Statements of Income due to an increase or decrease in the amount of amortization or depreciation of the related assets.

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The preliminary estimated purchase price is allocated as follows:

Tangible assets	$ 610,242
Identifiable indefinite-lived intangible assets	187,000
Identifiable finite-lived intangible assets	8,000
Goodwill	315,037
Liabilities assumed	(273,789)
Total preliminary estimated purchase price allocation	$ 846,490

Certain amounts in the historical financial statements of Multifoods have been reclassified to conform with Smucker s historical financial statement presentation. The unaudited condensed combined pro forma financial statements presented in this document do not necessarily indicate the results of operations or the combined financial position that would have resulted had the merger been completed at the beginning of the applicable period presented, nor is it indicative of the results of operations in future periods or the future financial position of the combined company.

Note 2 Pro Forma Adjustments

The pro forma and reclassification adjustments included in the unaudited condensed combined pro forma financial statements are as follows:

(A) Adjustment to reflect the use of cash and cash equivalents on-hand to fund a portion of the acquisition price, which was calculated by multiplying Multifoods shares of common stock outstanding of approximately 19,331 at January 31, 2004 by $5 per share.

(B) Represents the preliminary adjustment to record Multifoods inventories at estimated fair values as required by the purchase method of accounting.

(C) Represents the preliminary adjustment to record Multifoods long-term debt to be assumed, at fair value, including the write-off of related debt issuance costs, as required by the purchase method of accounting.

(D) Adjustment to write off product introduction expenses, which were amortized by Multifoods over a period not to exceed 12 months, to conform to Smucker s accounting policy of expensing such costs as incurred.

(E) Represents the preliminary adjustment to record Multifoods property, plant and equipment at estimated fair values as required by the purchase method of accounting.

(F) Represents the preliminary adjustment to record the excess of purchase price over the fair value of the net assets acquired as required by the purchase method of accounting.

(G) Adjustment to eliminate Multifoods historical goodwill.

(H) Represents the preliminary adjustment to record indefinite-lived intangible assets, primarily trademarks, at estimated fair values as required by the purchase method of accounting.

(I) Represents the preliminary adjustment to record finite-lived intangible assets at estimated fair values as required by the purchase method of accounting.

(J) Represents the preliminary adjustment to reduce Multifoods recorded assets and liabilities related to defined benefit pension plans to the net plan assets in excess of the projected benefit obligation ($22,700) as required by the purchase method of accounting.

(K) Reflects the deferred income tax assets and liabilities resulting from financial reporting and tax reporting differences in assets acquired and liabilities assumed in the merger transaction.

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(L) Represents the accrual of change in control payments to be paid as a result of the merger transaction.

(M) Represents the accrual of estimated costs to be paid as a result of the merger transaction including investment banking and other professional fees.

(N) Adjustment to reflect the impact of the financing transactions that Smucker will utilize to restructure the Multifoods debt outstanding at the effective date of the merger and to fund certain transaction-related costs. Smucker will utilize a combination of both short-term and long-term financing instruments. The short-term portion will be a revolving bank credit facility, provided through a syndicate of banks, at prevailing market interest rates. The long-term instrument will consist of a ten-year, $100 million, fixed-rate note, with an interest rate of approximately 4.85%.

(O) Adjustment to reflect the payoff at the effective date of the merger of Multifoods debt outstanding associated with its five-year, $250 million senior secured credit agreement.

(P) Adjustment to eliminate Multifoods historical shareholders equity.

(Q) Adjustment to reflect the fair value of Smucker stock options issued in exchange for Multifoods stock options.

(R) Represents the adjustment to reflect the fair value of Smucker common shares to be issued in the merger based upon the average closing price ($51.01) of Smucker common shares for the three days immediately preceding and following the date the proposed merger was announced (March 8, 2004). The number of Smucker common shares to be issued in the merger will be determined based upon the average closing price of Smucker common shares for the 20 consecutive trading days ending on the trading day immediately preceding the closing date of the merger. The adjustment assumes a $50 per share average trading price of Smucker common shares for such period resulting in 7,732 Smucker common shares assumed to be issued in the merger.

(S) Represents reclassifications to conform Multifoods financial statement presentation to Smucker s financial statement presentation.

(T) Adjustment to record incremental depreciation expense resulting from the preliminary adjustment to record Multifoods property, plant and equipment at estimated fair values utilizing the straight-line method and assuming an average estimated useful life of 15 years.

(U) Adjustment to recognize incremental amortization expense resulting from the preliminary adjustment to record Multifoods finite-lived intangible assets at estimated fair values utilizing the straight-line method and

assuming an average estimated useful life of ten years.

(V) Adjustment to reduce interest income resulting from the use of cash and cash equivalents to fund a portion of the merger consideration.

(W) Adjustment to reflect the impact on interest expense of the financing transactions discussed in note (N) above.

(X) Estimated tax impact of pro forma adjustments calculated at the statutory tax rate.

(Y) Pro forma earnings per share data is based on the number of Smucker common shares and common equivalent shares that would have been outstanding assuming the issuance of 7,732 Smucker common shares in each period presented.

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DESCRIPTION OF SMUCKER CAPITAL STOCK

The rights of Smucker shareholders are governed by Ohio law, Smucker s amended articles of incorporation, which we refer to in this document as Smucker s articles of incorporation, and Smucker s amended regulations, which we refer to in this document as Smucker s regulations. For information on how to obtain a copy of Smucker s articles of incorporation and Smucker s regulations, see Where You Can Find More Information beginning on page 136.

The following is a summary of the terms and provisions of Smucker s capital stock. This summary may not contain all the information that is important to you and is qualified in its entirety by reference to the complete text of Smucker s articles of incorporation and Smucker s regulations, which are incorporated by reference into this document, as well as applicable provisions of the Ohio Revised Code.

Smucker Common Shares

Smucker s articles of incorporation permit the issuance of up to 150,000,000 Smucker common shares. This amount can be amended by Smucker s board of directors without shareholder approval, to the extent permitted by Chapter 1701 of the Ohio Revised Code.

Voting Rights

Smucker s articles of incorporation provide that, except as set forth below, each outstanding Smucker common share entitles the holder to one vote on each matter properly submitted to the shareholders for their approval, including any vote or consent for the election or removal of Smucker s directors.

Notwithstanding the foregoing, holders of outstanding Smucker common shares who have held their Smucker common shares since the effective time of the merger of The Procter & Gamble Ohio Brands Company with and into Smucker on June 1, 2002 will be entitled to ten votes on each of the following matters properly submitted to the shareholders, to the extent those matters are required to be submitted to the shareholders under Ohio law, Smucker s articles of incorporation or Smucker s regulations, stock exchange rules, or are otherwise submitted or presented to Smucker shareholders for their approval:

any matter that relates to or would result in the dissolution or liquidation of Smucker, whether voluntary or involuntary, and whether pursuant to Section 1701.86 or 1701.91 of the Ohio Revised Code or otherwise;

the adoption of any amendment to Smucker s articles of incorporation or Smucker s regulations or the adoption of amended articles of incorporation, other than the adoption of any amendment or amended articles of incorporation that increases the number of votes to which holders of Smucker common shares are entitled or expands the matters to which the time-phase voting provisions of Smucker s articles of incorporation apply;

any proposal or other action to be taken by the shareholders of Smucker, whether or not proposed by the shareholders of Smucker, and whether proposed by authority of the board of directors of Smucker or otherwise, relating to Smucker s rights plan or any successor plan;

any matter relating to any stock option plan, stock purchase plan, executive compensation plan, or other similar plan, arrangement, or agreement;

adoption of any agreement or plan of or for the merger, consolidation or majority share acquisition of Smucker or any of its subsidiaries with or into any other person, whether domestic or foreign, corporate, or noncorporate or the authorization of the lease, sale, exchange, transfer or other disposition of all, or substantially all, of Smucker s assets;

any matter submitted to Smucker s shareholders pursuant to Article Fifth (interested shareholder provision) or Article Seventh (control share provision) of Smucker s articles of incorporation, as they may be further amended, or any issuance of Smucker common shares for which shareholder approval is required by applicable stock exchange rules; and

any matter relating to the issuance of Smucker common shares, or the repurchase of Smucker common shares that Smucker s board of directors determines is required or appropriate to be submitted to Smucker shareholders under Ohio law or applicable stock exchange rules.

Each Smucker common share issued upon the conversion of shares of Multifoods common stock in the merger will entitle the holder to ten votes on each of the matters listed above. Upon a change of beneficial ownership of that Smucker common share following the merger, the new holder will be entitled to only one vote on the matters listed above until that holder has held that share for four years without a further change in beneficial ownership. With respect to all other matters, including the election of directors, all Smucker common shares issued upon the conversion of shares of Multifoods common stock in the merger will be entitled to one vote per share.

Dividend Rights

Subject to the rights of holders of preferred shares, if any, holders of Smucker common shares are entitled to receive dividends as, when and if dividends are declared by Smucker s board of directors out of assets legally available for the payment of dividends.

Liquidation Rights

In the event of a liquidation, dissolution or winding up of Smucker, whether voluntary or involuntary, after payment of liabilities and obligations to creditors and holders of preferred shares, if any, Smucker s remaining assets are distributed ratably among the holders of common shares.

Preemption Rights

Smucker shareholders will not have any preemptive rights to purchase or subscribe for shares of any class or any other security of Smucker.

Redemption Rights

The Smucker common shares are not subject to redemption by Smucker or by the holder of the Smucker common shares.

Conversion Rights

The Smucker common shares are not convertible into shares of any other class or any other security of Smucker.

Repurchase

Under Smucker s articles of incorporation, Smucker, by action of the board of directors and without action by Smucker shareholders, may purchase its own common shares in accordance with Ohio law. The board of directors may authorize such purchases to be made in the open market or through a private or public sale and at such price as the board of directors determines.

Transferability and Trading Market

All Smucker common shares that will be distributed to Multifoods shareholders in the merger will be freely transferable and listed for trading on the New York Stock Exchange under the symbol SJM, except for restrictions applicable to affiliates of Multifoods and except that resale restrictions may be imposed by securities laws in non-U.S. jurisdictions insofar as subsequent trades are made within these jurisdictions. Persons who are deemed to be affiliates of Multifoods may resell Smucker common shares received by them only in transactions permitted by the resale provisions of Rule 145 under the Securities Act of 1933 or as otherwise permitted under the Securities Act of 1933. Persons who may be deemed to be affiliates of Multifoods generally include executive officers, directors and significant shareholders of Multifoods. The merger agreement requires

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Multifoods to cause each of its directors and executive officers who Multifoods believes may be deemed to be affiliates of Multifoods to execute a written agreement to the effect that those persons will not sell, assign or transfer any of the Smucker common shares issued to them in the merger unless that sale, assignment or transfer has been registered under the Securities Act of 1933, is in conformity with Rule 145 under the Securities Act of 1933 or is otherwise exempt from the registration requirements under the Securities Act of 1933.

This document does not cover any resales of the Smucker common shares to be received by Multifoods shareholders in the merger, and no person is authorized to make any use of this document in connection with any resale.

Liability to Further Calls or Assessments

The Smucker common shares, when issued, are duly and validly issued, fully paid and nonassessable.

Sinking Fund Provisions

The Smucker common shares have no sinking fund provisions.

Smucker Preferred Shares

Smucker s articles of incorporation authorize 6,000,000 preferred shares. No preferred shares are currently issued and outstanding. Smucker s board of directors has, however, established a series designated as Series A Junior Participating Preferred Shares, the number of shares of which is 1,500,000.

Smucker s board of directors may establish and issue one or more series of preferred shares from time to time with such powers, preferences, rights, qualifications, limitations, and restrictions that are permitted by Smucker s articles of incorporation, and as the board fixes by resolution, including:

dividend rights;

redemption rights and price;

sinking fund requirements;

voting rights;

conversion rights;

liquidation rights, preferences and price; and

restrictions on the issuance of shares of any class or series.

Holders of common shares of Smucker will not have preemptive rights to participate in any issuance of preferred shares.

Smucker s current board of directors believes that the preferred shares will provide flexibility for future financings and acquisitions for Smucker. Although there currently are no plans to issue preferred shares, it is contemplated that from time to time Smucker may consider transactions involving the issuance of preferred shares. Because Smucker s articles of incorporation give Smucker s board of directors flexibility in determining the terms of the preferred shares, the board of directors is able to issue preferred shares with terms suitable to existing market conditions at the time of issuance or to meet the needs of a particular transaction.

The ability of Smucker s board of directors to issue preferred shares could enable them to render more difficult or discourage an attempt by another person or entity to obtain control of Smucker. The preferred shares could be issued by the board of directors in a public or private sale, merger, or similar transaction, increasing the number of outstanding shares and thereby diluting the equity interest and voting power, if the preferred shares were convertible into Smucker common shares, of a party attempting to obtain control of Smucker.

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COMPARISON OF RIGHTS OF SHAREHOLDERS

As a result of the merger, holders of Multifoods common stock will become holders of Smucker common shares. The rights of holders of Smucker common shares are governed by applicable Ohio law and the provisions of Smucker s articles of incorporation and regulations.

The following is a summary of the material differences between the rights of Smucker shareholders and Multifoods shareholders. These differences arise principally from differences between Ohio and Delaware corporate laws and the differences between Smucker s articles of incorporation and regulations and Multifoods certificate of incorporation and bylaws.

The following does not provide a complete description of the specific rights of Smucker shareholders under Smucker s articles of incorporation and regulations as compared with the rights of Multifoods shareholders under Multifoods certificate of incorporation and bylaws. This summary is qualified in its entirety by reference to the governing corporate instruments of Smucker and Multifoods to which we have referred you. You should read those documents for a complete understanding of all of the differences between the rights of Smucker shareholders and those of Multifoods shareholders. See Where You Can Find More Information beginning on page 136.

Authorized Capital Stock

Smucker. Smucker s articles of incorporation authorize it to issue up to 150,000,000 common shares, without par value, and 6,000,000 serial preferred shares, without par value. Smucker s board of directors is authorized to amend its articles of incorporation to amend these amounts, without shareholder approval, to the extent permitted by Chapter 1701 of the Ohio Revised Code, as it may be amended from time to time.

Multifoods. Multifoods certificate of incorporation authorizes it to issue up to 50,000,000 shares of common stock, par value $0.10 per share, 200,000 shares of cumulative redeemable sinking fund first preferred capital stock, par value $100 per share, and 10,000,000 shares of preferred capital stock, par value $1 per share.

Voting Rights

Smucker. Under Ohio law, all of the Smucker common shares may be voted cumulatively in the election of directors if a shareholder of record wishing to exercise cumulative voting rights satisfies certain notice requirements. Under cumulative voting, the number of votes to which each Smucker shareholder otherwise would be entitled is multiplied by the number of directors to be elected, and the Smucker shareholder then may cast that aggregate number of votes all for one candidate, or may divide them out among the candidates as the shareholder deems appropriate.

Under Smucker s articles of incorporation, except as set forth below, each outstanding Smucker common share entitles the holder to one vote on each matter properly submitted to Smucker shareholders for their approval, including any vote or consent for the election or removal of Smucker s directors.

Notwithstanding the foregoing, each outstanding Smucker common share entitles the holder to ten votes on each of the following matters properly submitted to Smucker shareholders, to the extent those matters are required to be submitted to Smucker shareholders under the Ohio Revised Code, any provisions of Smucker s articles of incorporation or regulations, or applicable stock exchange rules, or are otherwise submitted to Smucker shareholders for their approval (provided that the conditions described below are met):

- any matter that relates to, or would result in, the dissolution or liquidation of Smucker, whether voluntary or involuntary, and whether pursuant to Section 1701.86 or 1701.91 of the Ohio Revised Code or otherwise;

- the adoption of any amendment to Smucker s articles of incorporation or regulations or the adoption of amended articles of incorporation, other than the adoption of any amendment or any amended articles of

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incorporation that increases the number of votes to which holders of Smucker common shares are entitled or expands the matters to which this section applies;

any proposal or other action to be taken by Smucker shareholders, whether or not proposed by Smucker shareholders, and whether proposed by authority of the board of directors of Smucker or otherwise, relating to Smucker s rights plan or any successor plan;

any matter relating to any stock option plan, stock purchase plan, executive compensation plan, executive benefit plan or other similar plan, arrangement or agreement;

adoption of any agreement, or plan of or for the merger, consolidation or majority share acquisition of Smucker or any of its subsidiaries with or into any other person, whether domestic or foreign, corporate or noncorporate, or the authorization of the lease, sale, exchange, transfer or other disposition of all, or substantially all, of Smucker s assets;

any matter submitted to Smucker s shareholders pursuant to Article Fifth (interested shareholder provision) or Article Seventh (control share provision) of Smucker s articles of incorporation, as they may be further amended, or any issuance of shares of Smucker for which shareholders approval is required by applicable stock exchange rules; and

any matter relating to the issuance of Smucker shares, or the repurchase of Smucker shares that Smucker s board of directors determines is required or appropriate to be submitted to Smucker shareholders under the Ohio Revised Code or applicable stock exchange rules.

Each Smucker common share issued in the merger will entitle the holder to ten votes on each of the matters listed above. Upon a change of beneficial ownership of that share, the holder is entitled to only one vote on the matters listed above until that holder has held that share for four years without a further change in beneficial ownership. No holder of Smucker common shares will be entitled to exercise ten votes on any of the matters listed above if there has been a change in beneficial ownership of that share since June 1, 2002 until that holder has held that share for four years without a further change in beneficial ownership. Furthermore, no holder of Smucker common shares will be entitled to exercise more than one vote on any matter listed above if the aggregate voting power that holder otherwise would be entitled to exercise (disregarding the voting power of any holder on August 20, 1985 or acquired by the holder in a transaction not involving a change in beneficial ownership as determined pursuant to Smucker s articles of incorporation) would constitute one-fifth or more of the voting power of Smucker and Smucker common shareholders have not authorized the ownership of Smucker common shares by that holder as and to the extent contemplated by Article Seventh (control share provision) of Smucker s articles of incorporation.

Multifoods. Under Multifoods certificate of incorporation and bylaws, each share of Multifoods common stock entitles the holder to one vote.

Shareholder Meetings

Annual and Special Meetings

Smucker. Smucker s regulations provide that annual meetings will be held at 10:00 a.m. on the third Friday of August at Smucker s principal office in Orrville, Ohio, or at such other time, date and place as may be designated by Smucker s board of directors or its president and specified in the notice of the meeting. Smucker s regulations provide that special meetings may be held on any business day, when called by the chairman of the board, the president, by a majority of the members of the board of directors acting with or without a meeting, or by persons holding 25% of all Smucker shares outstanding and entitled to vote at the special meeting.

Multifoods. Multifoods bylaws provide that annual meetings will be held on the third Friday of June at a time designated by Multifoods board of directors, or at such other date as determined by Multifoods board of directors. Multifoods bylaws provide that special meetings of shareholders may be called at any time by the board of directors or the chairman of the board.

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Quorum

Smucker. Smucker s regulations provide that the holders of shares entitled to exercise a majority of the voting power of Smucker must be present in person or by proxy to constitute a quorum for the transaction of business.

Multifoods. Multifoods bylaws provide that the holders of a majority of the votes of the shares issued and outstanding and entitled to vote must be present in person or by proxy to constitute a quorum for the transaction of business at a meeting of shareholders, except when Multifoods shareholders are required to vote by class, in which event a majority of the issued and outstanding shares of the appropriate class must be present in person or by proxy.

Notice of Shareholder Proposals

Smucker. Smucker s regulations provide that only business properly brought before annual or special meetings will be considered at the meeting. For annual meetings, the Smucker shareholder must have been a shareholder of record at the time notice was given for the annual meeting, been entitled to vote at the annual meeting, and have given timely notice in writing to Smucker s corporate secretary of the business the Smucker shareholder requests to be brought before the meeting. In general, notice of the Smucker shareholder s request must have been received at Smucker s principal executive offices not less than 60 calendar days before the first anniversary of the date on which Smucker first mailed its proxy materials for the prior year s annual meeting. Only matters specified in the notice for special meetings or otherwise brought before special meetings by the presiding officer or at the direction of the majority of Smucker s board of directors will be considered at special meetings.

Multifoods. Multifoods bylaws provide that only business properly brought before annual or special meetings will be considered at the meeting. For annual meetings, Multifoods board of directors may bring any business before the meeting and any Multifoods shareholder may bring business before the meeting provided the shareholder must be entitled to vote with respect to the business requested to be brought before the meeting, the business must be the proper subject for shareholder action and the shareholder must have given timely notice in writing to the secretary of Multifoods. In general, to be timely, a shareholder notice must be received at the principal executive offices of Multifoods not less than 90 days prior to the first anniversary of the preceding year s annual meeting. Only matters brought by or at the direction of Multifoods board of directors will be considered at special meetings.

Each of Smucker s regulations and Multifoods bylaws provide that, to be in proper form, shareholder notices must contain for each matter:

- a brief description of the matter;
- the name and address of the shareholder;
- the class and number of shares beneficially owned by the shareholder;
- a description of the shareholder s material interest in the matter; and
- other information required under federal securities laws.

Actions by Written Consent

Smucker. Under Ohio law, unless prohibited by the articles of incorporation or regulations, any action by shareholders generally must be taken at a meeting, unless a written consent stating the action to be taken is signed by all the shareholders who would be entitled to notice of the meeting held to consider the subject matter of the written consent. Smucker s regulations do not prohibit Smucker s shareholders from acting by written consent.

Multifoods. Under Delaware law, unless the certificate of incorporation provides otherwise, any action by shareholders to be taken at a meeting of shareholders, may be taken without a meeting if written consents stating

the action to be taken are signed by shareholders having not less than the minimum number of votes necessary to take that action at a meeting at which all shares entitled to vote were present and voted. With limited exceptions, Multifoods certificate of incorporation provides that any action required to be taken by the shareholders must be effected by a duly called annual or special meeting and cannot be effected by written consent of shareholders.

Matters Relating to the Board of Directors

Number; Classification

Smucker. Under Smucker s regulations, its board of directors is divided into three classes, with not fewer than three directors in each class. Smucker s board of directors currently consists of ten directors, with three directors in the class whose term expires at Smucker s 2004 annual meeting of shareholders, three directors in the class whose term expires at Smucker s 2005 annual meeting of shareholders and four directors in the class whose term expires at Smucker s 2006 annual meeting of shareholders. Smucker s board members are elected by plurality voting, meaning that the director nominees receiving the greatest number of votes are elected.

Multifoods. Multifoods certificate of incorporation and bylaws provide for not less than three nor more than 12 directors, divided into three classes. Multifoods board of directors currently consists of eight directors, with three directors in the class whose term expires at Multifoods 2004 annual meeting of shareholders, two directors in the class whose term expires at Multifoods 2005 annual meeting of shareholders and three directors in the class whose term expires at Multifoods 2006 annual meeting of shareholders. Multifoods certificate of incorporation generally provides that Multifoods board members are elected by plurality voting, under which the nominees receiving the greatest number of votes are elected to office. If there is a shareholder (other than Multifoods, any Multifoods subsidiary or any Multifoods employee benefit plan) who is known by Multifoods in advance of a meeting of shareholders for the election of directors to be the beneficial owner of voting stock representing 40% or more of the votes entitled to be cast by the holders of the then outstanding shares of voting stock, then Multifoods shareholders will be entitled to cumulative voting in the election of Multifoods board members.

Quorum

Smucker. Smucker s regulations provide that a majority of directors then in office constitutes a quorum of the board of directors for the transaction of business at a meeting of the board of directors.

Multifoods. Multifoods bylaws provide that a majority of the entire board of directors constitutes a quorum of the board of directors for the transaction of business at a meeting, provided that if the chairman of the board, if any, is present at any meeting of the board, or if by reason of catastrophe or emergency a majority of the entire board is not available or capable of acting, then one-third of the entire board of directors, but not less than two directors, constitutes a quorum for the transaction of business at any meeting of the board of directors.

Vacancies

Smucker. Smucker s regulations provide that director vacancies may be filled by a majority vote of the remaining directors even if the remaining directors do not constitute a quorum.

Multifoods. Multifoods bylaws provide that director vacancies resulting from an increase in the authorized number of directors may be filled only by the majority vote of the directors then in office, and any other vacancy occurring in the board of directors may be filled only by a majority of the directors then in office, although less than a quorum, or by a sole remaining director. If at any time of filling any vacancy or any newly created directorship, the directors then in office constitute less than a majority of the whole board of directors (as constituted immediately prior to any increase), the Delaware Court of Chancery may, upon application of any Multifoods shareholder or holders of at least ten percent of the votes of the shares at the time outstanding having the right to vote for the directors, summarily order an election to be held to fill any vacancies or newly created directorships, or to replace the directors chosen by the directors then in office. Except as described above, when one or more of Multifoods directors resign from the board of directors, effective at a future date, a majority of the directors then in office, including those who have resigned, have the power to fill the vacancies.

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Removal of Directors

Smucker. Ohio law provides that, unless the governing documents of a corporation provide otherwise, directors may be removed, with or without cause, by the affirmative vote of the holders of a majority of the voting power of the corporation with respect to the election of directors. However, unless all the directors or all the directors of a particular class are removed, no individual director may be removed if the votes of a sufficient number of shares are cast against that director s removal which, if cumulatively voted at an election of all the directors, or all the directors of a particular class, as the case may be, would be sufficient to elect at least one director.

Multifoods. Delaware law provides that any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors, except if the board is divided in classes, then unless the certificate of incorporation otherwise provides, shareholders may effect the removal of a director only for cause or if a corporation has cumulative voting (Multifoods certificate of incorporation provides for cumulative voting in limited circumstances), no director may be removed without cause if the votes cast against the director s removal would be sufficient to elect such director. Multifoods certificate of incorporation and bylaws provide that directors may be removed only for cause by the affirmative vote of a majority of the board of directors or a majority of the votes of the issued and outstanding stock entitled to vote for the election of directors of Multifoods given at a special meeting of Multifoods shareholders called and held for that purpose.

Anti-Takeover Matters

Control Share Acquisitions

Smucker. Smucker s articles provide for the opting out of Ohio s control share acquisition law. Smucker has, however, adopted similar provisions in its articles requiring that notice and informational filings and special shareholder meetings and voting procedures must be followed prior to consummation of a proposed control share acquisition. In general a control share acquisition is the acquisition, directly or indirectly, by any person of Smucker shares that when added to all other Smucker shares in respect of which that person, directly or indirectly, may exercise or direct the exercise of voting power as provided in Smucker s articles of incorporation, would entitle the person, immediately after the acquisition, directly or indirectly, to exercise or direct the exercise of the voting power in the election of Smucker directors of a number of the outstanding shares of Smucker (as distinguished from the number of votes to which the holder of the shares is entitled) within any of the following ranges:

- one-fifth or more but less than one-third of outstanding shares;
- one-third or more but less than a majority of outstanding shares; and
- a majority or more of outstanding shares.

Assuming compliance with the notice and information filings, the proposed control share acquisition may be made only if both of the following occur:

- Smucker shareholders who hold shares entitling them to vote in the election of directors authorize the acquisition at a special meeting held for that purpose at which a quorum is present by an affirmative vote of a majority of the voting power of Smucker in the election of directors represented at the meeting in person or by proxy and a majority of the portion of the voting power excluding the voting power of interested shares represented at the meeting in person or by proxy; and
- the acquisition is consummated, in accordance with the terms authorized, not later than 360 days following shareholder authorization of the control share acquisition.

In general, interested shares means Smucker shares of which any of the following persons may exercise or direct the exercise of the voting power of Smucker in the election of directors:

- the acquiring person;

any officer elected by the board of directors, except shares beneficially owned by such officer for four years or more;

any employee who is also a director, except shares beneficially owned by such employee for four years or more;

any person that acquires shares of Smucker during the period beginning with the first public disclosure of the proposed control share acquisition and ending with the record date established for the special meeting, if either of the following applies:

the aggregate consideration paid by such person, and any persons acting in concert therewith, exceeds $250,000; or

the number of shares acquired by such person, and any persons acting in concert therewith, exceeds one-half of one percent (1/2%) of the outstanding shares of Smucker entitled to vote on the election of directors; and

any person who transfers shares after the record date for the special meeting, if accompanied by voting power in the form of a blank proxy, an agreement to vote as instructed by the transferee, or otherwise.

Multifoods. No similar provision is applicable to Multifoods under Delaware law or Multifoods certificate of incorporation or bylaws.

Transactions with Interested Shareholders

Smucker. Smucker is subject to Chapter 1704 of the Ohio Revised Code, which generally prohibits certain business combinations and transactions with interested shareholders for a period of three years after the interested shareholder acquired ten percent or more of the voting power of the corporation in the election of directors, unless prior to the interested shareholder s acquisition of ten percent or more of the corporation s shares, the directors of the corporation approved the business combination or other transaction or the purchase of shares by the interested shareholder on the date the shareholder acquired ten percent or more of the corporation s shares.

In general, subsequent to the three-year period, a transaction subject to Chapter 1704 may take place provided that at least one of the following is satisfied:

prior to the date the interested shareholder acquired ten percent or more of the corporation s shares, the board of directors approved the purchase of shares by the interested shareholder;

the transaction is approved, at a meeting held for that purpose, by the affirmative vote of the holders of shares of the corporation entitling them to exercise at least two-thirds of the voting power of the corporation in the election of directors, or of such different proportion as the articles may provide, provided that the transaction is also approved by the affirmative vote of the holders of at least a majority of the disinterested shares; or

the transaction results in shareholders, other than the interested shareholder, receiving a fair price (as described in Chapter 1704) plus interest for their shares.

In addition, Smucker s articles provide that any business combination between Smucker and any person that beneficially owns more than 30% of Smucker shares entitled to vote in the election of directors (or at any time owned more than 30% of Smucker shares entitled to vote in the election of directors) must be approved by the affirmative vote of 85% of all Smucker shares entitled to vote in the election of directors. The 85% voting requirement is not applicable if:

the cash, or fair market value of other consideration, to be received per share by Smucker common shareholders in the business combination is at least an amount equal to the highest per share price paid by the other entity in acquiring any of its holdings of Smucker common shares plus the aggregate

amount, if any, by which 5% per annum of the per share price exceeds the aggregate amount of all dividends paid in cash, in each case since the date on which the other entity acquired the 30% interest;

after the other entity has acquired a 30% interest and prior to the consummation of the business combination (1) the other entity has taken steps to ensure that Smucker s board of directors included at all times representation by continuing directors proportionate to the shareholdings of the public holders of Smucker common shares not affiliated with the other entity (with a continuing director to occupy any resulting fractional board position), (2) the other entity has not acquired any newly issued shares, directly or indirectly, from Smucker (except upon conversion of convertible securities acquired by it prior to obtaining a 30% interest or as a result of a pro rata share dividend or share split) and (3) the other entity has not acquired any additional outstanding Smucker common shares or securities convertible into Smucker common shares except as part of the transaction that resulted in the other entity s acquiring its 30% interest;

the other entity has not (1) received the benefit, directly or indirectly (except proportionately as a shareholder), of any loans, advances, guarantees, pledges, or other financial assistance or tax credits provided by Smucker or (2) made any major change in Smucker s business or equity capital structure without in either case the approval of at least a majority of all the directors and at least two-thirds of the continuing directors, in either case prior to the consummation of the business combination; and

a proxy statement responsive to the requirements of the Securities Exchange Act of 1934 has been mailed to public shareholders of Smucker for the purpose of soliciting shareholder approval of the business combination and contained at the front, in a prominent place, any recommendations, as to the advisability (or inadvisability) of the business combination that the continuing directors, or any of them, may choose to state and, if deemed advisable by a majority of the continuing directors, an opinion of a reputable investment banking firm as to the fairness (or not) of the terms of the business combination, from the point of view of the remaining public shareholders of Smucker (the investment banking firm to be selected by a majority of the continuing directors and to be paid a reasonable fee for their services by Smucker upon receipt of the opinion).

Continuing directors are directors elected by shareholders prior to the time when such entity acquired more than 5% of the shares entitled to vote in the election of directors, or a person recommended to succeed a continuing director or by a majority of continuing directors.

Multifoods. Section 203 of the DGCL generally prohibits a business combination between a corporation and an interested stockholder within three years of the time that person became an interested stockholder. An interested stockholder generally includes a person who beneficially owns 15% or more of the outstanding voting stock of the corporation. This provision does not

apply in some circumstances, including if:

- the corporation s board of directors approved the interested stockholder transaction prior to the date the interested stockholder acquired its shares;

- as a result of the interested stockholder transaction, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced (excluding shares owned by persons who are both directors and officers and by certain employee stock plans); or

- the interested stockholder transaction is approved by the board of directors and the affirmative vote of two-thirds of the outstanding voting stock of the disinterested stockholders at an annual or special meeting.

In addition, Multifoods certificate of incorporation generally prohibits Multifoods from purchasing or otherwise acquiring any stock entitled to vote generally in the election of directors, directly or indirectly, from an interested shareholder who has beneficially owned that stock for less than two years at an above market price, unless the transaction is approved by an affirmative vote of the majority of Multifoods voting shares excluding shares beneficially owned by the interested shareholder. An interested shareholder includes a 5% or greater

beneficial owner, an affiliate of Multifoods that at anytime within the previous two years was a 5% or greater beneficial owner and an assignee of shares that were at any time two years prior to the contemplated purchase owned by a 5% or greater beneficial owner.

Multifoods certificate of incorporation also provides that the consent of the holders of 80% of all shares of stock of Multifoods entitled to vote, voting together without regard to class, is required

for the adoption of any agreement for the merger or consolidation of Multifoods;

to authorize any sale or lease of all or a substantial part of the assets of Multifoods; or

to authorize any sale or lease to Multifoods or any subsidiary of Multifoods of any assets of another corporation, person or entity in exchange for voting securities of Multifoods in excess of 10% of Multifoods outstanding voting securities

if, as of the record date for the determination of shareholders entitled to vote, the other corporation, person or entity is the beneficial owner, directly or indirectly, of more than 5% of the outstanding shares of stock of Multifoods entitled to vote.

Rights Plans

Smucker. Smucker shareholders are subject to Smucker s existing shareholders rights plan pursuant to an amended and restated rights agreement between Smucker and Computershare Investor Services, LLC, as rights agent, dated as of August 28, 2000 and amended as of October 9, 2001. A summary of the material provisions of the rights plan is set forth below and is qualified by reference to the complete text of the rights plan, which has been filed with the Securities and Exchange Commission. The summary does not describe all of the terms of the rights plan. For more information on how to obtain a copy of the rights plan, see Where You Can Find More Information beginning on page 136.

In connection with the shareholders rights plan, Smucker issued, as a dividend, one right for each outstanding Smucker common share. Under the shareholders rights plan, the rights generally will not become exercisable until the earlier of:

the close of business on the tenth calendar day following the first date of public announcement that a person or group (other than Smucker s subsidiaries, employee benefit or stock ownership plans or specified Smucker family members and various trusts, foundations, partnerships or other entities), has acquired beneficial ownership of 10% or more of Smucker s outstanding common shares; or

the close of business on the tenth business day (or a later date specified by Smucker s directors) after a person or group (other than Smucker s subsidiaries, employee benefit or stock ownership plans) begins a tender offer or exchange offer which, if completed, would result in that person or group having beneficial ownership of 10% or more of Smucker s outstanding common shares.

After the rights become exercisable, all holders of rights, except the acquiring person, may exercise the rights upon payment of the purchase price, which is currently $90 per right, to purchase Smucker common shares (or other securities or assets of Smucker) with a market value of two times the purchase price. Thereafter, if Smucker is acquired in a merger or similar transaction, all holders of rights, except the acquiring person, may exercise the rights upon payment of the purchase price, to purchase shares of the acquiring corporation with a market value of two times the purchase price.

At any time before the later of the time that a person or group becomes an acquiring person and the time that the rights become exercisable, the Smucker directors may redeem the rights in whole, but not in part, at a price of $.01 per right. At any time after a person or group becomes an acquiring person, but before the person or group acquires 50% or more of the outstanding Smucker common shares, the Smucker directors may exchange each right (except for the rights held by the acquiring person) for one Smucker common share or an equivalent security. The rights will expire on May 14, 2009 if they have not been previously exercised, exchanged or redeemed.

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Multifoods. Multifoods shareholders are subject to a share rights agreement pursuant to the Share Rights Agreement between Multifoods and Wells Fargo Bank Minnesota, N.A., as rights agent, dated as of September 15, 2000. A summary of the material provisions of the rights agreement is set forth below and is qualified by reference to the complete text of the rights agreement, which has been filed with the Securities and Exchange Commission. The summary does not describe all of the terms of the rights agreement. For more information on how to obtain a copy of the rights agreement, see Where You Can Find More Information beginning on page 136.

In connection with the rights agreement, Multifoods issued, as a dividend, one preferred share purchase right for each outstanding share of Multifoods common stock. Each right entitles the registered holder to purchase from Multifoods one-hundredth of a share of Series A Junior Participating Preferred Capital Stock, $1.00 par value per share, of Multifoods at a price of $70 per one-hundredth of a preferred share, subject to adjustment.

The rights attach to all certificates representing shares of Multifoods common stock outstanding and no separate right certificates will be distributed initially. The rights will separate from the shares of Multifoods common stock and a distribution date for the rights will occur, subject to certain exceptions, upon the earlier of: (i) the close of business on the fifteenth day following a public announcement that a person or group of affiliated or associated persons has become an acquiring person (*i.e.*, has become, subject to certain exceptions, the beneficial owner of 15% or more of the outstanding shares of Multifoods common stock), or (ii) the close of business on the fifteenth day following the first public announcement relating to a tender offer or exchange offer the consummation of which would result in a person or group of affiliated or associated persons becoming, subject to certain exceptions, the beneficial owner of 15% or more of the outstanding shares of Multifoods common stock (or such later date as may be determined by Multifoods board of directors before a person or group of affiliated or associated persons becomes an acquiring person).

Until the distribution date, (i) the rights will be evidenced by the Multifoods common stock certificates and will be transferred with and only with the shares of Multifoods common stock, (ii) new Multifoods common stock certificates issued after September 15, 2000 upon transfer or new issuance of Multifoods common stock will contain a notation incorporating the rights agreement by reference, and (iii) the surrender for transfer of any Multifoods common stock certificate, even without such notation or a copy of the summary of rights attached thereto, will also constitute the transfer of the rights associated with the Multifoods common stock represented by such certificate. As promptly as practicable following the distribution date, separate certificates evidencing the rights will be mailed to holders of record of the shares of Multifoods common stock as of the close of business on the distribution date and such separate right certificates alone will evidence the rights. The rights are not exercisable until the distribution date.

The rights will expire on October 4, 2010, unless extended or earlier redeemed or exchanged by Multifoods as described below. The purchase price payable, and the number of preferred shares or other securities or property issuable, upon exercise of the rights are subject to adjustment from time to time to prevent dilution. The number of preferred shares issuable upon the exercise of a right is also subject to adjustment. With certain exceptions, no adjustment in the purchase price will be required until cumulative adjustments require an adjustment of at least 1% in the purchase price.

Under the rights agreement, if any person or group of affiliated or associated persons becomes an acquiring person, proper provision shall be made so that each holder of a right, other than rights that are or were beneficially owned by the acquiring person (which will thereafter be void), will thereafter have the right to receive upon exercise of the right at the then current exercise price of the right that number of shares of Multifoods common stock having a market value of two times the exercise price of the right, subject to certain possible adjustments. If, on or after the distribution date or within 15 days prior thereto, Multifoods is acquired in certain mergers or other business combination transactions or 50% or more of the assets or earning power of Multifoods and its subsidiaries (taken as a whole) are sold on or after the distribution date or within 15 days prior thereto in one or a series of related transactions, each holder of a right (other than rights that have become void

under the terms of the rights agreement) will thereafter have the right to receive, upon exercise of the right at the then current exercise price of the right, that number of common shares of the acquiring company (or, in certain cases, one of its affiliates) having a market value of two times the exercise price of the right. In certain events specified in the rights agreement, Multifoods is permitted temporarily to suspend the exercisability of the rights. At any time after a person or group of affiliated or associated persons becomes an acquiring person (subject to certain exceptions) and before the acquisition by a person or group of affiliated or associated persons of 50% or more of the outstanding shares of Multifoods common stock, Multifoods board of directors may exchange all or part of the rights (other than rights that have become void under the terms of the rights agreement) for shares of Multifoods common stock or equivalent securities at an exchange ratio per right equal to the result obtained by dividing the exercise price of a right by the current per share market price of the shares of Multifoods common stock, subject to adjustment.

At any time before a person or group of affiliated or associated persons becomes an acquiring person, Multifoods board of directors may redeem the rights in whole, but not in part, at a price of $.001 per right, subject to adjustment, payable in cash. The redemption of the rights may be made effective at such time, on such basis and with such conditions as Multifoods board of directors in its sole discretion may establish. Multifoods board of directors and Multifoods will not have any liability to any person as a result of the redemption or exchange of the rights pursuant to the provisions of the rights agreement. The terms of the rights may be amended by Multifoods board of directors, subject to certain limitations after the distribution date, without the consent of the holders of the rights, including an amendment before a person or group of affiliated or associated persons becomes an acquiring person to lower the 15% threshold for exercisability of the rights to not less than the greater of (i) the sum of .001% and the largest percentage of the outstanding shares of Multifoods common stock then known by Multifoods to be beneficially owned by any person or group of affiliated or associated persons (subject to certain exceptions) or (ii) 10%. Until a right is exercised, the holder of the right, as such, has no rights as a Multifoods shareholder, including the right to vote or to receive dividends. Multifoods rights agreement has been amended to render it inapplicable to the merger and the other transactions contemplated by the merger agreement.

Both Smucker s rights plan and Multifoods rights agreement are designed to protect the interests of each company and its shareholders against coercive takeover tactics. The plans may have the effect of deterring unsolicited takeover proposals.

Constituencies Provisions

Smucker. Section 1701.59 of the Ohio Revised Code permits a director, in determining what that director reasonably believes to be in the best interests of the corporation, to consider, in addition to the interests of the corporation s

shareholders, any of the following:

- the interests of the corporation s employees, suppliers, creditors, and customers;
- the economy of the state and nation;
- community and societal considerations; and
- the long-term as well as short-term interests of the corporation and its shareholders, including the possibility that these interests may be best served by the continued independence of the corporation.

Multifoods. Delaware law contains no provision comparable to Section 1701.59 of the Ohio law.

Amendments to Constituent Documents

Smucker. Ohio law permits the adoption of amendments to articles of incorporation if those amendments are approved at a meeting held for that purpose by the holders of shares entitling them to exercise two-thirds of the voting power of the corporation, or a lesser, but not less than a majority, or greater vote as specified in the articles of incorporation. Smucker s articles of incorporation specify that amendments relating to transactions with interested persons requires the affirmative vote of the holders of 85% of the Smucker common shares

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entitled to vote in the election of directors, except that the 85% vote will not be required for any amendment to that provision recommended to Smucker s shareholders if the recommendation was approved by at least a majority of Smucker s directors and at least two-thirds of Smucker s continuing directors.

Ohio law permits adoption of amendments to regulations by an affirmative vote of the majority of shares entitled to vote or by written consent from holders of two-thirds of the shares entitled to vote or by written consent or vote of a greater or lesser proportion as provided in the articles of incorporation or regulations but not less than the majority of voting power. Smucker s regulations may be amended by (1) its board of directors or (2) its shareholders by the affirmative vote of a majority of the voting power of Smucker at a meeting held for that purpose, or without a meeting by the affirmative written consent of two-thirds of the voting power of Smucker.

Multifoods. Delaware law provides that an amendment to a corporation s certificate of incorporation requires that the board of directors adopt a resolution setting forth the proposed amendment and that a majority of the voting power of the then outstanding capital stock of the corporation approve the amendment, although the certificate of incorporation may provide for a greater vote. Multifoods shareholders may generally approve an amendment to its certificate of incorporation by an affirmative vote of the majority of the outstanding shares entitled to vote, except an affirmative vote of 80% of all shares of Multifoods stock entitled to vote, voting together without regard to class, is required for amendments affecting:

Paragraph (1) of Article 8 (providing that shareholders must approve actions at a duly called meeting);

Article 10 (providing that directors may be removed for cause only by a vote of Multifoods shareholders or by a vote of a majority of Multifoods board of directors);

Article 12 (providing when a vote of holders of 80% of shares is required in connection with certain transactions);

Article 13 (governing the board of directors); or

Article 14 (governing the acquisition of voting stock by Multifoods from an interested shareholder).

Multifoods bylaws may generally be amended by an affirmative vote of the majority of all shares entitled to vote on such matters, except that the affirmative vote of 80% of all shares of Multifoods capital stock is needed to amend the provisions relating to shareholder action without a meeting, the election and removal of directors and the filling of vacancies on the board of

directors. Further, Multifoods board of directors may repeal and amend the bylaws or adopt new bylaws.

Dividends and Repurchase of Shares

Smucker. Ohio law permits dividends to the extent they do not exceed the combination of the surplus of the corporation and the difference between (1) the reduction in surplus resulting from the immediate recognition of the transition obligation under Statement of Financial Accounting Standard No. 106 and (2) the aggregate amount of the transition obligation that would have been recognized as of the date of the declaration of the dividend if the corporation had elected to amortize its recognition of the transition obligation under Statement of Financial Accounting Standard No. 106. Additionally, no dividends will be paid when the corporation is insolvent or there is reasonable grounds to believe that by such payment it would be rendered insolvent. Further, no dividends may be paid to the holders of one class when the payment would violate the rights of holders of another class. Likewise, a corporation may not purchase or redeem its own shares if immediately thereafter its assets would be less than its liabilities plus its stated capital, if any, if the corporation is insolvent or if there is reasonable grounds to believe that by such purchase or redemption it would be rendered insolvent. Finally, Ohio law requires a corporation to notify the shareholders when any portion of a dividend or distribution is paid out of capital surplus. Subject to rights of holders of preferred shares, holders of Smucker common shares are entitled to receive dividends, when and if they are declared, out of assets legally available for the payment of dividends.

Multifoods. Delaware law permits a corporation to pay dividends out of surplus or, if there is no surplus, out of net profits for the current year or the prior year. Dividends may not be paid if the payment reduces the

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corporation s capital below the amount of capital represented by all classes of stock having a preference on distribution of assets over the class to receive the dividend. Further, a corporation may not repurchase its own shares if the capital of the corporation is impaired or if the repurchase would impair the capital of the corporation. Subject to the rights of holders of preferred shares, holders of Multifoods common stock are entitled to receive dividends, when and if they are declared, out of assets legally available for the payment of dividends.

Limitation of Liability of Directors and Officers

Smucker. Ohio law provides that, with limited exceptions, a director may be held liable in damages for acts or omissions as a director only if it is proven by clear and convincing evidence that the director undertook the act or omission with deliberate intent to cause injury to the corporation or with reckless disregard for its best interests.

Smucker s regulations provide that Smucker must indemnify any director, officer or employee to the full extent then permitted by law. Smucker s regulations further provide that Smucker may enter into indemnification agreements with each of its directors to the extent permitted by law.

Ohio law provides that a corporation must indemnify a person for expenses reasonably incurred successfully defending (on the merits or otherwise) an action, suit or proceeding (including certain derivative suits) brought against the person as a director, officer, employee or agent of the corporation. Further, a corporation may indemnify such persons for liability in such actions, suits or proceedings if the person acted in good faith in a matter believed to be in or not opposed to the best interest of the corporation, and, with respect to a criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful. Indemnification may be made only if ordered by a court or authorized in a specific case upon the determination that the appropriate standard has been met by the majority of disinterested directors, an independent legal advisor or shareholders.

Multifoods. Delaware law allows a corporation to limit the personal liability of a director for breach of fiduciary duty to the corporation. Delaware law generally permits indemnification if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to a criminal action or proceeding, had no reasonable cause to believe their conduct was unlawful. Directors or officers adjudged liable to the corporation are not entitled to indemnification unless, and only to the extent that, the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability in view of all the circumstances of the case, they are fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

Multifoods certificate of incorporation provides that a director of Multifoods shall not be personally liable for breach of fiduciary duty to the corporation except for:

- a breach of the director s duty of loyalty to the corporation or its shareholders;
- acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- payment of unlawful dividends or unlawful stock purchases or redemptions; and
- any transaction in which the director derived an improper personal benefit.

Multifoods certificate of incorporation and bylaws provide that directors and officers shall be indemnified to the fullest extent permitted by law when involved in any action, suit or proceeding as a director or officer of Multifoods. Further, Multifoods has entered into agreements with its directors and executive officers providing that Multifoods shall indemnify such persons to the fullest extent authorized by Delaware law.

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TRANSACTION FINANCING

Smucker will use a combination of existing cash balances and outside financing to finance the cash component of the merger consideration.

Smucker will assume approximately $342 million of Multifoods outstanding indebtedness in connection with the merger, including $200 million in aggregate principal amount of Multifoods 6.602% notes due 2009 and approximately $142 million in aggregate principal amount of Multifoods senior secured bank debt. Smucker plans to refinance the entire amount of the senior secured bank debt contemporaneously with the closing of the merger.

Smucker has determined that the financing will consist of a combination of both long-term and short-term obligations. The long-term portion will be comprised of ten-year, fixed rate, unsecured senior notes in an aggregate principal amount of $100 million. The short-term portion will be a revolving bank credit facility, provided through a syndicate of banks, at prevailing market interest rates.

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LEGAL MATTERS

The validity of the Smucker common shares to be issued in the merger will be passed on for Smucker by Jones Day, Cleveland, Ohio, counsel to Smucker. William Steinbrink, a member of Smucker s board of directors, currently serves as Of Counsel for and has been associated with the law firm of Jones Day from September 2001. As of April 30, 2004, Mr. Steinbrink owned 2,067 Smucker common shares and has stock options and deferred stock units totaling 22,881 underlying common shares.

TAX MATTERS

Certain tax consequences of the merger will be passed on for Smucker by Jones Day, Cleveland, Ohio, and for Multifoods by Faegre & Benson LLP, Minneapolis, Minnesota.

EXPERTS

Ernst & Young LLP, independent auditors, have audited Smucker s consolidated financial statements, incorporated by reference or included in its Annual Report on Form 10-K for the year ended April 30, 2003, as set forth in their reports, which are incorporated by reference in this document and in the registration statement of which this document forms a part. Smucker s consolidated financial statements are incorporated by reference in reliance on Ernst & Young LLP s report, given on their authority as experts in accounting and auditing.

The consolidated financial statements and schedule of Multifoods as of February 28, 2004 and March 1, 2003, and for each of the years in the three-year period ended February 28, 2004, have been incorporated by reference herein in reliance upon the reports of KPMG LLP, independent accountants, incorporated by reference herein, and upon the authority of the firm as experts in accounting and auditing. The independent auditors report on the consolidated financial statements referred to above contains an explanatory paragraph regarding Multifoods change in its method of accounting for the remaining provisions of accounting for goodwill and intangible assets in fiscal 2003.

SUBMISSION OF FUTURE SHAREHOLDER PROPOSALS

All proposals submitted by Smucker shareholders who wish those proposals be considered for inclusion in the proxy materials for the 2004 annual meeting of Smucker shareholders must have been received by Smucker by March 10, 2004. Shareholder proposals not included in the proxy materials for the 2004 annual meeting of Smucker shareholders must each comply with the advance notice procedures set forth in Smucker s regulations in order to be brought properly before that meeting. In general, the Smucker shareholder must:

- be a Smucker shareholder of record at the time Smucker gives notice for the annual meeting;
- be entitled to vote at the Smucker annual meeting; and
- have given timely notice in writing to Smucker s corporate secretary. To be timely, the shareholder notice must be received by Smucker s corporate secretary by May 9, 2004.

In addition to the timing requirements, the advance notice provisions of Smucker s regulations contain informational content requirements that also must be met. In general, a Smucker shareholder notice to Smucker s corporate secretary must set forth, as to each matter the Smucker shareholder proposes to bring before the Smucker annual meeting, the following:

- a description of the business desired to be brought before the annual meeting and the reasons for conducting that business at the annual meeting;
- the shareholder s name and address, as they appear on Smucker s books;
- the class and number of shares beneficially owned by the Smucker shareholder; and

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any material interest the shareholder has in the business desired to be brought before the annual meeting.

A copy of the regulation provisions governing these timing procedures and content requirements may be obtained by writing to the corporate secretary of Smucker.

Unless shareholder proposals meet the requirements set forth above, the persons named in the proxies solicited on behalf of Smucker s board of directors will have discretionary authority to vote on and may vote against any such shareholder proposal.

If the merger is not consummated, Multifoods must have received by January 16, 2004 any proposal of a shareholder intended to be presented at Multifoods 2004 annual meeting and to be included in Multifoods proxy materials related to the 2004 annual meeting pursuant to Rule 14a-8 under the Securities Exchange Act of 1934. Proposals of shareholders submitted outside the processes of Rule 14a-8 under the Securities Exchange Act of 1934 in connection with the 2004 annual meeting, or non-Rule 14a-8 proposals, must have been received by Multifoods by March 22, 2004 or these proposals will be considered untimely under the advance notice provisions of the Multifoods bylaws. Non-Rule 14a-8 proposals must comply with certain provisions of Multifoods bylaws. Multifoods proxy related to the 2004 annual meeting will give discretionary authority to the proxy holders to vote with respect to all non-Rule 14a-8 proposals received by Multifoods after January 16, 2004. Notices of shareholder proposals should be delivered personally or mailed, and any request for a copy of Multifoods bylaws (which will be provided at no charge to any holder of Multifoods common stock) should be directed, to the secretary of Multifoods at its principal offices.

WHERE YOU CAN FIND MORE INFORMATION

Smucker and Multifoods file annual, quarterly and current reports, proxy statements and other information with the Securities and Exchange Commission. You may read and copy materials that Smucker and Multifoods have filed with the Securities and Exchange Commission at the following Securities and Exchange Commission public reference room:

450 Fifth Street, N.W.

Washington, D.C. 20549

Please call the Securities and Exchange Commission at 1-800-SEC-0330 for further information on the operation of the public reference room.

Smucker common shares and shares of Multifoods common stock are traded on the New York Stock Exchange under the symbols SJM and IMC, respectively, and our Securities and Exchange Commission filings can also be read at the following address:

New York Stock Exchange, 20 Broad Street, New York, New York 10005

Our Securities and Exchange Commission filings are also available to the public on the Securities and Exchange Commission s internet website at www.sec.gov, which contains reports, proxy and information statements and other information regarding companies that file electronically with the Securities and Exchange Commission. In addition, Smucker s Securities and Exchange Commission filings are also available to the public on Smucker s website, www.smuckers.com, and Multifoods filings with the Securities and Exchange Commission are also available to the public on Multifoods website, www.multifoods.com. Information contained on Smucker s website and Multifoods website is not incorporated by reference into this document, and you should not consider information contained on those websites as part of this document.

We incorporate by reference into this document the documents listed below and any future filings Smucker or Multifoods makes with the Securities and Exchange Commission under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, including any filings after the date of this document until the date of the special meetings. The information incorporated by reference is an important part of this document. Any statement in a document incorporated by reference into this document will be deemed to be modified or superseded for purposes of this document to the extent a statement contained in this or any other subsequently

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filed document that is incorporated by reference into this document modifies or supersedes such statement. Any statement so modified or superseded will be not deemed, except as so modified or superseded, to constitute a part of this document.

Smucker Securities and Exchange Commission Filings

Commission file number 1-05111	Period
Annual Report on Form 10-K	Year ended April 30, 2003 (filed on July 24, 2003)
Amendment No. 1 to Form 10-K	Year ended April 30, 2003 (filed on July 28, 2003)
Quarterly Reports on Form 10-Q	Quarter ended July 31, 2003 (filed on September 11, 2003); quarter ended October 31, 2003 (filed on December 11, 2003) and quarter ended January 31, 2004 (filed on March 11, 2004)
Current Reports on Form 8-K	Filed on March 8, 2004 and April 20, 2004
Definitive Proxy Statement	Filed on July 8, 2003

Smucker has supplied all information contained or incorporated by reference into this document relating to Smucker and its respective affiliates and brands.

You can obtain a copy of any document incorporated by reference into this document except for the exhibits to those documents from Smucker. You may also obtain these documents from the Securities and Exchange Commission or through the Securities and Exchange Commission s website described above. Documents incorporated by reference are available from Smucker without charge, excluding all exhibits unless specifically incorporated by reference as an exhibit into this document. You may obtain documents incorporated by reference into this document by requesting them in writing or by telephone from Smucker at the following address and telephone number:

The J. M. Smucker Company

Strawberry Lane

Orrville, Ohio 44667

Attention: Shareholder Relations

(330) 682-3000

If you would like to request documents, please do so by June 10, 2004 to receive them before the Smucker special meeting. If you request any of these documents from Smucker, Smucker will mail them to you by first-class mail, or similar means.

You should rely only on the information contained or incorporated by reference into this document in voting your shares at the Smucker special meeting. Smucker has not authorized anyone to provide you with information that is different from what is contained in this document. This document is dated May 4, 2004. You should not assume that the information contained in the document is accurate as of any other date, and neither the mailing of this document to Smucker s shareholders nor the issuance of Smucker common shares in the merger will create any implication to the contrary.

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Multifoods Securities and Exchange Commission Filings

Commission File No. 001-06699	**Period**
Annual Report on Form 10-K	Year ended February 28, 2004 (filed on April 29, 2004)
Current Reports on Form 8-K	Filed on March 11, 2004, March 23, 2004 and April 20, 2004

Multifoods has supplied all information contained or incorporated by reference into this document relating to Multifoods and its respective affiliates and brands.

You can obtain a copy of any document incorporated by reference into this document except for the exhibits to those documents from Multifoods. You may also obtain these documents from the Securities and Exchange Commission or through the Securities and Exchange Commission s website described above. Documents incorporated by referenced are available from Multifoods without charge, excluding all exhibits unless specifically incorporated by reference as an exhibit into this document. You may obtain documents incorporated by reference into this document by requesting them in writing or by telephone from Multifoods at the following address and telephone number:

International Multifoods Corporation

110 Cheshire Lane, Suite 300

Minnetonka, Minnesota 55305

Attn: Investor Relations

(952) 594-3300

If you would like to request documents, please do so by June 10, 2004 to receive them before the Multifoods special meeting. If you request any of these documents from Multifoods, Multifoods will mail them to you by first-class mail, or similar means.

You should rely only on the information contained or incorporated by reference into this document in voting your shares at the Multifoods special meeting. Multifoods has not authorized anyone to provide you

with information that is different from what is contained in this document. This document is dated May 4, 2004. You should not assume that the information contained in the document is accurate as of any other date, and neither the mailing of this document to Multifoods shareholders nor the merger will create any implication to the contrary.

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ANNEX A

EXECUTION COPY

AGREEMENT AND PLAN OF MERGER

by and among

INTERNATIONAL MULTIFOODS CORPORATION,

MIX ACQUISITION CORPORATION

and

THE J. M. SMUCKER COMPANY

Dated as of March 7, 2004

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AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER (this ***Agreement***), dated as of March 7, 2004, by and among The J. M. Smucker Company, an Ohio corporation (***Parent***), MIX Acquisition Corporation, a Delaware corporation and a direct, wholly owned subsidiary of Parent (***Merger Sub***), and International Multifoods Corporation, a Delaware corporation (the ***Company***).

W I T N E S S E T H:

WHEREAS, the respective Boards of Directors of the Company and Parent have each determined that a business combination between Parent and the Company is advisable, fair to and in the best interests of their respective companies and shareholders and accordingly have agreed to effect the merger of the Company with and into Merger Sub (the ***Merger***), upon the terms and subject to the conditions set forth in this Agreement and in accordance with the General Corporation Law of the State of Delaware (the ***DGCL***), whereby the separate corporate existence of the Company shall cease and each issued and outstanding share of common stock, par value $0.10 per share, of the Company (***Company Common Stock***), other than Dissenting Shares (as defined in Section 2.4) and any shares of Company Common Stock owned by Parent or any direct or indirect subsidiary of Parent or held in the treasury of the Company, will be converted into the right to receive shares of common stock, no par value per share, of Parent (***Parent Common Stock***), and cash as provided in Section 2.1 of this Agreement;

WHEREAS, the Company, Parent and Merger Sub desire to make certain representations, warranties, covenants and agreements in connection with the Merger and also to prescribe various conditions to the Merger;

WHEREAS, for federal income tax purposes, it is intended that the Merger will qualify as a reorganization under the provisions of Section 368(a) of the Internal Revenue Code of 1986, as amended (the ***Code***); and

WHEREAS, simultaneously with execution of this Agreement, certain shareholders of Parent named therein have entered into that certain Parent Shareholders Agreement dated as of the date hereof with the Company (the ***Parent Shareholders Agreement***), which includes, among other things, an irrevocable proxy granting to the Company the right to vote all of the Parent Common Stock of such Parent Shareholders in favor of the issuance of Parent Common Stock in the Merger;

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the conditions set forth herein, the parties hereto agree as follows:

ARTICLE I

THE MERGER

Section 1.1 The Merger. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the DGCL, the Company will be merged with and into Merger Sub at the Effective Time (as defined in Section 1.3) and the separate corporate existence of the Company will thereupon cease. Following the Effective Time, Merger Sub will be the surviving corporation (the ***Surviving Corporation***). The Company and Merger Sub are sometimes referred to in this Agreement as the ***Constituent Corporations.***

Section 1.2 Closing. The closing of the Merger (the ***Closing***) will take place at 10:00 a.m., Minneapolis time on the second Business Day after satisfaction or waiver (subject to applicable Law (as defined in Section 3.1(o)(vii)(H)) of the conditions (excluding conditions that, by their terms, cannot be satisfied until the Closing Date but subject to the satisfaction or waiver of those conditions) set forth in Article VI, unless another time or date is agreed to by the parties to this Agreement. The Closing will be held at the offices of Jones Day, 901 Lakeside Avenue, Cleveland, Ohio 44114, or such other location to which the parties to this Agreement agree in writing. The date on which the Closing occurs is hereinafter referred to as the ***Closing Date.*** ***Business Day*** means any day other than Saturday, Sunday or any federal holiday.

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Section 1.3 Effective Time. Subject to the provisions of this Agreement, as soon as practicable on the Closing Date or on such later date as shall be agreed to by the parties to this Agreement, the parties shall (i) file a certificate of merger (the ***Certificate of Merger***) with the Delaware Secretary of State in such form as is required by, and executed in accordance with, the relevant provisions of the DGCL and the terms of this Agreement and (ii) make all other filings or recordings required under the DGCL. The Merger will become effective at such time as the Certificate of Merger is duly filed with the Secretary of State of the State of Delaware, or at such subsequent date or time as the Company, Parent and Merger Sub agree and as is specified in the Certificate of Merger (the date and time the Merger becomes effective is hereinafter referred to as the ***Effective Time***).

Section 1.4 Effects of the Merger. The Merger will have the effects set forth in the DGCL. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, all the property, rights, privileges, powers and franchises of the Company and Merger Sub will be vested in the Surviving Corporation, and all debts, liabilities and duties of the Company and Merger Sub will become the debts, liabilities and duties of the Surviving Corporation.

Section 1.5 Certificate of Incorporation and By-Laws. The Certificate of Incorporation and By-laws of Merger Sub, as in effect immediately before the Effective Time, will be the Certificate of Incorporation and By-laws, respectively, of the Surviving Corporation (with such changes thereto as the parties may agree), until thereafter changed or amended as provided therein or by applicable Law, except that Article I of the Certificate of Incorporation of the Surviving Corporation shall state The name of the corporation is International Multifoods Corporation.

Section 1.6 Directors and Officers of the Surviving Corporation. The directors of Merger Sub immediately prior to the Effective Time will be the directors of the Surviving Corporation, until the earlier of their death, resignation or removal or until their respective successors are duly elected and qualified, as the case may be. The officers of Merger Sub immediately prior to the Effective Time will be the officers of the Surviving Corporation, until the earlier of their death, resignation or removal or until their respective successors are duly elected and qualified, as the case may be.

ARTICLE II

EFFECT OF THE MERGER ON THE CAPITAL STOCK OF THE CONSTITUENT

CORPORATIONS; SURRENDER OF CERTIFICATES AND PAYMENT

Section 2.1 Effect on Capital Stock. At the Effective Time, by virtue of the Merger and without any action on the part of the holder of any shares of capital stock of the Company, Parent or Merger Sub:

(a) Merger Sub s Common Stock. Each share of Merger Sub s common stock, par value $0.01 per share (***Merger Sub Common Stock***), outstanding immediately prior to the Effective Time will remain outstanding as one fully paid and nonassessable share of common stock of the Surviving Corporation, which shall constitute the only issued and outstanding shares of capital stock of the Surviving Corporation immediately after the Effective Time.

(b) Cancellation of Treasury Stock and Owned Stock. Each share of Company Common Stock that is owned by Parent or any direct or indirect subsidiary of Parent immediately prior to the Effective Time and any Company Common Stock held in the treasury of the Company immediately prior to the Effective Time will automatically be canceled and retired and will cease to exist, and no consideration will be delivered in exchange therefor.

(c) Conversion of Company Common Stock. Subject to Section 2.2(e), each issued and outstanding share of Company Common Stock (other than shares to be canceled in accordance with Section

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2.1(b) and Dissenting Shares (as defined in Section 2.4) that are owned by Dissenting Shareholders (as defined in Section 2.4) that have properly exercised appraisal rights pursuant to Section 262 of the DGCL) will automatically be converted into the right to receive from Parent (i) a number of fully paid, nonassessable shares of Parent Common Stock equal to the Exchange Ratio (as defined below) (the ***Stock Consideration***) and (ii) $5 in cash without interest from Parent, subject to adjustment as set forth in Section 2.1(d) (the ***Cash Consideration*** and, together with the Stock Consideration, the ***Merger Consideration***), prorated for fractional shares, if any, of Company Common Stock. The ***Exchange Ratio*** shall be equal to the quotient (rounded to four decimal places) of $20 divided by the Average Closing Price (as defined below) of Parent Common Stock; provided, however, that if, based on the Exchange Ratio, Parent would be required to issue pursuant to this Section 2.1(c) greater than 19.9% of the Parent Common Stock outstanding immediately prior to such issuance, the Exchange Ratio shall be adjusted such that the number of shares of Parent Common Stock issuable pursuant to this Section 2.1(c) shall not exceed 19.9% of Parent Common Stock outstanding immediately prior to such issuance. Computations to be rounded to four decimal places shall be rounded to the next highest ten thousandth if the computation initially shall be exactly halfway between the next lowest and next highest ten thousandth. All Company Common Stock converted into the right to receive the Merger Consideration pursuant to this Section 2.1(c) shall cease to be outstanding and shall be canceled and retired and shall cease to exist, and each holder of a certificate that immediately prior to the Effective Time represented such Company Common Stock (***Company Certificate***) shall thereafter cease to have any rights with respect to such Company Common Stock, except the right to receive the Merger Consideration to be issued in consideration therefor and any dividends or other distributions to which holders of Company Common Stock become entitled in accordance with this Article II upon the surrender of such Company Certificate. ***Average Closing Price*** means the average of the per share closing prices of Parent Common Stock as reported in The Wall Street Journal s New York Stock Exchange Composite Transactions Reports for each of the 20 consecutive Trading Days (as defined below) in the period ending with the Trading Day immediately preceding the Closing Date. ***Trading Day*** means a day on which the New York Stock Exchange, Inc. (***NYSE***) is open for trading and on which the Parent Common Stock was traded.

(d) Cash Consideration Adjustment. In the event the Exchange Ratio is adjusted pursuant to the proviso contained in the second sentence of Section 2.1(c), the Cash Consideration will be adjusted upward by an amount equal to the difference between (a) $25 minus (b) the sum of (i) the Exchange Ratio as adjusted pursuant to such proviso multiplied by the Average Closing Price plus (ii) $5.

Section 2.2 Exchange of Certificates.

(a) Exchange Agent. Computershare Institutional Services, LLC will act as agent of Parent for purposes of, among other things, mailing and receiving transmittal letters and distributing cash and certificates for Parent Common Stock, and cash in lieu of fractional shares of Parent Common Stock, to the

Company shareholders (the ***Exchange Agent***). As of the Effective Time, Parent and the Exchange Agent shall enter into an agreement which will provide that Parent shall irrevocably (except as provided in Section 2.2(f)) deposit with the Exchange Agent as of the Effective Time, for the benefit of the holders of shares of Company Common Stock, for exchange in accordance with this Article II, through the Exchange Agent, all cash and certificates representing the shares of Parent Common Stock (such cash and shares of Parent Common Stock, together with any dividends or distributions with respect thereto with a record date on or after the Effective Time, and any cash proceeds thereof being hereinafter referred to as the ***Exchange Fund***) payable or issuable pursuant to Section 2.1 (assuming that all Dissenting Shares will lose the right of appraisal) and Section 2.2(e) in exchange for outstanding shares of Company Common Stock. Additional amounts of cash, if any, needed from time to time by the Exchange Agent to make payments of Cash Consideration or for fractional shares or Dissenting Shares shall be provided by Parent and shall become part of the Exchange Fund. The Exchange Fund may not be used for any other purpose, except as provided in this Agreement, or as otherwise agreed by the Company and Parent before the Effective Time. All cash deposited with the Exchange Agent shall be invested in obligations of or guaranteed by the United States of America, in commercial paper obligations receiving the highest rating from either Moody s Investors Service, Inc. or Standard & Poor s Corporation, or in certificates of deposit, bank repurchase agreements or bankers acceptances of commercial banks with capital, surplus and undivided profits exceeding

$100,000,000 (***Permitted Investments***) or in money market funds that are invested solely in such Permitted Investments; provided, that the maturities of Permitted Investments shall be such as to permit the Exchange Agent to make prompt payments to persons entitled thereto pursuant to this Section 2.2.

(b) Exchange Procedures.

(i) As soon as reasonably practicable after the Effective Time, the Exchange Agent will mail to each holder of record of a Company Certificate whose shares of Company Common Stock were converted into the right to receive Merger Consideration (A) a letter of transmittal (which will specify that delivery will be effected, and risk of loss and title to the Company Certificates will pass, only upon proper delivery of the Company Certificates to the Exchange Agent and will be in such form and have such other provisions as Parent and the Company may specify consistent with this Agreement) and (B) instructions for use in effecting the surrender of the Company Certificates in exchange for the Merger Consideration.

(ii) After the Effective Time, and upon surrender in accordance with Section 2.2(b)(i) of a Company Certificate for cancellation to the Exchange Agent, together with such letter of transmittal, duly executed, and such other documents as may reasonably be required by the Exchange Agent, the holder of such Company Certificate will be entitled to receive in exchange therefor the Merger Consideration that such holder has the right to receive therefor pursuant to the provisions of this Article II, certain dividends or other distributions, if any, in accordance with Section 2.2(c) and cash in lieu of any fractional share of Parent Common Stock in accordance with Section 2.2(e), and the Company Certificate so surrendered will forthwith be canceled. In the event of a transfer of ownership of shares of Company Common Stock that is not registered in the transfer records of the Company, payment may be issued to a person other than the person in whose name the Certificate so surrendered is registered (the ***Transferee***) if such Company Certificate is properly endorsed or otherwise in proper form for transfer and the Transferee pays any transfer or other taxes required by reason of such payment to a person other than the registered holder of such Company Certificate or establishes to the satisfaction of the Exchange Agent that such tax has been paid or is not applicable. Until surrendered as contemplated by this Section 2.2, each Company Certificate converted pursuant to Section 2.1(c) will be deemed at any time after the Effective Time to represent only the right to receive upon such surrender the Merger Consideration that the holder thereof has the right to receive in respect of such Company Certificate pursuant to the provisions of this Article II, certain dividends or other distributions, if any, in accordance with Section 2.2(c) and cash in lieu of any fractional share of Parent Common Stock in accordance with Section 2.2(e). No interest will be paid or will accrue on any cash payable to holders of Company Certificates pursuant to the provisions of this Article II.

(c) Distributions with Respect to Unexchanged Shares. No dividends or other distributions with respect to Parent Common Stock with a record date on

or after the Effective Time will be paid to the holder of any unsurrendered Company Certificate with respect to the shares of Parent Common Stock represented thereby, and, in the case of Company Certificates representing Company Common Stock, no cash payment in lieu of fractional shares will be paid to any such holder pursuant to Section 2.2(e), and all such dividends, other distributions and cash in lieu of fractional shares of Parent Common Stock will be paid by Parent to the Exchange Agent and will be included in the Exchange Fund, in each case until the surrender of such Company Certificate in accordance with this Article II. Subject to the effect of applicable escheat or similar laws, following surrender of any such Company Certificate, there will be paid to the holder of the certificate representing whole shares of Parent Common Stock issued in exchange therefor, without interest, (i) at the time of such surrender, the amount of dividends or other distributions with a record date on or after the Effective Time theretofore paid with respect to such whole shares of Parent Common Stock and, in the case of Company Certificates representing Company Common Stock, the amount of any cash payable in lieu of a fractional share of Parent Common Stock to which such holder is entitled pursuant to Section 2.2(e) and (ii) at the appropriate payment date, the amount of dividends or other distributions with a record date on or after the Effective Time but prior to such surrender and with a payment date subsequent to such surrender payable with respect to such whole shares of Parent Common Stock.

(d) No Further Ownership Rights in Company Common Stock. All shares of Parent Common Stock issued upon the surrender for exchange of Company Certificates in accordance with the terms of this

Article II, together with the Cash Consideration (and any cash paid pursuant to Section 2.2(e)) will be deemed to have been issued and paid in full satisfaction of all rights pertaining to the shares of Company Common Stock theretofore represented by such Company Certificates, and there will be no further registration of transfers on the stock transfer books of the Surviving Corporation of the shares of Company Common Stock that were outstanding immediately prior to the Effective Time. If, after the Effective Time, Company Certificates are presented to the Surviving Corporation or the Exchange Agent for any reason, they will be canceled and exchanged as provided in this Article II, except as otherwise provided by Law.

(e) No Fractional Shares.

(i) No certificates or scrip representing fractional shares of Parent Common Stock will be issued upon the surrender for exchange of Company Certificates, no dividend or distribution on or with respect to Parent Common Stock will relate to such fractional share interests and such fractional share interests will not entitle the owner thereof to vote or to any rights of a shareholder of Parent.

(ii) In lieu of the issuance of fractional shares, the Exchange Agent shall sell such number of whole shares of Parent Common Stock in the open market in order to pay each holder of Company Common Stock entitled to receive a fractional share, after aggregating all fractional shares to which a holder of Company Common Stock would otherwise be entitled, of Parent Common Stock an amount in cash equal to the product obtained by multiplying (A) the fractional share interest to which such former holder (after taking into account all shares of Company Common Stock held at the Effective Time by such holder) would otherwise be entitled by (B) the Average Closing Price.

(iii) As soon as practicable after the determination of the amount of cash, if any, to be paid to holders of Company Certificates formerly representing Company Common Stock with respect to any fractional share interests, the Exchange Agent shall make available such amounts to such holders of Company Certificates formerly representing Company Common Stock subject to and in accordance with the terms of Section 2.2(c).

(f) Termination of Exchange Fund. Any portion of the Exchange Fund that remains undistributed to the holders of the Company Certificates for one year after the Effective Time will be delivered to Parent, upon demand, and any holders of the Company Certificates who have not theretofore complied with this Article II may thereafter look only to Parent or the Surviving Corporation for payment of their claim for Stock Consideration, any dividends or distributions with respect to Parent Common Stock, any cash in lieu of fractional shares of Parent Common Stock and Cash Consideration, provided that the Surviving Corporation shall continue to be liable for any payments required to be made thereafter pursuant to Section 262 of the DGCL and Section 2.4 hereof.

(g) No Liability. None of Parent, the Surviving Corporation or the Exchange Agent will be liable to any person in respect of any shares of Parent Common Stock, any dividends or distributions with respect thereto, any cash in lieu of fractional shares of Parent Common Stock or any cash from the Exchange Fund, in each case, delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law.

(h) Investment of Exchange Fund. The Exchange Agent shall invest any cash included in the Exchange Fund, as directed by Parent, on a daily basis within the guidelines set forth in Section 2.2(a). Any interest and other income resulting from such investments will be paid to Parent.

(i) Lost Certificates. If any Company Certificate has been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming such Company Certificate to be lost, stolen or destroyed and, if reasonably required by the Surviving Corporation, the posting by such person of a bond in such reasonable amount as the Surviving Corporation may direct as indemnity against any claim that may be made against it with respect to such Company Certificate, the Exchange Agent shall issue, in exchange for such lost, stolen or destroyed Company Certificate the Merger Consideration and, if applicable, any unpaid dividends and distributions on shares of Parent Common Stock deliverable in respect thereof and any cash in lieu of fractional shares, in each case, due to such person pursuant to this Agreement.

Section 2.3 Certain Adjustments. If after the date of this Agreement and at or prior to the Effective Time, the outstanding shares of Parent Common Stock or Company Common Stock are changed into a different number of shares by reason of any reclassification, recapitalization, split-up, stock split, subdivision, combination or exchange of shares, or any dividend payable in stock or other securities is declared thereon or rights issued in respect thereof with a record date within such period, or any similar event occurs (any such action, an ***Adjustment Event***), each of the Exchange Ratio, Stock Consideration and the Cash Consideration will be adjusted accordingly, without duplication, to provide to the holders of Company Common Stock the same economic effect and percentage ownership of Parent Common Stock as contemplated by this Agreement prior to such reclassification, recapitalization, split-up, stock split, subdivision, combination, exchange or dividend or similar event. Nothing stated herein shall permit Parent or the Company to take any action that is prohibited under this Agreement.

Section 2.4 Dissenters Rights. Shares of Company Common Stock that have not been voted for adoption of this Agreement and with respect to which appraisal must have been properly demanded in accordance with Section 262 of the DGCL (***Dissenting Shares***) will not be converted into the right to receive the Merger Consideration at or after the Effective Time unless and until the holder of such shares (a ***Dissenting Shareholder***) withdraws his, her or its demand for such appraisal (in accordance with Section 262(k) of the DGCL) or becomes ineligible for such appraisal. If a holder of Dissenting Shares withdraws (in accordance with Section 262(k) of the DGCL) his, her or its demand for such appraisal or becomes ineligible for such appraisal, then, as of the Effective Time or the occurrence of such event, whichever last occurs, each of such holder s Dissenting Shares will cease to be a Dissenting Share and will be converted into and represent the right to receive the Merger Consideration. The Company shall give Parent prompt notice of any written demands for appraisal, attempted withdrawals of such demands and any other instruments received by the Company relating to shareholders rights of appraisal. Parent shall conduct all negotiations and proceedings with respect to demands for appraisal under the DGCL and the Company will be entitled to participate in such negotiations only as and to the extent requested by Parent. The Company shall not, except with the prior written consent of Parent, make any payment with respect to any demands for appraisal of Dissenting Shares, compromise or offer to settle or settle any such demands or approve any withdrawal of any such demands.

Section 2.5 Further Assurances. At and after the Effective Time, the officers and directors of the Surviving Corporation will be authorized to execute and deliver, in the name and on behalf of the Company or Merger Sub, any deeds, bills of sale, assignments or assurances and to take and do, in the name and on behalf of the Company or Merger Sub, any other actions and things to vest, perfect or confirm of record or otherwise in the Surviving Corporation any and all right, title and interest in, to and under any of the rights, properties or assets acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger.

Section 2.6 Withholding Rights. The Surviving Corporation, Parent or the Exchange Agent, as the case may be, shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any person such amounts, if any, as it is required to deduct and withhold with respect to the making of such payment under the Code, or any provision of state, local or foreign Tax Law. To the extent that amounts are so withheld by the Surviving Corporation, Parent or the Exchange Agent, as the case may be, such amounts withheld shall be treated for purposes of this Agreement as having been paid to such person in respect of which such deduction and withholding was made by the Surviving Corporation, Parent or the Exchange Agent, as the case may be.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Section 3.1 Representations and Warranties of Company. Except as otherwise set forth in the Company Disclosure Letter (as defined in Section 3.1(b)), the Company hereby represents and warrants to Parent and Merger Sub as follows:

(a) Organization, Standing and Corporate Power. The Company is a corporation duly organized, validly existing and in good standing under the laws of Delaware, and has the requisite corporate power and

authority to carry on its business as now being conducted. Each of the Company Subsidiaries (as defined in Section 3.1(b)) is a corporation or other legal entity duly organized, validly existing and in good standing (with respect to jurisdictions that recognize such concept) under the laws of the jurisdiction in which it is organized and has the requisite corporate or other applicable entity power, as the case may be, and authority to carry on its business as now being conducted, except for those jurisdictions where the failure to be so organized, existing or in good standing, individually or in the aggregate, would not have or result in a material adverse effect on the Company. The Company and each of the Company Subsidiaries is duly qualified or licensed to do business and is in good standing (with respect to jurisdictions that recognize such concept) in each jurisdiction in which the nature of its business or the ownership, leasing or operation of its properties makes such qualification or licensing necessary, except for those jurisdictions where the failure to be so qualified or licensed or to be in good standing, individually or in the aggregate, would not have or result in a material adverse effect on the Company. The Company has made available to Parent prior to the execution of this Agreement complete and correct copies of its Certificate of Incorporation and By-laws, each as amended to date.

(b) Subsidiaries. Section 3.1(b) of the disclosure letter delivered by the Company to Parent prior to the execution of this Agreement (the ***Company Disclosure Letter***), sets forth all the subsidiaries of the Company (each a ***Company Subsidiary***, collectively, the ***Company Subsidiaries***, and together with the Company, the ***Company Entities***), specifying those that are Significant Subsidiaries (as defined in Rule 1-02 of Regulation S-X under the Securities Exchange Act of 1934, as amended (the ***Exchange Act***)). All outstanding shares of capital stock of, or other equity interests in, each Company Subsidiary (i) have been validly issued and are fully paid and nonassessable, (ii) are free and clear of all Liens (as defined in Section 9.3) and (iii) are free of any other restriction (including any restriction on the right to vote, sell or otherwise dispose of such capital stock or other ownership interests), except, in the case of clauses (ii) and (iii), for any Liens or restrictions that, individually or in the aggregate, would not have or result in a material adverse effect on the Company. All outstanding shares of capital stock (or equivalent equity interests of entities other than corporations) of each of the Company Subsidiaries are beneficially owned, directly or indirectly, by the Company. The Company does not, directly or indirectly, own more than 20% but less than 100% of the capital stock or other equity interest in any person.

(c) Capital Structure. The authorized capital stock of the Company consists entirely of 50,000,000 shares of Company Common Stock, 10,000,000 shares of Preferred Capital Stock, par value $1.00 per share (***Preferred Stock***), of which 500,000 shares have been designated as Series A Junior Participating Preferred Capital Stock (the ***Series A Preferred Stock)***, and 200,000 shares of Cumulative Redeemable Sinking Fund First Preferred Capital Stock, par value $100 per share (***First Preferred Stock***), of which (i) 15,032 shares have been designated Four Percent Series A First Preferred Stock, (ii) 3,902 shares have been designated Four and One-Fourth Percent Series C First Preferred Stock, (iii) 9,365 shares have been designated Four and One-Half Percent Series D First Preferred Stock, and (iv) 15,712 shares have been designated as Five and One-Fourth Percent Series E First Preferred Stock. At the close of business on February 28, 2004: (i) 19,340,185 shares of Company

Common Stock were issued and outstanding (including 69,794 shares of restricted stock of Company Common Stock including shares of Company Common Stock held by the trust formed pursuant to the Company Stock Purchase Plan (as defined below) and held by the trust formed pursuant to the Employees Voluntary Investment and Savings Plan of the Company and excluding 2,503,447 shares of Company Common Stock held in the treasury of the Company); (ii) no shares of Preferred Stock or First Preferred Stock were issued or outstanding; and (iii) 1,918,063 shares of Company Common Stock were subject to outstanding employee or director stock options to purchase Company Common Stock (collectively, the ***Company Stock Options***) and 180,550 shares of Company Common Stock were issuable pursuant to outstanding restricted stock units, in each case granted under the Company s 1997 Stock-Based Incentive Plan, its Amended and Restated 1989 Stock-Based Incentive Plan and its 1986 Stock Option Incentive Plan (the ***Company Stock Plans***). Section 3.1(c) of the Company Disclosure Letter sets forth the holders of all outstanding Company Stock Options, restricted stock, restricted stock units, deferred shares, stock units and other stock awards and the number, exercise prices, vesting schedules and expiration dates of each grant to such holders, in each case as of the date of this Agreement. Each share of Company Common Stock carries with it an

associated share purchase right (collectively, the ***Company Rights***) issued pursuant to the Share Rights Agreement between the Company and Wells Fargo Bank Minnesota, N.A., as Rights Agent, dated as of September 15, 2000 (the ***Company Rights Agreement***), which entitles the holder thereof to purchase, on the occurrence of certain events, Company Common Stock or Series A Preferred Stock. Participants in the Stock Purchase Plan of Robin Hood Multifoods Inc. (the ***Company Stock Purchase Plan***) have the right to purchase shares of Company Common Stock pursuant to the terms of such plan. All outstanding shares of capital stock of the Company are, and all shares that may be issued will be, when issued, duly authorized, validly issued, fully paid and nonassessable and not subject to or issued in violation of preemptive rights. Except as set forth in this Section 3.1(c), (A) there are not issued, reserved for issuance or outstanding (1) any shares of capital stock or other voting securities of the Company, (2) any securities convertible into or exchangeable or exercisable for shares of capital stock or voting securities of the Company, or (3) any warrants, calls, options or other rights to acquire from the Company or any Company Subsidiary, and no obligation of the Company or any Company Subsidiary to issue, any capital stock, voting securities or securities convertible into or exchangeable or exercisable for capital stock or voting securities of the Company and (B) there are no outstanding obligations of the Company or any Company Subsidiary to repurchase, redeem or otherwise acquire any such securities or to issue, deliver or sell, or cause to be issued, delivered or sold, any such securities. Neither the Company nor any Company Subsidiary is a party to any voting agreement with respect to the voting of any such securities. There are not issued, reserved for issuance or outstanding (i) securities convertible into or exchangeable or exercisable for shares of capital stock or other voting securities or ownership interests in any Company Subsidiary, (ii) warrants, calls, options or other rights to acquire from the Company or any Company Subsidiary, and no obligation of the Company or any Company Subsidiary to issue, any capital stock, voting securities or other ownership interests in, or any securities convertible into or exchangeable or exercisable for any capital stock, voting securities or ownership interests in, any Company Subsidiary, or (iii) obligations of the Company or any Company Subsidiary to repurchase, redeem or otherwise acquire any such outstanding securities of Company Subsidiaries or to issue, deliver or sell, or cause to be issued, delivered or sold, any such securities. There are no agreements, arrangements or commitments of any character (contingent or otherwise) pursuant to which any person is or may be entitled to receive any payment pursuant to any unpaid earnout or similar agreement contained in any business acquisition agreement based on the revenues, earnings or other performance measurement of the Company or any Company Subsidiary.

(d) Authority; Noncontravention. The Company has all requisite corporate power and authority to enter into this Agreement, and, subject to the Company Shareholder Approval (as defined in Section 3.1(k)), to consummate the transactions contemplated by this Agreement. The execution and delivery of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Company, subject, in the case of the Merger, to the Company Shareholder Approval. This Agreement has been duly executed and delivered by the Company, and, assuming the due authorization, execution and delivery by Parent and Merger Sub, constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as the enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization,

moratorium or similar laws generally affecting the rights of creditors and subject to general equity principles. The execution and delivery of this Agreement by the Company does not, and the consummation of the transactions contemplated by this Agreement and compliance with the provisions of this Agreement by the Company will not, (i) conflict with the certificate of incorporation or by-laws (or comparable organizational documents) of any of the Company Entities, (ii) result in any breach, violation or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or creation or acceleration of any obligation or right of a third party or loss of a benefit under, or result in the creation of any Lien upon any of the properties or assets of any of the Company Entities under, any loan or credit agreement, note, bond, mortgage, indenture, lease or other agreement, instrument, permit, concession, franchise, license or other authorization applicable to any of the Company Entities or their respective properties or assets or (iii) subject to the governmental filings and other matters referred to in the following sentence, conflict with or violate any Law applicable to any of the Company Entities or their respective properties or assets or any judgment, order or decree to which any of the Company Entities or their respective properties or assets have been specifically identified as subject, other than, in the case

of clauses (ii) and (iii), any such breaches, conflicts, violations, defaults, rights, losses or Liens that, individually or in the aggregate, would not have or result in a material adverse effect on the Company and that would not materially impair the ability of the Company to consummate the transactions contemplated by this Agreement. No consent, approval, order or authorization of, action by or in respect of, or registration, declaration or filing with, any federal, state, provincial or local or foreign government, court or administrative, regulatory or other governmental agency, commission or authority (each, a ***Governmental Entity***) is required by the Company in connection with the execution and delivery of this Agreement by the Company or the consummation by the Company of the transactions contemplated hereby, except for: (i) the filing with the Securities and Exchange Commission (the ***SEC***) of (A) a proxy statement relating to the Company Shareholders Meeting and the Parent Shareholders Meeting (each as defined in Section 5.1) (such proxy statement, as amended or supplemented from time to time, the ***Proxy Statement***) and (B) such reports under Section 13(a), 13(d), 15(d) or 16(a) of the Exchange Act, as may be required in connection with this Agreement and the transactions contemplated hereby; (ii) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware; (iii) the filing of a premerger notification and report form by the Company under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (***HSR Act***); (iv) filings required under the antitrust and competition laws of foreign countries (***Foreign Antitrust Laws***), including the Canadian Competition Act (the ***Canadian Act***)**,** which are set forth on Section 3.1(d) of the Company Disclosure Letter; and (v) such consents, approvals, orders, authorizations, actions, registrations, declarations or filings the failure of which to be made or obtained (as applicable), individually or in the aggregate, would not have or result in a material adverse effect on the Company and would not materially impair the ability of the Company to consummate the transactions contemplated by this Agreement. The Company does not operate as a transportation company or publishing company.

(e) SEC Reports and Financial Statements; Undisclosed Liabilities.

(i) The Company has timely filed all required reports, schedules, forms, statements and other documents (including exhibits and all other information incorporated therein) under the Securities Act of 1933, as amended (the ***Securities Act***), and the Exchange Act, with the SEC since March 1, 2002 (as such reports, schedules, forms, statements and documents have been amended or supplemented since the time of their filing, collectively, the ***Company SEC Documents***). As of their respective dates, or if amended or supplemented prior to the date of this Agreement, as of the date of the last such amendment or supplement, the Company SEC Documents complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and the rules and regulations of the SEC promulgated thereunder applicable to such Company SEC Documents, and none of the Company SEC Documents when filed, or (if amended or supplemented) as of the date of such amendment or supplement, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(ii) The consolidated financial statements of the Company included in the Company SEC Documents comply as to form, as of their respective dates of filing with the SEC, in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with United States generally accepted accounting principles (***GAAP***) (except, in the case of unaudited statements, as permitted by Form 10-Q of the SEC) applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto), and fairly present in all material respects the consolidated financial position of the Company and its subsidiaries as of the dates thereof and the consolidated statements of income, cash flows and shareholders equity for the periods then ended (subject, in the case of interim financial statements, to normal year-end audit adjustments), except that the interim financial statements do not contain all of the footnote disclosures required by GAAP. No Company Subsidiary is required to make any filings with the SEC. Except (A) as and to the extent reflected in or reserved against in such financial statements, including the notes thereto, (B) obligations and liabilities incurred in the ordinary course of business since the date of the most recent balance sheet contained in the Company SEC Documents filed prior to the date hereof, (C) obligations and liabilities disclosed pursuant to any other representation or warranty set forth in this Agreement, including liabilities and obligations incurred under or pursuant to Company Benefit Plans or

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Company Foreign Plans disclosed in Section 3.1(i)(i) of the Company Disclosure Letter, Leases made available to Parent pursuant to Section 3.1(p)(ii), collective bargaining agreements or other agreements disclosed in Section 3.1(s) of the Company Disclosure Letter and Contracts, agreements, commitments and arrangements disclosed in Section 3.1(u) of the Company Disclosure Letter, (D) other contracts, agreements and contractual commitments and arrangements that do not constitute Company Contracts, Leases, Company Benefit Plans or Company Foreign Plans and (E) obligations and liabilities incurred in connection with this Agreement or the transactions contemplated hereby, neither the Company or any Company Subsidiary has any obligations or liabilities of any nature (whether accrued, absolute, contingent or otherwise) as of the date of this Agreement that would have or result in a material adverse effect on the Company.

(f) Information Supplied. None of the information supplied or to be supplied by or on behalf of the Company specifically for inclusion or incorporation by reference in (i) the registration statement on Form S-4 to be filed with the SEC by Parent in connection with the issuance of Parent Common Stock in the Merger (the ***Form S-4***) will, at the time the Form S-4 becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they are made, not misleading or (ii) the Proxy Statement will, at the date it is first mailed to the Company s shareholders and Parent s shareholders or at the time of the Company Shareholders Meeting or the Parent Shareholders Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The Proxy Statement will comply as to form in all material respects with the requirements of the Exchange Act and the rules and regulations thereunder, except that no representation or warranty is made by the Company with respect to information contained or incorporated by reference therein supplied by or on behalf of Parent or Merger Sub specifically for inclusion or incorporation by reference in the Proxy Statement.

(g) Absence of Certain Changes or Events. From the date of the most recent Company balance sheet contained in the Company SEC Documents filed prior to the date hereof (the ***Company Balance Sheet***) to the date of this Agreement, (i) each of the Company Entities has conducted its respective operations only in the ordinary course consistent with past practice, (ii) the Company has not suffered a material adverse change and (iii) no Company Entity has engaged in any material transaction or entered into any material agreement or commitments outside the ordinary course of business (except for the transactions contemplated by this Agreement). From the date of the Company Balance Sheet to the date of this Agreement the Company and the Company Subsidiaries have not:

(i) (A) other than dividends and distributions by a direct or indirect wholly owned Company Subsidiary to the Company or another wholly owned Subsidiary, declared, set aside or paid any dividends on, or made any other distributions in respect of, any of its capital stock, (B) split, combined or

reclassified any of its capital stock, or (C) except pursuant to agreements entered into with respect to the Company Stock Plans, purchased, redeemed or otherwise acquired any shares of capital stock of the Company or any of the Company Subsidiaries or any other securities thereof or any rights, warrants or options to acquire any such shares or other securities;

(ii) issued, delivered, sold, pledged or otherwise encumbered or subjected to any Lien any shares of its capital stock, any other voting securities or any securities convertible into, or any rights, warrants or options to acquire, any such shares, voting securities or convertible securities, other than the issuance of shares by one Company Subsidiary to the Company or any Company Subsidiary or the issuance of shares of Company Common Stock (A) upon the exercise of Company Stock Options under the Company Stock Plans or in connection with other awards under the Company Stock Plans, in each case, in accordance with their terms, (B) under the Company Stock Purchase Plan, (C) as matching contributions to the Employees Voluntary Investment and Savings Plan of the Company, or (D) the issuance of Company Rights under the Company Rights Agreement in connection with the issuance of Company Common Stock permitted pursuant to this Agreement.

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(iii) (A) amended its Certificate of Incorporation or Bylaws (or other comparable organizational documents), (B) except as represented in Section 3.1(t), amended or taken any other action with respect to the Company Rights Agreement, (C) merged or consolidated with any person or (D) taken or failed to have taken any actions that would constitute a violation of applicable Law, except for such violations as did not result in a material adverse effect on the Company;

(iv) sold, leased, licensed, mortgaged or otherwise encumbered or subjected to any Lien or otherwise disposed of any of its properties or assets that were material to the Company Entities taken as a whole, other than dispositions in the ordinary course of business consistent with past practice and the granting of Permitted Liens and Liens required under then existing bank agreements;

(v) entered into commitments for capital expenditures involving more than $1,000,000 in the aggregate, except pursuant to the capital plan of the Company previously provided to Parent;

(vi) incurred any indebtedness for money borrowed (whether evidenced by a note or other instrument, pursuant to a financing lease, sale-leaseback transaction, or otherwise), other than intercompany indebtedness, indebtedness under the Company s then existing credit agreement in a manner consistent with past practices, and other indebtedness of up to $3,500,000 in the aggregate;

(vii) except as set forth on Section 3.1(g)(vii) of the Company Disclosure Letter, as required by Law or as required by contracts or plans entered into then in existence (and previously disclosed to Parent) and subject to Sections 3.1(g)(i) and (ii), (A) except for normal increases in salary and wages in the ordinary course of business consistent with the past practice, granted any increase in the compensation or benefits payable or to become payable by the Company or any Company Subsidiary to any current or former director, officer, employee or consultant; (B) adopted, entered into, amended or otherwise increased, repriced or accelerated the payment or vesting of the amounts, benefits or rights payable or accrued or to become payable or accrued under any Company Benefit Plan or Foreign Plan; (C) entered into or amended any employment, severance, change in control agreement or any similar agreement or any collective bargaining agreement or, except as required in accordance with the then existing written policies of the Company, granted any severance or termination pay to any officer, director, consultant or employee of the Company or any Company Subsidiaries (except in the ordinary course of business consistent with the Company s severance policy then in effect); or (D) paid or awarded any pension, retirement, allowance or other non-equity incentive awards, or other employee or director benefit not required by any then outstanding Company Benefit Plan or Foreign Plan;

(viii) changed the accounting principles used by it unless required by GAAP (or, if applicable with respect to foreign subsidiaries, the relevant foreign generally accepted accounting principles);

(ix) acquired by merging or consolidating with, by purchasing any equity interest in or a portion of the assets of, or by any other manner, any business or any corporation, partnership, association or other business organization or division thereof, or otherwise acquired any material amount of assets of any other person (other than the purchase of assets from suppliers or vendors in the ordinary course of business consistent with past practice);

(x) amended any Tax Returns except as required by Law or as will not have or result in a material adverse effect on the Company or, except as did not have a material adverse effect on the Company and consistent with past practice, made or rescinded any express or deemed election or settled or compromised any claim or action relating to Taxes, or changed any of its methods of accounting or of reporting income or deductions for Tax purposes unless required by GAAP (or, if applicable with respect to foreign subsidiaries, the relevant foreign generally accepted accounting principles) or by Law;

(xi) satisfied any claims or liabilities, other than (A) the satisfaction of such claims or liabilities, in the ordinary course of business consistent with past practice, in accordance with their terms, or (B) the satisfaction of claims or liabilities reflected or reserved against in the financial statements (or the notes thereto) of the Company included in the Company SEC Documents (for amounts not in excess of such reserves) or incurred since the date of such financial statements in the ordinary course of business consistent with past practice;

(xii) made any loans, advances or capital contributions to, or investments in, any other person, except for loans, advances, capital contributions or investments between any wholly owned Company Subsidiary and the Company or another wholly owned Company Subsidiary and except for employee or director advances for expenses in the ordinary course of business consistent with past practice;

(xiii) other than in the ordinary course of business consistent with past practice, (A) modified, amended or terminated any material contract in a manner materially adverse to the Company or any Company Subsidiary, (B) waived, released, relinquished or assigned any material contract (or any of the Company s or any Company Subsidiary s rights thereunder), right or claim, or (C) canceled or forgiven any indebtedness owed to the Company or any Company Subsidiary (other than intercompany indebtedness);

(xiv) taken any action that would jeopardize qualification of the Merger as a reorganization within the meaning of Section 368(a) of the Code;

(xv) sold or otherwise disposed of any business or any stock or other equity interest of any subsidiary;

(xvi) entered into any new line of business; or

(xvii) authorized, or committed or agreed to take, any of the foregoing actions; provided, however, that the limitations set forth in the second sentence of Section 3.1(g) do not apply to any transaction to which the only parties are the Company and any wholly owned subsidiaries of the Company.

(h) Compliance with Applicable Laws; Litigation; Regulatory Matters.

(i) The operations of the Company Entities since March 1, 2002 have not been and are not being conducted in violation of any Law (including the Sarbanes-Oxley Act of 2002 and the USA PATRIOT Act of 2001) or any Permit (as defined in Section 3.1(h)(ii)) applicable to or held by (as the case may be) the Company Entities, except where such violations, individually or in the aggregate, would not have or result in a material adverse effect on the Company. Since March 1, 2002, none of the Company Entities has received any written notice alleging any such violation, except where such violations, individually or in the aggregate, would not have or result in a material adverse effect on the Company.

(ii) The Company Entities hold all licenses, permits, variances, consents, authorizations, waivers, grants, franchises, concessions, exemptions, orders, registrations and approvals of Governmental Entities necessary for the conduct of their respective businesses as currently conducted (***Permits***), except where the failure to hold such Permits, individually or in the aggregate, would not have or result in a material adverse effect on the Company. Since March 1, 2002, none of the Company Entities has received written notice that any Permit will be terminated or modified or cannot be renewed in the ordinary course of business except for such terminations, modifications or nonrenewals as, individually or in the aggregate, would not have or result in a material adverse effect on the Company. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby do not and will not violate any Permit, except for such violations thereof as, individually or in the aggregate, would not reasonably be expected to have or result in a material adverse effect on the Company.

(iii) There is no investigation by a Governmental Entity or litigation, arbitration, or administrative proceeding pending against or, to the knowledge of the Company, threatened against the Company or any Company Subsidiary as of the date of this Agreement that, if decided adversely to such person, would have or result in a material adverse effect on the Company, or that seeks to enjoin or otherwise challenges the consummation of the transactions contemplated by this Agreement.

(iv) From March 1, 2002 to the date of this Agreement, no products sold or manufactured by the Company or any Company Subsidiary have been recalled voluntarily or involuntarily or have been adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetics Act, as amended, and the rules and regulations promulgated thereunder (the ***Food, Drug and Cosmetics Act***) or, except as individually or in the aggregate, would not have or result in a material adverse effect on the Company, labeled

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contrary to the Food and Drugs Act, Canada and Consumer Packaging and Labeling Act, Canada, as amended, and the rules and regulations promulgated thereunder (the ***Canada Act***), and no recall of any of such products is currently being considered by the Company or any Company Subsidiary or, to the Company s knowledge, has been requested, ordered or threatened in writing by any Governmental Entity (including the Canadian Food Inspection Agency) or consumer group.

(i) Employee Benefit Plans.

(i) Section 3.1(i)(i) of the Company Disclosure Letter sets forth a true and complete list of (A) each United States bonus, pension, profit sharing, deferred compensation, incentive compensation, stock ownership, stock purchase, stock option, phantom stock, retirement, vacation, employment, disability, death benefit, hospitalization, medical insurance, life insurance, severance or other employee benefit plan, agreement or arrangement maintained by the Company or any Company Subsidiary or to which the Company or any Company Subsidiary contributes or is obligated to contribute or with respect to which the Company or any Company Subsidiary has any liability, other than a plan or program operated by a Governmental Entity (such as government-operated workers compensation or Social Security), and (B) each change of control agreement providing benefits to any current or former employee, officer or director of the Company or any Company Subsidiary, to which the Company or any Company Subsidiary is a party or by which the Company or any Company Subsidiary is bound (collectively, the ***Company Benefit Plans***). For purposes of this Agreement, the term ***Company Foreign Plan*** refers to each plan, agreement or arrangement that is subject to or governed by the laws of any jurisdiction other than the United States and that would have been treated as a Company Benefit Plan had it been a United States plan, agreement or arrangement, other than a plan or program operated by a Governmental Entity (such as a government-operated provincial health plan or the Canada Pension Plan). Section 3.1(i)(i) of the Company Disclosure Letter sets forth a true and correct list of the Company Foreign Plans. With respect to each Company Benefit Plan and Company Foreign Plan, no event has occurred and there exists no condition or set of circumstances in connection with which the Company or any Company Subsidiary would be subject to any liability that, individually or in the aggregate, would have or result in a material adverse effect on the Company.

(ii) Each Company Benefit Plan and its administration is in compliance with all applicable Laws, including the Employee Retirement Income Security Act of 1974, as amended (***ERISA***), and the Code, if applicable, and with the terms of all applicable collective bargaining agreements, except for any failures that, individually or in the aggregate, would not have or result in a material adverse effect on the Company. Each Company Benefit Plan that is intended to be qualified under Section 401(a), 401(k) or 4975(e)(7) of the Code has received a favorable determination letter from the IRS as to its qualified status that covers the Uruguay Round Agreement Act (GATT), the Taxpayer Relief Act of 1997, the Reemployment Rights Act of 1994 (USERRA), the Internal Revenue Service Restructuring and Reform Act of 1998, the Small Business Job Protection Act of 1996 and the Community

Renewal Act of 2000. All contributions to, and payments from, the Company Benefit Plans that are required to have been made in accordance with such Company Benefit Plans, ERISA or the Code have been made other than any failures that, individually or in the aggregate, would not have or result in a material adverse effect on the Company. All trusts providing funding for Company Benefit Plans that are intended to comply with Section 501(c)(9) of the Code are exempt from federal income taxation and, together with any other welfare benefit funds (as defined in Section 419(e)(1) of the Code) maintained in connection with any of the Company Benefit Plans, have been operated and administered in compliance with all applicable requirements such that none of the Company, any Company Subsidiary, any Company Benefit Plan or such trust or fund is subject to any Taxes, penalties or other liabilities imposed as a consequence of failure to comply with such requirements which, individually or in the aggregate, would have a material adverse effect on the Company. No welfare benefit fund (as defined in Section 419(e)(1) of the Code) maintained in connection with any of the Company Benefit Plans has provided any disqualified benefit (as defined in Section 4976(b)(1) of the Code) for which the Company or any Company Subsidiary has or had any liability for the excise tax imposed by Section 4976 of the Code which has not been paid in full, except as would not have or result in a material adverse effect on the Company.

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(iii) Neither the Company nor any trade or business, whether or not incorporated, which, together with the Company, would be deemed to be a single employer within the meaning of Section 4001(b) of ERISA or Sections 414(b) or (c) of the Code (an ***ERISA Affiliate***) has incurred any liability under Title IV of ERISA (other than for premiums pursuant to Section 4007 of ERISA which have been timely paid) or Section 4971 of the Code that has not been satisfied. No Company Benefit Plan has or within the three years preceding the date of this Agreement has incurred an accumulated funding deficiency within the meaning of Section 302 of ERISA or Section 412 of the Code, nor is there any request pending before the Internal Revenue Service for any waiver of the minimum funding standards of Section 302 of ERISA and Section 412 of the Code, nor has there been any prior such request granted with respect to any Company Benefit Plan where the minimum funding commitment has not yet been satisfied, nor has any Lien in favor of any Company Benefit Plan arisen under Section 412(n) of the Code or Section 302(f) of ERISA. Neither the Company nor any ERISA Affiliate has been required to provide security to any defined benefit pension plan pursuant to Section 401(a)(29) of the Code that has not been released. With respect to each Company Benefit Plan that is subject to Title IV or Section 302 of ERISA or Section 412 or 4971 of the Code, the fair market value of the assets of such Company Benefit Plan equals or exceeds the actuarial present value of all accrued benefits under such Company Benefit Plan (whether or not vested), based upon the actuarial assumptions used to prepare the most recent actuarial report for such Company Benefit Plan. There has been no reportable event within the meaning of Section 4043 of ERISA and the regulations and interpretations thereunder which required a notice to the Pension Benefit Guaranty Corporation (the ***PBGC***) which has not been fully and accurately reported in a timely fashion, as required, or which, whether or not reported, would constitute grounds for the PBGC to institute involuntary termination proceedings with respect to any Company Benefit Plan that is subject to Title IV of ERISA.

(iv) No Company Benefit Plan provides medical or life insurance benefits (whether or not insured) with respect to current or former employees or officers or directors after retirement or other termination of service, other than any such coverage required by Law and with respect to any Company Benefit Plan, to the knowledge of the Company, the Company and the Company Subsidiaries have reserved all rights necessary to amend or terminate each of such plans without the consent of any other person.

(v) The consummation of the transactions contemplated by this Agreement will not, either alone or in combination with another event, (A) entitle any current or former employee, officer or director of the Company or any Company Subsidiary to severance pay, unemployment compensation or any other payment that would not have been payable if such transactions had not been consummated, or (B) accelerate the time of payment or vesting, or increase the amount of compensation due any such employee, officer or director.

(vi) Neither the Company nor any Company Subsidiary is a party to any agreement, contract or arrangement (including this Agreement) that would

result, separately or in the aggregate, in the payment of any excess parachute payments within the meaning of Section 280G of the Code. No Company Benefit Plan provides for the reimbursement of excise taxes under Section 4999 of the Code or any income taxes under the Code.

(vii) With respect to each Company Benefit Plan, the Company has made available to Parent a true and complete copy of: (A) each writing constituting a current part of such Company Benefit Plan, including all current Company Benefit Plan documents and trust agreements, and all amendments thereto; (B) the most recent Annual Report (Form 5500 Series) and accompanying schedules, if any; (C) the most recent annual financial report, if any; (D) the most recent actuarial report, if any; and (E) the most recent determination letter from the Internal Revenue Service, if any. Neither the Company nor any Company Subsidiary has made an enforceable commitment to make any new amendments to, or to adopt or approve any new, Company Benefit Plan.

(viii) No Company Benefit Plan is a multiemployer plan (as defined in Section 4001(a)(3) of ERISA) (a ***Multiemployer Plan***) or a plan that has two or more contributing sponsors at least two of whom are not under common control, within the meaning of Section 4063 of ERISA (a ***Multiple Employer Plan***). None of the Company, the Company Subsidiaries nor any of their respective ERISA Affiliates has, at any time during the last six years, contributed to or been obligated to contribute to any Multiemployer Plan or Multiple Employer Plan that is subject to Title IV of ERISA.

(ix) As of the date of this Agreement, there are no pending claims (other than claims for benefits in the ordinary course), lawsuits or arbitrations that have been asserted or instituted, or to the Company s knowledge, threatened against the Company Benefit Plans, any fiduciaries thereof with respect to their duties to the Company Benefit Plans or the assets of any of the trusts under any of the Company Benefit Plans that could reasonably be expected to result in any material liability of the Company or any Company Subsidiaries to the PBGC, the United States Department of Treasury, the United States Department of Labor, any Multiemployer Plan, any Company Benefit Plan or any participant in a Company Benefit Plan.

(x) There have been no prohibited transactions or breaches of any of the duties imposed on fiduciaries (within the meaning of Section 3(21) of ERISA) by ERISA with respect to the Company Benefit Plans that would result in any material liability or excise tax under ERISA or the Code being imposed on the Company or any of the Company Subsidiaries.

(xi) With respect to each Company Foreign Plan, except as would not have or result in a material adverse effect on the Company: (A) all amounts required to be reserved under each book reserved Company Foreign Plan have been so reserved in accordance with reasonable accounting practices prevailing in the country where such Company Foreign Plan is established and maintained; (B) each Company Foreign Plan required to be registered with a Governmental Entity has been duly registered and has been maintained in good standing with the appropriate Governmental Entities, and each Company Foreign Plan has been operated, administered, funded and invested in accordance with its terms, all applicable Laws and the terms of all applicable collective bargaining agreements; (C) as of the date of this Agreement, there are no actions, suits, arbitrations or claims relating thereto (other than claims for benefits in the ordinary course of business) that are pending or, to the knowledge of the Company, threatened by any current or former employee of the Company or the Company Subsidiaries, any collective bargaining agent, any Governmental Entity or by any other person in relation to any Company Foreign Plan or the assets of the trust thereunder; (D) with respect to each Company Foreign Plan, the Company has made available to Parent a true and complete copy of: (1) all documents relating to the Company Foreign Plan, including the current plan text, the trust or other funding or other related agreements, the investment policy statement, and all amendments thereto; (2) the most recent Annual Information Return filed for any Company Foreign Plan that is a registered pension plan; (3) the most recent financial report or statement; (4) the most recent actuarial valuation report, if any; and (5) the most recent plan description provided to employees of the Company or the Company Subsidiaries; (E) neither the Company nor any Company Subsidiary has announced or made an enforceable commitment to make any new amendments to, or to adopt or approve any new, Company Foreign Plan; (F) no Company Foreign Plan provides medical or life insurance or other welfare benefits (whether or not insured) with respect to current or former employees or officers or directors of the Company or any Company Subsidiary after retirement or other termination of service, other than any such coverage required by Law; (G) no Company Foreign Plan is a multi-employer pension plan as defined under applicable Canadian Laws; (H) there have been no withdrawals, transfers or applications of assets under any of the Company Foreign Plans in contravention of any applicable Laws, the terms of any Company Foreign Plans or the terms of any trusts established thereunder; and

(I) to the Company s knowledge, no fact or circumstance exists that could adversely affect the tax-exempt status of any Company Foreign Plan.

(j) Taxes. (i) Except as would not have or result in a material adverse effect on the Company, the Company and each Company Subsidiary have filed all Tax Returns required to be filed and all such returns are materially complete and correct; (ii) except as would not have or result in a material adverse effect on the Company, the Company and each Company Subsidiary have paid all Taxes due; (iii) except as would not have or result in a material adverse effect on the Company, there are no pending, or, to the knowledge of the Company, threatened, audits, examinations, investigations or other proceedings in respect of Taxes relating to the Company or any Company Subsidiary; (iv) there are no Liens for Taxes upon the assets of the Company or any of the Company Subsidiaries, other than Permitted Liens (as defined in Section 9.3); (v) neither the Company nor any of the Company Subsidiaries has any liability for Taxes of any person (other than the Company and the Company Subsidiaries) under Treasury Regulation Section 1.1502-6 (or any comparable provision of Law) as a transferee or successor, by contract, or otherwise; (vi) neither the Company nor any Company Subsidiary is a party to any agreement relating to the allocation or sharing of Taxes; (vii) neither the Company nor any Company Subsidiary

has taken any action or knows of any fact, agreement, plan or other circumstance that would prevent the Merger from qualifying as a reorganization within the meaning of Section 368(a)(2)(D) of the Code; (viii) except as would not have or result in a material adverse effect on the Company, no deficiencies for any Taxes for a Tax year that has not yet been closed have been proposed, asserted or assessed in writing against the Company or any Company Subsidiary for which adequate reserves have not been created; (ix) neither the Company nor any Company Subsidiary will be required to include any adjustment in taxable income for any Tax period ending after the Closing Date (a ***Post-Closing Tax Period***) under Section 481 of the Code (or any comparable provision of Law) as a result of a change in method of accounting for any Tax period (or portion thereof) ending prior to the Closing Date (a ***Pre-Closing Tax Period***) or pursuant to the provisions of any agreement entered into with any taxing authority with regard to the Tax liability of the Company or any Company Subsidiary for any Pre-Closing Tax Period; (x) the financial statements included in the Company SEC Documents reflect an adequate reserve for all Taxes for which the Company or any Company Subsidiary may be liable for all taxable periods and portions thereof through the date hereof; (xi) except as would not have or result in a material adverse effect on the Company, no person has granted any extension or waiver of the statute of limitations period applicable to any Tax of the Company or any Company Subsidiary or any affiliated, combined or unitary group of which the Company or any Company Subsidiary is or was a member, which period (after giving effect to such extension or waiver) has not yet expired; (xii) except as would not have or result in a material adverse effect on the Company, the Company and each Company Subsidiary have withheld and paid all Taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party; (xiii) since March 1, 2000, neither the Company nor any Company Subsidiary has distributed stock of another person or has had its stock distributed by another person, in a transaction that was purported or intended to be governed in whole or in part by Section 355 or Section 361 of the Code; (xiv) Since March 1, 2000, neither the Company nor any Company Subsidiary has participated in any transaction that has been identified by the Internal Revenue Service in published guidance as a reportable transaction; and (xv) the consolidated federal income Tax Returns of the Company have been examined, or the statute of limitations has closed, with respect to all taxable years through and including February 29, 2000. As used in this Agreement, ***Tax*** *or* ***Taxes*** includes all federal, state, provincial or local or foreign net and gross income, alternative or add-on minimum, environmental, gross receipts, ad valorem, value added, goods and services, capital stock, profits, license, single business, employment, social security, severance, stamp, unemployment, customs, property, sales, excise, use, occupation, service, transfer, payroll, franchise, withholding and other taxes or similar governmental duties, charges, fees, levies or other assessments, including any interest, penalties or additions with respect thereto. As used herein, ***Tax Return*** shall mean any return, report, statement or information required to be filed with any Governmental Entity with respect to Taxes.

(k) Voting Requirement. Assuming the accuracy of Parent and Merger Sub s representations in Section 3.2(n) without the knowledge qualifier, the affirmative vote of a majority of the votes entitled to be cast by the holders of outstanding shares of Company Common Stock is the only vote of the holders of any class or series of the Company s capital stock necessary to adopt and approve this Agreement and the Merger and the transactions contemplated

hereby (the ***Company Shareholder Approval***).

(l) State Takeover Statutes. Assuming the accuracy of Parent and Merger Sub s representations in Section 3.2(n) without the knowledge qualifier, the Board of Directors of the Company has taken all necessary action so that no fair price, moratorium, control share acquisition or other anti-takeover Law (each, a ***Takeover Statute***) applicable to the Company or any anti-takeover provision in the Company s Certificate of Incorporation or By-laws is applicable to the Merger and the other transactions contemplated by this Agreement. The Board of Directors of the Company has (i) duly and validly approved this Agreement, (ii) determined that the transactions contemplated by this Agreement are advisable and in the best interests of the Company and its shareholders, (iii) unanimously resolved to recommend to such shareholders that they vote in favor of the Merger and (iv) taken all corporate action required to be taken by the Board of Directors of the Company for the consummation of the transactions contemplated by this Agreement.

(m) Brokers. Except for Greenhill & Co., LLC (the ***Company s Banker)***, no broker, investment banker, financial advisor or other person is entitled to any broker s, finder s, financial advisor s or

other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company. The Company has made available to Parent true and complete copies of all agreements with the Company s Banker under which any fees, commissions or expenses are payable and all indemnification and other agreements related to the engagement of the Company s Banker.

(n) Ownership of Parent Common Stock. Except for shares of Parent Common Stock owned by the Company Benefit Plans or shares held or managed for the account of another person or as to which the Company is required to act as a fiduciary or in a similar capacity, neither the Company nor, to its knowledge, any of its affiliates, (i) beneficially owns (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, or (ii) is party to any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of, in each case, shares of Parent Common Stock.

(o) Environmental Matters.

(i) Except as disclosed in the Company SEC Reports filed since March 1, 1999 (the ***Recent SEC Reports***) or where noncompliance, individually or in the aggregate, would not have or result in a material adverse effect on the Company, the Company Entities are and have been for the past five years in compliance with all applicable Environmental Laws (as defined below) and Environmental Permits (as defined below).

(ii) Except as disclosed in the Recent SEC Reports, as of the date of this Agreement, there are no Environmental Claims pending or, to the knowledge of the Company, threatened, against the Company or any Company Subsidiary, except for Environmental Claims that would not have or result in a material adverse effect on the Company.

(iii) Except as disclosed in the Recent SEC Reports, there have been no Releases (as defined below) of any Hazardous Substance in, on, under, from or affecting any real property currently or previously owned, leased, operated or otherwise used by the Company or any Company Entities that, individually or in the aggregate, would have or result in a material adverse effect on the Company.

(iv) Except as disclosed in the Recent SEC Reports, none of the Company or the Company Subsidiaries has assumed, undertaken or otherwise become subject to any liability of any other person relating to or arising from Environmental Laws that, individually or in the aggregate, would have or result in a material adverse effect on the Company.

(v) Except as disclosed in the Recent SEC Reports, to the knowledge of the Company, there exist no Environmental Conditions relating to any real property currently or previously owned, leased, operated or otherwise used by the Company or any Company Subsidiaries for which the Company or any Company Subsidiary presently has an obligation to remediate or cure under any Environmental Law or Environmental Permit, except for such Environmental Conditions for which the cost to remediate or cure would not, individually or in the aggregate, have or result in a material adverse effect on the Company.

(vi) The Company Disclosure Letter lists all environmental assessments prepared since January 1, 1999 in the Company s possession as of the date of this Agreement relating to any of its (or any Company Subsidiary s) currently owned or leased real property. The Company Disclosure Letter lists all material documents prepared since January 1, 1999 concerning environmental matters that would reasonably be expected to result in liability under Environmental Laws that would have or result in a material adverse effect on the Company, which are in the Company s possession as of the date of this Agreement relating to any of its (or any Company Subsidiary s) currently or previously owned or leased real property. The Company has made available to Parent true and complete copies of all environmental assessments and documents listed in the Company Disclosure Letter, all of the disclosures and other information made or contained in which are deemed to be incorporated by reference, and thereby included, in the Company Disclosure Letter.

(vii) As used in this Agreement:

(A) the term ***Environment*** means soil, surface waters, ground water, land, stream sediment, surface and subsurface strata, ambient air, indoor air or indoor air quality, including, without limitation, any material or substance used in the physical structure of any building or improvement;

(B) the term ***Environmental Claim*** means any written claim, demand, suit, action, proceeding, order, investigation or notice to any of the Company Entities or Parent Entities (as defined herein) (as applicable) by any person alleging any potential liability (including potential liability for investigatory costs, risk assessment costs, cleanup costs, removal costs, remedial costs, operation and maintenance costs, governmental response costs, natural resource damages, or penalties) arising out of, based on, or resulting from (1) noncompliance or alleged noncompliance with any Environmental Law or Environmental Permit, (2) injury or damage (or alleged injury or damage) arising from exposure to Hazardous Substances, or (3) the presence, Release or threatened Release into the Environment, of any Hazardous Substance at or from any location, whether or not owned, leased, operated or otherwise used (including off-site disposal locations) by the Company or any Company Subsidiary, on the one hand, or Parent or any Parent Subsidiary, on the other hand (as applicable);

(C) the term ***Environmental Laws*** means all Laws relating to (1) pollution or protection of the Environment, (2) emissions, discharges, Releases or threatened Releases of Hazardous Substances, (3) threats to human health or ecological resources arising from exposure to Hazardous Substances, or (4) the manufacture, generation, processing, distribution, use, sale, treatment, receipt, storage, disposal, transport or handling of Hazardous Substances, and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conversation and Recovery Act, the Clean Air Act, the Clean Water Act, the Water Pollution Control Act, the Toxic Substances Control Act, the Occupational Safety and Health Act and any similar foreign, state, provincial or local Laws;

(D) the term ***Hazardous Substance*** means (1) chemicals, pollutants, contaminants, hazardous wastes, toxic substances, toxic mold, radiation and radioactive materials, (2) any substance that is or contains asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls (***PCBs***), petroleum or petroleum-derived substances or wastes, leaded paints, radon gas or related materials, (3) any substance that requires removal or remediation under any Environmental Law, or is defined, listed or identified as a hazardous waste or hazardous substance thereunder, or (4) any substance that is regulated under any Environmental Law;

(E) the term ***Release*** means any releasing, disposing, discharging, injecting, spilling, leaking, pumping, dumping, emitting, escaping, emptying, migration, placing and the like, or otherwise entering into the Environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Substances) and any condition that results in exposure of a person to a Hazardous Substance;

(F) the term ***Environmental Permit*** means all Permits and the timely submission of applications for Permits, as required under Environmental Laws;

(G) the term ***Environmental Condition*** means any contamination, damage, injury or other condition related to Hazardous Substances and includes, without limitation, any present or former Hazardous Substance treatment, storage, disposal or recycling units, underground storage tanks, wastewater treatment or management systems, wetlands, sumps, lagoons, impoundments, landfills, ponds, incinerators, wells, asbestos containing materials, lead paint or PCB-containing articles; and

(H) the term ***Law*** means any foreign, federal, state, provincial or local law, statute, code, ordinance, regulation, rule or other legally enforceable obligation imposed by a court or other Governmental Entity.

(p) Real Property; Assets.

(i) Section 3.1(p)(i) of the Company Disclosure Letter contains a true and complete list and brief description of each parcel of real property owned by the Company and the Company Subsidiaries (the ***Owned Real Property***). One or more of the Company and the Company Subsidiaries has good and valid title to all such real property, free and clear of all Liens, except (a) Permitted Liens, (b) Liens evidenced by any lease, contract, or agreement that is described in the Company Disclosure Letter or in the Company SEC Documents filed before the date of this Agreement, (c) imperfections of title and Liens that do not materially detract from the value or materially interfere with the present use of the properties subject thereto or affected thereby, (d) imperfections of title and Liens that (1) are shown on any title commitment or title policy described in the Company Disclosure Letter or (2) are otherwise of record which do not have or result in a material adverse effect on the Company, and (e) imperfections of title and Liens which do not have or result in a material adverse effect on the Company.

(ii) Section 3.1(p)(ii) of the Company Disclosure Letter contains a true and complete list and brief description of all real property leased by the Company and the Company Subsidiaries, all of which are hereinafter referred to as the ***Leased Real Property.*** The Owned Real Property and Leased Real Property constitute all of the real property occupied or used by the Company and the Company Subsidiaries in connection with the operation of their respective businesses as currently conducted (other than real property accessible to the public generally). The Company or a Company Subsidiary has a valid leasehold interest in or valid rights to all Leased Real Property except (a) Permitted Liens, (b) Liens evidenced by any lease, contract, or agreement that is described in the Company Disclosure Letter or in the Company SEC Documents filed before the date of this Agreement, (c) imperfections of leasehold title and Liens that do not materially detract from the value or materially interfere with the present use of the properties subject thereto or affected thereby, (d) imperfections of leasehold title and Liens that are shown of record which do not have or result in a material adverse effect on the Company, and (e) imperfections of leasehold title and Liens which do not have or result in a material adverse effect on the Company. The Company has made available to Parent true and complete copies of all leases of the Leased Real Property (the ***Leases***). Each of the Company and the Company Subsidiaries is in compliance with the terms of all Leases to which it is a party and under which it is in occupancy, and all such Leases are in full force and effect, except for any failure to be in such compliance or to be in full force and effect that does not have or result in a material adverse effect on the Company. To the knowledge of the Company, the lessors under the Leases to which the Company or a Company Subsidiary is a party are in compliance with the terms of their respective Leases, except for any failure to be in such compliance that does not have or result in a material adverse effect on the Company.

(iii) The Company and the Company Subsidiaries have sufficient title to, or the right to use, all of their tangible properties and assets (other than the Owned Real Property, representations as to which are set forth in Section 3.1(p)(i)) and the Leased Real Property, representations as to which are set

forth in Section 3.1(p)(ii), necessary to conduct their respective businesses as currently conducted, with such exceptions as, individually or in the aggregate, would not interfere with the current use of such properties or assets in such a manner as to have or result in a material adverse effect on the Company.

(q) Intellectual Property.

(i) The term ***Intellectual Property*** means all of the following that is owned by or licensed to Company or the Company Subsidiaries which is used in the business of the Company or the Company Subsidiaries as currently conducted: (A) all currently subsisting material patents, patent applications, common law trademarks, trademark applications, trademark registrations, trade names, trade dress, common law service marks, service mark applications, service mark registrations, logos, copyrights registrations and Internet domain names together with all goodwill associated therewith; (B) all material trade secrets and confidential information (including customer lists, know-how, formulae, manufacturing and production processes, research, financial business information and marketing plans); and (C) information technologies (including software programs, data and related documentation); provided, however, that the term Intellectual Property shall not include any (x) information technologies licensed to Company or the Company Subsidiaries under non-negotiated, non-exclusive

licenses granted to end-user customers by third parties in the ordinary course of such third parties businesses; and (y) intellectual property which is embedded in equipment or fixtures and which is licensed to Company or the Company Subsidiaries under non-negotiated, non-exclusive licenses granted to customers by third parties in the ordinary course of such third parties businesses. The term ***Owned Intellectual Property*** means all Intellectual Property owned by Company or the Company Subsidiaries, and the term ***Licensed Intellectual Property*** means all Intellectual Property licensed to Company or the Company Subsidiaries. Section 3.1(q)(i) of the Company Disclosure Letter sets forth a complete and accurate list of all Owned Intellectual Property set forth in Clause (A) of this Section 3.1(q)(i).

(ii) (A) The Company or the Company Subsidiaries own all of the Owned Intellectual Property; (B) the Company or the Company Subsidiaries have a valid and enforceable license to all of the material Licensed Intellectual Property pursuant to a contract a copy of which has been made available to Parent; (C) from March 1, 2002 to the date of this Agreement, to the knowledge of the Company, no written claim by any third party contesting the validity, enforceability, use by the Company or the Company Subsidiaries or ownership by (or, if applicable, license to) the Company or the Company Subsidiaries of any of the Intellectual Property has been made, is currently outstanding or is threatened (other than challenges by governmental intellectual property office examiners as part of the application process); (D) as of the date of this Agreement, to the knowledge of the Company, no third party is infringing or misappropriating any of the Owned Intellectual Property or any of the Licensed Intellectual Property that is licensed to the Company or the Company Subsidiaries on an exclusive basis; (E) as of the date of this Agreement, to the knowledge of the Company, neither the Company or the Company Subsidiaries nor the conduct of their respective businesses as currently conducted infringes, misappropriates or otherwise conflicts with any intellectual property rights or other rights of any third parties; and (F) as of the date of this Agreement, to the knowledge of Company, the continued operation of the Company s and the Company Subsidiaries respective businesses as currently conducted will not infringe, misappropriate or otherwise conflict with any intellectual property rights or other rights of any third parties; in each of cases (A) through (F) except to the extent that exceptions to any of the foregoing, individually or in the aggregate, would not have or result in a material adverse effect on the Company.

(iii) (A) The Company or one of the Company Subsidiaries, as the case may be, has taken all reasonably prudent actions necessary to maintain and protect the Owned Intellectual Property so as to not materially adversely affect the validity or enforceability of the Owned Intellectual Property; and (B) with respect to the Licensed Intellectual Property licensed from General Mills, Inc. and The Pillsbury Company to Company or the Company Subsidiaries, the Company or one of the Company Subsidiaries, as the case may be, has taken all reasonably prudent actions, within the constraints of the applicable license agreement from General Mills, Inc. and The Pillsbury Company, necessary to maintain and protect such Licensed Intellectual Property so as to not materially adversely affect the validity or enforceability of such Licensed Intellectual Property.

(r) Opinion of Financial Advisor. The Company has received the opinion of the Company s Banker, dated the date of this Agreement, to the effect that, as of such date, the Merger Consideration is fair from a financial point of view to holders of shares of Company Common Stock, a signed copy of which opinion will be made available to Parent promptly after the date of this Agreement.

(s) Labor Agreements and Employee Issues. Section 3.1(s) of the Company Disclosure Letter sets forth a true and complete list of each collective bargaining agreement or other labor agreement with any union or labor organization to which the Company or any of the Company Subsidiaries is a party. The Company and Company Subsidiaries have made available to Parent true and complete copies of all collective bargaining agreements or other agreements identified in Section 3.1(s) of the Company Disclosure Letter. The Company and Company Subsidiaries are in compliance with each of the collective bargaining agreements or other agreements identified in Section 3.1(s) of the Company Disclosure Letter, except for any failure to be in such compliance that does not have or result in a material adverse effect on the Company. As of the date hereof, to the knowledge of the Company, there is no effort, activity or proceeding of any labor organization (or representative thereof) to organize any of its or its subsidiaries employees. As of the date hereof, the Company and the Company Subsidiaries are not, and have not since March 1, 2003 been, subject to any pending, or to the knowledge of the

Company, threatened (i) unfair labor practice charges and/or complaints, (ii) arbitration proceeding arising under any collective bargaining agreement or other labor agreement identified in Section 3.1(s) of the Company Disclosure Letter, (iii) claim, suit, action or governmental investigation relating to employees, including any alleging discrimination, wrongful discharge, or violation of any state and/or federal statute relating to employment practices, or (iv) strike, lockout or dispute, slowdown or work stoppage, except for the foregoing which, in the case of Clauses (i), (ii), (iii) and (iv), would not, individually or in the aggregate, have or result in a material adverse effect on the Company. Neither the Company nor any of the Company Subsidiaries is a party to, or is otherwise specifically identified as subject to, any consent decree with any Governmental Entity relating to employees or employment practices of the Company or Company Subsidiaries.

(t) The Company Rights Agreement. The Company Rights Agreement has been amended to (i) render the Company Rights Agreement inapplicable to the Merger and the other transactions contemplated by this Agreement, (ii) ensure that (A) none of Parent or any of its subsidiaries is an Acquiring Person (as defined in the Company Rights Agreement) pursuant to the Company Rights Agreement, (B) a Distribution Date, a Section 11(a)(ii) Event, a Section 13 Event or a Share Acquisition Date (as such terms are defined in the Company Rights Agreement) does not occur solely by reason of the approval, execution or delivery of this Agreement, the consummation of the Merger or the consummation of the other transactions contemplated by this Agreement and (C) all outstanding Company Rights will expire or otherwise terminate immediately prior to the Effective Time.

(u) Certain Contracts. Neither the Company nor any Company Subsidiary is a party to or bound by any contract, arrangement or commitment (other than those imposed by Law) (i) with respect to the employment of any directors, executive officers or key employees, or with any individuals who are consultants or independent directors involving the payment of $150,000 or more per annum (in each case, other than those that are terminable by the Company or a Company Subsidiary without cost or penalty upon 60 or fewer days notice), (ii) which is a material contract (as such term is defined in Item 601(b)(10) of Regulation S-K of the SEC) that has not been filed as an exhibit to or incorporated by reference in the Company SEC Documents, (iii) which limits in any material way the ability of the Company or any Company Subsidiary to compete in any line of business, in any geographic area or with any person or which requires referrals of any material business or requires the Company or any of its affiliates to make available investment opportunities to any person on a priority, equal or exclusive basis, (iv) that is a collective bargaining agreement or similar agreement, (v) any of the benefits of which will be increased, or the vesting of the benefits of which will be accelerated, by the occurrence of any of the transactions contemplated by this Agreement, or the value of any of the benefits of which will be calculated on the basis of any of the transactions contemplated by this Agreement, (vi) for the distribution or resale of the products of the Company or any Company Subsidiary that commits the Company or any Company Subsidiary for more than one year after the Closing Date and involves the payment of more than $500,000 per year in any one case, (vii) with respect to indebtedness for borrowed money, including letters of credit, guaranties, indentures, swaps and similar agreements, in excess of $100,000 in any one case, and (viii) with respect to capital expenditures or commitments for such expenditures in

excess of $100,000 in any one case that are not provided for in the capital expenditures plan provided by the Company to Parent prior to the date of this Agreement. The Company has previously made available to Parent complete and accurate copies of all Company Contracts (as defined below), to the extent they are evidenced by documents. Each contract, arrangement or commitment of the type described in this Section 3.1(u), whether or not set forth on the Company Disclosure Letter, is referred to herein as a ***Company Contract,*** and the Company has no knowledge of, and has not received written notice of, any violation of any of the Company Contracts by any of the other parties thereto which violation still exists, except such violations as would not, individually or in the aggregate, have or result in a material adverse effect on the Company. All contracts, agreements or arrangements of any kind (other than those relating to compensation and benefits of such affiliates in their capacities (as applicable) as directors or officers of the Company or a Company Subsidiary) between any affiliate of the Company (other than any Company Subsidiary), on the one hand, and the Company or any Company Subsidiary, on the other hand, are on terms no less favorable to the Company or to such Company Subsidiary than would be obtained with an unaffiliated third party on an arm s-length basis.

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(v) Insurance. The Company has made available to Parent prior to the date of this Agreement written summaries or copies of all insurance policies that are maintained by the Company or any of the Company Subsidiaries as of the date of this Agreement. All such insurance policies are in full force and effect. As of the date of this Agreement, neither the Company nor any of the Company Subsidiaries has received written notice of cancellation of any such insurance policies.

(w) Acquisitions and Divestitures. Set forth on Section 3.1(w) of the Company Disclosure Letter is a brief description of each acquisition or divestiture (but specifically excluding product discontinuances) of a business or product line made by the Company or any Company Subsidiary since March 1, 1999.

(x) Affiliate Transactions. Other than compensation and benefits received in the ordinary course of business as an employee or director of the Company or the Company Subsidiaries, no director, officer or other affiliate (as hereinafter defined) of the Company or any associate (as hereinafter defined) of any director, officer or other affiliate of the Company (in each case, other than the Company itself and the Company Subsidiaries), directly or indirectly, has any interest in: (i) any contract or arrangement with, or relating to the business or operations of the Company or any Company Subsidiary; (ii) any loan, arrangement, agreement or contract for or relating to indebtedness of the Company or any Company Subsidiary; or (iii) any property (real, personal or mixed or tangible or intangible), used or currently intended to be used in the business or operations of the Company or any Company Subsidiary. For purposes of this Section 3.1(x), the terms affiliate and associate shall have the same meaning as set forth in Rule 12b-2 promulgated under the Securities Exchange Act; provided, however, that for purposes of this Section 3.1(x), the term associate shall not include any corporation or organization of which any person is a beneficial owner of ten percent or more of any class of securities of such corporation or organization unless such person holds ten percent or more of such securities as of the date hereof.

Section 3.2 Representations and Warranties of Parent and Merger Sub. Except as otherwise set forth in the Parent Disclosure Letter (as defined in Section 3.2(b)), each of Parent and Merger Sub hereby represents and warrants to the Company as follows:

(a) Organization, Standing and Corporate Power. Parent is a corporation duly organized, validly existing and in good standing under the laws of Ohio, and has the requisite corporate power and authority to carry on its business as now being conducted. Each of the Parent Subsidiaries (as defined in Section 3.2(b)) is a corporation or other legal entity duly organized, validly existing and in good standing (with respect to jurisdictions that recognize such concept) under the laws of the jurisdiction in which it is organized and has the requisite corporate or other applicable entity power, as the case may be, and authority to carry on its business as now being conducted, except for those jurisdictions where the failure to be so organized, existing or in good standing,

individually or in the aggregate, would not have or result in a material adverse effect on Parent. All outstanding stock of Merger Sub is owned by Parent. Parent and each of the Parent Subsidiaries is duly qualified or licensed to do business and is in good standing (with respect to jurisdictions that recognize such concept) in each jurisdiction in which the nature of its business or the ownership, leasing or operation of its properties makes such qualification or licensing necessary, except for those jurisdictions where the failure to be so qualified or licensed or to be in good standing, individually or in the aggregate, would not have or result in a material adverse effect on Parent or Merger Sub. Parent has made available to the Company prior to the execution of this Agreement complete and correct copies of its Amended Articles of Incorporation and Code of Regulations, each as amended to date.

(b) Subsidiaries. Section 3.2(b) of the disclosure letter delivered by Parent to the Company prior to the execution of this Agreement (the ***Parent Disclosure Letter***), sets forth all the subsidiaries of Parent (each a ***Parent Subsidiary***, collectively, the ***Parent Subsidiaries***, and together with Parent, the ***Parent Entities***), specifying those that are Significant Subsidiaries (as defined in Rule 1-02 of Regulation S-X under the Exchange Act). All outstanding shares of capital stock of, or other equity interests in, each Parent Subsidiary (i) have been validly issued and are fully paid and nonassessable, (ii) are free and clear of all Liens and (iii) are

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free of any other restriction (including any restriction on the right to vote, sell or otherwise dispose of such capital stock or other ownership interests), except, in the case of clauses (ii) and (iii), for any Liens or restrictions that, individually or in the aggregate, would not have or result in a material adverse effect on Parent. All outstanding shares of capital stock (or equivalent equity interests of entities other than corporations) of each of the Parent Subsidiaries are beneficially owned, directly or indirectly, by Parent. Parent does not, directly or indirectly, own more than 20% but less than 100% of the capital stock or other equity interest in any person other than the Parent Subsidiaries.

(c) Capital Structure. The authorized capital stock of Parent consists entirely of 150,000,000 shares of Parent Common Stock and 6,000,000 shares of Serial Preferred Stock without par value (***Parent Preferred Stock***), of which 1,500,000 shares have been designated as Series A Junior Participating Preferred Shares. At the close of business on March 5, 2004: (i) 50,102,603 shares of Parent Common Stock were issued and outstanding (including awards of restricted stock); (ii) no shares of Parent Preferred Stock were issued or outstanding, and (iii) 2,646,467 shares of Parent Common Stock were subject to outstanding employee or director stock options to purchase Parent Common Stock or other common stock awards granted under Parent stock plans (collectively, the ***Parent Stock Options***). Each share of Parent Common Stock carries with it an associated share purchase right (collectively, the ***Parent Rights***) issued pursuant to the Amended and Restated Rights Agreement between Parent and Computershare Investor Services, LLC, as Rights Agent, dated as of August 28, 2000 (the ***Parent Rights Agreement***), which entitles the holder thereof to purchase, on the occurrence of certain events, Parent Common Stock. All outstanding shares of capital stock of Parent are, and all shares that may be issued will be, when issued, duly authorized, validly issued, fully paid and nonassessable, and not subject to or issued in violation of preemptive rights. All shares of Parent Common Stock to be issued in the Merger will entitle the holders thereof to one vote on each matter properly submitted to the shareholders of Parent for their vote, consent, waiver, release, or other action, including any vote or consent for the election or removal of directors; provided, however, that such shares will entitle the holders thereof to ten votes per share on each of the matters set forth in Division II, Section 2(a) of Parent s Amended Articles of Incorporation, subject to the limitations set forth therein. The shares of Parent Common Stock to be issued pursuant to this Agreement, when issued in accordance with the terms of this Agreement, will be validly issued, fully paid, and nonassessable, and no person will have any preemptive right, subscription right, or other purchase right in respect thereof. Except (i) as set forth in this Section 3.2(c) and (ii) as set forth on Section 3.2(c) of the Parent Disclosure Letter, (A) there are not issued, reserved for issuance or outstanding (1) any shares of capital stock or other voting securities of Parent, (2) any securities convertible into or exchangeable or exercisable for shares of capital stock or voting securities of Parent, or (3) any warrants, calls, options or other rights to acquire from Parent or any Parent Subsidiary, and no obligation of Parent or any Parent Subsidiary to issue, any capital stock, voting securities or securities convertible into or exchangeable or exercisable for capital stock or voting securities of Parent and (B) there are no outstanding obligations of Parent or any Parent Subsidiary to repurchase, redeem or otherwise acquire any such securities or to issue, deliver or sell, or cause to be issued, delivered or sold, any such securities. Neither Parent nor any Parent Subsidiary is a party to any voting agreement with respect to the voting of any such securities. There are not issued, reserved for issuance or outstanding (i) securities convertible into or exchangeable or exercisable for shares of capital stock or other voting

securities or ownership interests in any Parent Subsidiary, (ii) warrants, calls, options or other rights to acquire from Parent or any Parent Subsidiary, and no obligation of Parent or any Parent Subsidiary to issue, any capital stock, voting securities or other ownership interests in, or any securities convertible into or exchangeable or exercisable for any capital stock, voting securities or ownership interests in, any Parent Subsidiary, or (iii) obligations of Parent or any Parent Subsidiary to repurchase, redeem or otherwise acquire any such outstanding securities of Parent Subsidiaries or to issue, deliver or sell, or cause to be issued, delivered or sold, any such securities. There are no agreements, arrangements or commitments of any character (contingent or otherwise) pursuant to which any person is or may be entitled to receive any payment pursuant to any unpaid earnout or similar agreement contained in any business acquisition agreement based on the revenues, earnings or other performance measurement of Parent or any Parent Subsidiary.

(d) Authority; Noncontravention. Each of Parent and Merger Sub has all requisite corporate power and authority to enter into this Agreement, and, subject to Parent Shareholder Approval (as defined in

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Section 3.2(k)), to consummate the transactions contemplated by this Agreement. The execution and delivery of this Agreement by Parent and Merger Sub and the consummation by Parent and Merger Sub of the transactions contemplated hereby have been duly authorized by all necessary corporate action (including approval by Parent in its capacity as the sole shareholder of Merger Sub of such execution, delivery and performance by Merger Sub) on the part of Parent and Merger Sub, respectively, subject, in the case of the issuance of shares of Parent Common Stock in the Merger as contemplated by this Agreement (the ***Stock Issuance***), to Parent Shareholder Approval. This Agreement has been duly executed and delivered by each of Parent and Merger Sub, and, assuming the due authorization, execution and delivery by the Company, constitutes the legal, valid and binding obligation of each of Parent and Merger Sub, enforceable against each of Parent and Merger Sub in accordance with its terms, except as the enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws generally affecting the rights of creditors and subject to general equity principles. The execution and delivery of this Agreement by Parent and Merger Sub does not, and the consummation of the transactions contemplated by this Agreement and compliance with the provisions of this Agreement by Parent and Merger Sub will not, (i) conflict with the articles of incorporation or code of regulations (or comparable organizational documents) of any of the Parent Entities, (ii) result in any breach, violation or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or creation or acceleration of any obligation or right of a third party or loss of a benefit under, or result in the creation of any Lien upon any of the properties or assets of any of the Parent Entities under, any loan or credit agreement, note, bond, mortgage, indenture, lease or other agreement, instrument, permit, concession, franchise, license or other authorization applicable to any of the Parent Entities or their respective properties or assets or (iii) subject to the governmental filings and other matters referred to in the following sentence, conflict with or violate any Law applicable to any of the Parent Entities or their respective properties or assets or any judgment, order or decree to which any of the Parent Entities or their respective properties or assets have been specifically identified as subject, other than, in the case of clauses (ii) and (iii), any such breaches, conflicts, violations, defaults, rights, losses or Liens that, individually or in the aggregate, would not have or result in a material adverse effect on Parent or Merger Sub and that would not materially impair the ability of Parent or Merger Sub to consummate the transactions contemplated by this Agreement. No consent, approval, order or authorization of, action by or in respect of, or registration, declaration or filing with, any Governmental Entity is required by Parent or Merger Sub in connection with the execution and delivery of this Agreement by Parent or Merger Sub or the consummation by Parent and Merger Sub of the transactions contemplated hereby, except for: (i) the filing with the SEC of (A) the Form S-4 and the Proxy Statement and (B) such reports under Section 13(a), 13(d), 15(d) or 16(a) of the Exchange Act, as may be required in connection with this Agreement and the transactions contemplated hereby; (ii) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware; (iii) the filing of a premerger notification and report form by Parent under the HSR Act; (iv) filings required under the Foreign Antitrust Laws including the Canadian Act, which are set forth on Section 3.2(d) of Parent Disclosure Letter; and (v) such consents, approvals, orders, authorizations, actions, registrations, declarations or filings the failure of which to be made or obtained (as applicable), individually or in the aggregate, would not have or result in a material adverse effect on Parent or Merger Sub and would not materially impair the ability of Parent or Merger Sub to consummate the transactions contemplated by this Agreement.

(e) SEC Reports and Financial Statements; Undisclosed Liabilities.

(i) Parent has timely filed all required reports, schedules, forms, statements and other documents (including exhibits and all other information incorporated therein) under the Securities Act and the Exchange Act with the SEC since March 1, 2002 (as such reports, schedules, forms, statements and documents have been amended or supplemented since the time of their filing, collectively, the ***Parent SEC Documents***). As of their respective dates, or if amended or supplemented prior to the date of this Agreement, as of the date of the last such amendment or supplement, the Parent SEC Documents complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and the rules and regulations of the SEC promulgated thereunder applicable to such Parent SEC Documents, and none of the Parent SEC Documents when filed, or (if amended or supplemented) as of the date of such amendment or supplement, contained any

untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(ii) The consolidated financial statements of Parent included in the Parent SEC Documents comply as to form, as of their respective dates of filing with the SEC, in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with GAAP (except, in the case of unaudited statements, as permitted by Form 10-Q of the SEC) applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto), and fairly present in all material respects the consolidated financial position of Parent and its subsidiaries as of the dates thereof and the consolidated statements of income, cash flows and shareholders equity for the periods then ended (subject, in the case of interim financial statements, to normal year-end audit adjustments), except that the interim financial statements do not contain all of the footnote disclosures required by GAAP. No Parent Subsidiary is required to make any filings with the SEC. Except (A) as and to the extent reflected in or reserved against in such financial statements, including the notes thereto, (B) obligations and liabilities incurred in the ordinary course of business since the date of the most recent balance sheet contained in the Parent SEC Documents filed prior to the date hereof, (C) obligations and liabilities disclosed pursuant to any other representation or warranty set forth in this Agreement, including liabilities and obligations incurred under or pursuant to Parent Benefit Plans or Parent Foreign Plans, Leases made available to the Company pursuant to Section 3.2(p)(ii), collective bargaining agreements or other agreements of Parent, and Contracts, agreements, commitments and arrangements of Parent, (D) other contracts, agreements and contractual commitments and arrangements that do not constitute Parent Leases, Parent Benefit Plans or Parent Foreign Plans and (E) obligations and liabilities incurred in connection with this Agreement or the transactions contemplated hereby, neither the Parent or any Parent Subsidiary has any obligations or liabilities of any nature (whether accrued, absolute, contingent or otherwise) as of the date of this Agreement that would have or result in a material adverse effect on the Parent.

(f) Information Supplied. None of the information supplied or to be supplied by or on behalf of Parent or Merger Sub specifically for inclusion or incorporation by reference in (i) the Form S-4 will, at the time the Form S-4 becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they are made, not misleading or (ii) the Proxy Statement will, at the date it is first mailed to the Company shareholders and Parent s shareholders or at the time of the Company Shareholders Meeting or the Parent Shareholders Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The Form S-4 and the Proxy Statement will comply as to form in all material respects with the requirements of the Exchange Act and the rules and regulations thereunder, except that no representation or warranty is made by Parent or Merger Sub with respect to information contained or incorporated by reference therein supplied by or on behalf of the Company specifically for inclusion or incorporation by reference in the Form S-4 and

the Proxy Statement.

(g) Absence of Certain Changes or Events. From the date of the most recent Parent balance sheet contained in Parent SEC Documents filed prior to the to the date hereof (the ***Parent Balance Sheet***) to the date of this Agreement, (i) each of the Parent Entities has conducted its respective operations only in the ordinary course consistent with past practice, (ii) Parent has not suffered a material adverse change and (iii) no Parent Entity has engaged in any material transaction or entered into any material agreement or commitments outside the ordinary course of business (except for the transactions contemplated by this Agreement). From the date of the Parent Balance Sheet to the date of this Agreement the Parent Entities have not:

(i) (A) other than dividends and distributions by a direct or indirect wholly owned subsidiary of Parent to Parent or another wholly owned subsidiary of Parent, declared, set aside or paid any dividends on, or made any other distributions in respect of, any of its capital stock other than regular quarterly cash dividends with respect to Parent Common Stock not in excess of $0.23 per share of Parent Common Stock in accordance with Parent s past dividend practice or (B) split, combined or reclassified any of its capital stock or

(C) except pursuant to agreements entered into with respect to the Parent Stock Plans, purchased, redeemed or otherwise acquired any shares of capital stock of Parent or any of the Parent Subsidiaries or any other securities thereof or any rights, warrants or options to acquire any such shares or other securities;

(ii) issued, delivered, sold, pledged or otherwise encumbered or subjected to any Lien any shares of its capital stock, any other voting securities or any securities convertible into, or any rights, warrants or options to acquire, any such shares, voting securities or convertible securities, other than the issuance of shares by one subsidiary of Parent to Parent or any Parent Subsidiary or the issuance of shares of Parent Common Stock (A) upon the exercise of Parent Stock Options under the Parent stock plans or in connection with other awards under Parent stock plans, in each case, in accordance with their terms or (B) the issuance of Parent Rights under the Parent Rights Agreement in connection with the issuance of Parent Common Stock permitted pursuant to this Agreement;

(iii) (A) amended its Amended Articles of Incorporation or Code of Regulations (or other comparable organizational documents) or (B) merged or consolidated with any person;

(iv) taken any action that would jeopardize qualification of the Merger as a reorganization within the meaning of Section 368(a) of the Code;

(v) purchased any material business or purchased any stock of or other equity interest in any material corporation or other entity;

(vi) taken or failed to have taken any action that would constitute a violation of applicable Law, except for such violations as did not have or result in a material adverse effect on Parent or changed the accounting principles used by it unless required by GAAP (or, if applicable with respect to foreign subsidiaries, the relevant foreign generally accepted accounting principles);

(vii) entered into any new material line of business; or

(viii) authorized, or committed or agreed to take, any of the foregoing actions; provided, however, that the limitations set forth in the second sentence of Section 3.2(g) do not apply to any transaction to which the only parties are Parent and wholly owned subsidiaries of the Parent.

(h) Compliance with Applicable Laws; Litigation; Regulatory Matters.

(i) The operations of the Parent Entities since March 1, 2002 have not been and are not being conducted in violation of any Law (including the Sarbanes-Oxley Act of 2002 and the USA PATRIOT Act of 2001) or any Permit applicable to or held by (as the case may be) the Parent Entities, except where such violations, individually or in the aggregate, would not have or result in a material adverse effect on Parent. Since March 1, 2002, none of the Parent Entities has received any written notice alleging any such violation, except where such violations, individually or in the aggregate, would not have or result in a material adverse effect on Parent.

(ii) The Parent Entities hold all Permits, except where the failure to hold such Permits, individually or in the aggregate, would not have or result in a material adverse effect on Parent. Since March 1, 2002, none of the Parent Entities has received written notice that any Permit will be terminated or modified or cannot be renewed in the ordinary course of business except for such terminations, modifications or nonrenewals as, individually or in the aggregate, would not have or result in a material adverse effect on Parent. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby do not and will not violate any Permit, except for such violations thereof as, individually or in the aggregate, would not reasonably be expected to have or result in a material adverse effect on Parent.

(iii) There is no investigation by a Governmental Entity or litigation, arbitration, or administrative proceeding pending against or, to the knowledge of Parent, threatened against Parent or any Parent Subsidiary as of the date of this Agreement that, if decided adversely to such person, would have or result in a material adverse effect on Parent, or that seeks to enjoin or otherwise challenges the consummation of the transactions contemplated by this Agreement.

(iv) Except as set forth on Section 3.2(h)(iv) of the Parent Disclosure Letter, from March 1, 2002, no products sold or manufactured by Parent or any Parent Subsidiary have been recalled voluntarily or involuntarily or have been adulterated or misbranded within the meaning of the Food, Drug and Cosmetics Act or, except as individually or in the aggregate, would not have or result in a material adverse effect on Parent, labeled contrary to the Canada Act, and no recall of any of such products is currently being considered by Parent or any Parent Subsidiary or, to Parent s knowledge, has been requested, ordered or threatened in writing by any Governmental Entity or consumer group.

(i) Employee Benefit Plans.

(i) Each (A) United States bonus, pension, profit sharing, deferred compensation, incentive compensation, stock ownership, stock purchase, stock option, phantom stock, retirement, vacation, employment, disability, death benefit, hospitalization, medical insurance, life insurance, severance or other employee benefit plan, agreement or arrangement maintained by Parent or any Parent Subsidiary or to which Parent or any Parent Subsidiary contributes or is obligated to contribute or with respect to which Parent or any Parent Subsidiary has any liability, other than a plan or program operated by a Governmental Entity (such as government-operated workers compensation or Social Security), and (B) change of control agreement providing benefits to any current or former employee, officer or director of Parent or any Parent Subsidiary, to which Parent or any Parent Subsidiary is a party or by which Parent or any Parent Subsidiary is bound is referred to herein collectively as the ***Parent Benefit Plans.*** For purposes of this Agreement, the term ***Parent Foreign Plan*** refers to each plan, agreement or arrangement that is subject to or governed by the laws of any jurisdiction other than the United States and that would have been treated as a Parent Benefit Plan had it been a United States plan, agreement or arrangement, other than a plan or program operated by a Governmental Entity (such as a government-operated provincial health plan or the Canada Pension Plan). With respect to each Parent Benefit Plan and Parent Foreign Plan, no event has occurred and there exists no condition or set of circumstances in connection with which Parent or any Parent Subsidiary would be subject to any liability that, individually or in the aggregate, would have or result in a material adverse effect on Parent.

(ii) Each Parent Benefit Plan and its administration is in compliance with all applicable Laws, including ERISA, and the Code, if applicable, and with the terms of all applicable collective bargaining agreements, except for any failures that, individually or in the aggregate, would not have or result in a material adverse effect on Parent. Each Parent Benefit Plan that is intended to be qualified under Section 401(a), 401(k) or 4975(e)(7) of the Code has received a favorable determination letter from the IRS as to its qualified status that covers the Uruguay Round Agreement Act (GATT), the Taxpayer Relief Act of 1997, the Reemployment Rights Act of 1994 (USERRA), the Internal Revenue Service Restructuring and Reform Act of 1998, the Small Business Job Protection Act of 1996 and the Community Renewal Act of 2000. All contributions to, and payments from, Parent Benefit Plans that are required to have been made in accordance with such Parent Benefit Plans, ERISA or the

Code have been timely made other than any failures that, individually or in the aggregate, would not have or result in a material adverse effect on Parent. All trusts providing funding for Parent Benefit Plans that are intended to comply with Section 501(c)(9) of the Code are exempt from federal income taxation and, together with any other welfare benefit funds (as defined in Section 419(e)(1) of the Code) maintained in connection with any of Parent Benefit Plans, have been operated and administered in compliance with all applicable requirements such that none of Parent, any Parent Subsidiary, any Parent Benefit Plan or such trust or fund is subject to any Taxes, penalties or other liabilities imposed as a consequence of failure to comply with such requirements which, individually or in the aggregate, would have a material adverse effect on Parent. No welfare benefit fund (as defined in Section 419(e)(1) of the Code) maintained in connection with any of Parent Benefit Plans has provided any disqualified benefit (as defined in Section 4976(b)(1) of the Code) for which Parent or any Parent Subsidiary has or had any liability for the excise tax imposed by Section 4976 of the Code which has not been paid in full, except as would not have or result in a material adverse effect on Parent.

(iii) Neither Parent nor any trade or business, whether or not incorporated, which, together with Parent, would be deemed to be an ERISA Affiliate, has incurred any liability under Title IV of ERISA (other than for premiums pursuant to Section 4007 of ERISA which have been timely paid) or Section 4971 of

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the Code that has not been satisfied. No Parent Benefit Plan has or has incurred an accumulated funding deficiency within the meaning of Section 302 of ERISA or Section 412 of the Code, nor is there any request pending before the Internal Revenue Service for any waiver of the minimum funding standards of Section 302 of ERISA and Section 412 of the Code been requested of or granted by the Internal Revenue Service with respect to any Parent Benefit Plan nor has any lien in favor of any Parent Benefit Plan arisen under Section 412(n) of the Code or Section 302(f) of ERISA. Neither Parent nor any ERISA Affiliate has been required to provide security to any defined benefit pension plan pursuant to Section 401(a)(29) of the Code that has not been released. With respect to each Parent Benefit Plan that is subject to Title IV or Section 302 of ERISA or Section 412 or 4971 of the Code, the fair market value of the assets of such Parent Benefit Plan equals or exceeds the actuarial present value of all accrued benefits under such Parent Benefit Plan (whether or not vested), based upon the actuarial assumptions used to prepare the most recent actuarial report for such Parent Benefit Plan. There has been no reportable event within the meaning of Section 4043 of ERISA and the regulations and interpretations thereunder which required a notice to the PBGC which has not been fully and accurately reported in a timely fashion, as required, or which, whether or not reported, would constitute grounds for the PBGC to institute involuntary termination proceedings with respect to any Parent Benefit Plan that is subject to Title IV of ERISA.

(iv) No Parent Benefit Plan provides medical or life insurance benefits (whether or not insured) with respect to current or former employees or officers or directors after retirement or other termination of service, other than any such coverage required by law and with respect to any Parent Benefit Plan set forth on Section 3.2(i)(iv) of the Parent Disclosure Letter, Parent and Parent Subsidiaries have reserved all rights necessary to amend or terminate each of such plans without the consent of any other person.

(v) Except as set forth on Section 3.2(i)(v) of the Parent Disclosure Letter, no Parent Benefit Plan is a Multiemployer Plan or a Multiple Employer Plan. None of Parent, the Parent Subsidiaries nor any of their respective ERISA Affiliates has, at any time during the last six years, contributed to or been obligated to contribute to any Multiemployer Plan or Multiple Employer Plan that is subject to Title IV of ERISA. None of Parent, the Parent Subsidiaries nor any of their respective ERISA Affiliates has incurred any material withdrawal liability under a Multiemployer Plan that has not been satisfied in full. None of Parent, the Parent Subsidiaries nor any of their respective ERISA Affiliates would incur any withdrawal liability (within the meaning of Part 1 of Subtitle E of Title I of ERISA) if Parent, the Parent Subsidiaries or any of their respective ERISA Affiliates withdrew (within the meaning of Part 1 of Subtitle E of Title I of ERISA) on or prior to the Closing Date from each Multiemployer Plan to which Parent, Parent Subsidiaries or any of their respective ERISA Affiliates has an obligation to contribute on the date of this Agreement. No Multiemployer Plan to which Parent, Parent Subsidiaries or any of their respective ERISA Affiliates contributes is in reorganization (within the meaning of Section 4241 of ERISA) or is reasonably likely to commence reorganization.

(vi) Except as set forth on Section 3.2(i)(vi) of the Parent Disclosure Letter, as of the date of this Agreement, there are no pending claims (other than claims for benefits in the ordinary course), lawsuits or arbitrations that have been asserted or instituted, or to Parent s knowledge, threatened against the Parent Benefit Plans, any fiduciaries thereof with respect to their duties to Parent Benefit Plans or the assets of any of the trusts under any of Parent Benefit Plans that could reasonably be expected to result in any material liability of Parent or any Parent Subsidiaries to the PBGC, the United States Department of Treasury, the United States Department of Labor, any Multiemployer Plan, any Parent Benefit Plan or any participant in a Parent Benefit Plan.

(vii) There have been no prohibited transactions or breaches of any of the duties imposed on fiduciaries (within the meaning of Section 3(21) of ERISA) by ERISA with respect to Parent Benefit Plans that would result in any material liability or excise tax under ERISA or the Code being imposed on Parent or any of the Parent Subsidiaries.

(viii) With respect to each Parent Foreign Plan, except as would not have or result in a material adverse effect on Parent: (A) all amounts required to be reserved under each book reserved Parent Foreign Plan have been so reserved in accordance with reasonable accounting practices prevailing in the country where such Parent Foreign Plan is established and maintained; (B) each Parent Foreign Plan required to be registered with a Governmental Entity has been duly registered and has been maintained in good standing with

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the appropriate Governmental Entities, and each Parent Foreign Plan has been operated, administered, funded and invested in accordance with its terms, all applicable Laws and the terms of all applicable collective bargaining agreements; (C) as of the date of this Agreement, there are no actions, suits, arbitrations or claims relating thereto (other than claims for benefits in the ordinary course) that are pending or, to the knowledge of Parent, threatened by any current or former employee of Parent or the Parent Subsidiaries, any collective bargaining agent, any Governmental Entity or by any other person in relation to any Parent Foreign Plan or the assets of the trust thereunder; (D) with respect to each Parent Foreign Plan, Parent has made available to the Company a true and complete copy of: (1) all documents relating to the Parent Foreign Plan, including the current plan text, the trust or other funding or other related agreements, the investment policy statement, and all amendments thereto; (2) the most recent Annual Information Return filed for any Parent Foreign Plan that is a registered pension plan; (3) the most recent financial report or statement; (4) the most recent actuarial valuation report, if any; and (5) the most recent plan description provided to employees of Parent or the Parent Subsidiaries; (E) neither Parent nor any Parent Subsidiary has announced or made an enforceable commitment to make any new amendments to, or to adopt or approve any new, Parent Foreign Plan; (F) no Parent Foreign Plan provides medical or life insurance or other welfare benefits (whether or not insured) with respect to current or former employees or officers or directors of Parent or any Parent Subsidiary after retirement or other termination of service, other than any such coverage required by Law; (G) there have been no withdrawals, transfers or applications of assets under any of Parent Foreign Plans in contravention of any applicable Laws, the terms of any Parent Foreign Plans or the terms of any trusts established thereunder; and (H) no fact or circumstance exists that could adversely affect the tax-exempt status of any Parent Foreign Plan.

(j) Taxes. (i) Except as would not have or result in a material adverse effect on Parent, Parent and each Parent Subsidiary have filed all Tax Returns required to be filed and all such returns are materially complete and correct; (ii) except as would not have or result in a material adverse effect on Parent, Parent and each Parent Subsidiary have paid all Taxes due; (iii) except as would not have or result in a material adverse effect on Parent, there are no pending, or, to the knowledge of Parent, threatened, audits, examinations, investigations or other proceedings in respect of Taxes relating to Parent or any Parent Subsidiary; (iv) there are no Liens for Taxes upon the assets of Parent or any of the Parent Subsidiaries, other than Permitted Liens; (v) neither Parent nor any of the Parent Subsidiaries has any liability for Taxes of any person (other than Parent and the Parent Subsidiaries) under Treasury Regulation Section 1.1502-6 (or any comparable provision of Law) as a transferee or successor, by contract, or otherwise; (vi) neither Parent nor any Parent Subsidiary is a party to any agreement relating to the allocation or sharing of Taxes; (vii) neither Parent nor any Parent Subsidiary has taken any action or knows of any fact, agreement, plan or other circumstance that would prevent the Merger from qualifying as a reorganization within the meaning of Section 368(a)(2)(D) of the Code; (viii) except as would not have or result in a material adverse effect on Parent, no deficiencies for any Taxes for a Tax year that has not yet been closed have been proposed, asserted or assessed in writing against Parent or any Parent Subsidiary for which adequate reserves have not been created; (ix) neither Parent nor any Parent Subsidiary will be required to include any adjustment in taxable income for any Post-Closing Tax Period under Section 481 of the Code (or any comparable provision of Law) as a result of a change in method of accounting for any Pre-Closing Tax

Period or pursuant to the provisions of any agreement entered into with any taxing authority with regard to the Tax liability of Parent or any Parent Subsidiary for any Pre-Closing Tax Period; (x) the financial statements included in Parent SEC Documents reflect an adequate reserve for all Taxes for which Parent or any Parent Subsidiary may be liable for all taxable periods and portions thereof through the date hereof; (xi) except as would not have or result in a material adverse effect on Parent, no person has granted any extension or waiver of the statute of limitations period applicable to any Tax of Parent or any Parent Subsidiary or any affiliated, combined or unitary group of which Parent or any Parent Subsidiary is or was a member, which period (after giving effect to such extension or waiver) has not yet expired; (xii)except as would not have or result in a material adverse effect on Parent, Parent and each Parent Subsidiary have withheld and paid all Taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party; (xiii) since May 29, 2002, neither Parent nor any Parent Subsidiary has distributed stock of another person or has had its stock distributed by another person, in a transaction that was purported or intended to be governed in whole or in part by Section 355 or Section 361 of the Code; (xiv) since March 1, 2000, neither

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Parent nor any Parent Subsidiary has participated in any transaction that has been identified by the Internal Revenue Service in published guidance as a reportable transaction; (xv) the consolidated federal income Tax Returns of Parent have been examined, or the statute of limitations has closed, with respect to all taxable years through and including April 30, 2000; (xvi) Parent has made available to the Company a true and correct copy of that certain private letter ruling (the ***Ruling***), dated as of May 17, 2002, issued by the IRS to Parent, and neither Parent nor any Parent Subsidiary has received any notice or information from any source indicating that the Ruling may be revoked or its application to the spin off or the brands merger described therein challenged or disputed by any Tax authority and (xvii) Parent has complied and is in compliance with Section 4.02 of the Tax Sharing Agreement, dated as of May 31, 2002, between The Procter & Gamble Company and Parent.

(k) Voting Requirement. Approval by a majority of the votes cast in person or by proxy at the Parent Shareholders Meeting at which at least a majority of the outstanding voting power entitled to vote is present in person or by proxy is the only vote of the holders of any class or series of Parent s capital stock necessary to approve the Stock Issuance (the ***Parent Shareholder Approval***).

(l) State Takeover Statutes. The Board of Directors of Parent has taken all necessary action so that no Takeover statute applicable to Parent or Merger Sub or any anti-takeover provision in Parent s Amended Articles of Incorporation or Code of Regulations is applicable to the Merger and the other transactions contemplated by this Agreement or the execution, delivery and performance of the Parent Shareholders Agreement. The Board of Directors of Parent has (i) duly and validly approved this Agreement, (ii) determined that the transactions contemplated by this Agreement are advisable and in the best interests of Parent and its shareholders, (iii) unanimously resolved to recommend to such shareholders that they vote in favor of the Stock Issuance and (iv) taken all corporate action required to be taken by the Board of Directors of Parent for the consummation of the transactions contemplated by this Agreement.

(m) Brokers. Except for William Blair & Co. L.L.C. (the ***Parent s Banker***), no broker, investment banker, financial advisor or other person is entitled to any broker s, finder s, financial advisor s or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Parent.

(n) Ownership of Company Common Stock. Except for shares of Company Common Stock owned by Parent Benefit Plans or shares held or managed for the account of another person or as to which Parent is required to act as a fiduciary or in a similar capacity that in the aggregate constitute less than 4% of the shares of Company Common Stock, neither Parent nor, to its knowledge, any of its affiliates, (i) beneficially owns (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, or (ii) is party to any

agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of, in each case, shares of Company Common Stock.

(o) Environmental Matters.

(i) Except as disclosed in the Parent SEC Reports filed since April 30, 1999 (the ***Recent Parent SEC Reports***), or as set forth on Section 3.2(o)(i) of the Parent Disclosure Letter, or where noncompliance, individually or in the aggregate, would not have or result in a material adverse effect on Parent, Parent Entities are and have been for the past five years in compliance with all applicable Environmental Laws and Environmental Permits.

(ii) Except as disclosed in the Recent Parent SEC Reports, as of the date of this Agreement, there are no Environmental Claims pending or, to the knowledge of Parent, threatened, against Parent or any Parent Subsidiary, except for Environmental Claims that would not have or result in a material adverse effect on Parent.

(iii) Except as disclosed in the Recent Parent SEC Reports, there have been no Releases of any Hazardous Substance in, on, under, from or affecting any real property currently or previously owned, leased, operated or otherwise used by Parent or any Parent Entities that, individually or in the aggregate, would have or result in a material adverse effect on Parent.

(iv) Except as disclosed in the Recent Parent SEC Reports, or as set forth on Section 3.2(o)(iv) of the Parent Disclosure Letter, none of Parent or the Parent Subsidiaries has assumed, undertaken or otherwise become subject to any liability of any other person relating to or arising from Environmental Laws that, individually or in the aggregate, would have or result in a material adverse effect on Parent.

(v) Except as disclosed in the Recent Parent SEC Reports, to the knowledge of Parent, there exist no Environmental Conditions relating to any real property currently or previously owned, leased, operated or otherwise used by Parent or any Parent Subsidiaries for which Parent or any Parent Subsidiary presently has an obligation to remediate or cure under any Environmental Law or Environmental Permit, except for such Environmental Conditions for which the cost to remediate or cure would not, individually or in the aggregate, have or result in a material adverse effect on Parent.

(vi) The Parent Disclosure Letter lists all material documents prepared or received since January 1, 1999 (other than environmental assessments) concerning environmental matters that would reasonably be expected to result in liability under Environmental Laws that would have or result in a material adverse effect on Parent, which are in Parent s possession as of the date of this Agreement relating to any of its (or any Parent Subsidiaries) currently or previously owned or leased real property. Parent has made available to the Company true and complete copies of all environmental assessments and documents listed in the Parent Disclosure Letter, all of the disclosures and other information made or contained in which are deemed to be incorporated by reference, and thereby included, in the Parent Disclosure Letter.

(p) Real Property; Assets.

(i) Each parcel of real property owned by Parent and the Parent Subsidiaries is referred to collectively as the ***Parent Owned Real Property.*** One or more of Parent and the Parent Subsidiaries has good and valid title to all such real property, free and clear of all Liens, except (a) Permitted Liens, (b) Liens evidenced by any lease, contract, or agreement that is described in the Parent Disclosure Letter or in Parent SEC Documents filed before the date of this Agreement, (c) imperfections of title and Liens that do not materially detract from the value or materially interfere with the present use of the properties subject thereto or affected thereby, (d) imperfections of title and Liens that (1) are shown on any title commitment or title policy described in the Parent Disclosure Letter or (2) are otherwise of record which do not have or result in a material adverse effect on Parent, and (e) imperfections of title and Liens which do not have or result in a material adverse effect on Parent.

(ii) All real property leased by Parent and the Parent Subsidiaries is referred to as the ***Parent Leased Real Property.*** The Parent Owned Real Property and Parent Leased Real Property constitute all of the real property occupied or

used by Parent and the Parent Subsidiaries in connection with the operation of their respective businesses as currently conducted (other than real property accessible to the public generally). Parent or a Parent Subsidiary has a valid leasehold interest in or valid rights to all Parent Leased Real Property except (a) Permitted Liens, (b) Liens evidenced by any lease, contract or agreement that is described in the Parent Disclosure Letter or in the Parent SEC Documents filed before the date of this Agreement, (c) imperfections of leasehold title and Liens that do not materially detract from the value or materially interfere with the present use of the properties subject thereto or affected thereby, (d) imperfections of leasehold title and Liens that are shown of record which do not have or result in a material adverse effect on Parent, and (e) imperfections of leasehold title and Liens which do not have or result in a material adverse effect on Parent. All leases of the Parent Leased Real Property are referred to collectively herein as the ***Parent Leases.*** Each of Parent and the Parent Subsidiaries is in compliance with the terms of all Parent Leases to which it is a party and under which it is in occupancy, and all such Parent Leases are in full force and effect, except for any failure to be in such compliance or to be in full force and effect that does not have or result in a material adverse effect on Parent. To the knowledge of Parent, the lessors under the Parent Leases to which Parent or a Parent Subsidiary is a party are in compliance with the terms of their respective Parent Leases, except for any failure to be in such compliance that does not have or result in a material adverse effect on Parent.

(iii) Parent and the Parent Subsidiaries have sufficient title to, or the right to use, all of their tangible properties and assets (other than the Parent Owned Real Property, representations as to which are set forth in Section 3.2(p)(i)) and the Parent Leased Real Property, representations as to which are set forth in Section 3.2(p)(i), necessary to conduct their respective businesses as currently conducted, with such exceptions as, individually or in the aggregate, would not interfere with the current use of such properties or assets in such a manner as to have or result in a material adverse effect on Parent.

(q) Intellectual Property.

(i) The term ***Parent Intellectual Property*** means all of the following that is owned by or licensed to Parent or the Parent Subsidiaries which is used in the business of Parent or Parent Subsidiaries as currently conducted: (A) all currently subsisting material patents, patent applications, common law trademarks, trademark applications, trademark registrations, trade names, trade dress, common law service marks, service mark applications, service mark registrations, logos, copyrights registrations and Internet domain names together with all goodwill associated therewith; (B) all material trade secrets and confidential information (including customer lists, know-how, formulae, manufacturing and production processes, research, financial business information and marketing plans); and (C) information technologies (including software programs, data and related documentation); provided, however, that the term Parent Intellectual Property shall not include any (x) information technologies licensed to Parent or the Parent Subsidiaries under non-negotiated, non-exclusive licenses granted to end-user customers by third parties in the ordinary course of such third parties businesses; and (y) intellectual property which is embedded in equipment or fixtures and which is licensed to Parent or the Parent Subsidiaries under non-negotiated, non-exclusive licenses granted to customers by third parties in the ordinary course of such third parties businesses. The term ***Parent Owned Intellectual Property*** means all Parent Intellectual Property owned by Parent or the Parent Subsidiaries, and the term ***Parent Licensed Intellectual Property*** means all Parent Intellectual Property licensed to Parent or the Parent Subsidiaries.

(ii) (A) Parent or the Parent Subsidiaries own all of the Owned Intellectual Property; (B) Parent or the Parent Subsidiaries have a valid and enforceable license to all of the material Parent Licensed Intellectual Property pursuant to a contract a copy of which has been made available to the Company; (C) from March 1, 2002 to the date of this Agreement, to the knowledge of Parent, no written claim by any third party contesting the validity, enforceability, use by Parent or the Parent Subsidiaries or ownership by (or, if applicable, license to) Parent or the Parent Subsidiaries of any of the Parent Intellectual Property has been made, is currently outstanding or is threatened (other than challenges by governmental intellectual property office examiners as part of the application process); (D) as of the date of this Agreement, to the knowledge of Parent, no third party is infringing or misappropriating any of the Parent Owned Intellectual Property or any of the Licensed Intellectual Property that is licensed to Parent or the Parent Subsidiaries on an exclusive basis; (E) as of the date of this Agreement, to the knowledge of Parent, neither Parent or the

Parent Subsidiaries nor the conduct of their respective businesses as currently conducted infringes, misappropriates or otherwise conflicts with any intellectual property rights or other rights of any third parties; and (F) as of the date of this Agreement, to the knowledge of Parent, the continued operation of Parent s and the Parent Subsidiaries respective businesses as currently conducted will not infringe, misappropriate or otherwise conflict with any intellectual property rights or other rights of any third parties; in each of cases (A) through (F) except to the extent that exceptions to any of the foregoing, individually or in the aggregate, would not have or result in a material adverse effect on Parent.

(iii) (A) Parent or one of the Parent Subsidiaries, as the case may be, has taken all reasonably prudent actions necessary to maintain and protect the Parent Owned Intellectual Property so as to not materially adversely affect the validity or enforceability of the Parent Owned Intellectual Property; and (B) with respect to the Parent Licensed Intellectual Property licensed from third parties to Parent or the Parent Subsidiaries, Parent or one of the Parent Subsidiaries, as the case may be, has taken all reasonably prudent actions, within the constraints of the applicable license agreement, necessary to maintain and protect such Parent Licensed Intellectual Property so as to not materially adversely affect the validity or enforceability of such Parent Licensed Intellectual Property.

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(r) Opinion of Financial Advisor. Parent has received the opinion of Parent s Banker, dated the date of this Agreement, to the effect that, as of such date, the Merger Consideration is fair from a financial point of view to Parent, a signed copy of which opinion will be made available to the Company promptly after the date of this Agreement.

(s) Labor Agreements and Employee Issues. Parent and the Parent Subsidiaries are in compliance with each collective bargaining agreements or other similar agreements, except for any failure to be in such compliance that does not have or result in a material adverse effect on Parent. As of the date hereof, to the knowledge of Parent, there is no effort, activity or proceeding of any labor organization (or representative thereof) to organize any of its or its subsidiaries employees. As of the date hereof, Parent and the Parent Subsidiaries are not, and have not since March 1, 2003 been, subject to any pending, or to the knowledge of Parent, threatened (i) unfair labor practice charges and/or complaints, (ii) arbitration proceeding arising under any collective bargaining agreement or other labor agreement, (iii) claim, suit, action or governmental investigation relating to employees, including any alleging discrimination, wrongful discharge, or violation of any state and/or federal statute relating to employment practices, or (iv) strike, lockout or dispute, slowdown or work stoppage, except for the foregoing which, in the case of Clauses (i), (ii), (iii) and (iv), would not, individually or in the aggregate, have or result in a material adverse effect on Parent. Neither Parent nor any of the Parent Subsidiaries is a party to, or is otherwise specifically identified as subject to, any consent decree with any Governmental Entity relating to employees or employment practices of Parent or the Parent Subsidiaries.

(t) Parent Rights Agreement. The Parent Rights Agreement has been amended to render the Parent Rights Agreement inapplicable to the execution, delivery and performance of the Parent Shareholders Agreement. None of Company or any Company Subsidiary will become an Acquiring Person (as defined in the Parent Rights Agreement). None of a Distribution Date, a Stock Acquisition Date or a Triggering Event (as such terms are defined in the Parent Rights Agreement) will occur solely by reason of the approval, execution or delivery of this Agreement, the consummation of the Merger or the execution, delivery and performance of the Parent Shareholders Agreement or the consummation of the other transactions contemplated by this Agreement.

(u) Insurance. All Parent and Parent Subsidiary insurance policies are in full force and effect. As of the date of this Agreement, neither Parent nor any of the Parent Subsidiaries has received written notice of cancellation of any such insurance policies.

(v) Affiliate Transactions. Other than compensation and benefits received in the ordinary course of business as an employee or director of Parent or the Parent Subsidiaries, no director, officer or other affiliate (as hereinafter defined) of Parent or any associate (as hereinafter defined) of any director,

officer or other affiliate of Parent (in each case, other than Parent itself and the Parent Subsidiaries), directly or indirectly, has any interest in: (i) any contract or arrangement with, or relating to the business or operations of Parent or any Parent Subsidiary; (ii) any loan, arrangement, agreement or contract for or relating to indebtedness of Parent or any Parent Subsidiary; or (iii) any property (real, personal or mixed or tangible or intangible), used or currently intended to be used in the business or operations of Parent or any Parent Subsidiary. For purposes of this Section 3.2(v), the terms affiliate and associate shall have the same meaning as set forth in Rule 12b-2 promulgated under the Securities Exchange Act; provided, however, that for purposes of this Section 3.2(v), the term associate shall not include any corporation or organization of which any person is a beneficial owner of ten percent or more of any class of securities of such corporation or organization unless such person holds ten percent or more of such securities as of the date hereof.

(w) Availability of Funds. Parent will have funds available in an amount sufficient to enable it to pay the Cash Consideration and consummate the transactions contemplated by this Agreement and to pay all related fees and expenses.

(x) Merger Sub. Merger Sub was formed solely for the purpose of effecting the Merger and has not engaged in any business activities or conducted any operations other than in connection with the Merger. Except for obligations or liabilities incurred in connection with its incorporation or organization and the transactions contemplated by this Agreement, and except for this Agreement and any other agreements or arrangements contemplated by this Agreement, Merger Sub has not incurred, directly or indirectly through any subsidiary, any obligations or liabilities or entered into any agreement or arrangements with any person.

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ARTICLE IV

COVENANTS RELATING TO CONDUCT OF BUSINESS

Section 4.1 Conduct of Business.

(a) Conduct of Business by the Company. Except as set forth on Section 4.1(a) of the Company Disclosure Letter, except as otherwise contemplated by this Agreement or except as consented to in writing by Parent, during the period from the date of this Agreement to the Effective Time, the Company shall, and shall cause the Company Subsidiaries to, carry on their respective businesses in the ordinary course consistent with past practice and, to the extent consistent therewith, use all reasonable efforts to preserve intact their current business organizations, use all reasonable efforts to keep available the services of their current officers and other key employees and preserve their relationships with customers, suppliers, distributors and other persons having business dealings with them. Without limiting the generality of the foregoing (but subject to the above exceptions), during the period from the date of this Agreement to the Effective Time, the Company shall not and shall not permit any Company Subsidiary to:

(i) (A) other than dividends and distributions by a direct or indirect wholly owned Company Subsidiary to the Company or another wholly owned Company Subsidiary, declare, set aside or pay any dividends on, or make any other distributions in respect of, any of its capital stock, (B) split, combine or reclassify any of its capital stock, or (C) except pursuant to agreements entered into with respect to the Company Stock Plans that are in effect as of the close of business on the date of this Agreement, purchase, redeem or otherwise acquire any shares of capital stock of the Company or any of the Company Subsidiaries or any other securities thereof or any rights, warrants or options to acquire any such shares or other securities;

(ii) issue, deliver, sell, pledge or otherwise encumber or subject to any Lien any shares of its capital stock, any other voting securities or any securities convertible into, or any rights, warrants or options to acquire, any such shares, voting securities or convertible securities, other than the issuance of shares by one Company Subsidiary to the Company or any Company Subsidiary or the issuance of shares of Company Common Stock (A) upon the exercise of Company Stock Options under the Company Stock Plans or in connection with other awards under the Company Stock Plans, in each case, outstanding as of the date of this Agreement and in accordance with their present terms, (B) under the Company Stock Purchase Plan, (C) as matching contributions to the Employees Voluntary Investment and Savings Plan of the Company, and (D) the issuance of Rights under the Company Rights Agreement in connection with the issuance of Company Common Stock permitted pursuant to this Agreement and, if the Company is not otherwise in breach of Section 4.2 of this Agreement, the purchase of stock upon exercise of the Rights

pursuant to the Company Rights Agreement;

(iii) (A) amend its Certificate of Incorporation or Bylaws (or other comparable organizational documents), (B) amend or take any other action with respect to the Company Rights Agreement, (C) merge or consolidate with any person or (D) take or fail to take any actions that would constitute a violation of applicable Law, except for such violations as would not have or result in a material adverse effect on the Company;

(iv) sell, lease, license, mortgage or otherwise encumber or subject to any Lien or otherwise dispose of any of its properties or assets other than dispositions of tangible properties and assets in the ordinary course of business consistent with past practice or dispositions of such tangible properties and assets that, individually or in the aggregate, are not material to the Company Entities taken as a whole and the granting of Permitted Liens and Liens required under existing bank agreements;

(v) enter into commitments for capital expenditures involving more than $1,000,000 in the aggregate, except pursuant to the capital plan of the Company previously provided to Parent;

(vi) incur any indebtedness for money borrowed (whether evidenced by a note or other instrument, pursuant to a financing lease, sale-leaseback transaction, or otherwise), other than intercompany indebtedness, indebtedness under the Company s existing credit agreement in a manner consistent with past practices, and other indebtedness of up to $3,500,000 in the aggregate;

(vii) except as required by Law or as required by contracts or plans entered into or in existence on or prior to the date of this Agreement (and previously disclosed to Parent) and subject to Sections 4.1(a)(i) and (ii), (A) except for normal increases in salary and wages in the ordinary course of business consistent with the Company s fiscal year 2005 plan previously provided to Parent, grant any increase in the compensation or benefits payable or to become payable by the Company or any Company Subsidiary to any current or former director, officer, employee or consultant; (B) adopt, enter into, amend or otherwise increase, reprice or accelerate the payment or vesting of the amounts, benefits or rights payable or accrued or to become payable or accrued under any Company Benefit Plan or Foreign Plan; (C) enter into or amend any employment, severance, change in control agreement or any similar agreement or any collective bargaining agreement or, except as required in accordance with the Company s severance policy in effect on the date hereof and previously provided to Parent, grant any severance or termination pay to any officer, director, consultant or employee of the Company or any Company Subsidiaries; or (D) pay or award any pension, retirement, allowance or other non-equity incentive awards, or other employee or director benefit not required by any outstanding Company Benefit Plan or Foreign Plan;

(viii) change the accounting principles used by it unless required by GAAP (or, if applicable with respect to foreign subsidiaries, the relevant foreign generally accepted accounting principles);

(ix) acquire by merging or consolidating with, by purchasing any equity interest in or a portion of the assets of, or by any other manner, any business or any corporation, partnership, association or other business organization or division thereof, or otherwise acquire any material amount of assets of any other person (other than the purchase of assets from suppliers or vendors in the ordinary course of business consistent with past practice);

(x) amend any Tax Returns except as required by Law or, except as would not have a material adverse effect on the Company and consistent with past practice, make or rescind any express or deemed election or settle or compromise any claim or action relating to Taxes, or change any of its methods of accounting or of reporting income or deductions for Tax purposes unless required by GAAP (or, if applicable with respect to foreign subsidiaries, the relevant foreign generally accepted accounting principles) or by Law;

(xi) satisfy any claims or liabilities, other than (A) the satisfaction of such claims or liabilities, in the ordinary course of business consistent with past practice, in accordance with their terms, or (B) the satisfaction in the ordinary course of business or pursuant to their respective terms of claims or liabilities reflected or reserved against in the most recent financial statements (or the notes thereto) of the Company included in the Company SEC Documents (for amounts not in excess of such reserves) or incurred since the date of such financial statements in the ordinary course of business consistent with past

practice;

(xii) make any loans, advances or capital contributions to, or investments in, any other person, except for loans, advances, capital contributions or investments between any wholly owned Company Subsidiary and the Company or another wholly owned Company Subsidiary and except for employee or director advances for expenses in the ordinary course of business consistent with past practice;

(xiii) other than in the ordinary course of business consistent with past practice, (A) modify, amend or terminate any material contract in a manner materially adverse to the Company or any Company Subsidiary, (B) waive, release, relinquish or assign any material contract (or any of the Company s or any Company Subsidiary s rights thereunder), right or claim, or (C) cancel or forgive any indebtedness owed to the Company or any Company Subsidiary (other than intercompany indebtedness); provided, however, that, subject to Section 4.2(a), the Company may not under any circumstance waive or release any of its rights under any confidentiality and/or standstill agreement to which it is a party;

(xiv) take any action that would jeopardize qualification of the Merger as a reorganization within the meaning of Section 368(a) of the Code;

(xv) sell or otherwise dispose of any business, or except as set forth in this Section 4.1(a), any capital stock or other equity interest;

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(xvi) enter into any new line of business; or

(xvii) authorize, or commit or agree to take, any of the foregoing actions; provided, however, that the limitations set forth in this Section 4.1(a) do not apply to any transaction to which the only parties are the Company and wholly owned subsidiaries of the Company.

(b) Conduct of Business by Parent. Except as otherwise contemplated by this Agreement or except as consented to in writing by the Company, during the period from the date of this Agreement to the Effective Time, Parent shall, and shall cause the Parent Subsidiaries to, carry on their respective businesses in the ordinary course consistent with past practice and, to the extent consistent therewith, use all reasonable efforts to preserve intact their current business organizations, use all reasonable efforts to keep available the services of their current officers and other key employees and preserve their relationships with customers, suppliers, distributors and other persons having business dealings with them. Without limiting the generality of the foregoing (but subject to the above exceptions), during the period from the date of this Agreement to the Effective Time, Parent shall not and shall not permit any of the Parent Subsidiaries to:

(i) (A) other than dividends and distributions by a direct or indirect wholly owned subsidiary of Parent to the Parent or another wholly owned Parent Subsidiary, declare, set aside or pay any dividends on, or make any other distributions in respect of, any of its capital stock other than regular quarterly cash dividends with respect to Parent Common Stock in accordance with Parent s past dividend practice or (B) split, combine or reclassify any of its capital stock or (C) except pursuant to agreements entered into with respect to the Parent Stock Plans that are in effect as of the close of business on the date of this Agreement, purchase, redeem or otherwise acquire any shares of capital stock of Parent or any of the Parent Subsidiaries or any other securities thereof or any rights, warrants or options to acquire any such shares or other securities;

(ii) issue, deliver, sell, pledge or otherwise encumber or subject to any Lien any shares of its capital stock, any other voting securities or any securities convertible into, or any rights, warrants or options to acquire, any such shares, voting securities or convertible securities, other than the issuance of shares by one Parent Subsidiary to Parent or any Parent Subsidiary or the issuance of shares of Parent Common Stock (A) upon the exercise of Parent Stock Options under Parents stock plans or in connection with other awards under Parent stock plans, in each case, outstanding as of the date of this Agreement or granted thereafter in a manner consistent with past practices, and in accordance with their present terms or (B) the issuance of Parent Rights under the Parent Rights Agreement in connection with the issuance of Parent Common Stock permitted pursuant to this Agreement;

(iii) (A) amend its Amended Articles of Incorporation or Code of Regulations (or other comparable organization documents) or (B) subject to the fiduciary duties of Parent s Board of Directors in response to an unsolicited third party proposal relating to any direct or indirect acquisition or purchase of assets or equity securities (including any merger, consolidation, business combination, or similar transaction) of Parent or any Parent Subsidiary, (1) take any other action with respect to the Parent Rights Plan, or (2) merge or consolidate with any person;

(iv) take any action that would jeopardize qualification of the Merger as a reorganization within the meaning of Section 368(a) of the Code;

(v) purchase any material business or purchase any stock of or other equity interest in any material corporation or other entity;

(vi) take or fail to take any actions that would constitute a violation of applicable Law, except for such violations as would not have or result in a material adverse effect on Parent or change the accounting principles used by it unless required by GAAP (or, if applicable with respect to foreign subsidiaries, the relevant foreign generally accepted accounting principles);

(vii) enter into any new material line of business; or

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(viii) authorize, or commit or agree to take, any of the foregoing actions; provided, however, that the limitations set forth in this Section 4.1(b) do not apply to any transaction to which the only parties are Parent and wholly owned subsidiaries of the Parent.

(c) Conduct of Business by Merger Sub. During the period from the date of this Agreement to the Effective Time, Merger Sub shall not engage in any activities of any nature except as expressly provided in or contemplated by this Agreement.

(d) Other Actions. Except as required by Law or permitted by this Agreement, the Company and Parent shall not, and shall not permit any of their respective subsidiaries to, voluntarily take any action that would reasonably be expected to result in any of the conditions to the Merger set forth in Article VI not being satisfied.

(e) Advice of Notices. Each of the Company, Parent and Merger Sub shall promptly advise the other parties to this Agreement orally and in writing to the extent it has knowledge of any change or event that would have or result in a material adverse effect on such party or on the truth of their respective representations and warranties or the ability of the conditions set forth in Article VI to be satisfied; provided, however, that no such notification will affect the representations, warranties, covenants or agreements of the parties (or remedies with respect thereto) or the conditions to the obligations of the parties under this Agreement; provided, further, that the breach or failure to comply with this Section 4.1(e) by any of the parties hereto shall not entitle the other party to any remedy other than the remedies, if any, that would be available to such party upon the occurrence or non-occurrence of the change or event that was the subject of the breach or failure even if notice thereof had been given pursuant to this Section 4.1(e).

Section 4.2 No Solicitation by the Company.

(a) Company Takeover Proposal. The Company shall, and shall cause the Company Subsidiaries, and its and their officers, directors, employees, financial advisors, attorneys, accountants and other advisors, investment bankers, representatives and agents retained by the Company or any of the Company Subsidiaries (collectively, ***Representatives***) to, immediately cease and cause to be terminated immediately all existing activities, discussions and negotiations with any parties conducted heretofore with respect to, or that would reasonably be expected to lead to, any Company Takeover Proposal (as defined in Section 4.2(b)). From and after the date of this Agreement until the earlier of the Effective Time or the termination of this Agreement, the Company shall not, nor shall it permit any of the Company Subsidiaries to, nor shall it authorize or permit any of its or the Company Subsidiaries Representatives to, directly or indirectly, (i) solicit, initiate or encourage (including by way of furnishing information), or take any other

action designed to facilitate, any inquiries or the making of any proposal that constitutes, or would be reasonably likely to lead to, a Company Takeover Proposal, (ii) enter into any agreement, arrangement or understanding with respect to any Company Takeover Proposal or enter into any agreement, arrangement or understanding requiring it to abandon, terminate or fail to consummate the Merger or any other transaction contemplated by this Agreement, or (iii) initiate or participate in any way in any discussions or negotiations regarding, or furnish or disclose to any person (other than a party to this Agreement) any information with respect to, or take any other action to facilitate or in furtherance of any inquiries or the making of any proposal that constitutes, or could reasonably be expected to lead to, any Company Takeover Proposal or (iv) grant any waiver or release under any standstill or any similar agreement with respect to any class of the Company s equity securities (other than the standstill provision contained in the Confidentiality Agreement which shall be deemed waived and released if the Company takes any action pursuant to the proviso contained in this Section 4.2(a)); provided, however, at any time prior to obtaining the Company Shareholder Approval, in response to a bona fide written Company Takeover Proposal that the Board of Directors of the Company determines in good faith (after consultation with its outside counsel and its financial advisor) constitutes or would reasonably be expected to lead to a Superior Proposal (as defined in Section 4.2(b)), and which Company Takeover Proposal was not solicited after the date hereof and was made after the date hereof and did not otherwise result from a breach of this Section 4.2, the Company may, subject to compliance with

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Section 4.2(c), (i) furnish information with respect to, and access to the properties, books, records, and personnel of, the Company and the Company Subsidiaries to the person making such Company Takeover Proposal (and its representatives) pursuant to a customary confidentiality agreement not less restrictive of such person than the Confidentiality Agreement (excluding the standstill provision contained therein), and (ii) participate in discussions or negotiations with the person making such Company Takeover Proposal (and its representatives) regarding such Company Takeover Proposal.

(b) Definitions. As used herein, (i) ***Superior Proposal*** means a bona fide written Company Takeover Proposal (provided that for purposes of this definition references to 10% or more or 25% or more in the definition of Company Takeover Proposal shall be deemed references to 50% or more) that the Board of Directors of the Company determines in its good faith judgment consistent with its fiduciary duties to the stockholders of the Company under the DGCL after consulting with the Company s Banker (or any other nationally recognized investment banking firm and outside legal counsel), taking into account all legal, financial and regulatory and other aspects of the proposal and the person making the proposal (including any break-up fees, expense reimbursement provisions, the absence, if such is the case, of committed financing to the extent financing is a condition to consummation of the Company Takeover Proposal, and other conditions to consummation), would be more favorable to the shareholders of the Company than the transactions contemplated by this Agreement (including any adjustment to the terms and conditions proposed by Parent in response to such Company Takeover Proposal pursuant to Section 7.1(d)(ii)) and is reasonably capable of being consummated on the terms proposed and (ii) ***Company Takeover Proposal*** means any inquiry, proposal or offer from any person other than Parent or its affiliates or Representatives relating to any (A) direct or indirect acquisition or purchase of a business that constitutes 25% or more of the net revenues, net income or the assets of the Company and the Company Subsidiaries, taken as a whole, or (B) direct or indirect acquisition or purchase of 10% or more of any class of equity securities of the Company or any of the Company Subsidiaries, (C) any tender offer or exchange offer that if consummated would result in any person beneficially owning 10% or more of any class of equity securities of the Company or any of the Company Subsidiaries, or (D) any merger, consolidation, business combination, purchase of consolidated assets of the Company and the Company s Subsidiaries (other than the purchase of inventory or obsolete equipment in the ordinary course of business), recapitalization, liquidation, dissolution or similar transaction involving, in each case, 25% or more of the consolidated assets of the Company and Company Subsidiaries, taken as a whole, other than, in each case, the transactions contemplated by this Agreement.

(c) Actions by the Company. Neither the Board of Directors of the Company nor any committee thereof shall (i) (A) withdraw (or modify in a manner adverse to Parent), or publicly propose to withdraw (or modify in a manner adverse to Parent), the approval, recommendation or declaration of advisability by such Board of Directors or any such committee thereof of this Agreement, the Merger or the other transactions contemplated by this Agreement or (B) recommend, adopt or approve, or propose publicly to recommend, adopt or approve, any Company Takeover Proposal (any action described in this clause (i) being referred to as a ***Company Adverse Recommendation Change***) or (ii) approve or recommend, or propose to

approve or recommend, or allow the Company or any of the Company Subsidiaries to execute or enter into, any letter of intent, memorandum of understanding, agreement in principle, merger agreement, acquisition agreement, option agreement, joint venture agreement, partnership agreement or other similar agreement constituting or related to, or that is intended to or would reasonably be expected to lead to, any Company Takeover Proposal (other than a confidentiality agreement referred to in Section 4.2(a)) (an ***Acquisition Agreement***). Notwithstanding the foregoing, the Board of Directors of the Company may make a Company Adverse Recommendation Change if the Board of Directors of the Company determines in its good faith judgment consistent with its fiduciary duties to the stockholders of the Company under the DGCL after consulting with outside legal counsel that it is required to do so in order to comply with its fiduciary duties. Any Company Adverse Recommendation Change shall not change the approval of the Board of Directors of the Company for purposes of causing any antitakeover provision in the Company s Certificate of Incorporation or Bylaws or any Takeover Statute or other state Law to be inapplicable to the transactions contemplated hereby, including the Merger or otherwise affect any other obligation of the Company under this Agreement. The Company shall not submit to the vote of its shareholders any Company Takeover Proposal other than the Merger prior to the termination of this Agreement.

(d) Notice of Company Takeover Proposal. From and after the date of this Agreement, the Company shall promptly (but in any event within one calendar day) advise Parent and Merger Sub in writing of the receipt, directly or indirectly, of any Company Takeover Proposal, or any request for nonpublic information relating to any of the Company Entities by any person that informs the Company or its Representatives that such person is considering making, or has made, a Company Takeover Proposal, or an inquiry from a person seeking to have discussions or negotiations relating to a possible Company Takeover Proposal. Such notice shall be made orally and confirmed in writing, and shall indicate the specific terms and conditions thereof (but need not identify the other party or parties involved) and promptly inform Parent and Merger Sub of any information provided to such third party thereto. The Company agrees that it shall keep Parent reasonably informed of the status and details (including amendments or proposed amendments) of any such request, Company Takeover Proposal or inquiry and keep Parent reasonably informed as to discussions or negotiations with respect to any such request, Company Takeover Proposal or inquiry.

(e) Rule 14e-2(a) and Rule 14d-9. Nothing contained in this Section 4.2 shall prohibit the Company from taking and disclosing to its shareholders a position contemplated by Rule 14e-2(a) or Rule 14d-9 promulgated under the Exchange Act with respect to a Company Takeover Proposal; provided, however, that compliance with such rules and Laws shall not in any way limit or modify the effect that any action taken pursuant to such rules and Laws has under Section 7.1(c).

(f) Return or Destruction of Confidential Information. The Company agrees that promptly following the execution of this Agreement, it shall request each person that has heretofore executed a confidentiality agreement since January 1, 2002 in connection with such person s consideration of acquiring the Company to return or destroy all confidential information heretofore furnished to such person by or on the Company s behalf.

ARTICLE V

ADDITIONAL AGREEMENTS

Section 5.1 Preparation of the Form S-4 Proxy Statement; Shareholders Meetings.

(a) Form S-4; Proxy Statement. As soon as practicable following the date of this Agreement, the Company and Parent shall prepare and file with the SEC the Proxy Statement and Parent shall prepare and file with the SEC the Form S-4, in which the Proxy Statement will be included as a prospectus. Each of

the Company and Parent shall use reasonable best efforts to have the Form S-4 declared effective under the Securities Act as promptly as practicable after such filing. The Company shall use all reasonable best efforts to cause the Proxy Statement to be mailed to the Company s shareholders and Parent shall use all reasonable best efforts to cause the Proxy Statement to be mailed to Parent s shareholders, in each case, as promptly as practicable after the Form S-4 is declared effective under the Securities Act. Parent shall also take any action required to be taken under any applicable foreign and state securities laws in connection with the issuance of Parent Common Stock in the Merger and the Company shall furnish all information concerning the Company and the holders of the Company Common Stock as may be reasonably requested in connection with any such action. No filing of, or amendment or supplement to, the Form S-4 will be made by Parent, and no filing of, or amendment or supplement to, the Proxy Statement will be made by the Company or Parent, in each case, without providing the other party and its respective counsel the reasonable opportunity to review and comment thereon. Parent will advise the Company, promptly after it receives notice thereof, of the time when the Form S-4 has become effective or any supplement or amendment has been filed, the issuance of any stop order, the suspension of the qualification of the Parent Common Stock issuable in connection with the Merger for offering or sale in any jurisdiction, or any request by the SEC for amendment of the Form S-4 or comments thereon and responses thereto or requests by the SEC for additional information. If at any time prior to the Effective Time any information relating to the Company or Parent, or any of their respective affiliates, officers or directors, should be discovered by the Company or Parent

which should be set forth in an amendment or supplement to the Form S-4 or the Proxy Statement, so that any of such documents would not include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the party that discovers such information shall promptly notify the other parties hereto and an appropriate amendment or supplement describing such information must be promptly filed with the SEC and, to the extent required by Law, disseminated to the shareholders of the Company.

(b) Company Obligations. The Company shall take such action as may be necessary to ensure that (i) the information supplied by or on behalf of the Company specifically for inclusion or incorporation by reference in the Form S-4 shall not at the time the Form S-4 becomes effective under the Securities Act contain any untrue statement of a material fact or omit to state any material fact required to be stated in the Form S-4 or necessary in order to make the statements in the Form S-4, in light of the circumstances under which they were made, not misleading, and (ii) the information supplied by or on behalf of the Company for inclusion or incorporation by reference in the Proxy Statement shall not, on the date the Proxy Statement is first mailed to shareholders of Parent or the Company, at the time of the Company Shareholders Meeting and the Parent Shareholders Meeting, or at the Effective Time, contain any untrue statement of a material fact, or omit to state any material fact necessary in order to make the statements made in the Proxy Statement, in light of the circumstances under which they are made, not misleading, or omit to state any material fact necessary to correct any statement in any earlier communication with respect to the solicitation of proxies for the Company Shareholders Meeting or the Parent Shareholders Meeting that has become false or misleading.

(c) Parent Obligations. Parent shall take such action as may be necessary to ensure that (i) the information supplied by or on behalf of Parent specifically for inclusion or incorporation by reference in the Form S-4 shall not at the time the Form S-4 becomes effective under the Securities Act contain any untrue statement of a material fact or omit to state any material fact required to be stated in the Form S-4 or necessary in order to make the statements in the Form S-4, in light of the circumstances under which they were made, not misleading, and (ii) the information supplied by or on behalf of Parent for inclusion or incorporation by reference in the Proxy Statement shall not, on the date the Proxy Statement is first mailed to stockholders of Parent or the Company, at the time of the Parent Shareholders Meeting and the Company Shareholders Meeting, or at the Effective Time, contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made in the Proxy Statement, in light of the circumstances under which they are made, not misleading, or omit to state any material fact necessary to correct any statement in any earlier communication with respect to the solicitation of proxies for the Company Shareholders Meeting or the Parent Shareholders Meeting that has become false or misleading.

(d) Company Shareholders Meeting. The Company shall, as soon as practicable following the date of this Agreement, duly call, give notice of,

convene and hold, a meeting of its shareholders (the ***Company Shareholders Meeting***) in accordance with Law, the Company s Certificate of Incorporation and the Company s By-laws for the purpose of obtaining the Company Shareholder Approval and shall, (i) through the Board of Directors of the Company, subject to Section 4.2, recommend to its shareholders the approval and adoption of this Agreement, the Merger and the other transactions contemplated hereby and (ii) use its reasonable best efforts to solicit and obtain such adoption. Notwithstanding the foregoing, if there has been a Company Adverse Recommendation Change and this Agreement has not been terminated, the Company shall not be obligated to solicit from the holders of Company Common Stock proxies in favor of the adoption of this Agreement, but instead shall be obligated to solicit proxies to be voted at the Company Shareholders Meeting and to take all action necessary or advisable to maximize, at the Company Shareholders Meeting, the number of proxies submitted by the holders of Company Common Stock and otherwise facilitate the holding of the Company Shareholders meeting in accordance with the terms of this Agreement. Without limiting the generality of the foregoing, subject to its rights under Section 4.2 and Section 7.1, the Company agrees that its obligations pursuant to the first sentence of this Section 5.1(d) shall not be affected by any Company Adverse Recommendation Change or the commencement, public proposal, public disclosure or communication to the Company or its shareholders of any Company Takeover Proposal.

(e) Parent Shareholders Meeting. Parent shall, as soon as practicable following the date of this Agreement, duly call, give notice of, convene and hold a meeting of its shareholders (the ***Parent Shareholders Meeting***) in accordance with Law, the Parent s Amended Articles of Incorporation and the Parent s Code of Regulations for the purpose of obtaining the Parent Shareholder Approval and shall through the Board of Directors of Parent, recommend to its shareholders the approval of the Stock Issuance. Parent will coordinate and cooperate with respect to the timing of the Parent Shareholders Meeting in an effort to hold the meeting on the same day as the Company Shareholders Meeting.

Section 5.2 Letters of the Company s Accountants. The Company shall use its reasonable efforts to cause to be delivered to Parent two letters from the Company s independent accountants, one dated a date within two Business Days before the date on which the Form S-4 will become effective and one dated a date within two Business Days before the Closing Date, each addressed to Parent, in form and substance reasonably satisfactory to Parent and customary in scope and substance for comfort letters delivered by independent public accountants in connection with registration statements similar to the Form S-4.

Section 5.3 Letters of Parent s Accountants. Parent shall use its reasonable efforts to cause to be delivered to the Company two letters from Parent s independent accountants, one dated a date within two Business Days before the date on which the Form S-4 will become effective and one dated a date within two Business Days before the Closing Date, each addressed to the Company, in form and substance reasonably satisfactory to the Company and customary in scope and substance for comfort letters delivered by independent public accountants in connection with registration statements similar to the Form S-4.

Section 5.4 Access to Information; Confidentiality. To the extent permitted by applicable Law and subject to the Agreement, dated February 13, 2004, between the Company and Parent (the ***Confidentiality Agreement***), each of Parent and the Company shall, and shall cause its subsidiaries to, upon reasonable notice and to the extent permitted under applicable Law and the provisions of agreements to which Parent or the Company, as the case may be, is a party, afford to the other parties and their Representatives, reasonable access, during normal business hours during the period prior to the Effective Time, to each other s and each other s subsidiaries properties, books, contracts, commitments, personnel and records and other information concerning their business, properties and personnel as the party desiring access may reasonably request. Each party shall hold, and shall cause its respective Representatives and affiliates to hold, any nonpublic information in accordance with the terms of the Confidentiality Agreement. Any investigation pursuant to this Section shall be conducted in such a manner as not to interfere unreasonably with the conduct of the parties respective businesses.

Section 5.5 Reasonable Best Efforts; Cooperation.

(a) Reasonable Best Efforts. Upon the terms and subject to the conditions set forth in this Agreement, each of the parties agrees to use reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the Merger and the other transactions contemplated by this Agreement and to obtain satisfaction or waiver of the conditions precedent to the Merger, including (i) the obtaining of all necessary actions or nonactions, waivers, consents and approvals from Governmental Entities and the making of all necessary registrations and filings and the taking of all steps as may be necessary to obtain an approval or waiver from, or to avoid an action or proceeding by, any Governmental Entity, (ii) the obtaining of all necessary consents, approvals or waivers from third parties, (iii) the defending of any lawsuits or other legal proceedings, whether judicial or administrative, challenging this Agreement or the consummation of the transactions contemplated hereby, including seeking to have any stay or temporary restraining order entered by any court or other Governmental Entity vacated or reversed, and (iv) the execution and delivery of any additional instruments necessary to consummate the transactions contemplated by, and to fully carry out the purposes of, this Agreement. Nothing set forth in this Section 5.5(a) will limit or affect actions permitted to be taken pursuant to Section 4.2.

(b) No Takeover Statutes Apply. In connection with and without limiting the foregoing, the Company, Parent and Merger Sub shall (i) take all action necessary to ensure that no Takeover Statute or similar Law is or becomes applicable to the Merger, this Agreement or any of the other transactions contemplated hereby and (ii) if any Takeover Statute or similar Law becomes applicable to the Merger, this Agreement or any of the other transactions contemplated hereby, take all action necessary to ensure that the Merger and the other transactions contemplated hereby may be consummated as promptly as practicable on the terms contemplated by this Agreement and otherwise to minimize the effect of such Law on the Merger and the other transactions contemplated by this Agreement.

(c) Opinions Regarding Tax Treatment. Parent and the Company shall cooperate with each other in obtaining the opinions of Jones Day, counsel to Parent, for the benefit of Parent, and Faegre & Benson LLP, counsel to the Company, for the benefit of the Company s shareholders, respectively, dated on or about the date the Proxy Statement is first mailed to shareholders of the Company and Parent and updated as of the Closing Date, constituting conditions precedent to the Merger pursuant to Article VI, to the effect that the Merger will constitute a reorganization within the meaning of Section 368(a) of the Code and each of Parent, Merger Sub and Company will be a party to such reorganization within the meaning of Section 368(b) of the Code. In connection therewith, each of Parent and the Company shall deliver to Jones Day and Faegre & Benson LLP customary representation letters in form and substance reasonably satisfactory to such counsel, and at such time or times that may be reasonably requested by such law firms (the representation letters referred to in this sentence are collectively referred to as the ***Tax Certificates***).

(d) Significant Developments. The Company shall consult and cooperate with Parent with respect to significant developments in its business and shall give reasonable consideration to the Parent s views with respect thereto to the extent permitted by Law.

(e) Compliance with HSR Act. Parent and the Company shall (i) make the filings required of such party under the HSR Act with respect to the Merger and the other transactions contemplated by this Agreement within ten days after the date of this Agreement, (ii) comply at the earliest practicable date with any request under the HSR Act for additional information, documents or other materials received by such party from the Federal Trade Commission or the Department of Justice or any other Governmental Entity in respect of such filings or the Merger and the other transactions contemplated by this Agreement, and (iii) cooperate with the other party in connection with making any filing under the HSR Act and in connection with any filings, conferences or other submissions related to resolving any investigation or other inquiry by any such Governmental Entity under the HSR Act with respect to the Merger and the other transactions contemplated by this Agreement. Each of Parent and the Company will, and will cause each of their subsidiaries to, use its reasonable best efforts to obtain (and will cooperate with each other in obtaining) the termination of all waiting periods under the HSR Act and not to extend any waiting period under the HSR Act. Prior to the termination of this

Agreement, each party shall be required to prosecute, cooperate in, and defend against any litigation instituted by the Federal Trade Commission or the Department of Justice or any other Governmental Entity which seeks to restrain or prohibit the consummation of the Merger or which seeks to impose material limitations on the ability of Parent, the Surviving Corporation or any of their respective affiliates or subsidiaries to acquire, operate or hold, or to require Parent, Surviving Corporation or any of their respective affiliates or subsidiaries to dispose of or hold separate, any material portion of their assets or business or the Company s assets or business after the Closing Date.

(f) Compliance with the Canadian Act. Parent and the Company shall, and shall cause their subsidiaries to, (i) jointly make all filings, notifications, applications and submissions (the ***Canadian Filing***) required of such party under the Canadian Act with respect to the Merger and the other transactions contemplated by this Agreement within ten days after the date of this Agreement, (ii) comply at the earliest practicable date with any request under the Canadian Act for additional information, documents or other materials received by such party from the Commissioner of Competition or the Competition Bureau in respect of the Merger and the other transactions contemplated by this Agreement, and (iii) cooperate with the other party in connection with

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making the Canadian Filing and in connection with any other filings, conferences, meetings or other submissions related to resolving any investigation, review or other inquiry by the Commissioner of Competition or the Competition Bureau under the Canadian Act with respect to the Merger and the other transactions contemplated by this Agreement. Each of Parent and the Company shall, and shall cause each of their subsidiaries to, use its reasonable best efforts to obtain (and will cooperate with each other in obtaining) the Canadian Clearance described in Section 6.1(f) of this Agreement. Prior to the termination of this Agreement, each party shall be required to prosecute, cooperate in, and defend against any litigation or proceeding instituted by the Commissioner of Competition or the Competition Tribunal or any other Governmental Entity, which seeks to restrain or prohibit the consummation of the Merger or which seeks to impose material limitations on the ability of Parent, the Surviving Corporation or any of their respective affiliates or subsidiaries to acquire, operate or hold, or to require Parent, the Surviving Corporation or any of their respective affiliates or subsidiaries to dispose of or hold separate, any material portion of their assets or business or the Company s assets or business after the Closing Date.

Section 5.6 Stock Plans and Company Stock Options.

(a) Assumption of Company Stock Options. At the Effective Time, (i) each outstanding Company Stock Option, whether vested or unvested immediately prior to the Effective Time, to purchase shares of Company Common Stock, and (ii) each of the Company Stock Plans and all agreements thereunder, shall be assumed by Parent. To the extent provided under the terms of the Company Stock Plans all such outstanding options shall accelerate and become immediately exercisable in connection with the Merger in accordance with their existing terms. Except for the acceleration of the Company Stock Options in accordance with the terms of the Company Stock Plans and any agreements thereunder, prior to or at the Effective Time, each Company Stock Option so assumed by Parent under this Agreement shall continue to have, and be subject to, substantially the same terms and conditions as were applicable under the Company Stock Plans and the documents governing the Company Stock Options immediately before the Effective Time, except that (i) each Company Stock Option will be exercisable for that number of whole shares of Parent Common Stock equal to the product of the number of shares of Company Common Stock that were issuable upon exercise of such option immediately prior to the Effective Time multiplied by the sum of the number of shares of Parent Common Stock constituting the Stock Consideration plus the Option Calculation Shares (as defined below) and rounded to the next highest whole number of shares of Parent Common Stock, (ii) the per-share exercise price for the shares of Parent Common Stock issuable upon exercise of such Company Stock Option will be equal to the quotient determined by dividing the exercise price per share of Company Common Stock at which such option was exercisable immediately prior to the Effective Time by the sum of the number of shares of Parent Common Stock constituting the Stock Consideration plus the Option Calculation Shares, rounded to the next highest whole cent, and (iii) Parent shall use its reasonable best efforts to amend the 1986 Stock Option Incentive Plan and the Amended and Restated 1989 Stock-Based Incentive Plan to provide, or otherwise cause to be provided, that vested options of employees will be exercisable for a period of 90 days following termination of employment other than for cause (except to the extent such stock option plan contains terms relating to exercise following

termination that are more favorable to the employee than such 90 day exercise period but no later than the expiration of the stock option if employment had not been terminated). ***Option Calculation Shares*** means the number equal to the quotient determined by dividing the Cash Consideration by the Average Closing Price. Notwithstanding anything to the contrary contained herein, in the case of any incentive stock option to which Section 421 of the Code applies by reason of its qualification under Section 422 of the Code, the formulas and other provisions set forth herein shall be adjusted to the extent necessary to comply with Section 424(a) of the Code.

(b) Reservation of Option Shares. Parent shall take all corporate action necessary to reserve for issuance a sufficient number of shares of Parent Common Stock for delivery upon exercise of all Company Stock Options assumed in accordance with this Section 5.6. As soon as practicable after the Effective Time, Parent shall file a registration statement on Form S-8 (or other appropriate form) or a post-effective amendment to the Form S-4 for purposes of registering all shares of Parent Common Stock issuable after the Effective Time upon exercise of those options and shall use its reasonable best efforts to maintain the effectiveness of the registration statement for so long as those options remain outstanding.

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(c) Restricted Stock. To the extent provided under the terms of the Company Stock Plans or any agreements thereunder, all restricted common stock of the Company shall vest, and all restrictions thereon shall lapse at or prior to the Effective Time in accordance with the terms thereof and such restricted common stock shall constitute Company Common Stock subject to Article II.

(d) Restricted Stock Units. To the extent provided under the terms of the Company Stock Plans or any agreements thereunder, all restricted stock units of the Company shall be deemed to vest and to constitute issued and outstanding Company Common Stock subject to Article II immediately prior to the Effective Time.

Section 5.7 Indemnification, Assumption.

(a) Rights Assumed by Surviving Corporation. Parent agrees that all rights to indemnification, indemnification expense advancement, and exculpation from liabilities for acts or omissions occurring at or prior to the Effective Time now existing in favor of the current or former directors or officers of the Company and the Company Subsidiaries (the ***Indemnified Parties***) as provided in their respective certificates of incorporation or by-laws (or comparable organizational documents) or in indemnification agreements will be assumed by the Surviving Corporation without further action, as of the Effective Time, and will survive the Merger and will continue in full force and effect in accordance with their terms and such rights will not be amended, or otherwise modified for a period of six years after the Effective Time (and no such amendment or modification shall affect a claim asserted prior to the amendment or modification) in any manner that would adversely affect the rights of individuals who on or prior to the Effective Time were directors, officers, employees or agents of the Company or any Company Subsidiary, unless such modification is required by Law. Parent hereby guarantees, effective at the Effective Time, all obligations of the Surviving Corporation in respect of such indemnification, exculpation and expense advancement.

(b) Successors and Assigns of Surviving Corporation. In the event that the Surviving Corporation or any of its successors or assigns (i) consolidates with or merges into any other person and is not the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers or conveys all or substantially all of its properties and assets to any person, then, and in each such case, proper provision will be made so that the successors and assigns of the Surviving Corporation assume the obligations set forth in this Section 5.7.

(c) Continuing Coverage. For at least six years after the Effective Time, Parent shall maintain (or cause to be maintained) in effect directors and officers liability insurance covering acts or omissions occurring prior to the Effective Time with respect to those Indemnified Parties who are currently covered by the Company s directors and officers liability insurance policy (a

copy of which has been heretofore made available to Parent) on terms with respect to such coverage and amount no less favorable than those of such current insurance coverage; provided, however, that in no event will Parent be required to expend in any one year an amount in excess of 250% of the annual premium currently paid by the Company for such insurance; and provided, further, that, if the annual premium of such insurance coverage exceeds such amount, Parent will be obligated to obtain a policy with the greatest coverage available for a cost not exceeding such amount.

(d) Intended Beneficiaries. The provisions of this Section 5.7 are (i) intended to be for the benefit of, and will be enforceable by, each Indemnified Party, his or her heirs and his or her representatives and (ii) in addition to, and not in substitution for, any other rights to indemnification or contribution that any such person may have by contract or otherwise.

(e) Key Employee Arrangements. Parent and the Surviving Corporation acknowledge that, by operation of Law, the Surviving Corporation will be obligated, from and after the Effective Time, to perform, in the same manner and to the same extent that the Company would be required to perform if the Merger had not taken place, the Company s obligations under each of the employment, severance, retention bonus, change in control, and similar arrangements listed in Section 5.7(e) of the Company Disclosure Letter. Parent shall

guarantee the performance of the Surviving Corporation s obligations with respect to the arrangements listed on Section 5.7(e) of the Company Disclosure Letter.

Section 5.8 Fees and Expenses.

(a) Division of Fees and Expenses. Except as provided in this Section 5.8, all fees and expenses incurred in connection with the Merger, this Agreement and the transactions contemplated hereby must be paid by the party incurring such fees or expenses, whether or not the Merger is consummated, except that each of Parent and the Company will bear and pay one-half of the costs and expenses incurred in connection with the filing, printing and mailing of the Form S-4 and the Proxy Statement (including SEC filing fees).

(b) Event of Termination. In the event that this Agreement is terminated pursuant to (i) Section 7.1(b)(i), Section 7.1(b)(ii), or Section 7.1(c)(i) (but only with respect to the conditions set forth in Section 6.2(a) and Section 6.2(b)) and (A) prior to the Company Shareholders Meeting, a Company Takeover Proposal shall have been made to the Company and shall have become known publicly or been made directly to the Company s shareholders generally or any person shall have publicly announced an intention (whether or not conditional) to make a Company Takeover Proposal and (B) within 12 months after such termination the Company or any of the Company Subsidiaries (1) enters into a definitive agreement with respect to any Company Takeover Proposal within such twelve-month period which Company Takeover Proposal is subsequently consummated within or after such twelve-month period, or (2) consummates any Company Takeover Proposal or (ii) Section 7.1(c)(ii) or (iii) Section 7.1(d)(ii) then, the Company shall (1) in the case of termination pursuant to clause (i) of this Section 5.8(b), upon such consummation or (2) in the case of termination pursuant to clause (ii) of this Section 5.8(b), promptly, but in no event later than two Business Days after the date of such termination, or (3) in the case of termination pursuant to clause (iii) of this Section 5.8(b) immediately prior to such termination, pay Parent a non-refundable fee equal to $17,000,000 (the ***Termination Fee***), payable by wire transfer of same day funds to an account designated in writing to the Company by Parent. For purposes of determining whether a Company Takeover Proposal has occurred that may entitle Parent to a Termination Fee, references to 10% or more or 25% or more in the definition of Company Takeover Proposal shall be deemed to be 50% or more. The Company acknowledges that the agreements contained in this Section 5.8(b) are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, Parent would not enter into this Agreement; accordingly, if the Company fails to pay promptly the amount due pursuant to this Section 5.8(b), and, in order to obtain such payment, Parent commences a suit that results in a judgment against the Company for the Termination Fee, the Company shall pay to Parent its costs and expenses (including reasonable attorneys fees and expenses) in connection with such suit, together with interest on the amount of the Termination Fee. In no event shall more than one Termination Fee be payable under this Section 5.8(b). Parent (for itself and its affiliates) hereby agrees that, upon any termination of this Agreement under circumstances where Parent is entitled to a Termination

Fee under this Section 5.8(b) and such Termination Fee is paid in full to Parent, Parent and its affiliates shall be precluded from any other remedy against the Company, at law or in equity or otherwise, and neither Parent nor any of its affiliates shall seek (and Parent shall cause its affiliates not to seek) to obtain any recovery, judgment, or damages of any kind, including consequential, indirect, or punitive damages, against the Company or any Company Subsidiary or any of their respective directors, officers, employees, partners, managers, members, or shareholders in connection with this Agreement or the transactions contemplated hereby.

Section 5.9 Public Announcements. So long as this Agreement is in effect, Parent and the Company shall consult with each other before holding any press conferences, analysts calls or other meetings or discussions and before issuing any press release or other public announcements with respect to the transactions contemplated by this Agreement, including the Merger. The parties will provide each other the opportunity to review and comment upon any press release or other public announcement or statement with respect to the transactions contemplated by this Agreement, including the Merger, and shall not issue any such press release or other public announcement or statement prior to such consultation, except as may be required by applicable Law, court process or by obligations pursuant to any listing agreement with any national securities exchange. The

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parties agree that the initial press release or releases to be issued with respect to the transactions contemplated by this Agreement shall be mutually agreed upon prior to the issuance thereof, which agreement shall not be unreasonably withheld or delayed.

Section 5.10 Affiliates. The Company shall deliver to Parent at least 45 days prior to the Closing Date a letter identifying all persons who are, in the Company s reasonable judgment, at the time this Agreement is submitted for adoption by the shareholders of the Company, affiliates of the Company for purposes of Rule 145 of the rules and regulations promulgated under the Securities Act. The Company shall use reasonable efforts to cause each such person to deliver to Parent at least 30 days prior to the Closing Date a written agreement substantially in the form attached as Exhibit A hereto.

Section 5.11 NYSE Listing. Parent shall use its reasonable best efforts to cause (i) the Parent Common Stock issuable to the Company s shareholders as contemplated by this Agreement (including pursuant to Parent s assumption of the Company Stock Options) to be approved for listing on the NYSE, subject to official notice of issuance, as promptly as practicable after the date of this Agreement, and in any event prior to the Closing Date and (ii) the Company Common Stock to be delisted from the NYSE.

Section 5.12 Shareholder Litigation. The parties to this Agreement shall cooperate and consult with one another, to the fullest extent possible, in connection with any shareholder litigation against any of them or any of their respective directors or officers with respect to the transactions contemplated by this Agreement. In furtherance of and without in any way limiting the foregoing, each of the parties shall use its respective reasonable best efforts to prevail in such litigation so as to permit the consummation of the transactions contemplated by this Agreement in the manner contemplated by this Agreement. Notwithstanding the foregoing, the Company agrees that prior to the termination of this Agreement, it will not compromise or settle any litigation commenced against it or its directors or officers relating to this Agreement or the transactions contemplated hereby (including the Merger) without Parent s prior written consent, which shall not be unreasonably withheld or delayed.

Section 5.13 Tax Treatment. Each of Parent, Merger Sub and the Company shall use its reasonable best efforts to cause the Merger to qualify as a reorganization under the provisions of Section 368(a) of the Code and to obtain the opinions of counsel referred to in Sections 6.2(c) and 6.3(c), including forbearing from taking any action that would cause the Merger not to qualify as a reorganization under the provisions of Section 368(a) of the Code.

Section 5.14 Transition. In order to facilitate an orderly transition of the management of the business of the Company and the Company Subsidiaries to

Parent and in order to facilitate the integration of the operations of the Company and Parent and its subsidiaries and to permit the coordination of their related operations on a timely basis, and in an effort to accelerate to the earliest time possible following the Effective Time the realization of synergies, operating efficiencies and other benefits expected to the realized by Parent and the Company as a result of the Merger, the Company shall and shall cause the Company Subsidiaries to consult with Parent on all material strategic and operational matters to the extent such consultation is not in violation of applicable Law, including Laws regarding the exchange of information and other Laws regarding competition. The Company shall and shall cause the Company Subsidiaries to make available to Parent at the facilities of the Company and the Company Subsidiaries, where reasonably determined by Parent to be appropriate and necessary, office space in order to assist it in observing operations and reviewing matters concerning the Company s affairs. Without in any way limiting the provisions of Section 5.4, Parent, its subsidiaries, officers, employees, counsel, financial advisors and other representatives shall, upon reasonable written notice to the Company, be entitled to review the operations and visit the facilities of the Company and the Company Subsidiaries at all reasonable times in order to accomplish the foregoing arrangements. Notwithstanding the foregoing, nothing contained in this Agreement shall give Parent, directly or indirectly, the right to control or direct the Company s operations prior to the Effective Time. Prior to the Effective Time, the Company shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its and the Company Subsidiaries respective operations.

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Section 5.15 Section 16(b).

(a) Approval of Acquisitions by Parent s Board. Prior to the Effective Time, Parent shall take all steps reasonably necessary to cause the transactions contemplated hereby and any other acquisitions of Parent equity securities (including derivative securities) in connection with this Agreement by each individual who is subject to the reporting requirements of Section 16(a) of the Exchange Act, to be approved by Parent s Board of Directors or a committee of two or more Non-Employee Directors of Parent (as such term is defined in Rule 16b-3 promulgated under the Exchange Act).

(b) Approval of Dispositions by Company s Board. Prior to the Effective Time, the Company shall take all steps reasonably necessary to cause the transactions contemplated hereby and any other dispositions of equity securities of the Company (including derivative securities), in connection with this Agreement by each individual who is subject to the reporting requirements of Section 16(a) of the Exchange Act to be approved by Company s Board of Directors or a committee of two or more Non-Employee Directors of the Company (as such term is defined in Rule 16b-3 promulgated under the Exchange Act).

(c) Content of Approval. Such approval shall specify: (i) the name of each officer or director, (ii) the number of securities to be acquired or disposed of for each named person, (iii) in the case of the derivative securities acquired, the material terms of the derivative securities, and (iv) that the approval is granted for purposes of exempting the transaction under Rule 16b-3 of the Exchange Act.

Section 5.16 Employee Benefit Matters. The Company shall (to the extent permitted by Law and by the terms of such plans and any agreements relating thereto) adopt such amendments to the Company Benefit Plans or the Company Foreign Plans as reasonably requested by Parent and as otherwise may be necessary to ensure that Company Benefit Plans and Company Foreign Plans cover only employees and former employees (and their dependents and beneficiaries) of the Company and the Company Subsidiaries following the consummation of the transactions contemplated by this Agreement. With respect to any Company Common Stock held by any Company Benefit Plan and Company Foreign Plans as of the date of this Agreement or thereafter, the Company or a Company Subsidiary, as appropriate, shall take all actions necessary or appropriate (including such actions as are reasonably requested by Parent) to ensure that all participant voting procedures contained in the Company Benefit Plans and Company Foreign Plans relating to such shares, and all applicable provisions of ERISA and applicable Laws, are complied with in full.

Section 5.17 Reports. From and after the Effective Time and so long as necessary in order to permit Rule 145 Affiliates to sell the shares of Parent

Common Stock received by them as a result of the Merger pursuant to Rule 145 and, to the extent applicable, Rule 144 under the Securities Act, Parent will use its reasonable best efforts to file on a timely basis all reports required to be filed by it pursuant to Section 13 or 15(d) of the Exchange Act, referred to in paragraph (c)(1) of Rule 144 under the Securities Act (or, if applicable, Parent will use its reasonable best efforts to make publicly available the information regarding itself referred to in paragraph (c)(3) of Rule 144).

Section 5.18 Confidentiality Agreement. The Confidentiality Agreement shall remain in full force and effect until the Effective Time. Until the Effective Time, the Company and Parent shall comply with the terms of the Confidentiality Agreement. The Confidentiality Agreement shall remain in full force and effect in accordance with its terms in the event this Agreement is terminated pursuant to Article VII.

Section 5.19 No Acquisition of Company Capital Stock**.** From the date of this Agreement until the earlier to occur of the Effective Time or the termination of this Agreement, Parent shall not (and shall cause its subsidiaries not to) acquire, directly or indirectly, any beneficial interest in shares of Company Common Stock.

Section 5.20 Maintenance of Insurance Coverage. From the date of this Agreement until the earlier to occur of the Effective Time or the termination of this Agreement, the Company shall use its reasonable best efforts to maintain in full force and effect all insurance policies that are maintained by the Company or any of the Company Subsidiaries as of the date hereof.

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ARTICLE VI

CONDITIONS PRECEDENT

Section 6.1 Conditions to Each Party s Obligation to Effect the Merger. The respective obligation of each party to effect the Merger is subject to the satisfaction or waiver on or prior to the Closing Date of the following conditions:

(a) Shareholder Approvals. The Company Shareholder Approval and the Parent Shareholder Approval must have been obtained.

(b) Governmental and Regulatory Approvals. All consents, approvals and actions of, filings with and notices to any Governmental Entity required of Parent, Merger Sub, the Company or any Company Subsidiary to consummate the Merger, the failure of which to be obtained or taken is reasonably expected to materially impair the ability of the parties to consummate the Merger, must have been obtained.

(c) No Injunctions or Restraints. No judgment, order, decree, statute, law, ordinance, rule or regulation, entered, enacted, promulgated, enforced or issued by any court or other Governmental Entity of competent jurisdiction or other legal restraint or prohibition (collectively, ***Restraints***) shall be in effect preventing the consummation of the Merger; provided, however, that each of the parties shall have used its reasonable best efforts to prevent the entry of any such Restraints and to appeal as promptly as possible any such Restraints that may be entered.

(d) Form S-4; Proxy Statement. The Form S-4 must have become effective under the Securities Act and will not be the subject of any stop order or proceedings seeking a stop order. The Proxy Statement shall have been delivered to the shareholders of the Company and Parent in accordance with the requirements of the Securities Act and the Exchange Act.

(e) NYSE Listing. The shares of Parent Common Stock issuable to the Company s shareholders as contemplated by this Agreement must have been approved for listing on the NYSE, subject to official notice of issuance.

(f) HSR Act and Foreign Antitrust Laws. The waiting period (including any extension thereof) applicable to the consummation of the Merger under the

HSR Act must have expired or been terminated and (i) the Commissioner of Competition shall have issued an advance ruling certificate under Section 102 of the Canadian Act to the effect that she is satisfied that she would not have sufficient grounds on which to apply to the Competition Tribunal under Section 92 of the Canadian Act in respect of the Merger and the other transactions contemplated by this Agreement; (ii) the Commissioner of Competition shall have issued a no-action letter under section 123(1) of the Canadian Act to the effect that she does not, at that time, intend to make an application to the Competition Tribunal under Section 92 of the Canadian Act in respect of the Merger and the other transactions contemplated by this Agreement; or (iii) the appropriate time period specified in Section 123 of the Canadian Act shall have expired; and neither the Commissioner of Competition nor the Competition Tribunal as authorized under the Canadian Act shall have taken, or have indicated their intention to take, any action under the Canadian Act, whether before or after the Closing Date, which could materially interfere with or detrimentally affect the Merger and the other transactions contemplated by this Agreement (individually, any one of the foregoing paragraphs (i), (ii) or (iii), the ***Canadian Clearance***).

Section 6.2 Conditions to Obligations of Parent and Merger Sub. The obligation of Parent to effect the Merger is further subject to satisfaction or waiver of the following conditions:

(a) Representations and Warranties. The representations and warranties of the Company contained in Section 3.1(c) must be true and correct in all material respects (except for the representations and warranties contained in the first two sentences of Section 3.1(c) which must be true and correct in all respects

unless the failure to be so true and correct is insignificant) both when made and on and as of the Closing Date as though made on and as of the Closing Date (except representations or warranties expressly made as of an earlier date, in which case as of such date), and all other representations and warranties of the Company set forth herein must be true and correct in all respects (without giving effect to any materiality or material adverse effect qualifications contained therein) both when made and on and as of the Closing Date, as though made on and as of the Closing Date (except to the extent expressly made as of an earlier date, in which case as of such date), except where the failure of such other representations and warranties to be so true and correct would not have or result in, individually or in the aggregate, a material adverse effect on the Company.

(b) Performance of Obligations of the Company. The Company must have performed in all material respects all of its obligations required to be performed by it under this Agreement at or prior to the Closing Date.

(c) Tax Opinion. Parent must have received from Jones Day, counsel to Parent, an opinion dated on or about the date the Proxy Statement is first mailed to shareholders of the Company and Parent and updated as of the Closing Date, to the effect that, on the basis of the facts, representations and assumptions set forth or referred to in such opinion, the Merger will constitute a reorganization within the meaning of Section 368(a) of the Code, and Parent, Merger Sub and the Company will each be a party to such reorganization within the meaning of Section 368(b) of the Code. In rendering such opinion, counsel for Parent may require delivery of, and rely upon, the Tax Certificates.

(d) No Material Adverse Change. At any time after the date of this Agreement, there must not have occurred any material adverse change relating to the Company.

(e) Officer s Certificate. The Company must have furnished Parent with a certificate dated the Closing Date signed on its behalf by an executive officer to the effect that the conditions set forth in Sections 6.2(a) and 6.2(b) have been satisfied.

Section 6.3 Conditions to Obligations of the Company. The obligation of the Company to effect the Merger is further subject to satisfaction or waiver of the following conditions:

(a) Representations and Warranties. The representations and warranties of Parent and Merger Sub set forth herein must be true and correct in all respects (without giving effect to any materiality or material adverse effect qualifications contained therein) both when made and on and as of the Closing

Date, as though made on and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date), except where the failure of such representations and warranties to be so true and correct would not have or result in, individually or in the aggregate, a material adverse effect on Parent or Merger Sub.

(b) Performance of Obligations of Parent and Merger Sub. Each of Parent and Merger Sub must have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date.

(c) Tax Opinion. The Company must have received from Faegre & Benson LLP, counsel to the Company, an opinion dated on or about the date the Proxy Statement is first mailed to shareholders of the Company and Parent and updated as of the Closing Date, to the effect that, on the basis of the facts, representations and assumptions set forth or referred to in such opinion, the Merger will constitute a reorganization within the meaning of Section 368(a) of the Code, and Parent, Merger Sub and the Company will each be a party to such reorganization within the meaning of Section 368(b) of the Code. In rendering such opinion, counsel for the Company may require delivery of, and rely upon, the Tax Certificates.

(d) No Material Adverse Change. At any time after the date of this Agreement, there must not have occurred any material adverse change relating to Parent.

(e) Officer s Certificate. Each of Parent and Merger Sub must have furnished the Company with a certificate dated the Closing Date signed on its behalf by an executive officer to the effect that the conditions set forth in Sections 6.3(a) and 6.3(b) have been satisfied.

ARTICLE VII

TERMINATION, AMENDMENT AND WAIVER

Section 7.1 Termination.

(a) Termination by Mutual Consent. This Agreement may be terminated at any time prior to the Effective Time, whether before or after the Company Shareholder Approval or the Parent Shareholder Approval, by mutual written consent of Parent and the Company.

(b) Termination by Parent or the Company. This Agreement may be terminated at any time prior to the Effective Time, whether before or after the Company Shareholder Approval or Parent Shareholder Approval, by either Parent or the Company:

(i) if the Merger has not been consummated by December 31, 2004 or such later date, if any, as Parent and the Company agree upon (the ***Termination Date***); provided, however, that the right to terminate this Agreement pursuant to this Section 7.1(b)(i) is not available to any party whose material breach of any provision of this Agreement results in or causes the failure of the Merger to be consummated by such time;

(ii) if the Company Shareholders Meeting (including any adjournment or postponement thereof) has concluded and the Company Shareholder Approval was not obtained;

(iii) if the Parent Shareholder Meeting (including any adjournment or postponement thereof) has concluded and the Parent Shareholder Approval is not obtained; or

(iv) if any Restraint having the effect set forth in Section 6.1(c) is in effect and has become final and nonappealable; provided, however, that the right to terminate this Agreement pursuant to this Section 7.1(b)(iv) is not available to any party whose material breach of any provision of this Agreement results in or causes such Restraint or the failure of such Restraint to be removed.

(c) Termination by Parent. This Agreement may be terminated at any time prior to the Effective Time, whether before or after the Company Shareholder Approval or the Parent Shareholder Approval, by Parent:

(i) if any of the conditions set forth in Section 6.1 or 6.2 shall become incapable of being fulfilled at any time on or before the Termination Date and shall not have been waived by Parent and Parent shall have provided the Company with written notice of its intent to terminate this Agreement pursuant to this clause (i) at least 5 Business Days prior to the effective date of such termination; provided, however, that the inability to fulfill the condition is not due to the failure of Parent or Merger Sub to comply in all material respects with its obligations under this Agreement; or

(ii) if the Board of Directors of the Company or any committee thereof has (1) made a Company Adverse Recommendation Change, (2) approved or recommended, or proposed to or announced any intention to approve or recommend, any Company Takeover Proposal, (3) proposed or announced any intention to enter into or entered into any Acquisition Agreement (other than a customary confidentiality agreement in compliance with Section 4.2), with respect to any Company Takeover Proposal except to the extent required in Section 7.1(d)(ii) prior to the termination of this Agreement pursuant thereto; or (4) materially breached the provisions of Section 4.2 or Section 5.1(d).

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(d) Termination by the Company. This Agreement may be terminated at any time prior to the Effective Time, whether before or after the Company Shareholder Approval or the Parent Shareholder Approval, by the Company,

(i) if any of the conditions set forth in Section 6.1 or 6.3 shall become incapable of being fulfilled at any time on or before the Termination Date and shall not have been waived by the Company and the Company shall have provided the Parent with written notice of its intent to terminate this Agreement pursuant to this clause (i) at least 5 Business Days prior to the effective date of such termination; provided, however, that the inability to fulfill the condition is not due to the failure of the Company to comply in all material respects with its obligations under this Agreement; or

(ii) if, at any time prior to obtaining the Company Shareholder Approval, (i) the Board of Directors of the Company receives a Superior Proposal, (ii) three Business Days have elapsed following Parent s receipt of written notice (a ***Notice of Superior Proposal***) from the Company advising Parent that the Board of Directors of the Company intends to terminate this Agreement and concurrently enter into an Acquisition Agreement with respect to such Superior Proposal and specifying the terms and conditions of such Superior Proposal and the identity of the party making such Superior Proposal that is the basis of the proposed action by the Board of Directors (it being understood and agreed that any amendment to the financial terms or any other material term of such Superior Proposal shall require a new Notice of Superior Proposal and a new three Business Day period); (iii) during such three Business Day period the Company shall afford Parent a reasonable opportunity to make such adjustments to the terms and conditions of this Agreement as would enable the Company to proceed with the transactions contemplated by this Agreement (as modified for such adjustments) and not terminate this Agreement because the Company Takeover Proposal is no longer a Superior Proposal as compared to the Merger on such adjusted terms, (iv) at the end of such three Business Day period (or periods, as applicable), the Company s Board of Directors continues reasonably to believe that the Company Takeover Proposal (as adjusted through any subsequent negotiations) that triggered the Notice of Superior Proposal constitutes a Superior Proposal as compared to the Merger (including any adjustments made pursuant to clause (iii)), (v) the Board of Directors of the Company concurrently approves, and the Company concurrently enters into, a definitive agreement with respect to such Superior Proposal, and (vi) at or prior to any termination pursuant to this Section 7.1(d)(ii), the Company pays the Parent the Termination Fee as provided in Section 5.8.

Section 7.2 Effect of Termination. In the event of termination of this Agreement by either the Company or Parent as provided in Section 7.1, this Agreement will forthwith become void and have no effect, without any liability or obligation on the part of Parent, Merger Sub or the Company, other than the provisions of Section 5.8, Section 5.18, this Section 7.2, Section 7.3, Section 7.4 and Article IX, which provisions survive such termination; provided, however, that nothing herein will relieve any party from any liability for any willful and material breach by such party of any of its representations, warranties, covenants or agreements set forth in this Agreement.

Section 7.3 Amendment. This Agreement may be amended by the parties at any time before or after the Company Shareholder Approval or Parent Shareholder Approval; provided, however, that, after the Company Shareholder Approval or Parent Shareholder Approval, there is not to be made any amendment that by law requires further approval by the shareholders of the Company without further approval of such shareholders. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties.

Section 7.4 Extension; Waiver. At any time prior to the Effective Time, Parent and Merger Sub, on the one hand, and the Company, on the other hand, may (a) extend the time for the performance of any of the obligations or other acts of the other party or parties (as the case may be), (b) waive any inaccuracies in the representations and warranties of the other party or parties (as the case may be) contained in this Agreement or in any document delivered pursuant to this Agreement or (c) subject to the proviso of Section 7.3, waive compliance by the other party or parties (as the case may be) with any of the agreements or conditions contained in this Agreement. Any agreement on the part of a party to any such extension or waiver will be valid only if set forth in an instrument in writing signed on behalf of such party. The failure of any party to this Agreement to assert any of its rights under this Agreement or otherwise will not constitute a waiver of such rights.

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ARTICLE VIII

EMPLOYEE BENEFIT MATTERS AFTER THE EFFECTIVE TIME

Section 8.1 Benefits for Full-Time Employees. From and after the Effective Time and until December 31, 2005, Parent shall, or shall cause the Surviving Corporation or one of its other subsidiaries to, provide welfare and pension benefits that are substantially comparable in the aggregate for Full-Time Employees (as herein defined) to the benefits that are (i) currently provided by the Company to Full-Time Employees or (ii) from time to time provided by Parent and its subsidiaries to their similarly situated full-time employees. For purposes of this Article VIII, ***Full-Time Employees*** means the employees who were active full-time employees of the Company or any of its subsidiaries immediately before the Effective Time and continue to be active full-time employees of Parent, the Surviving Corporation or any of Parent s other subsidiaries after the Effective Time.

Section 8.2 Eligibility on or after Effective Time. With respect to any Parent Benefit Plan or Parent Foreign Plan in which any Full-Time Employee first becomes eligible to participate on or after the Effective Time (by reason of the extension of such plan to employees of the Surviving Corporation and its subsidiaries, by reason of a merger of the analogous Company Benefit Plan or Company Foreign Plan with the Parent Benefit Plan or Parent Foreign Plan, or other reason), the Parent shall: (i) waive all pre-existing conditions, exclusions and waiting periods with respect to participation and coverage requirements applicable to each such Full-Time Employee and his or her eligible dependents under such Parent Benefit Plan or Parent Foreign Plan, except to the extent such pre-existing conditions, exclusions or waiting periods applied immediately prior thereto under the analogous Company Benefit Plan or Company Foreign Plan; (ii) provide such Full-Time Employee and his or her eligible dependents with credit for any co-payments and deductibles paid prior to becoming eligible to participate in such Parent Benefit Plan or Parent Foreign Plan under the analogous Company Benefit Plan or Company Foreign Plan (to the same extent that such credit was given under such Company Benefit Plan or Company Foreign Plan) in satisfying any applicable deductible or annual or lifetime maximum out-of-pocket requirements under such Parent Benefit Plan or Parent Foreign Plan; and (iii) recognize all service of such Full-Time Employee with the Company and its subsidiaries, and predecessors (including recognition of all prior service with any entity, including any subsidiary of the Company prior to its becoming a subsidiary of the Company, that was recognized by the Company (or one of its subsidiaries) prior to the date hereof in the ordinary course of administering its (or such subsidiary s) employee benefits), for purposes of eligibility to participate in and vesting in benefits under such Parent Benefit Plan or Parent Foreign Plan, to the extent that such service was recognized for such purpose under the analogous Company Benefit Plan or Company Foreign Plan.

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ARTICLE IX

GENERAL PROVISIONS

Section 9.1 Nonsurvival of Representations and Warranties. None of the representations, warranties, covenants and agreements in this Agreement or in any instrument delivered pursuant to this Agreement will survive the Effective Time, except the covenants and agreements contained in Articles II, VIII and IX and in Sections 5.6, 5.7, and 5.17, each of which will survive in accordance with its terms.

Section 9.2 Notices. All notices, requests, claims, demands and other communications under this Agreement must be in writing and will be deemed given if delivered personally, telecopied (which is confirmed) or sent by a nationally recognized overnight courier service (providing proof of delivery) to the parties at the following addresses (or at such other address for a party as is specified by like notice):

if to the Company, to:

International Multifoods Corporation

110 Cheshire Lane, Suite 300

Minnetonka, Minnesota 55305-1060

Telecopy No.: (952) 594-3367

Attention: General Counsel

with a copy to:

Faegre & Benson LLP

2200 Wells Fargo Center

90 South Seventh Street

Minneapolis, Minnesota 55402

Telecopy No.: (612) 766-1600

Attention: Philip S. Garon

if to Parent, to:

The J. M. Smucker Company

One Strawberry Lane

Orrville, Ohio 44667-0280

Telecopy No.: (330) 684-3026

Attention: General Counsel

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with a copy to:

Jones Day

North Point

901 Lakeside Avenue

Cleveland, Ohio 44114

Telecopy No.: (216) 579-0212

Attention: Patrick J. Leddy, Esq.

if to Merger Sub, to:

MIX Acquisition Corporation

c/o The J. M. Smucker Company

One Strawberry Lane

Orrville, Ohio 44667-0280

Telecopy No.: (330) 684-3026

Attention: General Counsel

with a copy to:

Jones Day

North Point

901 Lakeside Avenue

Cleveland, Ohio 44114

Telecopy No.: (216) 579-0212

Attention: Patrick J. Leddy, Esq.

Section 9.3 Interpretation. When a reference is made in this Agreement to an Article, Section or Exhibit, such reference is to an Article or Section of, or an Exhibit to, this Agreement unless otherwise indicated. The table of contents, table of defined terms and headings contained in this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement. Whenever the words include, includes or including are used in this Agreement, they will be deemed to be followed by the words without limitation. The words hereof, herein and hereunder and words of similar import when used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement. All terms defined in this Agreement will have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. For purposes of this Agreement, (a) ***person*** means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization or other entity (including its permitted successors and assigns), (b) ***knowledge*** of any person that is not an individual means the actual knowledge of such person s executive officers, (c) ***affiliate*** of any person means another person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first person, where control means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of a person, whether through the ownership of voting securities, by contract or otherwise, (d) ***Liens*** means all pledges, claims, liens, options, charges, easements, restrictions, covenants, conditions of record, encroachments, encumbrances and security interests of any kind or nature whatsoever, (e) ***material adverse change*** or ***material adverse effect*** means, when used in connection with the Company or Parent, any change, effect, event, occurrence or state of facts that is, or would reasonably be expected to be, materially adverse to the business, financial condition or results of operations of such party and its subsidiaries taken as a whole other than

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any change, effect, event or occurrence (i) relating to the economy or securities markets of the United States, (ii) generally affecting the industry in which such party and its respective subsidiaries operate, (iii) resulting from acts of terrorism or war (whether or not declared), or (iv) resulting from entering into this Agreement or the consummation of the transactions contemplated hereby or the announcement thereof, and the terms material and materially have correlative meanings, (f) a ***subsidiary*** of any person means another person, an amount of the voting securities, other voting ownership or voting partnership interests of which is sufficient to elect at least a majority of its Board of Directors or other governing body (or, if there are no such voting interests, 50% or more of the equity interest of which) is owned directly or indirectly by such first person, (g) all dollar amounts are expressed in United States funds, and (h) ***Permitted Liens*** means (i) Liens for Taxes or governmental assessments or similar obligations the payment of which is not yet due and payable or delinquent, or for Taxes the validity of which are being contested in good faith by appropriate proceedings, (ii) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics, materialmen, and other similar Liens imposed by applicable law incurred in the ordinary course of business for sums not yet delinquent or being contested in good faith, (iii) Liens relating to deposits made in the ordinary course of business in connection with workers compensation, unemployment insurance, and other types of social security, and (iv) Liens securing executory obligations under any lease, regardless of whether it constitutes an operating lease or a capitalized lease under GAAP.

Section 9.4 Counterparts. This Agreement may be executed in one or more counterparts, all of which will be considered one and the same agreement and will become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

Section 9.5 Entire Agreement; No Third-Party Beneficiaries. This Agreement and the Confidentiality Agreement (a) constitute the entire agreement, and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement and (b) except for the provisions of Section 5.7, are not intended to confer upon any person other than the parties any rights or remedies.

Section 9.6 Governing Law. This Agreement is to be governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflict of laws thereof.

Section 9.7 Assignment. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned, in whole or in part, by operation of law or otherwise by any of the parties hereto without the prior written consent of each other party. Any assignment in violation of this Section 9.7 will be void and of no effect. Subject to the preceding two sentences, this Agreement is binding upon, inures to the benefit of, and is enforceable by, the parties and their respective successors and assigns.

Section 9.8 Consent to Jurisdiction. Each of the parties hereto (a) consents to submit itself to the personal jurisdiction of the Delaware Court of Chancery in the event any dispute arises out of this Agreement or any of the transactions contemplated by this Agreement, (b) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court and (c) agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than the Delaware Court of Chancery.

Section 9.9 Specific Enforcement. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. The parties accordingly agree that the parties will be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in any federal court located in the State of Delaware or a Delaware state court, this being in addition to any other remedy to which they are entitled at law or in equity.

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Section 9.10 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement will nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible to the fullest extent permitted by applicable law in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

Section 9.11 Disclosure Letters. Matters reflected in the Company Disclosure Letter and the Parent Disclosure Letter are not necessarily limited to matters required by this Agreement to be reflected in such Disclosure Letters. Such additional matters may be set forth for informational purposes, do not necessarily include other matters of a similar nature that are not required to be reflected in such Disclosure Letters, and do not establish any standard or definition of materiality. The Company Disclosure Letter and the Parent Disclosure Letter have been arranged in a manner that corresponds to the Sections of this Agreement; provided, that a disclosure made in any section of the Company Disclosure Letter or the Parent Disclosure Letter that is sufficient to reasonably inform the recipient of information required to be disclosed in another section of such Disclosure Letter to avoid a misrepresentation under a Section of this Agreement shall be deemed, for all purposes of this Agreement, to have been made under the other section of such Disclosure Letter. The mere listing in the Company Disclosure Letter or the Parent Disclosure Letter, however, of a document or other item shall not be deemed adequate to disclose an exception to a representation or warranty made in this Agreement (unless the representation or warranty has to do with the existence of the document or other item itself or the mere listing of the document or item in such Disclosure Letter otherwise reasonably informs the recipient of an exception to the representation or warranty).

(Signatures are on the following page.)

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement and Plan of Merger to be signed by their respective officers thereunto duly authorized, all as of the date first written above.

INTERNATIONAL MULTIFOODS

CORPORATION

By: /s/ GARY E. COSTLEY

Name: Gary E. Costley
Title: Chairman of the Board, President and Chief Executive Officer

THE J. M. SMUCKER COMPANY

By: /s/ TIMOTHY P. SMUCKER

Name: Timothy P. Smucker
Title: Chairman

MIX ACQUISITION CORPORATION

By: /s/ RICHARD K. SMUCKER

Name: Richard K. Smucker
Title: President

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EXHIBIT A

FORM OF COMPANY AFFILIATE LETTER

The J. M. Smucker Company

One Strawberry Lane

Orrville, Ohio 44667-0280

International Multifoods Corporation

110 Cheshire Lane, Suite 300

Minnetonka, Minnesota 55305-1060

MIX Acquisition Corporation

c/o The J. M. Smucker Company

One Strawberry Lane

Orrville, Ohio 44667-0280

Ladies and Gentlemen:

Pursuant to the terms of the Agreement and Plan of Merger, dated as of March 7, 2004 (the ***Merger Agreement***), between International Multifoods Corporation, a Delaware corporation (the ***Company***), MIX Acquisition Corporation, a Delaware corporation (***Merger Sub***), and The J. M. Smucker Company, an Ohio Corporation (***Parent***), the Company will merge with and into the Merger Sub (the ***Merger***), with the Merger Sub as the surviving corporation. As a result of the Merger, the undersigned may receive shares of common stock, no par value per share, of Parent (***Parent Common Stock***) in exchange for shares owned by the undersigned of common stock, par value $0.10 per share, of the Company (the ***Company Common Stock***).

The undersigned acknowledges that the undersigned may be deemed an ***affiliate*** of the Company within the meaning of Rule 145 (***Rule 145***) promulgated under the Securities Act of 1933 (the ***Securities Act***) by the

Securities and Exchange Commission (the ***SEC***), although nothing contained herein should be construed as an admission of such fact. If in fact the undersigned is an affiliate of the Company under the Securities Act, the undersigned s ability to sell, assign or transfer Parent Common Stock received by the undersigned in exchange for any shares of Company Common Stock in connection with the Merger may be restricted unless such transaction is registered under the Securities Act or an exemption from such registration is available. The undersigned understands that such exemptions are limited and the undersigned has obtained or will obtain advice of counsel (which may be counsel to Parent or the Company) as to the nature and conditions of such exemptions, including information with respect to the applicability to the sale of such securities of Rules 144 and 145(d) promulgated under the Securities Act. The undersigned understands that Parent is under no obligation to register the sale, assignment, transfer or other disposition of Parent Common Stock to be received by the undersigned in the Merger or to take any other action necessary in order to make compliance with an exemption from such registration available.

The undersigned hereby represents to and covenants with Parent that the undersigned will not sell, assign, transfer or otherwise dispose of any of Parent Common Stock received by the undersigned in exchange for shares of Company Common Stock in connection with the Merger except (i) pursuant to an effective registration statement under the Securities Act, (ii) in conformity with the volume and other limitations of Rule 145 or (iii) in a transaction which, in the opinion of counsel reasonably acceptable to Parent or as described in a no-action or interpretive letter from the Staff of the SEC specifically issued with respect to a transaction to be engaged in by the undersigned, is not required to be registered under the Securities Act.

In the event of a sale or other disposition by the undersigned of the shares of Parent Common Stock received by the undersigned in the Merger pursuant to Rule 145, the undersigned will supply Parent with evidence of compliance with such Rule or the opinion of counsel or no-action letter referred to above. The undersigned

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understands that Parent may instruct its transfer agent to withhold the transfer of any shares of Parent Common Stock received by the undersigned in the Merger disposed of by the undersigned, but that (provided such transfer is not prohibited by any other provision of this letter agreement) upon receipt of such evidence of compliance, Parent shall cause the transfer agent to effectuate the transfer of the shares of Parent Common Stock sold as indicated in such letter.

The undersigned acknowledges and agrees that the legend set forth below will be placed on certificates representing the shares of Parent Common Stock received by the undersigned in connection with the Merger or held by a transferee thereof, which legend will be removed by delivery of substitute certificates if: (i) the securities represented thereby have been registered for sale by the undersigned under the Securities Act, (ii) Parent has received an opinion of counsel reasonably satisfactory to Parent to the effect that the restrictions imposed by Rule 145 no longer apply to the undersigned, (iii) the undersigned is not an affiliate of Parent and one year shall have elapsed from the date the undersigned acquired the securities in the Merger and the provisions of Rule 145(d)(2) are then available to the undersigned, or (iv) the undersigned is not, and has not then been for at least three months, an affiliate of Parent and two years shall have elapsed from the date the undersigned acquired the securities in the Merger and the provisions of Rule 145(d)(3) are then available to the undersigned.

There will be placed on the certificates for Parent Common Stock issued to the undersigned in connection with the Merger, or any substitutions therefor, a legend stating in substance:

The shares represented by this certificate are issued in a transaction to which Rule 145 promulgated under the Securities Act of 1933 applies. The shares may be sold, assigned, transferred or otherwise disposed of only in accordance with the terms of a letter dated ______, 2004 between the registered holder hereof to The J. M. Smucker Company, a copy of which is on file at the principal offices of The J. M. Smucker Company.

The undersigned acknowledges that (i) the undersigned has carefully read this letter and understands the requirements hereof and the limitations imposed upon the sale, assignment, transfer or other disposition of Parent Common Stock received by the undersigned in the Merger and (ii) the receipt by Parent of this letter is an inducement to Parent s obligations to consummate the Merger.

Very truly yours,

____

Name:

Dated: ______, 2004

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ANNEX B

JMS SHAREHOLDERS AGREEMENT

by and among

Multifoods

and

The J. M. Smucker Company Shareholders Listed on the Signature Page Attached Hereto

Dated March 7, 2004

AND

First Amendment thereto

Dated March 30, 2004

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JMS SHAREHOLDERS AGREEMENT AND IRREVOCABLE PROXY

THIS SHAREHOLDERS AGREEMENT AND IRREVOCABLE PROXY (this Agreement) is made and entered into as of March 7, 2004, by and among International Multifoods Corporation, a Delaware corporation (***IMC***), and those certain shareholders set forth on the signature pages hereto (each individually, a ***Shareholder*** and collectively, ***Shareholders***) of The J. M. Smucker Company, an Ohio corporation (***JMS***).

RECITALS

A. Concurrently with the execution of this Agreement, JMS, MIX Acquisition Corporation, a Delaware corporation and wholly owned subsidiary of JMS (***Merger Sub***), and IMC are entering into an Agreement and Plan of Merger of even date herewith (as such agreement may hereafter be amended from time to time, the ***Merger Agreement***) which provides for the merger of IMC with and into Merger Sub (the ***Merger***). Following the Merger, Merger Sub will continue as the surviving corporation (the ***Surviving Corporation***). In the Merger, shares of common stock of IMC, $0.10 par value (***IMC Common Stock***), other than Dissenting Shares and any shares of IMC Common Stock owned by JMS or any direct or indirect subsidiary of JMS or held in the treasury of IMC, will be converted into the right to receive shares of common stock, no par value per share, of JMS (***JMS Common Stock***), and cash, on the terms and subject to the conditions of the Merger Agreement. Capitalized terms that are used in this Agreement and are not otherwise defined herein will have the same meanings that such terms have in the Merger Agreement.

B. As of the date hereof, each Shareholder is the beneficial owner (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended (the ***Exchange Act***)) and exercises voting power with respect to, in the aggregate, such number of Shares (as defined herein) listed opposite such Shareholder s name on Schedule A attached hereto;

C. Each Shareholder is entering into this Agreement as a material inducement and consideration to IMC to enter into the Merger Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual premises, representations, warranties, covenants and agreements contained herein, the parties hereto hereby agree as follows:

1. Definitions.

(a) Expiration Date means the earlier to occur of (i) the Effective Time; and (ii) the termination of the Merger Agreement in accordance with its terms.

(b) Shares means all issued and outstanding shares of JMS Common Stock listed opposite such Shareholder s name on Schedule A hereof.

(c) Transfer with respect to any security means to directly or indirectly: (i) sell, pledge, encumber, transfer or dispose of, or grant an option with respect to, such security or any interest in such security; or (ii) enter into an agreement or commitment providing for the sale, pledge, encumbrance, transfer or disposition of, or grant of an option with respect to, such security or any interest therein.

2. Agreement to Vote.

2.1 Voting Agreement. (a) Each Shareholder hereby covenants and agrees that, prior to the Expiration Date, at any meeting (whether annual or special and whether or not an adjourned or postponed meeting) of the shareholders of JMS, however called, and in any action taken by the written consent of shareholders of JMS without a meeting, unless otherwise directed in writing by IMC, each Shareholder will appear at the meeting or otherwise cause such Shareholder s Shares to be counted as present thereat for purposes of establishing a quorum and vote or consent or cause to be voted or consented the Shares:

(i) in favor of the issuance of JMS Common Stock pursuant to the Merger, and to the extent that a vote is solicited in connection with this Agreement or the Merger Agreement, any other action required or desirable in furtherance hereof or thereof;

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(ii) to the extent a vote is solicited in connection with the approval of any action, agreement or proposal that would result in a breach of any representation, warranty, covenant or obligation of JMS or Merger Sub in the Merger Agreement or that would delay or hinder the consummation of the Merger or that would preclude fulfillment of a condition precedent under the Merger Agreement to JMS s, Merger Sub s or IMC s obligation to consummate the Merger, against the approval of such action, agreement or proposal; and

(iii) against approval of any action, agreement or proposal made in opposition to or in competition with the issuance of the JMS Common Stock pursuant to the Merger and the consummation of the Merger.

(b) Prior to the Expiration Date, each Shareholder will not enter into any agreement or understanding with any person to vote or give instructions in any manner inconsistent with any provision of this Section 2.1. This Agreement is intended to bind each Shareholder only with respect to the specific matters set forth herein.

2.2 Irrevocable Proxy. At IMC s request, each Shareholder will deliver to IMC a proxy with respect to such Shareholder s Shares in the form attached hereto as Exhibit 1, which proxy will be irrevocable to the fullest extent permitted by applicable Law (the ***Proxy***); except that the Proxy shall be automatically revoked upon termination of this Agreement in accordance with its terms.

2.3 Transfer and Other Restrictions.

(a) From and after the date hereof until the termination of this Agreement, each Shareholder agrees not to, directly or indirectly:

(i) except pursuant to the terms of the Merger Agreement, Transfer any or all of the Shares or any interest therein;

(ii) grant any proxy, power of attorney, deposit any Shares into a voting trust or enter into a voting agreement or arrangement with respect to the Shares, except as provided in this Agreement; or

(iii) take any other action that would make any representation or warranty of such Shareholder contained herein untrue or incorrect or have the effect of preventing or disabling such Shareholder from performing its obligations

under this Agreement.

(b) To the extent that any Shareholder is, as of the date hereof, party to a contract or agreement that requires such Shareholder to Transfer Shares to another person or entity (excluding a contract or agreement pledging Shares to JMS), such Shareholder will not effect any such Transfer unless, prior to such Transfer, such Shareholder causes the transferee to be bound by and to execute an agreement in the form of this Agreement with respect to the Shares to be Transferred. Nothing herein shall prohibit any Shareholder from exercising any option or warrant any Shareholder may hold (in accordance with the terms of such option or warrant, as applicable) or require such exercise; provided, however, that the securities acquired upon such exercise shall be deemed Shares.

(c) Each Shareholder agrees with, and covenants to, IMC that such Shareholder shall not request that JMS register the transfer (book-entry or otherwise) of any certificate or uncertificated interest representing any Shares, unless such transfer is made pursuant to and in compliance with this Agreement.

(d) The foregoing restrictions shall not prohibit a transfer of Shares (i) to any member of the Shareholder s immediate family, to a trust for the benefit of such Shareholder or any member of the Shareholder s immediate family or a transfer of Shares upon the death of any Shareholder; provided, however, that in each such case, (x) such Transfer is for no consideration of any kind and (y) any transferee shall, as a precondition to such transfer, agree in a writing delivered to IMC, to be bound by the terms and conditions of this Agreement and execute and deliver to IMC a proxy in the form attached hereto.

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3. Representations, Warranties and Covenants of Shareholder. Each Shareholder hereby represents, warrants and covenants to IMC severally, and not jointly, as follows:

3.1 Authority, Enforceability. Such Shareholder has the power and authority or capacity to enter into, execute, deliver and perform such Shareholder s obligations under this Agreement and to make the representations, warranties and covenants made by such Shareholder herein. This Agreement has been duly executed and delivered by such Shareholder and constitutes a legal, valid and binding obligation of such Shareholder, enforceable against such Shareholder in accordance with its terms, subject to (i) Laws of general application relating to bankruptcy, insolvency and the relief of debtors and (ii) rules of Law governing specific performance, injunctive relief and other equitable remedies.

3.2 No Conflicts, No Defaults and Consents. The execution and delivery of this Agreement by such Shareholder does not, and the performance of this Agreement by such Shareholder will not: (i) conflict with or violate any order, decree or judgment applicable to such Shareholder or by which such Shareholder or any of such Shareholder s properties or Shares is bound or affected; (ii) conflict with or violate any agreement to which such Shareholder is a party or is subject, including, without limitation, any voting agreement or voting trust; (iii) result in any breach of or constitute a default (with notice or lapse of time, or both) under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of any lien, restriction, adverse claim, option on, right to acquire, or any encumbrance or security interest in or to such Shareholder s Shares, pursuant to any written, oral or other agreement, contract or legally binding commitment to which such Shareholder is a party or by which such Shareholder or any of such Shareholder s Shares is bound or affected, or (iv) require any written, oral or other agreement, contract or legally binding commitment of any third party.

3.3 Shares Owned. As of the date hereof, such Shareholder is the beneficial owner and exercises voting power, with respect to, in the aggregate, the Shares listed opposite such Shareholder s name on Schedule A. Schedule A further sets forth as of the date hereof the number of Shares for which such Shareholder is entitled to cast one vote per Share and the number of Shares for which such Shareholder is entitled to cast ten votes per Share, in each case on certain matters submitted for the approval of holders of JMS Common Stock in accordance with the terms of the JMS Amended Articles of Incorporation (the ***JMS Charter***).

3.4 Accuracy of Representations; Reliance by IMC. The representations and warranties contained in this Agreement are accurate in all material respects as of the date of this Agreement, will be accurate in all material respects at all times through the Expiration Date and will be accurate in all material respects as of the Effective Time of the Merger as if made on that date. Each Shareholder understands and acknowledges that IMC is entering into the

Merger Agreement in reliance upon each Shareholder s execution and delivery of this Agreement.

3.5 Further Assurances. Each Shareholder agrees to execute and deliver any additional documents reasonably necessary or desirable, in the reasonable opinion of IMC, JMS or Merger Sub, to carry out the purposes and intent of this Agreement and the Proxy.

3.6 No Restraint on Officer or Director Action. Notwithstanding anything herein to the contrary, no person executing this Agreement who is, or becomes during the term hereof, a director or an officer of JMS makes any agreement, understanding or undertaking herein in his or her capacity as a director or officer, and the agreements set forth herein shall in no way restrict any director or officer in the exercise of his or her fiduciary duties as a director or officer of JMS. Each Shareholder has executed this Agreement solely in their capacity as the beneficial holder of such Shareholder s Shares.

3.7 Limited Proxy. Each Shareholder will retain at all times the right to vote such Shareholder s Shares, in such Shareholder s sole discretion, on all matters other than those set forth in Section 2.1, which are at any time or from time to time presented to JMS s shareholders generally.

3.8 Confidentiality. Each Shareholder agrees (i) to hold any non-public information regarding this Agreement and the Merger in strict confidence and (ii) not to divulge any such non-public information to any third person.

4. Miscellaneous.

4.1 Severability. If any provision of this Agreement is found by any court of competent jurisdiction to be invalid or unenforceable, then the parties hereby waive such provision to the extent that it is found to be invalid or unenforceable and to the extent that to do so would not deprive one of the parties of the substantial benefit of its bargain. Such provision will, to the extent allowable by Law and the preceding sentence, not be voided or canceled but will instead be modified by such arbitrator or court so that it becomes enforceable and, as modified, will be enforced as any other provision hereof, all the other provisions hereof continuing in full force and effect.

4.2 Amendment; Waiver. This Agreement may be amended, modified, superseded, canceled, renewed, or extended only by an agreement in writing executed by IMC and each Shareholder. The failure by any party at any time to require performance or compliance by another party of or with any of its obligations or agreements will in no way affect the right to require such performance or compliance at any time thereafter. The waiver by any party of a breach of any provision of this Agreement will not be treated as a waiver of any preceding or succeeding breach of such provision or as a waiver of the provision itself. No waiver of any kind will be effective or binding, unless it is in writing and is signed by the party against whom such waiver is sought to be enforced.

4.3 Anti-Takeover Provisions. In the event that any Takeover Statute or similar Law or any anti-takeover provision in the JMS Charter is applicable to this Agreement, the Proxy or the transactions contemplated hereby or thereby, then this Agreement and the Proxy shall be limited and revised, without any action by the parties hereto, to reduce the number of Shares covered by this Agreement and the Proxy (proportionately among the Shareholders) to cover the maximum number of Shares while rendering each such Takeover Statute, similar Law or anti-takeover provision inapplicable.

4.4 Entire Agreement; No Third Party Beneficiaries. This Agreement, together with the Merger Agreement and the documents to be executed and delivered in connection therewith, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof, and are not intended to convey upon any person other than IMC and each Shareholder any rights or remedies hereunder.

4.5 Assignment. This Agreement and all rights and obligations hereunder may not be transferred or assigned by any party hereto at any time. This Agreement will be binding upon, and inure to the benefit of, the persons or entities who are permitted, by the terms of this Agreement, to be successors, assigns and personal representatives of the respective parties hereto.

4.6 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Delaware, whether common law or statutory, without reference to the choice of law provisions thereof.

4.7 Notices. All notices required or permitted pursuant to this Agreement will be in writing and will be deemed to be properly given when actually received by the person entitled to receive the notice at the address stated below, or at such other address as a party may provide by notice to the other:

If to IMC:

International Multifoods Corporation

110 Cheshire Lane, Suite 300

Minnetonka, Minnesota 55305-1060

Attention: General Counsel

Telecopy No.: (952) 594-3367

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With a copy to:

Faegre & Benson LLP

2200 Wells Fargo Center

90 South Seventh Street

Minneapolis, Minnesota 55402

Attention: Philip S. Garon

Telecopy No.: (612) 766-1600

If to JMS or Merger Sub:

The J. M. Smucker Company

One Strawberry Lane

Orrville, Ohio 44667-0280

Attention: General Counsel

Telecopy No.: (330) 684-3026

With a copy to:

Jones Day

North Point

901 Lakeside Avenue

Cleveland, Ohio 44114

Attention: Patrick J. Leddy

Telecopy No.: (216) 579-0212

If to the Shareholders:

At the address listed on Schedule A.

With a copy to:

The J. M. Smucker Company

One Strawberry Lane

Orrville, Ohio 44667-0280

Attention: General Counsel

Telecopy No.: (330) 684-3026

4.8 Specific Performance. The parties hereby acknowledge and agree that the failure of any party to perform its agreements and covenants hereunder, including its failure to take all actions as are necessary on its part to the consummation of the Merger, will cause irreparable injury to the other parties for which damages, even if available, will not be an adequate remedy. Accordingly, each party hereby consents to the issuance of injunctive relief by any court of competent jurisdiction to compel performance of such party s obligations and to the granting by any court of the remedy of specific performance of its obligations hereunder.

4.9 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which, taken together, constitute one and the same agreement.

4.10 Titles. The titles and captions of the sections and paragraphs of this Agreement are included for convenience of reference only and will have no effect on the construction or meaning of this Agreement.

4.11 Termination. This Agreement will be terminated and will be of no further force and effect upon the Expiration Date.

4.12 Fees and Expenses. Except as specifically provided to the contrary in this Agreement, all costs and expenses incurred in connection with this Agreement shall be paid by the party incurring such expenses.

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4.13 Nonsurvival of Representations and Warranties. None of the representations and warranties in this Agreement or in any schedule, instrument or other document delivered pursuant to this Agreement shall survive the Expiration Date; provided, however, that the termination of this Agreement shall not relieve any party from any liability for any breach of this Agreement that has occurred prior to the termination of this Agreement as provided for in Section 4.11.

4.14 Legal Counsel. Each Shareholder acknowledges that it has been advised by, and has had the opportunity to consult with, its personal attorney prior to entering into this Agreement. Each Shareholder acknowledges that attorneys for JMS represent JMS and do not represent any of the shareholders of JMS in connection with the Merger Agreement, this Agreement or any of the transactions contemplated hereby or thereby.

4.15 Agreement Negotiated. The form of this Agreement has been negotiated by or on behalf of JMS and IMC, each of which was represented by attorneys who have carefully negotiated the provisions hereof. No Law or rule relating to the construction or interpretation of contracts against the drafter of any particular clause should be applied with respect to this Agreement or the Proxy.

4.16 Legends. Any stock certificates representing the Shares shall at the request of IMC reflect this Agreement and, if applicable, the irrevocable proxy granted by this Agreement.

[Intentionally Left Blank]

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IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the date first above written.

/s/ TIMOTHY P. SMUCKER

Timothy P. Smucker
Individually

/s/ RICHARD K. SMUCKER

Richard K. Smucker
Individually

/s/ RICHARD K. SMUCKER

Richard K. Smucker
Trustee, Protected Trust and Exempt Trust
FBO Timothy P. Smucker

/s/ RICHARD K. SMUCKER

Richard K. Smucker
Trustee, Protected Trust and Exempt Trust
FBO Julie E. Smucker

/s/ RICHARD K. SMUCKER

Richard K. Smucker
Trustee, Protected Trust and Exempt Trust
FBO Susan S. Wagstaff

International Multifoods Corporation
By:

/s/ GARY E. COSTLEY

Name: Gary E. Costley
Title: Chairman of the Board, President and Chief Executive Officer

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EXHIBIT 1 TO SHAREHOLDERS AGREEMENT

IRREVOCABLE PROXY

The undersigned shareholder (the ***Shareholder***) of The J. M. Smucker Company, an Ohio corporation, (***JMS***) hereby irrevocably (to the fullest extent permitted by applicable law) appoints and constitutes those officers of International Multifoods Corporation**,** a Delaware corporation (***IMC***) designated by IMC in writing and each of them (collectively the ***Proxyholders***), the agents, attorneys and proxies of the undersigned, with full power of substitution and resubstitution, to the fullest extent of the undersigned s rights with respect to such Shareholder s Shares (as defined in the Shareholders Agreement).

Upon the execution hereof, all prior proxies given by the undersigned with respect to any of the Shares are hereby revoked, and no subsequent proxies will be given with respect to any of the Shares until such time as this proxy shall be terminated in accordance with its terms.

The Proxyholders named above will be empowered, and may exercise this proxy, to vote the Shares at any time until the Expiration Date (as defined in the JMS Shareholders Agreement and Irrevocable Proxy dated as of the date hereof, between IMC and the undersigned (the ***Shareholders Agreement***)) at any meeting of the shareholders of JMS, however called, or in any action by written consent of shareholders of JMS with respect to the following matters and only the following matters:

(i) in favor of the issuance of common shares, no par value per share, of JMS (the ***JMS Common Stock***) pursuant to the merger (the ***Merger***) contemplated by the Agreement and Plan of Merger by and among JMS, MIX Acquisition Corporation, a Delaware corporation and a wholly owned subsidiary of JMS, (***Merger Sub***), and IMC, dated as of the date hereof (the ***Merger Agreement***), and, to the extent that a vote is solicited in connection with the Shareholders Agreement or the Merger Agreement, any other action required or desirable in furtherance hereof or thereof;

(ii) against approval of any action, agreement or proposal that would result in a breach of any representation, warranty, covenant or obligation of JMS or Merger Sub in the Merger Agreement or that would delay or hinder the consummation of the Merger or that would preclude fulfillment of a condition precedent under the Merger Agreement to JMS s, Merger Sub s or IMC s obligation to consummate the Merger; and

(iii) against approval of any action, agreement or proposal made in opposition to or in competition with the issuance of the JMS Common Stock pursuant to the Merger and the consummation of the Merger.

The Proxyholders may not exercise this proxy on any other matter. The Shareholder may vote the Shares on all such other matters. The proxy granted by the Shareholder to the Proxyholders hereby is granted as of the date of this Irrevocable Proxy in order to secure the obligations of the Shareholder set forth in Section 2 of the Shareholders Agreement. This proxy will terminate upon the termination of the Shareholders Agreement in accordance with its terms. Any obligation of the undersigned hereunder shall be binding upon the successors and assigns of the undersigned. The undersigned Shareholder authorizes the Proxyholders to file this proxy and any substitution or revocation of substitution with the Secretary of JMS and with any Inspector of Elections at any meeting of the shareholders of JMS. This proxy is irrevocable, is coupled with an interest, and shall survive the insolvency, incapacity, death or liquidation of the undersigned and will be binding upon the heirs, successors and assigns of the undersigned (including any transferee of any of the Shares) until terminated in accordance with its terms.

Dated: March __, 2004

SHAREHOLDER

By: ____________________

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SCHEDULE A

Name (1)	# of 10-Vote Shares as of 2/29/04 (2)	# of 1-Vote Shares as of 2/29/04 (2)
Timothy P. Smucker	382,481	0
Timothy P. Smucker Protected Trust and Exempt Trust (RKS, Trustee)	477,798	0
Richard K. Smucker	419,587	0
Susan S. Wagstaff Protected Trust and Exempt Trust (RKS, TPS, Trustees)	477,798	0
Julie E. Smucker Protected Trust and Exempt Trust (RKS, Trustee)	477,796	0

(1) The address of each Shareholder listed below for the purposes of the JMS Shareholders Agreement and Irrevocable Proxy, dated as of March 7, 2004, by and among International Multifoods Corporation and the Shareholders listed below is as follows: The J. M. Smucker Company, One Strawberry Lane, Orrville, Ohio 44667-0280; Attention: General Counsel.

(2) The voting power of the individual listed in this table has been computed to eliminate duplication of beneficial ownership.

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FIRST AMENDMENT TO JMS SHAREHOLDERS AGREEMENT AND IRREVOCABLE PROXY

THIS FIRST AMENDMENT TO JMS SHAREHOLDERS AGREEMENT AND IRREVOCABLE PROXY (this Amendment) is made and entered into as of March 30, 2004, by and among International Multifoods Corporation, a Delaware corporation (***IMC***), and those certain shareholders set forth on the signature pages hereto (each individually, a ***Shareholder*** and collectively, ***Shareholders***) of The J.M. Smucker Company, an Ohio corporation (***JMS***).

WHEREAS, IMC and the Shareholders entered into that certain JMS Shareholders Agreement and Irrevocable Proxy dated as of March 7, 2004 (the ***Agreement***); and

WHEREAS, IMC and the Shareholders desire to amend the Agreement;

NOW, THEREFORE, in consideration of the parties undertakings and covenants herein and in the Agreement, and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each party), the parties hereby agree as follows:

1. Unless otherwise defined herein, each capitalized term used herein shall have the meaning (if any) provided therefor in the Agreement.

2. Section 1 of the Agreement is hereby amended to add clause (d) thereto, which clause (d) shall read in its entirety as follows:

(d) Potential Transfer Shares means 572,323 of the 10-vote Shares listed on Schedule A hereto as held by the Willard E. Smucker Trust.

3. Section 2.3 of the Agreement is hereby amended to add clause (e) thereto, which clause (e) shall read in its entirety as follows:

(e) Notwithstanding any other provision of this Agreement, (i) Willard E. Smucker Trust may, prior to the Expiration Date, Transfer (or enter into an agreement to Transfer) all, or any portion, of its right, title and interest in and to any or all of the Potential Transfer Shares to a person or persons (other than

a person identified in Section 2.3(d)(i) hereof) pursuant to a bona fide arm s length transaction; provided, that no right, title or interest of such Shareholder in or to such Potential Transfer Shares shall be Transferred to the transferee thereof pursuant to this clause (i) unless and until all of such Shareholder s right, title and interest thereto shall be so Transferred; and (ii) to the extent a Transfer in accordance with clause (i) of this Section 2.3(e) is consummated prior to the Expiration Date, upon such consummation the term Shares shall, for all purposes of this Agreement, be deemed to mean all Shares held by such Shareholder identified on Schedule A hereto other than the Potential Transfer Shares so Transferred.

4. Schedule A to the Agreement is amended to read in its entirety as set forth on Schedule A attached hereto.

5. Except as amended by the foregoing, the Agreement and each provision thereof shall remain in full force and effect.

6. Each reference to the Agreement in any document or instrument delivered pursuant to or in connection with the Agreement shall be deemed to be a reference to the Agreement, as amended by this Amendment.

7. This Amendment may be executed by facsimile and in counterparts, each of which will be deemed an original, but all of which, taken together, constitute one and the same agreement.

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8. This Amendment will be governed by and construed in accordance with the laws of the State of Delaware, whether common law or statutory, without reference to the choice of law provisions thereof.

[Remainder of page left blank intentionally; signature page follows]

IN WITNESS WHEREOF, the undersigned parties have executed this Amendment as of the date first above written.

/s/ Timothy P. Smucker

Timothy P. Smucker
Individually

/s/ Richard K. Smucker

Richard K. Smucker
Individually

/s/ Richard K. Smucker

Richard K. Smucker
Trustee, Protected Trust and Exempt Trust
FBO Timothy P. Smucker

/s/ Richard K. Smucker

Richard K. Smucker
Trustee, Protected Trust and Exempt Trust
FBO Julie E. Smucker

/s/ Richard K. Smucker

Richard K. Smucker
Trustee, Protected Trust and Exempt Trust
FBO Susan S. Wagstaff

/s/ Timothy P. Smucker

Timothy P. Smucker

Trustee, Willard E. Smucker
Trust

FBO Marcella S. Clark

International Multifoods
Corporation

By: /s/ JOHN E. BYOM

Name: John E. Byom
Title: Senior Vice President,
Finance and
Chief Financial Officer

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SCHEDULE A

Name (1)	Number of 10-Vote Shares as of 2/29/04 (2)	Number of 1-Vote Shares as of 2/29/04 (2)
Timothy P. Smucker	382,481	0
Willard E. Smucker Trust (TPS, Trustee)	572,323	
Timothy P. Smucker Protected Trust and Exempt Trust (RKS, Trustee)	477,798	0
Richard K. Smucker	419,587	0
Susan S. Wagstaff Protected Trust and Exempt Trust (RKS, TPS, Trustees)	477,798	0
Julie E. Smucker Protected Trust and Exempt Trust (RKS, Trustee)	477,796	0

(1) The address of each Shareholder listed below for the purposes of the JMS Shareholders Agreement and Irrevocable Proxy, dated as of March 7, 2004, by and among International Multifoods Corporation and the Shareholders listed below is as follows: The J. M. Smucker Company, One Strawberry Lane, Orrville, Ohio 44667-0280; Attention: General Counsel.

(2) The voting power of the individual listed in this table has been computed to eliminate duplication of beneficial ownership.

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ANNEX C

March 7, 2004

CONFIDENTIAL

Board of Directors

The J.M. Smucker Company

Strawberry Lane

Orrville, Ohio 44667

Ladies and Gentlemen:

You have requested our opinion as to the fairness, from a financial point of view, to The J. M. Smucker Company (Smucker) of the Merger Consideration (as defined below) to be paid by Smucker pursuant to the terms and subject to the conditions set forth in the Agreement and Plan of Merger substantially in the same form as the draft dated as of March 7, 2004 (the Merger Agreement) by and among Smucker, Merger Sub, a wholly-owned subsidiary of Smucker (Merger Sub), and International Multifoods Corporation (IMC).

Pursuant to the terms of, and subject to the conditions set forth in the Merger Agreement, IMC will be merged with and into Merger Sub (the Merger), and each outstanding share of common stock of IMC, $0.10 par value per share, (other than shares owned by Smucker or any direct or indirect subsidiary of Smucker and any IMC treasury shares, which shall be canceled with no consideration delivered in exchange therefor, and other than shares held by Dissenting Shareholders (as defined in the Merger Agreement) who have properly exercised their appraisal rights) will automatically be converted, subject to the allocation or pro ration procedures set forth in the Merger Agreement, into the right to receive from Smucker:

(i) a number of fully paid, nonassessable shares of the common stock of Smucker, no par value per share, equal to the Exchange Ratio (as defined below) (the Stock Consideration); and

(ii) $5 in cash without interest, subject to adjustment as set forth in Section 2.1(d) of the Merger Agreement (the Cash Consideration and, together with the Stock Consideration, the Merger Consideration), prorated for fractional shares, if any, of IMC common stock.

The Exchange Ratio shall be equal to the quotient (rounded to four decimal places) of $20 divided by the Average Closing Price (as defined in the Merger Agreement) of the common stock of Smucker; provided, however, that if, based on the Exchange Ratio, Smucker would be required to issue greater than 19.9% of the Smucker common stock outstanding immediately prior to such issuance, the Exchange Ratio shall be adjusted such that the number of shares of Smucker common stock issuable pursuant to Section 2.1(c) of the Merger

222 West Adams Street Chicago, Illinois 60606 312.236.1600

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Agreement shall not exceed 19.9% of the Smucker common stock outstanding immediately prior to such issuance. The Merger Consideration is subject to certain procedures and limitations contained in the Merger Agreement, as to which procedures and limitations we express no opinion, including the aggregate number of shares to be issued as Stock Consideration.

In connection with our review of the proposed Merger and the preparation of our opinion herein, we have examined: (a) the terms and conditions of the Merger Agreement and the financial terms of the Merger as set forth in the Merger Agreement; (b) the audited historical financial statements of Smucker and of IMC for each of the years in the three-year period ended April 30, 2003 and March 1, 2003, respectively; (c) the unaudited interim financial statements of Smucker for each of the six-month periods ended October 31, 2002 and October 31, 2003 and of IMC for each of the nine-month periods ended November 30, 2002 and November 29, 2003; (d) certain (i) internal business, operating and financial information and forecasts of Smucker and IMC prepared by senior management of Smucker and IMC, respectively; (ii) information regarding the strategic, financial and operational benefits anticipated from the Merger and the prospects of Smucker (with and without the Merger) prepared by senior management of Smucker, and (iii) the pro forma impact of the Merger on the earnings per share of Smucker based on certain pro forma financial information prepared by the senior management of Smucker (collectively, the Forecasts); (e) information provided by senior management of Smucker regarding the amount and timing of cost savings and related expenses and potential synergies which senior management of Smucker expects will result from the Merger (the Expected Synergies); (f) information regarding publicly available financial terms of certain other business combinations we deemed relevant; (g) the financial position and operating results of Smucker and IMC compared with those of certain other publicly traded companies we deemed relevant; (h) current and historical market prices and trading volumes of the common stock of Smucker and IMC; and (i) certain other publicly available information regarding Smucker, IMC and their industries. We have also held discussions with members of the senior management of Smucker and IMC to discuss the foregoing, the past and current business operations, and the financial condition and future prospects of Smucker and IMC. We have also held discussions with you and Smucker s legal counsel to discuss IMC, the Merger and the results of our analysis and examination, and have considered such other matters that we have deemed relevant to our inquiry, and have taken into account such accepted financial and investment banking procedures and considerations as we have deemed relevant or appropriate.

In rendering our opinion, we have assumed and relied, without any duty of independent verification, upon the accuracy and completeness of all the information examined by or otherwise reviewed or discussed with us for purposes of this opinion, including without limitation the Forecasts provided by senior management. We have not made or obtained an independent valuation or appraisal of the assets, liabilities (contingent or otherwise) or solvency of Smucker or IMC. We have been advised by the senior management of Smucker that the Forecasts and the Expected Synergies examined by us have been reasonably prepared on bases reflecting the best currently available estimates and judgments of the senior management of Smucker. In that regard, we have assumed, with your consent, that (i) the Forecasts will be achieved and the Expected Synergies will be realized in the

amounts and at the times contemplated thereby and (ii) all material assets and liabilities (contingent or otherwise) of Smucker and IMC are as set forth in Smucker s and IMC s financial statements. We assume no liability for, and express no opinion with respect to, the Forecasts or Expected Synergies or the estimates and judgments on which they are based. Our opinion does not address the relative merits of the Merger as compared to any alternative business strategies that might exist for Smucker or the effect of any other transaction in which Smucker might engage. Our opinion herein is based upon economic, market, financial and other conditions as they exist on and can be evaluated as of, and other information disclosed to us as of, the date of this letter. It should be understood that, although subsequent developments may affect this opinion, we do not have any obligation to update, revise or reaffirm this opinion. We have further assumed, with your consent, that the Merger will qualify as a reorganization for United States federal income tax purposes under Section 368(a) of the Internal Revenue Code, and that neither Smucker nor IMC will recognize material income, gain or loss for United States federal or other income tax purposes as a result of the Merger. We have not independently verified that such tax treatment will be available with respect to the Merger, and we express no view with respect to the tax treatment that will be required to be applied to the Merger. In addition, we have assumed, with your consent, that, following the consummation of the Merger, no indemnification payments with respect to any taxes or otherwise will be required to be made by Smucker as a result of the Merger. We have relied as to all legal, tax and accounting matters on advice of counsel, tax advisors and auditors to Smucker. In rendering our opinion, we have assumed

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that the final terms of the Merger Agreement will not vary materially from those set forth in the latest draft reviewed by us, the Merger will be consummated on the terms described in the Merger Agreement, without any waiver of any material terms or conditions by Smucker or IMC, and that all material governmental, regulatory or other consents and approvals necessary for the consummation of the transaction contemplated by the Merger Agreement will be obtained without any adverse effect on Smucker or on the expected benefits of the transaction contemplated by the Merger Agreement.

William Blair & Company (William Blair) has been engaged in the investment banking business since 1935. We continually undertake the valuation of investment securities in connection with public offerings, private placements, business combinations, estate and gift tax valuations and similar transactions. We have acted as an investment banker to Smucker in connection with the Merger and will receive a fee from Smucker for our services, a portion of which was payable upon engagement of our services, a portion of which is payable upon delivery of this opinion and a significant portion of which is contingent upon consummation of the Merger. We may also provide services to Smucker in connection with the arrangement or completion of financing for the Merger, for which we may receive compensation. In addition, Smucker has agreed to indemnify us against certain liabilities arising out of our engagement. William Blair has, in the past, provided investment banking and financial advisory services to Smucker and its affiliates and may continue to do so, and we have received, and may receive, fees for the rendering of such services. Furthermore, in the ordinary course of our business, we may beneficially own or actively trade shares of common stock and other securities of Smucker, as well as the shares of common stock and other securities of IMC, for our own account and for the accounts of customers and, accordingly, may at any time hold a long or short position in such securities.

We are expressing no opinion herein as to the price at which the common stock of Smucker or IMC will trade at any future time or as to the effect of the Merger on the trading price of the common stock of Smucker. Such trading price may be affected by a number of factors, including but not limited to (i) dispositions of the common stock of Smucker by stockholders within a short period of time after the effective date of the Merger, (ii) changes in prevailing interest rates and other factors which generally influence the price of securities, (iii) adverse changes in the current capital markets, (iv) the occurrence of adverse changes in the financial condition, business, assets, results of operations or prospects of Smucker or of IMC or in the markets they serve, (v) any necessary actions by or restrictions of federal, state or other governmental agencies or regulatory authorities, and (vi) timely completion of the Merger on terms and conditions that are acceptable to all parties at interest.

Our investment banking services and our opinion were provided for the use and benefit of the Board of Directors of Smucker in connection with its consideration of the transaction contemplated by the Merger Agreement. Our opinion is limited to the fairness, from a financial point of view, of the Merger Consideration to be paid by Smucker in connection with the Merger. We do not address the merits of the underlying decision by Smucker to engage in the Merger (at all or as compared to any alternative business transaction), and this

opinion does not constitute a recommendation to any stockholder as to how such stockholder should vote or as to any other action such stockholder should take with respect to the proposed Merger. It is understood that this letter may not be disclosed or otherwise referred to without our prior written consent, except that the opinion may be included in a prospectus/proxy statement filed with the Securities and Exchange Commission and mailed to stockholders by Smucker and/or IMC with respect to the Merger; provided that this opinion is reproduced in its entirety and any description of, or reference to, William Blair or the advice rendered by it in such filing or document is in a form reasonably acceptable to William Blair and its counsel.

Based upon and subject to the foregoing, it is our opinion as investment bankers that, as of the date hereof, the Merger Consideration to be paid by Smucker is fair, from a financial point of view, to Smucker.

Very truly yours,

.

WILLIAM BLAIR &
COMPANY, L.L.C.

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ANNEX D

Greenhill & Co., LLC

300 Park Avenue

New York, NY 10022

(212) 389-1500

(212) 389-1700 Fax

Greenhill

CONFIDENTIAL

March 7, 2004

Board of Directors

International Multifoods Corporation

110 Cheshire Lane, Suite 300

Minnetonka, MN 55305

Members of the Board of Directors:

We understand that International Multifoods Corporation (Multifoods), The J.M. Smucker Company (Smucker) and MIX Acquisition Corporation (Merger Subsidiary) propose to enter into an Agreement and Plan of Merger (the Merger Agreement), which provides, among other things, for the merger (the Merger) of Multifoods with and into Merger Subsidiary, a wholly-owned subsidiary of Smucker, with Merger Subsidiary as the Surviving Corporation. Pursuant to the Merger, each issued and outstanding share of common stock, par value $0.10 per share, of Multifoods (the Multifoods Common Stock), other than shares of Multifoods Common Stock held in Multifoods treasury, shares of Multifoods Common Stock owned by Smucker or any direct or indirect subsidiary of Smucker, and any Dissenting Shares (as such term is defined in the Merger Agreement), shall be converted into the right to receive a stock and cash payment with a closing value of $25.00 per share (as adjusted and calculated pursuant to the terms of the Merger Agreement, the Consideration). The terms and conditions of the Merger are more fully set

forth in the Merger Agreement.

You have asked for our opinion as to whether, as of the date hereof, the Consideration to be received by the holders of Multifoods Common Stock pursuant to the Merger Agreement is fair, from a financial point of view, to such holders. We have not been requested to opine as to, and our opinion does not in any manner address the underlying business decision to proceed with or effect the Merger.

For purposes of the opinion set forth herein, we have:

1. reviewed the Merger Agreement dated March 7, 2004 and certain related documents;
2. reviewed certain publicly available financial statements of Multifoods;
3. reviewed certain other publicly available business and financial information relating to Multifoods that we deemed relevant;
4. reviewed certain information, including financial forecasts and other financial and operating data concerning Multifoods, prepared by the management of Multifoods;
5. discussed the past and present operations and financial condition and the prospects of Multifoods with senior executives of Multifoods;
6. reviewed the historical market prices and trading activity for the Multifoods Common Stock and analyzed its implied valuation multiples;

Greenhill

7. reviewed certain publicly available financial statements of Smucker;
8. reviewed certain other publicly available business and financial information relating to Smucker that we deemed relevant;
9. reviewed certain information, including financial forecasts and other financial and operating data concerning Smucker, prepared by the management of Smucker;
10. discussed the past and present operations and financial condition and the prospects of Smucker with senior executives of Smucker;
11. reviewed the historical market prices and trading activity for the Smucker Common Stock and analyzed its implied valuation multiples;
12. compared the value of the Consideration with that received in certain publicly available transactions that we deemed relevant;
13. compared the value of the Consideration with the trading valuations of certain publicly traded companies that we deemed relevant;
14. reviewed and discussed with senior executives of Multifoods and Smucker the outlook for Multifoods and Smucker as a combined company;
15. participated in discussions and negotiations among representatives of Multifoods and its legal advisors and Smucker and its legal advisors; and
16. performed such other analyses and considered such other factors as we deemed appropriate.

We have assumed and relied upon, without independent verification, the accuracy and completeness of the information supplied or otherwise made available to us by representatives and management of Multifoods and Smucker for the purposes of this opinion and have further relied upon the assurances of the representatives and management of Multifoods and Smucker that they are not aware of any facts or circumstances that would make such information inaccurate or misleading. With respect to the financial projections of Multifoods and Smucker and other data with respect to Multifoods and Smucker that have been furnished or otherwise provided to us, we have assumed that such projections and data were reasonably prepared on a basis

reflecting the best currently available estimates and good faith judgments of the management of Multifoods and Smucker as to those matters. We express no opinion with respect to such projections and data or the assumptions upon which they are based. In addition, we have not made any independent valuation or appraisal of the assets or liabilities of Multifoods or Smucker, nor have we been furnished with any such appraisals. In addition, we have assumed that the Merger will be consummated in accordance with the terms set forth in the final, executed Merger Agreement (after satisfaction and not waiver of the conditions to closing of the Merger), which we have further assumed will be identical in all material respects to the latest draft thereof we have reviewed. Our opinion is necessarily based on financial, economic, market and other conditions as in effect on, and the information made available to us as of, the date hereof. It should be understood that subsequent developments may affect this opinion, and we do not have any obligation to update, revise, or reaffirm this opinion unless reasonably requested by Multifoods to update our opinion.

We have acted as financial advisor to the Board of Directors (the Board) of Multifoods in connection with the Merger and will receive a fee for our services, which is contingent upon the consummation of the Merger or a similar transaction.

It is understood that this letter is for the information of the Board of Multifoods and is rendered to the Board in connection with their consideration of the Merger and may not be used for any other purpose without our prior written consent, except that this opinion may be included in its entirety in any proxy or other information

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statement or registration statement to be mailed to the shareholders of Multifoods Common Stock and the shareholders of Smucker in connection with the Merger and Multifoods may refer to this letter and include a summary of the letter in such proxy or information statement or registration statement. We are not expressing an opinion as to any aspect of the Merger, other than the fairness to the holders of Multifoods Common Stock of the Consideration to be received by the holders of Multifoods Common Stock from a financial point of view. This opinion is not intended to be and does not constitute a recommendation to the Board as to whether they should approve the Merger, nor does it constitute an opinion or recommendation as to how the shareholders of Multifoods should vote at the shareholders meeting to be held in connection with the Merger.

Based on and subject to the foregoing and upon such other matters as we deemed relevant, we are of the opinion on the date hereof that the Consideration to be received by the holders of Multifoods Common Stock pursuant to the Merger Agreement is fair from a financial point of view to such holders.

Very best regards,

GREENHILL & CO., LLC

By: /s/ Timothy M. George

Timothy M. George

Managing Director

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ANNEX E

Section 262 of the General Corporation Law of the State of Delaware

Appraisal Rights

(a) Any stockholder of a corporation of this State who holds shares of stock on the date of the making of a demand pursuant to subsection (d) of this section with respect to such shares, who continuously holds such shares through the effective date of the merger or consolidation, who has otherwise complied with subsection (d) of this section and who has neither voted in favor of the merger or consolidation nor consented thereto in writing pursuant to § 228 of this title shall be entitled to an appraisal by the Court of Chancery of the fair value of the stockholder s shares of stock under the circumstances described in subsections (b) and (c) of this section. As used in this section, the word stockholder means a holder of record of stock in a stock corporation and also a member of record of a nonstock corporation; the words stock and share mean and include what is ordinarily meant by those words and also membership or membership interest of a member of a nonstock corporation; and the words depository receipt mean a receipt or other instrument issued by a depository representing an interest in one or more shares, or fractions thereof, solely of stock of a corporation, which stock is deposited with the depository.

(b) Appraisal rights shall be available for the shares of any class or series of stock of a constituent corporation in a merger or consolidation to be effected pursuant to § 251 (other than a merger effected pursuant to § 251(g) of this title), § 252, § 254, § 257, § 258, § 263 or § 264 of this title:

(1) Provided, however, that no appraisal rights under this section shall be available for the shares of any class or series of stock, which stock, or depository receipts in respect thereof, at the record date fixed to determine the stockholders entitled to receive notice of and to vote at the meeting of stockholders to act upon the agreement of merger or consolidation, were either (i) listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc. or (ii) held of record by more than 2,000 holders; and further provided that no appraisal rights shall be available for any shares of stock of the constituent corporation surviving a merger if the merger did not require for its approval the vote of the stockholders of the surviving corporation as provided in subsection (f) of § 251 of this title.

(2) Notwithstanding paragraph (1) of this subsection, appraisal rights under this section shall be available for the shares of any class or series of stock of a constituent corporation if the holders thereof are required by the terms of an agreement of merger or consolidation pursuant to §§ 251, 252, 254, 257, 258, 263 and 264 of this title to accept for such stock anything except:

a. Shares of stock of the corporation surviving or resulting from such merger or consolidation, or depository receipts in respect thereof;

b. Shares of stock of any other corporation, or depository receipts in respect thereof, which shares of stock (or depository receipts in respect thereof) or depository receipts at the effective date of the merger or consolidation will be either listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc. or held of record by more than 2,000 holders;

c. Cash in lieu of fractional shares or fractional depository receipts described in the foregoing subparagraphs a. and b. of this paragraph; or

d. Any combination of the shares of stock, depository receipts and cash in lieu of fractional shares or fractional depository receipts described in the foregoing subparagraphs a., b. and c. of this paragraph.

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(3) In the event all of the stock of a subsidiary Delaware corporation party to a merger effected under § 253 of this title is not owned by the parent corporation immediately prior to the merger, appraisal rights shall be available for the shares of the subsidiary Delaware corporation.

(c) Any corporation may provide in its certificate of incorporation that appraisal rights under this section shall be available for the shares of any class or series of its stock as a result of an amendment to its certificate of incorporation, any merger or consolidation in which the corporation is a constituent corporation or the sale of all or substantially all of the assets of the corporation. If the certificate of incorporation contains such a provision, the procedures of this section, including those set forth in subsections (d) and (e) of this section, shall apply as nearly as is practicable.

(d) Appraisal rights shall be perfected as follows:

(1) If a proposed merger or consolidation for which appraisal rights are provided under this section is to be submitted for approval at a meeting of stockholders, the corporation, not less than 20 days prior to the meeting, shall notify each of its stockholders who was such on the record date for such meeting with respect to shares for which appraisal rights are available pursuant to subsection (b) or (c) hereof that appraisal rights are available for any or all of the shares of the constituent corporations, and shall include in such notice a copy of this section. Each stockholder electing to demand the appraisal of such stockholder s shares shall deliver to the corporation, before the taking of the vote on the merger or consolidation, a written demand for appraisal of such stockholder s shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such stockholder s shares. A proxy or vote against the merger or consolidation shall not constitute such a demand. A stockholder electing to take such action must do so by a separate written demand as herein provided. Within 10 days after the effective date of such merger or consolidation, the surviving or resulting corporation shall notify each stockholder of each constituent corporation who has complied with this subsection and has not voted in favor of or consented to the merger or consolidation of the date that the merger or consolidation has become effective; or

(2) If the merger or consolidation was approved pursuant to § 228 or § 253 of this title, then either a constituent corporation before the effective date of the merger or consolidation or the surviving or resulting corporation within 10 days thereafter shall notify each of the holders of any class or series of stock of such constituent corporation who are entitled to appraisal rights of the approval of the merger or consolidation and that appraisal rights are available for any or all shares of such class or series of stock of such constituent corporation, and shall include in such notice a copy of this section. Such notice may, and, if given on or after the effective date of the merger or consolidation, shall, also notify such stockholders of the effective date of the merger or consolidation. Any stockholder entitled to appraisal rights may,

within 20 days after the date of mailing of such notice, demand in writing from the surviving or resulting corporation the appraisal of such holder s shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such holder s shares. If such notice did not notify stockholders of the effective date of the merger or consolidation, either (i) each such constituent corporation shall send a second notice before the effective date of the merger or consolidation notifying each of the holders of any class or series of stock of such constituent corporation that are entitled to appraisal rights of the effective date of the merger or consolidation or (ii) the surviving or resulting corporation shall send such a second notice to all such holders on or within 10 days after such effective date; provided, however, that if such second notice is sent more than 20 days following the sending of the first notice, such second notice need only be sent to each stockholder who is entitled to appraisal rights and who has demanded appraisal of such holder s shares in accordance with this subsection. An affidavit of the secretary or assistant secretary or of the transfer agent of the corporation that is required to give either notice that such notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. For purposes of determining the stockholders entitled to receive either notice, each constituent corporation may fix, in advance, a record date that shall be not more than 10 days prior to the date the notice is given, provided, that if the notice is given on or after the effective date of the

merger or consolidation, the record date shall be such effective date. If no record date is fixed and the notice is given prior to the effective date, the record date shall be the close of business on the day next preceding the day on which the notice is given.

(e) Within 120 days after the effective date of the merger or consolidation, the surviving or resulting corporation or any stockholder who has complied with subsections (a) and (d) hereof and who is otherwise entitled to appraisal rights, may file a petition in the Court of Chancery demanding a determination of the value of the stock of all such stockholders. Notwithstanding the foregoing, at any time within 60 days after the effective date of the merger or consolidation, any stockholder shall have the right to withdraw such stockholder s demand for appraisal and to accept the terms offered upon the merger or consolidation. Within 120 days after the effective date of the merger or consolidation, any stockholder who has complied with the requirements of subsections (a) and (d) hereof, upon written request, shall be entitled to receive from the corporation surviving the merger or resulting from the consolidation a statement setting forth the aggregate number of shares not voted in favor of the merger or consolidation and with respect to which demands for appraisal have been received and the aggregate number of holders of such shares. Such written statement shall be mailed to the stockholder within 10 days after such stockholder s written request for such a statement is received by the surviving or resulting corporation or within 10 days after expiration of the period for delivery of demands for appraisal under subsection (d) hereof, whichever is later.

(f) Upon the filing of any such petition by a stockholder, service of a copy thereof shall be made upon the surviving or resulting corporation, which shall within 20 days after such service file in the office of the Register in Chancery in which the petition was filed a duly verified list containing the names and addresses of all stockholders who have demanded payment for their shares and with whom agreements as to the value of their shares have not been reached by the surviving or resulting corporation. If the petition shall be filed by the surviving or resulting corporation, the petition shall be accompanied by such a duly verified list. The Register in Chancery, if so ordered by the Court, shall give notice of the time and place fixed for the hearing of such petition by registered or certified mail to the surviving or resulting corporation and to the stockholders shown on the list at the addresses therein stated. Such notice shall also be given by 1 or more publications at least 1 week before the day of the hearing, in a newspaper of general circulation published in the City of Wilmington, Delaware or such publication as the Court deems advisable. The forms of the notices by mail and by publication shall be approved by the Court, and the costs thereof shall be borne by the surviving or resulting corporation.

(g) At the hearing on such petition, the Court shall determine the stockholders who have complied with this section and who have become entitled to appraisal rights. The Court may require the stockholders who have demanded an appraisal for their shares and who hold stock represented by certificates to submit their certificates of stock to the Register in Chancery for notation thereon of the pendency of the appraisal proceedings; and if any

stockholder fails to comply with such direction, the Court may dismiss the proceedings as to such stockholder.

(h) After determining the stockholders entitled to an appraisal, the Court shall appraise the shares, determining their fair value exclusive of any element of value arising from the accomplishment or expectation of the merger or consolidation, together with a fair rate of interest, if any, to be paid upon the amount determined to be the fair value. In determining such fair value, the Court shall take into account all relevant factors. In determining the fair rate of interest, the Court may consider all relevant factors, including the rate of interest which the surviving or resulting corporation would have had to pay to borrow money during the pendency of the proceeding. Upon application by the surviving or resulting corporation or by any stockholder entitled to participate in the appraisal proceeding, the Court may, in its discretion, permit discovery or other pretrial proceedings and may proceed to trial upon the appraisal prior to the final determination of the stockholder entitled to an appraisal. Any stockholder whose name appears on the list filed by the surviving or resulting corporation pursuant to subsection (f) of this section and who has submitted such stockholder s certificates of stock to the Register in Chancery, if such is required, may participate fully in all proceedings until it is finally determined that such stockholder is not entitled to appraisal rights under this section.

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(i) The Court shall direct the payment of the fair value of the shares, together with interest, if any, by the surviving or resulting corporation to the stockholders entitled thereto. Interest may be simple or compound, as the Court may direct. Payment shall be so made to each such stockholder, in the case of holders of uncertificated stock forthwith, and the case of holders of shares represented by certificates upon the surrender to the corporation of the certificates representing such stock. The Court s decree may be enforced as other decrees in the Court of Chancery may be enforced, whether such surviving or resulting corporation be a corporation of this State or of any state.

(j) The costs of the proceeding may be determined by the Court and taxed upon the parties as the Court deems equitable in the circumstances. Upon application of a stockholder, the Court may order all or a portion of the expenses incurred by any stockholder in connection with the appraisal proceeding, including, without limitation, reasonable attorney s fees and the fees and expenses of experts, to be charged pro rata against the value of all the shares entitled to an appraisal.

(k) From and after the effective date of the merger or consolidation, no stockholder who has demanded appraisal rights as provided in subsection (d) of this section shall be entitled to vote such stock for any purpose or to receive payment of dividends or other distributions on the stock (except dividends or other distributions payable to stockholders of record at a date which is prior to the effective date of the merger or consolidation); provided, however, that if no petition for an appraisal shall be filed within the time provided in subsection (e) of this section, or if such stockholder shall deliver to the surviving or resulting corporation a written withdrawal of such stockholder s demand for an appraisal and an acceptance of the merger or consolidation, either within 60 days after the effective date of the merger or consolidation as provided in subsection (e) of this section or thereafter with the written approval of the corporation, then the right of such stockholder to an appraisal shall cease. Notwithstanding the foregoing, no appraisal proceeding in the Court of Chancery shall be dismissed as to any stockholder without the approval of the Court, and such approval may be conditioned upon such terms as the Court deems just.

(1) The shares of the surviving or resulting corporation to which the shares of such objecting stockholders would have been converted had they assented to the merger or consolidation shall have the status of authorized and unissued shares of the surviving or resulting corporation.

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PART II

INFORMATION NOT REQUIRED IN THE PROSPECTUS

Item 20. ***Indemnification of Directors and Officers***

In general, a director of an Ohio corporation will not be found to have violated his or her fiduciary duties unless there is proof by clear and convincing evidence that the director (1) has not acted in good faith, (2) has not acted in a manner the director reasonably believes to be in or not opposed to the best interests of the corporation, or (3) has not acted with the care that an ordinarily prudent person in a like position would use under similar circumstances. Monetary damages for any act taken or omission made as a director are generally awarded only if it is proved by clear and convincing evidence that the director undertook such act or omission either with deliberate intent to cause injury to the corporation or with reckless disregard for the best interests of the corporation.

Under Ohio law, a corporation must indemnify its directors, officers, employees, and agents against expenses reasonably incurred in connection with the successful defense (on the merits or otherwise) of an action, suit, or proceeding. A corporation may indemnify such persons in actions, suits, and proceedings (including certain derivative suits) if the individual has acted in good faith and in a manner that the individual believes to be in or not opposed to the best interests of the corporation. In the case of a criminal proceeding, the individual must also have no reasonable cause to believe that his or her conduct was unlawful.

Indemnification may be made only if ordered by a court or if authorized in a specific case upon a determination that the applicable standard of conduct has been met. Such a determination may be made by a majority of the disinterested directors, by independent legal counsel, or by the shareholders.

Under Ohio law, a corporation may pay the expenses of any indemnified individual as they are incurred, in advance of the final disposition of the matter, if the individual provides an undertaking to repay the amount if it is ultimately determined that the individual is not entitled to be indemnified. Ohio law generally requires all expenses, including attorney s fees, incurred by a director in defending any action, suit, or proceeding to be paid by the corporation as they are incurred if the director agrees (i) to repay such amounts in the event that it is proved by clear and convincing evidence that the director s action or omission was undertaken with deliberate intent to cause injury to the corporation or with reckless disregard for the best interests of the corporation and (ii) to reasonably cooperate with the corporation concerning the action, suit, or proceeding.

Smucker s regulations require Smucker to indemnify, to the full extent permitted by Ohio law, any person made, or threatened to be made, a party to any threatened, pending or completed action, suit, or proceeding (whether civil, criminal, administrative, or investigative) because that person is or was a director, officer, or employee of Smucker or was serving, at the request of Smucker, as a director, trustee, officer, or employee of another entity. Smucker also has in effect insurance policies for general officers and directors liability insurance covering all of its directors and officers.

Following the merger, the indemnification arrangements discussed above will remain unchanged. In addition, Smucker may enter into indemnification agreements with each of its directors and officers that indemnify its directors and officers to the maximum extent permitted by law.

For the undertaking with respect to indemnification, see Item 22 herein.

Item 21. ***Exhibits and Financial Statement Schedules***

(a) See Exhibit Index.

(b) Not applicable.

(c) The opinion of William Blair & Company, L.L.C. is included as Annex C to the joint proxy statement/prospectus included as part of this Registration Statement. The opinion of Greenhill & Co., LLC is included as Annex D to the proxy statement/prospectus included as part of this Registration Statement.

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Item 22. ***Undertakings***

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of each of the registrant s annual reports pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan s annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(g)(1) The undersigned registrant hereby undertakes as follows: that prior to any public reoffering of the securities registered hereunder through use of a prospectus which is a part of this Registration Statement, by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c), the issuer undertakes that such reoffering prospectus will contain the information called for by the applicable registration form with respect to reofferings by persons who may be deemed underwriters, in addition to the information called for by the other items of the applicable form.

(2) The registrant undertakes that every prospectus: (i) that is filed pursuant to paragraph (1) immediately preceding, or (ii) that purports to meet the requirements of Section 10(a)(3) of the Act and is used in connection with an offering of securities subject to Rule 415, will be filed as part of an amendment to the registration statement and will not be used until such amendment is effective, and that, for purposes of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(h) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes to respond to requests for information that is incorporated by reference into the information statement-prospectus pursuant to Item 4, 10(b), 11 or 13 of this form, within one business day of receipt of such request, and to send the incorporated documents by first class mail or other equally prompt means. This includes information contained in documents filed subsequent to the effective date of the Registration Statement through the date of responding to the request.

The undersigned registrant hereby undertakes to supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in the registration statement when it became effective.

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SIGNATURES

Pursuant to the requirements of the Securities Act, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Orrville, State of Ohio, on May 3, 2004.

THE J. M. SMUCKER COMPANY

(Registrant)

By: /s/ RICHARD K. SMUCKER

Richard K. Smucker
President, Co-Chief Executive Officer

and Chief Financial Officer

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
* Timothy P. Smucker	Chairman and Co-Chief Executive Officer, and Director (Principal Executive Officer)	May 3, 2004
/s/ RICHARD K. SMUCKER Richard K. Smucker	President, Co-Chief Executive Officer, Chief Financial Officer and Director (Principal Executive Officer and Principal Financial Officer)	May 3, 2004
* Richard G. Jirsa	Vice President and Corporate Controller (Controller)	May 3, 2004
* Vincent C. Byrd	Director	May 3, 2004
* R. Douglas Cowan	Director	May 3, 2004

*	Director	May 3, 2004
Kathryn W. Dindo		
*	Director	May 3, 2004
Fred A. Duncan		
*	Director	May 3, 2004
Elizabeth Valk Long		
*	Director	May 3, 2004
Gary A. Oatey		
*	Director	May 3, 2004
William H. Steinbrink		

* The undersigned, by signing his name hereto, does sign and execute this registration statement pursuant to the powers of attorney executed by the above-named officers and directors of the registrant, which are being filed herewith with the Securities and Exchange Commission on behalf of such officers and directors.

By: /s/ Richard K. Smucker   Date: May 3, 2004

Richard K. Smucker
Attorney-in-fact

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EXHIBIT INDEX

Exhibit No	Exhibit Description
2.1	Agreement and Plan of Merger, dated as of March 7, 2004, by and among Smucker, Multifoods and Acquisition Sub (attached as Annex A to the joint proxy statement/prospectus).
3.1	Amended Articles of Incorporation of Smucker (incorporated by reference to Amendment No. 3 to the Registration Statement on Form S-4 filed by Smucker on February 28, 2002).
3.2	Amended Regulations of Smucker (filed as Exhibit 3(b) to Smucker s Quarterly Report on Form 10-Q for the quarterly period ended October 31, 2000, filed with the Commission on December 12, 2000).
5.1	Opinion of Jones Day, as to the validity of the Smucker common shares being registered hereby.
8.1	Opinion of Jones Day as to certain tax matters.
8.2	Opinion of Faegre & Benson LLP as to certain tax matters.
23.1	Consent of Ernst & Young LLP relating to the audited financial statements of Smucker.
23.2	Consent of KPMG LLP relating to the audited financial statements of Multifoods.
23.3	Consent of Jones Day (included in Exhibit 5.1).
23.4	Consent of Jones Day (included in Exhibit 8.1).
23.5	Consent of Faegre & Benson LLP (included in Exhibit 8.2).
23.6	Consent of William Blair & Company, L.L.C.
23.7	Consent of Greenhill & Co., LLC.
24.1*	Power of Attorney of Directors and Officers of Smucker.
99.1	JMS Shareholders Agreement and Irrevocable Proxy, dated March 7, 2004, between Multifoods and the shareholders listed on the signature page thereto (attached as part of Annex B to the joint proxy statement/prospectus).
99.2	First Amendment to the JMS Shareholders Agreement and Irrevocable Proxy, dated March 30, 2004, between Multifoods and the shareholders listed on the signature page thereto (attached as part of Annex B to the joint proxy statement/prospectus).
99.3	Form of proxy card and related proxy materials of Smucker.
99.4	Form of proxy card of Multifoods.

* Previously filed