

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM S-3  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

THE BLACK & DECKER CORPORATION  
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

MARYLAND 52-0248090  
(STATE OR OTHER JURISDICTION OF (I.R.S. EMPLOYER  
INCORPORATION OR ORGANIZATION) IDENTIFICATION NO.)

701 EAST JOPPA ROAD  
TOWSON, MARYLAND 21286  
(410) 716-3900  
(ADDRESS, INCLUDING ZIP CODE, AND TELEPHONE NUMBER, INCLUDING AREA CODE, OF  
REGISTRANT'S PRINCIPAL EXECUTIVE OFFICES)

CHARLES E. FENTON  
VICE PRESIDENT AND GENERAL COUNSEL  
THE BLACK & DECKER CORPORATION  
701 EAST JOPPA ROAD  
TOWSON, MARYLAND 21286  
(410) 716-3900  
(NAME, ADDRESS, INCLUDING ZIP CODE, AND TELEPHONE NUMBER, INCLUDING AREA CODE,  
OF AGENT FOR SERVICE)

COPIES TO:

GLENN C. CAMPBELL  
MILES & STOCKBRIDGE,  
A PROFESSIONAL CORPORATION  
10 LIGHT STREET  
BALTIMORE, MARYLAND 21202  
(410) 727-6464

DAVID J. SORKIN  
SIMPSON THACHER & BARTLETT  
425 LEXINGTON AVENUE  
NEW YORK, NEW YORK 10017  
(212) 455-2000

APPROXIMATE DATE OF COMMENCEMENT OF PROPOSED SALE TO THE PUBLIC: From time to  
time after the effective date of this registration statement.

If the only securities being registered on this Form are being offered  
pursuant to dividend or interest reinvestment plans, please check the following  
box. ☐

If any of the securities being registered on this Form are to be offered on a  
delayed or continuous basis pursuant to Rule 415 under the Securities Act of  
1933, other than securities offered only in connection with dividend or  
interest reinvestment plans, please check the following box. ☒

CALCULATION OF REGISTRATION FEE

| TITLE OF EACH CLASS<br>OF SECURITIES TO BE REGISTERED | AMOUNT<br>TO BE<br>REGISTERED(1)(2) | PROPOSED<br>MAXIMUM<br>OFFERING PRICE<br>PER UNIT(3) | PROPOSED<br>MAXIMUM<br>AGGREGATE<br>OFFERING PRICE(3) | AMOUNT OF<br>REGISTRATION<br>FEE |
|---|-------------------------------------|--|---|----------------------------------|
| Debt Securities.....                                  | \$500,000,000                       | 100%   | \$500,000,000   | \$172,414                        |

(1) In United States dollars or the equivalent thereof in other currencies or  
composite currencies on the basis of exchange rates in effect on the date  
an agreement to sell the applicable Debt Securities is entered into by the  
Registrant.

(2) Or, if any Debt Securities are issued at an original issue discount, such  
greater amount as may result in an aggregate offering price of  
\$500,000,000.

(3) Estimated solely for purposes of calculating the registration fee.

THE REGISTRANT HEREBY AMENDS THIS REGISTRATION STATEMENT ON SUCH DATE OR  
DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE REGISTRANT  
SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY STATES THAT THIS REGISTRATION  
STATEMENT SHALL THEREAFTER BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 8(A) OF

THE SECURITIES ACT OF 1933 OR UNTIL THE REGISTRATION STATEMENT SHALL BECOME  
EFFECTIVE ON SUCH DATE AS THE COMMISSION, ACTING PURSUANT TO SAID SECTION 8(A),  
MAY DETERMINE.

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+INFORMATION CONTAINED HEREIN IS SUBJECT TO COMPLETION OR AMENDMENT. A +  
+REGISTRATION STATEMENT RELATING TO THESE SECURITIES HAS BEEN FILED WITH THE +  
+SECURITIES AND EXCHANGE COMMISSION. THESE SECURITIES MAY NOT BE SOLD NOR MAY +  
+OFFERS TO BUY BE ACCEPTED PRIOR TO THE TIME THE REGISTRATION STATEMENT +  
+BECOMES EFFECTIVE. THIS PROSPECTUS SHALL NOT CONSTITUTE AN OFFER TO SELL OR +  
+THE SOLICITATION OF AN OFFER TO BUY, NOR SHALL THERE BE ANY SALE OF THESE +  
+SECURITIES IN ANY STATE IN WHICH SUCH OFFER, SOLICITATION OR SALE WOULD BE +  
+UNLAWFUL PRIOR TO REGISTRATION OR QUALIFICATION UNDER THE SECURITIES LAWS OF +  
+ANY STATE. +  
+++++  
SUBJECT TO COMPLETION, DATED MAY 25, 1994

PROSPECTUS

\$500,000,000

(LOGO OF BLACK & DECKER APPEARS HERE)

DEBT SECURITIES

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The Black & Decker Corporation (the "Corporation") from time to time may offer debt securities in one or more series (the "Debt Securities"), which Debt Securities may consist of debentures, notes or other unsecured evidences of indebtedness, in an amount sufficient to result in an aggregate initial offering price not to exceed \$500,000,000 (or the equivalent in one or more foreign denominated currencies or units based on or relating to currencies, including European Currency Units). The Debt Securities may be offered as separate series in amounts, at prices, and on terms to be determined by market conditions at the time of sale. The Debt Securities may be sold in United States dollars or one or more foreign denominated currencies or units based on or relating to currencies, and the principal of (and premium, if any) and interest, if any, on the Debt Securities may likewise be payable in United States dollars or one or more foreign denominated currencies or units based on or relating to currencies. The Debt Securities may be issued in registered or bearer form. Debt Securities issued in bearer form, subject to certain exceptions, will not be offered or sold to persons who are within the United States or to United States persons. See "Limitations on Issuance of Bearer Securities." All or a portion of the Debt Securities may be evidenced by a Global Security or Global Securities.

The accompanying Prospectus Supplement and Pricing Supplement (if applicable) set forth, with regard to the Debt Securities in respect of which this Prospectus is being delivered, the title, aggregate principal amount, currency denominations, maturity, rate (which may be fixed or variable) and time of payment of any interest, any terms for redemption at the option of the Corporation or the holder, any terms for sinking fund payments, any listing on a securities exchange, the initial public offering price and any other terms in connection with the offering and sale of the Debt Securities or a series of the Debt Securities.

The Corporation may sell Debt Securities to or through underwriters or dealers, and also may sell Debt Securities directly to other purchasers or through agents. If underwriters are used in the sale, the Debt Securities may be offered to the public either through underwriting syndicates represented by one or more managing underwriters or directly by one or more of such firms. See "Plan of Distribution." The accompanying Prospectus Supplement sets forth the names of any underwriters, dealers or agents involved in the sale of the Debt Securities in respect of which this Prospectus is being delivered, the principal amounts, if any, to be purchased by underwriters or dealers, and the compensation, if any, of those underwriters, dealers or agents. The net proceeds to the Corporation from the sale of the Debt Securities in respect of which this Prospectus is being delivered are set forth in the Prospectus Supplement or in the Pricing Supplement (if applicable). See "Plan of Distribution" for possible indemnification arrangements for underwriters, dealers and agents.

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THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

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, 1994

NO DEALER, SALESPERSON OR OTHER INDIVIDUAL HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATION NOT CONTAINED OR INCORPORATED BY REFERENCE IN THIS PROSPECTUS OR IN AN APPLICABLE PROSPECTUS SUPPLEMENT OR PRICING SUPPLEMENT IN CONNECTION WITH ANY OFFER MADE BY THIS PROSPECTUS AND SUCH PROSPECTUS SUPPLEMENT AND PRICING SUPPLEMENT AND, IF GIVEN OR MADE, SUCH INFORMATION OR REPRESENTATION MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY THE CORPORATION OR ANY UNDERWRITER, DEALER, AGENT OR OTHER PERSON. NEITHER THE DELIVERY OF THIS PROSPECTUS OR ANY PROSPECTUS SUPPLEMENT OR PRICING SUPPLEMENT NOR ANY SALE MADE HEREUNDER OR THEREUNDER SHALL UNDER ANY CIRCUMSTANCES CREATE AN IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE AFFAIRS OF THE CORPORATION SINCE THE DATE HEREOF OR THEREOF OR THAT THE INFORMATION CONTAINED HEREIN OR THEREIN IS CORRECT AS OF ANY TIME SUBSEQUENT TO ITS DATE. THIS PROSPECTUS AND ANY PROSPECTUS SUPPLEMENT AND PRICING SUPPLEMENT DO NOT CONSTITUTE AN OFFER OR SOLICITATION BY ANYONE IN ANY JURISDICTION TO ANY PERSON TO WHOM IT IS UNLAWFUL TO MAKE SUCH OFFER OR SOLICITATION IN SUCH JURISDICTION.

#### AVAILABLE INFORMATION

The Corporation is subject to the informational requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and in accordance therewith files reports, proxy statements and other information with the Securities and Exchange Commission (the "Commission"). Such reports, proxy statements and other information can be inspected and copied at the public reference facilities maintained by the Commission at Room 1024, 450 5th Street, N.W., Washington, D.C. 20549, and at the following regional offices of the Commission: New York Office, Seven World Trade Center, 13th Floor, New York, New York 10048; and Chicago Office, Northwestern Atrium Center, Suite 1400, 500 West Madison Street, Chicago, Illinois 60661. Copies of such material can be obtained from the Public Reference Section of the Commission at 450 5th Street, N.W., Washington, D.C. 20549, at prescribed rates. In addition, such reports, proxy statements and other information can be inspected at the offices of the New York Stock Exchange, Inc., 20 Broad Street, New York, New York 10005, and the Pacific Stock Exchange Incorporated, 301 Pine Street, San Francisco, California 94104.

The Corporation has filed with the Commission a Registration Statement on Form S-3 (together with all amendments, documents incorporated by reference and exhibits, the "Registration Statement") under the Securities Act of 1933, as amended (the "Securities Act"), with respect to the Debt Securities offered hereby. This Prospectus and the Prospectus Supplement, which constitute a part of the Registration Statement, do not contain all the information set forth in the Registration Statement, certain parts of which are contained in exhibits to the Registration Statement or otherwise have been omitted in accordance with the rules and regulations of the Commission. For further information, reference is made to the Registration Statement and to the documents incorporated therein by reference. Copies of the Registration Statement are on file at the offices of the Commission and may be obtained upon payment of the fees prescribed by the Commission, or examined without charge at the public reference facilities of the Commission described above.

#### INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

The Corporation's Annual Report on Form 10-K for the year ended December 31, 1993, Quarterly Report on Form 10-Q for the quarter ended April 3, 1994 and Current Report on Form 8-K dated January 20, 1994, are incorporated by reference herein and made a part hereof. All documents filed by the Corporation with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of this Prospectus and prior to the termination of the offering of the Debt Securities shall be deemed to be incorporated by reference and to be a part of this Prospectus from the date of filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Prospectus to the extent that a statement contained herein or in any subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such a statement. A statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Prospectus.

The Corporation will provide, without charge, to each person to whom this Prospectus is delivered, upon written or oral request, a copy of any and all of the documents incorporated herein by reference other than exhibits to such documents (unless such exhibits are specifically incorporated by reference in such documents). Requests should be directed to The Black & Decker Corporation, 701 East Joppa Road, Towson, Maryland 21286, Attention: Corporate Affairs, (800) 992-3042.

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#### FOR FLORIDA RESIDENTS

Emhart (U.K.) Limited, a subsidiary of the Corporation located in the United Kingdom, from time to time has provided spare parts to be incorporated into machinery used in the production of glass containers manufactured by Cubaequipos of Havana, Cuba. Transactions with Cubaequipos are subject to the provisions of the Cuban Assets Control Regulations and have been consummated in accordance with all applicable United States laws and regulations pursuant to specific licenses issued from time to time thereunder by the Office of Foreign Assets Control ("OFAC") of the United States Department of the Treasury. OFAC issued a license to complete the delivery of spare parts pursuant to a contract that predated the Cuban Democracy Act of 1992. The Cuban Democracy Act of 1992 prohibits OFAC from issuing additional licenses after October 23, 1992, except in connection with contracts entered into prior to that date. At this time, it is not clear whether OFAC will issue any additional licenses in light of the prohibitions set forth in the Cuban Democracy Act of 1992.

The information set forth above is accurate as of the date hereof. Current information concerning the Corporation's business dealings with the government of Cuba or with any person or affiliate located in Cuba may be obtained from the Division of Securities and Investor Protection of the Florida Department of Banking and Finance, The Capital, Tallahassee, Florida 32399-0350, telephone number (904) 488-9805.

## THE CORPORATION

The Black & Decker Corporation (the "Corporation"), incorporated in Maryland in 1910, is a global marketer and manufacturer of products used in and around the home and for various commercial applications. The Corporation markets its products in over 100 countries and enjoys worldwide brand name recognition.

The Corporation operates in three business segments: Consumer and Home Improvement Products, including consumer and professional power tools and accessories, household products, security hardware, lawn and garden and recreational outdoor products, plumbing products, and product service; Commercial and Industrial Products, including fastening systems and glass container-making equipment; and Information Systems and Services, including government and commercial information systems development, consulting, and other related contract services.

The Corporation's principal executive offices are located at 701 East Joppa Road, Towson, Maryland 21286. The telephone number of the Corporation is (410) 716-3900.

## USE OF PROCEEDS

Except as otherwise stated in the Prospectus Supplement in respect of which this Prospectus is being delivered, the net proceeds from the sale of the Debt Securities offered by the Corporation will be added to the general funds of the Corporation and will be available for general corporate purposes, which may include but are not limited to refinancing of indebtedness, working capital and capital expenditures.

## RATIO OF EARNINGS TO FIXED CHARGES

The following table sets forth the ratio of earnings to fixed charges for the quarters ended April 3, 1994 and April 4, 1993, each of the last five fiscal years and for the three-month Transition Period ended December 31, 1989. The Transition Period resulted from the Corporation's change in its fiscal year from the last Sunday in September to December 31, effective for the 1990 fiscal year.

|  | QUARTER<br>ENDED                     |                 | YEAR ENDED<br>DECEMBER 31 |      |      |      | YEAR ENDED           |                      |
|--|--------------------------------------|-----------------|---------------------------|------|------|------|----------------------|----------------------|
|  | APRIL 3<br>1994                      | APRIL 4<br>1993 | 1993                      | 1992 | 1991 | 1990 | TRANSITION<br>PERIOD | SEPTEMBER 24<br>1989 |
|  | (DOLLARS IN MILLIONS)<br>(UNAUDITED) |                 |                           |      |      |      |                      |                      |

|  |      |      |      |        |      |      |       |      |
|--|------|------|------|--------|------|------|-------|------|
| Ratio of earnings to<br>fixed charges.....   | 1.41 | 1.46 | 1.75 | --     | 1.32 | 1.29 | --    | 1.25 |
| Deficiency in the<br>coverage of fixed<br>charges by earnings<br>before fixed charges... | --   | --   | --   | \$29.0 | --   | --   | \$2.0 | --   |

The ratio of earnings to fixed charges equals earnings before fixed charges divided by fixed charges. For purposes of calculating the ratio of earnings to fixed charges, earnings before fixed charges consist of earnings (loss) before income taxes, extraordinary item, and cumulative effects of changes in accounting principles, plus fixed charges. Fixed charges consist of interest expense (including amortization of debt expense and discount or premium relating to any indebtedness), capitalized interest and that portion of rental expense representative of the interest factor.

Exclusive of the accrual of \$142.4 million before income taxes in connection with a restructuring of certain of its operations, the ratio of earnings to fixed charges for the year ended December 31, 1992, would have been 1.43.

#### DESCRIPTION OF DEBT SECURITIES

The following description of the Debt Securities sets forth certain general terms and provisions of the Debt Securities to which any Prospectus Supplement and Pricing Supplement (if applicable) may relate. The particular terms of the Debt Securities offered by any Prospectus Supplement and Pricing Supplement (if applicable) (the "Offered Debt Securities"), including the nature of any variation from the following general provisions applicable to the Offered Debt Securities, will be described in the Prospectus Supplement and Pricing Supplement (if applicable) relating to the Offered Debt Securities.

The Offered Debt Securities are to be issued in one or more series under an indenture (as it may be supplemented by a supplemental indenture described in any Prospectus Supplement for any series of Debt Securities, the "Indenture") between the Corporation and Marine Midland Bank, as Trustee (the "Trustee"), a copy of which Indenture is filed as an exhibit to the Registration Statement. The following summaries of certain provisions of the Indenture do not purport to be complete and are subject to, and are qualified in their entirety by reference to, all provisions of the Indenture, including definitions of certain terms. Provisions of or defined terms in the Indenture that are used in this Prospectus are incorporated by reference.

#### GENERAL

The Indenture does not limit the aggregate principal amount of debentures, notes or other evidences of indebtedness that may be issued thereunder and provides that Debt Securities may be issued in one or more series in an aggregate principal amount which may be authorized from time to time by the Corporation. The Debt Securities will be unsecured obligations of the Corporation and, except as otherwise provided in the Prospectus Supplement in respect of which this Prospectus is being delivered, will rank equally with all other unsecured and unsubordinated debt of the Corporation. Any other unsecured and unsubordinated indebtedness may contain covenants, events of default and other provisions which are different from or which are not contained in the Debt Securities.

Reference is made to the Prospectus Supplement for the following terms of the Offered Debt Securities: (1) the title of the Offered Debt Securities; (2) the price (expressed as a percentage of the aggregate principal amount thereof) at which the Offered Debt Securities will be issued; (3) any limit on the aggregate principal amount of the Offered Debt Securities or the series of which the Offered Debt Securities are a part; (4) the date or dates (or manner of determining the same) on which the Offered Debt Securities will mature; (5) the rate or rates (which may be fixed or variable) per annum (or the manner of determining the same) at which the Offered Debt Securities will bear interest, if any, and the date or dates from which such interest will accrue; (6) the date or dates on which such interest will be payable (or the manner of determining the same) and the record dates for Interest Payment Dates for Registered Securities; (7) the place or places where the principal of (and premium, if any) and interest, if any, on the Offered Debt Securities will be payable and each office or agency where the Offered Debt Securities may be presented for transfer or exchange; (8) if the trustee in respect of the Offered Debt Securities is other than the Trustee (or any successor thereto), the identity of the trustee; (9) any mandatory or optional sinking fund or purchase fund or analogous provision and the terms and conditions thereof; (10) any provisions relating to the date after which, the circumstances under which, and the price or prices at which the Offered Debt Securities may, pursuant to any optional or mandatory redemption provisions, be redeemed at the option of the Corporation or of the holder thereof and certain other terms and provisions of such optional or mandatory redemption; (11) if the amount payable upon acceleration of the Offered Debt Securities is other than the full principal amount, the portion of the principal amount payable upon acceleration; (12) any provisions relating to the conversion of Offered Debt Securities into Debt Securities of another series or any other securities; (13) any provisions restricting

defeasance of the Offered Debt Securities; (14) if the right of payment with respect to the Offered Debt Securities is subordinated to the right of payment with respect to any other indebtedness of the Corporation, the terms and conditions of subordination; (15) if the Offered Debt Securities will be issued, in whole or in part, in the form of one or more temporary or permanent Global Securities, the identity of the depositary for such Global Securities; (16) whether the Offered Debt Securities are to be issued as Registered Securities, Bearer Securities or both and the terms upon which any Bearer Securities of such series may be exchanged for Registered Securities of such series; (17) if other than United States dollars, the currency or currencies (including ECU) in which the Offered Debt Securities may be purchased, and the currency or currencies (including ECU) in which the principal of and premium, if any, and interest, if any, on such Offered Debt Securities may be payable; (18) if the currency for which the Offered Debt Securities may be purchased or in which the principal of (and premium, if any) or interest, if any, on the Offered Debt Securities may be payable is at the election of the Holder thereof, the manner of such election; (19) any index used to determine the amount of payments of principal of (and premium, if any) or interest, if any, on the Offered Debt Securities; (20) if the amounts of payments of principal of (and premium, if any) or interest, if any, on the Offered Debt Securities may be, at the election of the Corporation or a Holder thereof, determined with reference to an index based on a currency or currency unit other than that in which the Offered Debt Securities are stated to be payable, the manner in which such amounts are to be determined; and (21) any other terms of the Offered Debt Securities not inconsistent with the provisions of the Indenture.

The Debt Securities may be issuable as Registered Securities, Bearer Securities or both. Bearer Securities, subject to certain exceptions, will not be offered or sold to persons who are within the United States or to United States persons. See "Limitations on Issuance of Bearer Securities." Unless otherwise indicated in the Prospectus Supplement relating thereto, Registered Securities denominated in U.S. dollars will be issued only in denominations of \$1,000 or any integral multiple thereof, and Bearer Securities denominated in U.S. dollars will be issued only in denominations of \$5,000. The Pricing Supplement or Prospectus Supplement relating to a series of Debt Securities denominated in a foreign currency or currency unit will specify the denominations thereof. In the case of Global Securities, one or more Global Securities will be issued in a denomination or aggregate denominations equal to the aggregate principal amount of Outstanding Debt Securities of the series to be represented by such Global Securities. No service charge will be made for any transfer or exchange of Debt Securities, but the Corporation may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith. For certain information about Debt Securities issued in global form, see "Description of Debt Securities--Global Securities."

In connection with its sale during the "restricted period" as defined in Section 1.163-5(c)(2)(i)(D)(7) of the United States Treasury regulations (generally, the first 40 days after the closing date and, with respect to unsold allotments, until sold), no Bearer Security shall be offered or sold to persons who are within the United States or to United States persons or mailed or otherwise delivered to any location in the United States (as defined below under "Limitations on Issuance of Bearer Securities") and any such Bearer Security (other than a temporary Global Security in bearer form) may be delivered only if (i) the person entitled to receive such Bearer Security furnishes written certification, in the form required by the Indenture, to the effect that such Bearer Security is not being acquired by or on behalf of a United States person (as defined below under "Limitations on Issuance of Bearer Securities"), or (ii) if a beneficial interest in such Bearer Security is being acquired by or on behalf of a United States person, that United States person is a person described in Section 1.163-5(c)(2)(i)(D)(6) of the United States Treasury regulations or is a financial institution who has purchased such Bearer Security for resale during the restricted period and who certifies that it has not acquired such Bearer Security for purposes of resale directly or indirectly to a United States person or to a person within the United States or its possessions. See "Description of Debt Securities--Global Securities" and "Limitations on Issuance of Bearer Securities."

At the option of the Holder and subject to the terms of the Indenture, Bearer Securities (with all unmatured coupons, except as provided below) of any series will be exchangeable into an aggregate principal amount of Registered Securities (if the Debt Securities of such series are issuable as Registered Securities) or



Bearer Securities of the same series (with the same interest rate and maturity date) and Registered Securities of any series (other than a Global Security) will be exchangeable into an equal aggregate principal amount of Registered Securities of the same series (with the same interest rate and maturity date) of different authorized denominations. If a Holder surrenders Bearer Securities in exchange for Registered Securities between a Regular Record Date or in certain circumstances a Special Record Date and the relevant Interest Payment Date, the Holder will not be required to surrender the coupon related to such interest payment date. Registered Securities may not be exchanged for Bearer Securities.

Debt Securities may be presented for exchange and Registered Securities (other than a Global Security) may be presented for transfer (with the form of transfer endorsed thereon duly executed) at the office of the Trustee or at the office of the Security Registrar, without service charge and upon payment of any taxes and other governmental charges as described in the Indenture. Such transfer or exchange will be effected by the Trustee or the Security Registrar, as the case may be, being satisfied with the documents of title and identity of the person making the request. Bearer Securities will be transferable by delivery.

Debt Securities bearing no interest or interest at a rate that at the time of issuance is below the prevailing market rate will be sold at a discount below their stated principal amount. One or more series of Debt Securities may be floating rate debt securities, exchangeable for fixed rate debt securities. Special United States federal income tax considerations applicable to any such discounted or floating rate Debt Securities or to certain Debt Securities issued at par which are treated as having been issued at a discount for United States federal income tax purposes will be described in the Prospectus Supplement in respect of which this Prospectus is being delivered, if applicable.

Debt Securities may be issued, from time to time, with the principal amount (and premium, if any) payable on the applicable principal payment date, or the amount of interest, if any, payable on the applicable interest payment date, to be determined by reference to one or more currency exchange rates, commodity prices, equity indices or other factors. In such cases, holders of such Debt Securities may receive a principal amount (and premium, if any) on any principal payment date, or a payment of interest, if any, on any interest payment date, that is greater than or less than the amount of principal (and premium, if any) or interest payable on such dates, depending upon the value on such dates of the applicable currency, commodity, equity index or other factor. Information as to the methods for determining the amount of principal (and premium, if any) or interest, if any, payable on any date, the currencies, commodities, equity indices or the factors to which the amount payable on such date is linked and certain additional tax considerations applicable to the Offered Debt Securities will be set forth in the Prospectus Supplement in respect of which this Prospectus is being delivered, if applicable.

The Indenture does not limit the amount of additional unsecured indebtedness that the Corporation or its Subsidiaries may incur. Unless otherwise specified in the resolutions or any supplemental indenture establishing the terms of the Offered Debt Securities, the terms of the Offered Debt Securities or the covenants contained in the Indenture do not afford holders of the Offered Debt Securities protection in the event of a highly leveraged or other similar transaction involving the Corporation that may adversely affect Securityholders. See "Description of Debt Securities--Certain Covenants." The operations of the Corporation are conducted through its subsidiaries and, therefore, the Corporation is substantially dependent on the earnings and cash flow of its subsidiaries to meet its debt obligations, including its obligations in respect of the Debt Securities. Because the assets of its subsidiaries constitute effectively all of the assets of the Corporation, the claims of the holders of the Debt Securities effectively will be subordinated to the claims of creditors of the Corporation's subsidiaries.

#### PAYMENT AND PAYING AGENTS

Payment of principal of (and premium, if any) and interest, if any, on Bearer Securities will be payable in the currency designated in the applicable Pricing Supplement or related Prospectus Supplement, subject to any applicable laws and regulations, at such paying agencies outside the United States as the Corporation may appoint from time to time. Such payment may be made, at the option of the Holder, by a check in the

designated currency or by transfer to an account in the designated currency maintained by the payee with a bank located outside the United States. No payment of interest on a Bearer Security will be made unless on the earlier of the date of the first such payment by the Corporation or the date of delivery by the Corporation of a definitive Bearer Security, including a permanent Global Security, a written certificate, in the form required by the Indenture is provided to the Corporation stating that on such date the Bearer Security is not owned by or on behalf of a United States person or if a beneficial interest in such Bearer Security is owned by or on behalf of a United States person, that such United States person is a person described in Section 1.163-5(c)(1)(2)(D)(6) of the United States Treasury regulations or is a financial institution who has purchased such Bearer Security for resale during the restricted period and who certifies that it has not acquired such Bearer Security for purposes of resale directly or indirectly to a United States person or to a person within the United States or its possessions. No payment with respect to any Bearer Security will be made at the Corporate Trust Office of the Trustee or any other paying agency maintained by the Corporation in the United States nor will any such payment be made by transfer to an account or by mail to an address in the United States. Notwithstanding the foregoing, payments of principal of (and premium, if any) and interest, if any, on Bearer Securities denominated and payable in U.S. dollars will be made at the offices of the Paying Agent in the United States with respect thereto in the City of New York if payment of the full amount thereof in U.S. dollars at all paying agencies outside the United States is illegal or effectively precluded by exchange controls or other similar restrictions.

Payment of principal of (and premium, if any) on Registered Securities will be made in the designated currency against surrender of such Registered Securities at the Corporate Trust Office of the Paying Agent with respect thereto in the City of New York. Unless otherwise indicated in the related Prospectus Supplement payment of any installment of interest on a Registered Security will be made to the person in whose name such Debt Security is registered at the close of business on the Regular Record Date for such interest. Unless otherwise indicated in the related Prospectus Supplement, payments of such interest will be made at the Corporate Trust Office of the Trustee for such Security in the City of New York or at the Corporation's option, by a check in the designated currency mailed to the Holder at such Holder's registered address or by transfer to an account in the designated currency maintained by the payee.

The Paying Agents outside the United States initially appointed by the Corporation for a series of Debt Securities will be named in the related Prospectus Supplement. The Corporation may terminate the appointment of any of the Paying Agents from time to time, except that the Corporation will maintain at least one Paying Agent in a city outside the United States so long as any Bearer Securities are outstanding where Bearer Securities may be presented for payment and may be surrendered for exchange, provided that so long as any series of Debt Securities is listed on the Luxembourg Stock Exchange or any other stock exchange located outside the United States and such stock exchange shall so require, the Corporation will maintain a Paying Agent in Luxembourg or any other required city located outside the United States, as the case may be, for such series of Debt Securities.

All moneys paid by the Corporation to a Paying Agent for the payment of principal of (or premium, if any) or interest, if any, on any Debt Security that remains unclaimed at the end of two years will be repaid to the Corporation, unless otherwise prohibited by mandatory provisions of applicable escheat or abandoned or unclaimed property law, will be repaid to the Corporation, and the Holder of such Debt Security or any coupon appertaining thereto will thereafter look only to the Corporation for payment thereof.

#### GLOBAL SECURITIES

Debt Securities of any series may be issued, in whole or in part, in the form of one or more Global Securities that will be deposited with a depositary (the "Depositary") or with a nominee for a Depositary identified in the Prospectus Supplement relating to such series. Global Securities may be issued in either Registered or Bearer form and in temporary or permanent form. Unless and until it is exchanged in whole or in part for Debt Securities in definitive registered form, a Global Security may not be transferred except as a whole by the Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any nominee to a successor Depositary or a nominee of any successor.

The terms of the depositary arrangement with respect to any series of Debt Securities to be represented by a Global Security will be described in the Prospectus Supplement relating to such series. The Corporation anticipates that the provisions set forth below will apply to such depositary arrangements.

Upon the issuance of a Global Security, the Depositary will credit, on its book-entry registration and transfer system, the respective principal amounts of the Debt Securities represented by such Global Security to the accounts of persons that have accounts with such Depositary ("participants"). The accounts to be credited shall be designated by any underwriters or agents participating in the distribution of such Debt Securities or by the Corporation if the Debt Securities are offered and sold directly by the Corporation. Ownership of beneficial interest in a Global Security will be limited to participants or persons that hold interests through participants, but the Corporation has no obligations to any persons that hold interests through participants. Ownership of beneficial interests in such Global Security will be shown on, and the transfer of that ownership will be effected only through, records maintained by the Depositary for such Global Security (with respect to interests of participants) or by participants or persons that hold through participants (with respect to interests of persons other than participants). The laws of some states require that certain purchasers of securities take physical delivery of the securities in definitive form. Such limits and such laws may impair the ability to transfer beneficial interests in a Global Security.

As long as the Depositary or its nominee is the owner of such Global Security, the Depositary or its nominee, as the case may be, will be considered the sole owner or holder of the Debt Securities represented by the Global Security for all purposes under the Indenture. Except as set forth below, owners of beneficial interests in a Global Security will not be entitled to have the Debt Securities represented by such Global Security registered in their names, will not receive or be entitled to receive physical delivery of such Debt Securities in definitive form and will not be considered the owners or holders thereof under the Indenture.

Subject to the restrictions discussed above under "Payment and Paying Agents," payments of principal (and premium, if any) and interest, if any, on Debt Securities represented by a Global Security registered in the name of or held by a Depositary or its nominee will be made to the Depositary or its nominee, as the case may be, as the registered owner or the holder of such Global Security. Neither the Corporation, the Trustee, any Paying Agent nor the Security Registrar for such Debt Securities will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in such Global Security or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

The Corporation expects that the Depositary for any Debt Securities represented by a Global Security, upon receipt of any payment of principal (and premium, if any) or interest, if any, in respect of a permanent Global Security will, except as provided below, immediately credit participants' accounts with payments in amounts proportionate to their respective beneficial interests in the principal amount of such Global Security as shown on the records of the Depositary. The Corporation also expects that payments by participants to owners of beneficial interests in such Global Security held through such participants will be governed by standing instructions and customary practices, as is now the case with the securities held for the accounts of customers in bearer form or registered in "street names" and will be the responsibility of such participants. Receipt by owners of beneficial interests in a temporary Global Security of payments in respect of such temporary Global Security will be subject, in the case of a Global Security representing Bearer Securities, to the furnishing of the certificate described above under "Payment and Paying Agents."

If the Depositary for any Debt Securities represented by a Global Security is at any time unwilling or unable to continue as depositary and a successor depositary is not appointed by the Corporation within 90 days, the Corporation will issue Debt Securities in definitive form in exchange for such Global Security. In addition, the Corporation may at any time and in its sole discretion determine not to have any of the Debt Securities of a series represented by one or more Global Securities and, in such event, will issue in exchange therefor Debt Securities of such series in definitive form. Further, if the Corporation so specifies with respect to the Debt Securities of a series, an owner of a beneficial interest in a Global Security representing Debt

Securities of that series may, on terms acceptable to the Corporation and the Depository for such Global Security, receive Debt Securities of such series in definitive form. In any such instance, an owner of a beneficial interest in a Global Security will be entitled to physical delivery in definitive form of Debt Securities of the series represented by such Global Security equal in principal amount to such beneficial interest and to have such Debt Securities registered in its name (if the Debt Securities of such series are issuable as Registered Securities). Debt Securities of such series so issued in definitive form will be issued (a) as Registered Securities in denominations, unless otherwise specified by the Corporation, of \$1,000 and integral multiples thereof if the Debt Securities of such series are issuable as Registered Securities and are denominated in United States dollars, (b) as Bearer Securities in denominations, unless otherwise specified by the Corporation, of \$5,000 if the Debt Securities of such series are issuable as Bearer Securities and are denominated in United States dollars or (c) as either Registered or Bearer Securities, if the Debt Securities of such series are issuable in either form. See, however, "Limitations on Issuance of Bearer Securities" below for description of certain restrictions on the issuance of a Bearer Security in definitive form in exchange for an interest in a temporary Global Security.

#### AMENDMENT, SUPPLEMENT AND WAIVER

Modifications and amendments of the Indenture, the Debt Securities and any related coupon may be made by the Corporation and the Trustee with the consent of the Holders of a majority in principal amount of the Outstanding Debt Securities of each series issued under the Indenture affected by such modification or amendment; provided, however, that no such modification or amendment may, without the consent of the Holder of each Outstanding Debt Security affected thereby, (a) change the Stated Maturity of the principal of, or any installment of principal of or interest, if any, on any Debt Security or any related coupon, (b) reduce the principal amount of or rate of interest, if any, on any Debt Security, or any related coupon or any premium payable upon the redemption thereof, (c) reduce the amount of principal of a Discounted Security payable upon acceleration of the Maturity thereof, (d) change the Place of Payment, (e) change the currency or currency unit of payment of principal of (or premium, if any) or interest, if any, on any Debt Security or any related coupon, (f) impair the right to institute suit for the enforcement of any payment on or with respect to any Debt Security, or any related coupon on or after the Stated Maturity thereof (or in the case of redemption on or after the Redemption Date) or (g) reduce the percentage in principal amount of Outstanding Securities of any series, the consent of the Holders of which is required for modification or amendment of the Indenture or for waiver of compliance with certain provisions of the Indenture or for waiver of certain Defaults.

The Holders of not less than a majority in principal amount of the Outstanding Debt Securities of any series may on behalf of the Holders of all Debt Securities of that series waive, insofar as the series is concerned, compliance by the Corporation with certain restrictive provisions of the Indenture. The Holders of not less than a majority of principal amount of the Outstanding Securities of any series may on behalf of the Holders of all Debt Securities of that series and any coupons appertaining thereto waive any past default under the Indenture with respect to that series, except a default in the payment of the principal of (or premium, if any) and interest, if any, on any Debt Security of that series or in respect of a provision which under the Indenture cannot be modified or amended without the consent of the Holder of each Outstanding Debt Security of that series affected. The Indenture and the Debt Securities may be amended or supplemented, without the consent of any Holder of Debt Securities, to cure any ambiguity or inconsistency or to make any change that does not have a materially adverse effect on the rights of any Holder of Debt Securities.

#### CERTAIN COVENANTS

Unless otherwise specified in the Board Resolution or Resolutions or any supplemental indenture establishing the terms of the Debt Securities of any series, the terms of the Debt Securities of any series or the covenants contained in the Indenture do not afford holders of Debt Securities protection in the event of a highly leveraged or other similar transaction involving the Corporation that may adversely affect Securityholders. If the Offered Debt Securities contain, or a future supplemental indenture contains,

covenants to afford Securityholders protection in the event of a highly leveraged or similar transaction, the Prospectus Supplement or Pricing Supplement relating to the Offered Debt Securities will provide a brief description of such protective covenants. The Indenture does not limit the amount of additional unsecured indebtedness that the Corporation or its Subsidiaries may incur.

General. The Indenture requires the Corporation to covenant to the following with respect to each series of Debt Securities: (i) to promptly pay the principal of (and premium, if any) and interest, if any, on such series of Debt Securities and any related coupons; (ii) to maintain an office or agency in each place where Debt Securities and any related coupons may be presented, surrendered for payment, transferred or exchanged and where notice upon the Corporation may be served; (iii) if the Corporation acts as its own Paying Agent for any series of Securities, to segregate and hold in trust for the benefit of the persons entitled thereto a sum sufficient to pay the principal of (and premium, if any) or interest, if any, as the same becomes due; (iv) to deliver to the Trustee, within 120 days after the end of each fiscal year, a written statement to the effect that the Corporation has complied with its obligations under the Indenture; and (v) to deliver to the Trustee copies of annual and other reports that the Corporation files with the Commission within 15 days after filing such reports with the Commission.

Limitations on Liens. Unless otherwise specified in the Prospectus Supplement in respect of which this Prospectus is being delivered, and subject to the following sentence as well as to the exceptions set forth below under the caption "Exempted Debt," the Corporation will not, and will not permit any Subsidiary (as hereinafter defined) to, directly or indirectly, as security for any Debt (as hereinafter defined), mortgage, pledge or create or permit to exist any lien on any shares of stock, indebtedness or other obligations of a Subsidiary or Principal Property (as hereinafter defined), whether such shares of stock, indebtedness or other obligations of a Subsidiary or Principal Property are owned at the date of the Indenture or thereafter acquired, unless the Corporation secures or causes to be secured any outstanding Securities equally and ratably with all Debt secured by such mortgage, pledge or lien, so long as that Debt shall be so secured. This restriction will not apply to, among other things, certain mortgages, pledges or other liens on any shares of stock, indebtedness or other obligations of a Subsidiary or a Principal Property (i) existing at the time of the acquisition thereof (or within 120 days thereafter) or incurred to secure or provide for the payment or financing of any part of the purchase price thereof; (ii) as to any particular series of Debt Securities, existing on the date that Debt Securities of such series are first issued; (iii) in favor of the Corporation or any Subsidiary; (iv) securing Debt incurred to finance construction of or improvements to a Principal Property; (v) incurred in connection with the issuance by a state or political subdivision thereof of certain tax exempt securities; and (vi) certain other mortgages, pledges and liens.

"Consolidated Net Tangible Assets" means total assets less (1) total current liabilities (excluding any Debt which, at the option of the borrower, is renewable or extendable to a term exceeding 12 months and which is included in current liabilities and further excluding any deferred income taxes which are included in current liabilities) and (2) goodwill, patents, trademarks and other like intangibles, all as stated on the Corporation's most recent quarter-end consolidated balance sheet preceding the date of determination.

"Debt" means any debt for borrowed money, capitalized lease obligations and purchase money obligations, or any guarantee of such debt, in any such case which would appear on the consolidated balance sheet of the Corporation as a liability.

"Principal Property" means land, land improvements, buildings and associated factory and laboratory equipment owned or leased pursuant to a capital lease and used by the Corporation or any Subsidiary primarily for manufacturing, assembling, processing, producing, packaging or storing its products, raw materials, inventories or other materials and supplies and located in the United States and having an acquisition cost plus capitalized improvements in excess of 2% of Consolidated Net Tangible Assets as of the date of determination but shall not include any such property financed through the issuance of tax exempt governmental obligations, or any such property that has been determined by Board Resolution of the Corporation not to be of material importance to the respective businesses conducted by the Corporation and its Subsidiaries taken as a whole, effective as of the date such resolution is adopted.

"Subsidiary" means a corporation a majority of the voting stock of which is owned by the Corporation, the Corporation and one or more Subsidiaries, or one or more Subsidiaries.

Limitations on Sale-Leaseback Transactions. Unless otherwise specified in the Prospectus Supplement in respect of which this Prospectus is being delivered, and subject to the following sentence as well as to the exceptions set forth below under the caption "Exempted Debt," the Corporation will not, and will not permit any Subsidiary to, sell or transfer, directly or indirectly, except to the Corporation or a Subsidiary, a Principal Property as an entirety, or any substantial portion thereof, with the intention of taking back a lease of all or part of such property, except a lease for a period of three years or less at the end of which it is intended that the use of such property by the lessee will be discontinued. Notwithstanding the foregoing, the Corporation or any Subsidiary may sell a Principal Property and lease it back for a longer period (i) if the Corporation or such Subsidiary would be entitled, pursuant to the provisions set forth above under the caption "Limitations on Liens," to create a mortgage on the property to be leased securing Debt in an amount equal to the Attributable Debt (as hereinafter defined) in respect of the sale-leaseback transaction without equally and ratably securing the outstanding Debt Securities or (ii) if the Corporation promptly informs the Trustee of such transaction, the net proceeds of such transaction are at least equal to the fair value (as determined by a Board Resolution) of such property, and the Corporation causes an amount equal to the net proceeds of the sale to be applied to the retirement of Funded Debt (including the Debt Securities) and having an outstanding principal amount equal to the net proceeds.

"Funded Debt" means all Debt having a maturity of more than one year from the date of its creation or having a maturity of less than one year but by its terms being renewable or extendible, at the option of the obligor in respect thereof, beyond one year from its creation.

Exempted Debt. Notwithstanding the restrictions set forth above under the captions "Limitations on Liens" and "Limitations on Sale-Leaseback Transactions," the Corporation or any Subsidiary may create or assume liens and renew, extend or replace such liens and may enter into sale and leaseback transactions, in each case in addition to those permitted under the captions "Limitations on Liens" and "Limitations on Sale-Leaseback Transactions," provided that at the time of the creation, assumption, renewal, extension or replacement of such liens or the entering into of such sale-leaseback transactions, and after giving effect thereto, Exempted Debt does not exceed 10% of Consolidated Net Tangible Assets.

"Attributable Debt" for a lease means the carrying value of the capitalized rental obligation determined under generally accepted accounting principles whether or not such obligation is required to be shown on the balance sheet as a long-term liability. The carrying value may be reduced by the capitalized value of the rental obligations, calculated on the same basis, that any sublessee has for all or part of the same property.

"Exempted Debt" means the sum, without duplication, of the following items outstanding as of the date Exempted Debt is being determined: (i) Debt incurred after the date of the Indenture and secured by liens created or assumed or permitted to exist pursuant to the exception to the limitations set forth above under the caption "Exempted Debt," and (ii) Attributable Debt of the Corporation and its Subsidiaries in respect of all sale-leaseback transactions with regard to any Principal Property entered into pursuant to the exception to the sale-leaseback limitations set forth above under the caption "Exempted Debt."

Consolidation, Merger, Sale of Assets. The Corporation may not consolidate with or merge into, or transfer, directly or indirectly, all or substantially all of its assets to, another corporation or other entity unless (1) the resulting, surviving or transferee corporation or other entity assumes by supplemental indenture all of the obligations of the Corporation under the Debt Securities and the Indenture, (2) immediately after giving effect to the transaction no Event of Default, and no event that, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing, and (3) the Corporation shall have delivered an officers' certificate and an opinion of counsel each stating that the consolidation, merger or transfer and the supplemental indenture comply with the terms of the Indenture.

When a successor corporation or other entity, trustee, paying agent or registrar assumes all of the obligations of its predecessor under the Debt Securities and the Indenture, the predecessor will be released from those obligations.

#### DEFAULT AND REMEDIES

An Event of Default under the Indenture in respect of any series of Debt Securities includes: default for 30 days in payment of interest on the Debt Securities or a related coupon, if any, of that series; default in payment of principal on the Debt Securities of that series; failure by the Corporation for 30 days after notice to it to comply with any of its other agreements in the Indenture for the benefit of holders of Debt Securities of that series; failure by the Corporation or any Subsidiary to pay when due principal of or interest on any Debt (other than the Debt Securities) having a then-outstanding principal amount in excess of \$20,000,000 or the maturity of any such Debt shall have been accelerated; certain events of bankruptcy or insolvency; and any other Event of Default specifically provided for by the terms of such series, as described in the related Prospectus Supplement. If an Event of Default occurs and is continuing, the Trustee or the holders of at least 25% in principal amount of the outstanding Debt Securities of the affected series may declare the Debt Securities of that series to be due and payable immediately, but under certain conditions such acceleration may be rescinded by the holders of a majority in principal amount of the outstanding Debt Securities of the affected series.

Securityholders may not enforce the Indenture or the Debt Securities except as provided in the Indenture. The Trustee may refuse to enforce the Indenture or the Debt Securities unless it receives indemnity satisfactory to it. Subject to certain limitations, holders of a majority in principal amount of the Debt Securities of any series may direct the Trustee in its exercise of any trust or power under the Indenture in respect of that series. The Indenture provides that the Trustee will, within 90 days after the occurrence of any default with respect to the Debt Securities of any particular series, give to the holders of such Debt Securities notice of the default if known to it, unless the default shall have been cured or waived. The Trustee may withhold from Securityholders notice of any continuing default (except a default in payment of principal of (or premium, if any) or interest, if any) if it determines that withholding such notice does not adversely affect the interests of such Holders.

If, for the purpose of obtaining a judgment in any court with respect to any obligation of the Corporation under the Indenture, any Debt Security, or any related coupon, as the case may be, it becomes necessary to convert into any other currency or currency unit any amount in the currency or currency unit due under the Indenture, such Debt Security or coupon, as the case may be, the conversion will be made by the Currency Determination Agent appointed pursuant to the Indenture with respect to such Debt Security at the Market Exchange Rate in effect on the date of entry of the judgment (the "Judgment Date"). If pursuant to any such judgment, conversion is made on a date (the "Substitute Date") other than the Judgment Date and a change has occurred between the Market Exchange Rate in effect on the Judgment Date and the Market Exchange Rate in effect on the Substitute Date, the Indenture requires the Corporation to pay such additional amounts (if any) as may be necessary to ensure that the amount paid is equal to the amount in such other currency or currency unit which, when converted at the Market Exchange Rate in effect on the Judgment Date, is the amount then due under the Indenture, such Debt Security or coupon, as the case may be. The Corporation will not, however, be required to pay more in the currency or currency unit due under the Indenture, such Debt Security or coupon, as the case may be, at the Market Exchange Rate in effect on the Judgment Date than the amount of currency or currency unit stated to be due under the Indenture, such Debt Security or coupon, as the case may be, and the Corporation will be entitled to withhold (or be reimbursed for, as the case may be), any excess of the amount actually realized upon any such conversion at the Substitute Date over the amount due and payable on the Judgment Date.

A director, officer, employee or stockholder, as such, of the Corporation shall not have any liability for any obligations of the Corporation under the Debt Securities or the Indenture or for any claim based on, in respect of, or by reason of such obligations or their creation. By accepting a Debt Security, each

Securityholder waives and releases all such claims and liability. This waiver and release are part of the consideration for the issue of the Debt Securities.

#### DEFEASANCE

The Indenture provides, unless such provision is made inapplicable to the Debt Securities of any series issued pursuant to the Indenture, that the Corporation may, subject to certain conditions described below, discharge its indebtedness and its obligations or certain of its obligations under the Indenture in respect of Debt Securities of a series by depositing funds or Government Obligations with the Trustee. The Indenture provides that (1) the Corporation will be discharged from any obligation to comply with certain restrictive covenants of the Indenture and certain other obligations under the Indenture and any noncompliance with such obligations shall not be an Event of Default in respect of the series of Debt Securities or (2) provided that 91 days have passed from the date of the deposit referred to below and certain specified Events of Default have not occurred, the Corporation will be discharged from any and all obligations in respect of the series of Debt Securities (except for certain obligations, including obligations to register the transfer and exchange of the Debt Securities of such series, to replace mutilated, lost or stolen Debt Securities of such series, to maintain paying agencies and to cause money to be held in trust), in either case upon the deposit with the Trustee, in trust, of money and/or Government Obligations that, through the payment of interest and principal in accordance with their terms, will provide money in an amount sufficient to pay the principal of (and premium, if any) and each installment of interest, if any, on the series of Debt Securities on the date when such payments become due in accordance with the terms of the Indenture and the series of Debt Securities. Such a trust may (except to the extent the terms of the Debt Securities of such series provide otherwise) only be established, if among other things, (a) the deposit of money and/or Government Obligations will not result in a breach or violation of, or constitute a default under, the Indenture or any other agreement or instrument to which the Corporation is a party or by which it is bound, (b) the Corporation shall have delivered to the Trustee an opinion of counsel to the effect that the holders of Debt Securities of such series will not recognize income, gain or loss for federal income tax purposes as a result of such deposit, defeasance or discharge and will be subject to federal income tax on the same amount and in the same manner and at the same times as would have been the case if such deposit, defeasance or discharge had not occurred and (c) if the Debt Securities are then listed on any securities exchange, the Corporation shall have delivered to the Trustee an opinion of counsel to the effect that such deposit, defeasance or discharge will not cause the Debt Securities to be delisted. In the event of any such defeasance under clause (1) above, the obligations of the Corporation under the Indenture and the Debt Securities of the affected series, other than with respect to the covenants relating to limitations on liens and sale-leaseback transactions and the delivery of compliance certificates, shall remain in full force and effect. In the event of defeasance and discharge under clause (2) above, the holders of Debt Securities of the affected series are entitled to look only to the trust fund created by such deposit for payment.

Pursuant to the escrow or trust agreements that the Corporation may execute in connection with the defeasance of all or certain of its obligations under the Indenture as provided above, the Corporation from time to time may elect to substitute Government Obligations for any or all of the Government Obligations deposited with the Trustee; provided that the money and/or Government Obligations in trust following such substitution or substitutions will be sufficient, through the payment of interest, if any, and principal in accordance with their terms, to pay the principal of (and premium, if any) and each installment of interest on the series of Debt Securities on the date when such payments become due in accordance with the terms of the Indenture and the series of Debt Securities. The escrow or trust agreements also may enable the Corporation (1) to direct the Trustee to invest any money received by the Trustee on the Government Obligations comprising the trust in additional Government Obligations, and (2) to withdraw monies or Government Obligations from the trust from time to time; provided that the money and/or Government Obligations in trust following such withdrawal will be sufficient, through the payment of interest, if any, and principal in accordance with their terms, to pay the principal of (and premium, if any) and each installment of interest on the series of Debt Securities on the date when such payments become due in accordance with the terms of the Indenture and the series of Debt Securities.



## NOTICES

Except as may otherwise be set forth in the Prospectus Supplement relating to a series of Debt Securities, notices to Holders of Bearer Securities will be given by publication in a daily newspaper in the English language of general circulation in the City of New York and in London, and so long as such Bearer Securities are listed on the Luxembourg Stock Exchange and the Luxembourg Stock Exchange shall so require in a daily newspaper of general circulation in Luxembourg or, if not practical, elsewhere in Western Europe. Such publication is expected to be made in The Wall Street Journal, the Financial Times and the Luxemburger Wort. Notices to Holders of Registered Securities will be given by mail to the addresses of such Holders as they appear in the Security Register.

## TITLE

Title to any temporary Global Security, any permanent Global Security, and Bearer Securities and any coupons appertaining thereto will pass by delivery. The Corporation, the Trustee and any agent of the Corporation or the Trustee may treat the bearer of any Bearer Security and the bearer of any coupon and the registered owner of any Registered Security as the absolute owner thereof (whether or not such Debt Security or coupon shall be overdue and notwithstanding any notice to the contrary) for the purpose of making payment and for all other purposes.

## GOVERNING LAW

The Debt Securities and the Indenture will be governed by the laws of the State of New York.

## TRUSTEE

An affiliate of Marine Midland Bank participates in the Corporation's revolving credit facility and from time to time performs other services for the Corporation in the normal course of business.

## ADDITIONAL INFORMATION

The Indenture is an exhibit to the Registration Statement of which this Prospectus is a part. Any person who receives this Prospectus may obtain a copy of the Indenture without charge by writing to the Corporation at the address listed under the caption "Incorporation of Certain Information by Reference."

## LIMITATIONS ON ISSUANCE OF BEARER SECURITIES

In compliance with United States federal tax laws and regulations, Bearer Securities may not be offered or sold during the restricted period (as defined in Section 1.163-5(c)(2)(i)(D)(7) of the United States Treasury regulations) or delivered in connection with their sale during the restricted period in the United States or its possessions or to United States persons (each as defined below) except to the extent permitted under Section 1.163-5(c)(2)(i)(D) of the United States Treasury regulations (the "D Rules"), and any underwriters, agents and dealers participating in the offering of Debt Securities must agree that they will not offer for sale or resale, or sell, Bearer Securities in the United States or its possessions or to United States persons, except to the extent permitted under the D Rules, nor deliver Bearer Securities within the United States.

Bearer Securities and any coupons appertaining thereto will bear a legend substantially to the following effect: "Any United States person who holds this obligation will be subject to limitations under the United States income tax laws, including the limitations provided in Sections 165(j) and 1287(a) of the Internal Revenue Code." Under Sections 165(j) and 1287(a) of the Code and the regulations thereunder, Holders of Bearer Securities that are United States persons, with certain exceptions, will not be allowed to deduct any loss sustained on the sale, exchange, redemption or other disposition of Bearer Securities and will be taxed at ordinary income rates on any gain (which might otherwise be characterized as capital gain) recognized on such sale, exchange or disposition. In addition, interest on Bearer Securities will be payable only outside the United States.

As used herein, "United States" means the United States of America (including the States and the District of Columbia), and its "possessions," including Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and the Northern Mariana Islands, and "United States person" means an individual who is a citizen or resident of the United States, a corporation, partnership or other entity created or organized in or under the laws of the United States or any political subdivision thereof, or any estate or trust the income of which is subject to United States Federal income taxation regardless of its source.

#### PLAN OF DISTRIBUTION

The Corporation may sell Debt Securities to or through underwriters or to dealers, acting as principals for their own account and also may sell Debt Securities directly to other purchasers or through agents. The Prospectus Supplement in respect of which this Prospectus is being delivered sets forth the terms of the offering of the Offered Debt Securities and includes, without limitation, (i) the name or names of any underwriters, dealers or agents with which the Corporation has entered into arrangements with respect to the sale of the Offered Debt Securities, (ii) the initial public offering or purchase price of the Offered Debt Securities, (iii) the principal amounts of the Offered Debt Securities to be purchased by any such underwriters, dealers or agents, (iv) any underwriting discounts, commissions and other items constituting underwriters' compensation and any other discounts, concessions or commissions allowed or reallocated or paid by any underwriters or other dealers, (v) any commissions paid to any agents, (vi) the net proceeds to the Corporation and (vii) the securities exchanges, if any, on which the Offered Debt Securities will be listed.

If underwriters are used in the offering of Debt Securities, the Debt Securities being sold will be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of such resale. Unless otherwise set forth in an applicable Prospectus Supplement, the obligations of the underwriters to purchase such Debt Securities will be subject to certain conditions precedent and each of the underwriters with respect to such Debt Securities will be obligated to purchase all of the Debt Securities allocated to it if any such Debt Securities are purchased. Any initial public offering price and any discounts or concessions allowed or reallocated or paid to dealers may be changed from time to time.

If dealers are utilized in the sale of the Debt Securities in respect of which this Prospectus is being delivered, the Corporation will sell such Debt Securities to such dealers as principals. The dealers may then resell such Debt Securities to the public at varying prices to be determined by such dealers at the time of resale.

Offers to purchase Debt Securities may be solicited by agents designated by the Corporation from time to time. Any such agent, who may be deemed to be an underwriter as that term is defined in the Securities Act, involved in the offer or sale of the Debt Securities in respect of which this Prospectus is being delivered will be named, and any commissions payable by the Corporation to such agent will be set forth, in the Prospectus Supplement. Unless otherwise indicated in the Prospectus Supplement in respect of which this Prospectus is being delivered, any such agent will be acting on a reasonable or best efforts basis for the period of its appointment.

Offers to purchase Debt Securities may be solicited, and sales thereof may be made directly by the Corporation to institutional investors or otherwise, who may be deemed to be underwriters within the meaning of the Securities Act with respect to any resales thereof.

Underwriters, dealers and agents participating in the distribution of Debt Securities may be deemed to be "underwriters," as that term is defined under the Securities Act, and any discounts and commissions received by them and any profit realized by them on the resale thereof may be deemed to be underwriting discounts and commissions, under the Securities Act.

Under agreements that may be entered into by the Corporation, underwriters, dealers and agents who participate in the distribution of Debt Securities may be entitled to indemnification by the Corporation against certain liabilities, including certain liabilities under the Securities Act.

If indicated in the Prospectus Supplement, the Corporation may authorize underwriters or other persons acting as the Corporation's agents to solicit offers by certain institutions to purchase Offered Debt Securities from the Corporation pursuant to contracts providing for payment and delivery on a future date. Institutions with which such contracts may be made include commercial and savings banks, insurance companies, pension funds, investment companies, educational and charitable institutions and others, but in all cases such institutions must be approved by the Corporation. The obligations of any purchaser under any such contract will be subject to the condition that the purchase of the Offered Debt Securities shall not at the time of delivery be prohibited under the laws of the jurisdiction to which such purchaser is subject. The underwriters and any such other agents will not have any responsibility in respect of the validity or performance of such contracts.

#### VALIDITY

The validity of the Debt Securities offered hereby will be passed on for the Corporation by Miles & Stockbridge, a Professional Corporation, Baltimore, Maryland. If this Prospectus is being delivered in an underwritten offering of Debt Securities, certain matters will be passed on for any underwriters by Simpson Thacher & Bartlett (a partnership which includes professional corporations), New York, New York. Simpson Thacher & Bartlett may rely, as to matters of Maryland law, upon the opinion of Miles & Stockbridge, a Professional Corporation.

#### EXPERTS

The consolidated financial statements of the Corporation appearing in the Corporation's Annual Report on Form 10-K for the year ended December 31, 1993, have been audited by Ernst & Young, independent auditors, as set forth in their report thereon included therein and incorporated herein by reference. Such consolidated financial statements are incorporated herein by reference in reliance upon such report given upon the authority of such firm as experts in accounting and auditing.

## PART II

### INFORMATION NOT REQUIRED IN PROSPECTUS

#### ITEM 14. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION.

The following table sets forth the expenses (other than underwriting discounts and commissions) expected to be incurred in connection with the offering or offerings described in this Registration Statement. All amounts are estimated except the Securities and Exchange Commission registration fee.

|  |           |
|--|-----------|
| Securities and Exchange Commission registration fee..... | \$172,414 |
| Trustee fees and expenses.....                           | 15,000    |
| Legal fees and expenses.....                             | 200,000   |
| Accounting fees and expenses.....                        | 200,000   |
| Printing and engraving fees and expenses.....            | 60,000    |
| Rating agency fees.....                                  | 170,000   |
| Blue Sky fees and expenses (including legal fees).....   | 25,000    |
| Miscellaneous.....                                       | 17,586    |
|  | -----     |
|  | \$860,000 |
|  | =====     |

#### ITEM 15. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

The Corporation's By-Laws provide that the Corporation may indemnify and advance expenses to its currently acting and its former directors to the fullest extent permitted by the Maryland General Corporation Law, and that the Corporation may indemnify and advance expenses to its officers to the same extent as its directors and to such further extent as is consistent with law. The Maryland General Corporation Law provides that a corporation may indemnify any director made a party to any proceeding by reason of service in that capacity unless it is established that: (1) the act or omission of the director was material to the matter giving rise to the proceeding and (a) was committed in bad faith or (b) was the result of active and deliberate dishonesty, or (2) the director actually received an improper personal benefit in money, property or services, or (3) in the case of any criminal proceeding, the director had reasonable cause to believe that the act or omission was unlawful. The statute permits Maryland corporations to indemnify its officers, employees or agents to the same extent as its directors and to such further extent as is consistent with law.

The Corporation's Charter provides that, to the fullest extent limitations on the liability of directors and officers are permitted by the Maryland General Corporation Law, no director or officer of the Corporation shall have any liability to the Corporation or its stockholders for monetary damages. The Maryland General Corporation Law provides that a corporation's charter may include a provision which restricts or limits the liability of its directors or officers to the corporation or its stockholders for money damages except: (1) to the extent that it is proved that the person actually received an improper benefit or profit in money, property or services, for the amount of the benefit or profit in money, property or services actually received, or (2) to the extent that a judgment or other final adjudication adverse to the person is entered in a proceeding based on a finding in the proceeding that the person's action, or failure to act, was the result of active and deliberate dishonesty and was material to the cause of action adjudicated in the proceeding. In situations to which the Charter provision applies, the remedies available to the Corporation or a stockholder are limited to equitable remedies such as injunction or rescission. This provision would not, in the opinion of the Commission, eliminate or limit the liability of directors and officers under the federal securities laws.

The form of underwriting agreement filed as an exhibit to this Registration Statement provides for indemnification by the Corporation of the underwriters or controlling persons of the underwriters under certain circumstances.

ITEM 16. EXHIBITS.

- 1 Form of Underwriting Agreement.
- 4 Form of Indenture.
- 5 Opinion of Miles & Stockbridge, a Professional Corporation.
- 12 Statement regarding computation of ratio of earnings to fixed charges.
- 23(a) Consent of Ernst & Young.
- 23(b) Consent of Miles & Stockbridge, a Professional Corporation (included in Exhibit 5).
- 24 Powers of Attorney.
- 25 Form T-1, Statement of Eligibility and Qualification Under the Trust Indenture Act of 1939.

ITEM 17. UNDERTAKINGS.

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs (a)(i) and (a)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

(2) That, for the purpose 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.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to section 13(a) or 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.

(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.

(i) The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act of 1933 shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus 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.

(j) The undersigned registrant hereby undertakes to file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of section 310 of the Trust Indenture Act of 1939 in accordance with the rules and regulations prescribed by the Commission under section 305(b)(2) of the Trust Indenture Act of 1939.

# SIGNATURES

PURSUANT TO THE REQUIREMENTS OF THE SECURITIES ACT OF 1933, THE REGISTRANT CERTIFIES THAT IT HAS REASONABLE GROUNDS TO BELIEVE THAT IT MEETS ALL OF THE REQUIREMENTS FOR FILING ON FORM S-3 AND HAS DULY CAUSED THIS REGISTRATION STATEMENT TO BE SIGNED ON ITS BEHALF BY THE UNDERSIGNED, THEREUNTO DULY AUTHORIZED, IN THE CITY OF TOWSON, STATE OF MARYLAND, THE 25TH DAY OF MAY 1994.

THE BLACK & DECKER CORPORATION

/S/ CHARLES E. FENTON

By: \_\_\_\_\_  
Charles E. Fenton  
Vice President and General Counsel

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.

| SIGNATURES<br>-----                  | TITLE<br>-----   | DATE<br>----- |
|--------------------------------------|--|---------------|
| <br>*<br>_____<br>NOLAN D. ARCHIBALD | Chairman, President<br>and Chief Executive<br>Officer (Principal<br>Executive Officer) | May 25, 1994  |
| <br>*<br>_____<br>THOMAS M. SCHOEWE  | Vice President--<br>Finance (Principal<br>Financial Officer)                           | May 25, 1994  |
| <br>*<br>_____<br>STEPHEN F. REEVES  | Corporate Controller<br>(Principal<br>Accounting Officer)                              | May 25, 1994  |

The registration statement also has been signed on the date indicated by the following directors, who constitute a majority of the Board of Directors:

|                        |                          |
|------------------------|--------------------------|
| Nolan D. Archibald*    | J. Dean Muncaster*       |
| Barbara L. Bowles*     | Lawrence R. Pugh*        |
| Malcolm Candlish*      | Mark H. Willes*          |
| Alonzo G. Decker, Jr.* | M. Cabell Woodward, Jr.* |
| Anthony Luiso*         |                          |

/S/ CHARLES E. FENTON  
May 25, 1994  
\*By: \_\_\_\_\_  
Charles E. Fenton  
(As Attorney-in-fact)

# EXHIBIT INDEX

| EXHIBIT NO.<br>----- | DESCRIPTION<br>-----   | PAGE<br>---- |
|----------------------|--|--------------|
| 1                    | Form of Underwriting Agreement.  |              |
| 4                    | Form of Indenture.   |              |
| 5                    | Opinion of Miles & Stockbridge, a Professional Corporation.  |              |
| 12                   | Statement regarding computation of ratio of earnings to fixed charges.   |              |
| 23(a)                | Consent of Ernst & Young.  |              |
| 23(b)                | Consent of Miles & Stockbridge, a Professional Corporation (included in Exhibit 5).                                      |              |
| 24                   | Powers of Attorney.  |              |
| 25                   | Form T-1, Statement of Eligibility and Qualification Under the Trust Indenture Act of 1939 (filed under separate cover). |              |



THE BLACK & DECKER CORPORATION

Debt Securities

UNDERWRITING AGREEMENT - BASIC PROVISIONS

as of \_\_\_\_\_, 1994

Dear Sirs:

The Black & Decker Corporation, a Maryland corporation (the "Corporation"), proposes from time to time to enter into one or more Pricing Agreements in the form of Annex I hereto, with such additions and deletions as the parties thereto may determine (each a "Pricing Agreement"), and, subject to the terms and conditions stated herein and therein, to issue and sell to the firm or firms named in Schedule I to the applicable Pricing Agreement (such firm or firms constituting the "Underwriters" with respect to such Pricing Agreement and the securities specified therein) certain of its debt securities (the "Securities") specified in Schedule II to such Pricing Agreement (such Securities, as so specified in such Pricing Agreement, being herein sometimes referred to as the "Designated Securities"). This Agreement, the applicable Pricing Agreement, the Securities and the Indenture are hereinafter referred to collectively as the "Operative Documents".

The terms and rights of any particular issuance of Designated Securities shall be as specified in the Pricing Agreement relating thereto and in or pursuant to the indenture dated as of \_\_\_\_\_, 1994 (such indenture, together with any indentures supplemental thereto, being herein referred to as the "Indenture") between the Corporation and Marine Midland Bank, a banking corporation and trust company organized under the laws of the State of New York, as Trustee (the "Trustee").

For purposes of this Agreement, the terms "Act," "the Trust Indenture Act," "the 1933 Act Regulations," and "the Trust Indenture Act Regulations" shall mean the Securities Act of 1933, as amended, the Trust Indenture Act of 1939, as amended, respectively, and the rules and regulations promulgated by the Securities and Exchange Commission (the "Commission") under the Act and the Trust Indenture Act, respectively.

1. Obligations of Corporation and Underwriters. Particular sales of Designated Securities may be made from time to time to the Underwriters of such Securities, for whom the firms designated as

representatives of the Underwriters of such Securities in the Pricing Agreement relating thereto will act as representatives (the "Representatives"). The term "Representatives" also refers to a single firm acting as sole representative of the Underwriters, to a single firm acting as an Underwriter and to Underwriters that act without any firm being designated as their representative. This Agreement, absent the execution and delivery of a Pricing Agreement in respect of Designated Securities, shall not be construed as an obligation of the Corporation to sell any of the Securities or as an obligation of any of the Underwriters to purchase the Securities. The obligation of the Corporation to issue and sell any of the Securities and the obligation of any of the Underwriters to purchase any of the Securities shall be evidenced by the Pricing Agreement with respect to the Designated Securities specified therein. Each Pricing Agreement shall state the aggregate principal amount of such Designated Securities, the initial public offering price of such Designated Securities, the purchase price to the Underwriters of such Designated Securities, the name or names of the Underwriters of such Designated Securities, the principal amount of such Designated Securities to be purchased by each Underwriter, and shall set forth the date, time and manner of delivery of such Designated Securities and payment therefor. The Pricing Agreement shall also specify (to the extent not set forth in the registration statement and the prospectus with respect thereto and in the Indenture) the terms of such Designated Securities. A Pricing Agreement shall be in the form of an executed writing (which may be in counterparts), and may be evidenced by an exchange of facsimile transmissions. Each Pricing Agreement shall be deemed to be an agreement by the Corporation and the Underwriters to be bound, except as otherwise expressly stated in such Pricing Agreement, by the terms of this Agreement. The obligations of the Underwriters under this Agreement and each Pricing Agreement shall be several and not joint.

2. Representations, Warranties and Agreements of the Corporation. The Corporation represents, warrants and agrees at and as of the date hereof, as of the date of the applicable Pricing Agreement and as of the Time of Delivery (as hereinafter defined) (in each case, the "Representation Date") that:

(a) The Corporation meets the requirements for use of Form S-3 under the Act. The Corporation has prepared and filed with the Commission a registration statement on Form S-3 (File No. 33-\_\_\_\_\_) relating to the Securities and the offering thereof and has filed such amendments thereto as may have been required to the date hereof. Such registration statement, as amended, has been declared effective by the Commission. No stop order suspending the effectiveness of such registration statement has been issued and no proceeding for that purpose has been initiated or threatened by the Commission.

As provided in Section 5, a prospectus supplement reflecting the terms of the Designated Securities, the terms

of the offering thereof and the other matters set forth therein will be prepared and filed pursuant to Rule 424 under the Act. In addition, a preliminary prospectus supplement reflecting the terms of the Designated Securities, the terms of the offering thereof, and the other matters set forth therein may also be prepared and filed pursuant to Rule 424 under the Act. Such prospectus supplement, in the form first filed pursuant to Rule 424, is herein referred to as the "Prospectus Supplement", and any such preliminary prospectus supplement in the form filed pursuant to Rule 424 is hereinafter referred to as the "Preliminary Prospectus Supplement". Any prospectus accompanied by a Preliminary Prospectus Supplement is hereinafter referred to, collectively with such Preliminary Prospectus Supplement, as a "Preliminary Prospectus". The registration statement referred to above in this Section 2(a), as amended at the time of execution of the applicable Pricing Agreement, including the exhibits thereto and the documents incorporated by reference therein, is herein called the "Registration Statement", and the basic prospectus included therein relating to all offerings of securities under the Registration Statement, as supplemented by the Prospectus Supplement, is herein called the "Prospectus", except that, if such basic prospectus is amended or supplemented on or prior to the date on which the Prospectus Supplement is first filed pursuant to Rule 424, the term "Prospectus" shall refer to the basic prospectus as so amended or supplemented and as supplemented by the Prospectus Supplement in the form first filed, in each case including the documents filed by the Corporation with the Commission pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"), that are incorporated by reference therein. All references in this Agreement to financial statements and schedules and other information, facts and statements which are "contained," "included" or "stated" in the Registration Statement, the Prospectus or the Preliminary Prospectus (and all other references of like import) shall be deemed to mean and include all such financial statements and schedules and other information which is or is deemed to be incorporated by reference in the Registration Statement, the Prospectus or the Preliminary Prospectus, as the case may be.

(b) The Registration Statement and the Prospectus, at the time the Registration Statement became effective and as of the applicable Representation Date, complied and will comply in all material respects with the applicable requirements of the Act and the 1933 Act Regulations (including with respect to the offering of the Securities under Rule 415 of such regulations). The Registration Statement, at the time the Registration Statement became effective (or, if an amendment to the Registration Statement or an annual report on Form 10-K has been filed by the Corporation with the Commission subsequent to the effectiveness of the Registration Statement, then at the time of the most recent such filing) did not 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 not misleading. The Prospectus, at the time the Registration Statement became effective and as of the applicable Representation Date, did not and will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that the representations and

-----  
warranties in this subsection shall not apply to statements in or omissions from the Registration Statement or Prospectus made in reliance upon and in conformity with information furnished to the Corporation in writing by any of the Underwriters expressly for use in the Registration Statement or Prospectus relating to such Designated Securities or to that part of the Registration Statement which shall constitute the Statement of Eligibility and Qualification under the Trust Indenture Act (Form T-1) of the Trustee under the Indenture.

(c) The documents incorporated by reference in the Registration Statement and Prospectus, at the time they were or hereafter are filed with the Commission, complied and will comply in all material respects with the applicable requirements of the Exchange Act, and the applicable rules and regulations of the Commission thereunder and, when read together with the other information in the Prospectus, at the time the Registration Statement and any amendments thereto became or become effective and at each Representation Date, did not and will not contain an untrue statement of a material fact and will not omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading.

(d) When the Registration Statement became effective, the Indenture was, and at all times thereafter the Indenture has been and will be, duly qualified under the Trust Indenture Act, and when such Registration Statement became effective the Indenture conformed, and at all times thereafter the Indenture has conformed and will conform, in all material respects to the applicable requirements of the Trust Indenture Act and the Trust Indenture Act Regulations.

(e) The Corporation has all requisite corporate power and authority to execute and deliver this Agreement and each Pricing Agreement. This Agreement and the applicable Pricing Agreement have been duly authorized, executed and delivered by the Corporation.

(f) The Corporation has all of the requisite corporate power and authority to execute, issue and deliver the Designated Securities and to incur and perform its obligations provided for therein; from the time a Pricing Agreement is executed and delivered by the Corporation in respect of

Designated Securities, such Designated Securities will have been duly authorized by the Corporation and, when such Designated Securities are authenticated in the manner provided for in the Indenture and delivered against payment therefor as provided for in this Agreement and the applicable Pricing Agreement, such Designated Securities will have been duly executed, authenticated (assuming due authentication by the Trustee), issued and delivered and will constitute legal, valid and binding obligations of the Corporation entitled to the benefits of the Indenture and enforceable against the Corporation in accordance with their terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws affecting enforcement of creditors' rights generally, by general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law) or by an implied covenant of good faith and fair dealing; and the Designated Securities conform in all material respects to the description thereof contained in the Prospectus.

(g) The Corporation has all of the requisite corporate power and authority to execute and deliver the Indenture and to perform its obligations provided for therein; the Indenture has been duly authorized, executed and delivered by the Corporation, will be substantially in the form heretofore delivered to the Underwriters and assuming due execution and delivery by the Trustee, will constitute a legal, valid and binding obligation of the Corporation, enforceable against the Corporation in accordance with its terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws affecting enforcement of creditors' rights generally, by general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law) or by an implied covenant of good faith and fair dealing; and the Indenture conforms in all material respects to the description thereof contained in the Prospectus.

(h) The Corporation and each of its subsidiaries (as defined in Section 15) have been duly incorporated and are validly existing as corporations in good standing under the laws of their respective jurisdictions of incorporation, are duly qualified to do business and are in good standing as foreign corporations in each jurisdiction in which their respective ownership or lease of property or the conduct of their respective businesses requires such qualification (except where the failure to be so qualified or be in good standing would not have, individually or in the aggregate, a material adverse effect on the business or financial condition of the Corporation and its subsidiaries taken as a whole), and have all power and authority necessary to own or hold their respective properties and to conduct the business in which they are engaged.

(i) The Corporation has an authorized capitalization as set forth in the Prospectus, and all of the issued shares of capital stock of the Corporation have been duly and validly authorized and issued, are full paid and non-assessable; and all of the issued shares of capital stock of each subsidiary of the Corporation have been duly and validly authorized and issued and are fully paid, non-assessable and (except for directors' qualifying shares) owned directly or indirectly by the Corporation, free and clear of all liens, encumbrances, equities or claims (except for such liens, encumbrances, equities or claims arising as a matter of law that would not have a material adverse effect on the business or financial condition of the Corporation and its subsidiaries taken as a whole).

(j) The issuance, sale and delivery of the Designated Securities, the execution, delivery and performance of the other Operative Documents, the compliance by the Corporation with the terms therein and the consummation by the Corporation of the transactions contemplated hereby, thereby and by the Registration Statement do not and will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Corporation or any of its subsidiaries is a party or by which the Corporation or any of its subsidiaries is bound or to which any of the property or assets of the Corporation or any of its subsidiaries is subject, (ii) result in any violation of the provisions of the charter or by-laws of the Corporation or (except for any violation the result of which would not be material to the Corporation and its subsidiaries taken as a whole and would not adversely affect the consummation of the transactions contemplated hereby and thereby) any of its subsidiaries or (iii) result in the violation of any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Corporation or any of its subsidiaries or any of their properties the result of which violation would be material to the Corporation and its subsidiaries taken as a whole or would adversely affect the consummation of the transactions contemplated hereby or thereby. Except (i) for such consents, approvals, authorizations, registrations or qualifications as may be required under applicable state or foreign securities laws and (ii) such consents, approvals, authorizations, registrations and qualifications as have been obtained or made and are in full force and effect at the Time of Delivery, no consent, approval, authorization or order of, or filing or registration with, any such court or governmental agency or body is required for the valid authorization, issuance, sale and delivery of the Designated Securities or the authorization, execution, delivery and performance of this Agreement and the applicable Pricing Agreement by the Corporation and the consummation of the transactions contemplated hereby and

thereby. No consent, approval, authorization or order of, or filing or registration with, any such court or governmental agency or body is required for the due authorization, execution, delivery and performance of the Indenture and the consummation of the transactions contemplated thereby.

(k) Other than rights in favor of Newell Co. which have been waived or satisfied in respect of the Registration Statement, there are no contracts, agreements or understandings between the Corporation and any person granting such person the right to require the Corporation to file a registration statement under the Act with respect to any securities of the Corporation owned or to be owned by such person or to require the Corporation to include such securities in the securities registered pursuant to the Registration Statement or in any securities being registered pursuant to any other registration statement filed by the Corporation under the Act.

(l) Neither the Corporation nor any of its subsidiaries has sustained, since the date of the latest audited financial statements included or incorporated by reference in the Prospectus, any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, material, individually or in the aggregate, to the Corporation and its subsidiaries taken as a whole, otherwise than as set forth or contemplated in the Prospectus; and, since such date, there has not been any change in the capital stock or long-term debt of the Corporation or any of its subsidiaries otherwise than in the ordinary course of business or any material adverse change, or any development reasonably likely to involve a prospective material adverse change, in or affecting the general affairs, management, financial position, stockholders' equity or results of operations of the Corporation and its subsidiaries taken as a whole, otherwise than as set forth or contemplated in the Prospectus.

(m) The financial statements (including the related notes and supporting schedules) filed as part of the Registration Statement or included or incorporated by reference in the Prospectus present fairly the financial condition and results of operations of the entities purported to be shown thereby, at the dates and for the periods indicated, and have been prepared in conformity with generally accepted accounting principles applied on a consistent basis throughout the periods involved, except as otherwise stated therein.

(n) Ernst & Young, who have certified certain financial statements of the Corporation and whose report appears in the Prospectus or is incorporated by reference therein, are (and were at the time such reports were issued) independent public

accountants as required by the Act and the 1933 Act Regulations.

(o) The Corporation and each of its subsidiaries own or possess adequate rights to use all patents, patent applications, trademarks, service marks, trade names, trademark registrations, service mark registrations, copyrights and licenses necessary and material to the conduct of their respective businesses as now being conducted except when the failure to own or possess adequate rights to use any such patents, patent applications, trademarks, service marks, trade names, trademark registrations, service mark registrations, copyrights or licenses would not have, individually or in the aggregate, a material adverse effect on the business or financial condition of the Corporation and its subsidiaries taken as a whole and have no reason to believe that the conduct of their respective businesses as now being conducted conflict with, and have not received any notice of any claim of conflict with, the rights of others in respect thereof except for any such conflict or claim of conflict which is not reasonably likely to have, individually or in the aggregate, a material adverse effect on the business or financial condition of the Corporation and its subsidiaries taken as a whole.

(p) Except as described in the Prospectus, there are no legal or governmental proceedings pending to which the Corporation or any of its subsidiaries is a party or of which any property of the Corporation or any of its subsidiaries is the subject which are reasonably likely to have a material adverse effect on the consolidated financial position, stockholders' equity, results of operations, business or prospects of the Corporation and its subsidiaries taken as a whole; and to the best of the Corporation's knowledge except as described in the Prospectus, no such proceedings are threatened or contemplated by governmental authorities or threatened by others.

(q) There are no contracts or other documents which are required to be described in the Prospectus or filed as exhibits to the Registration Statement by the Act or by the 1933 Act Regulations which have not been described in the Prospectus or filed as exhibits to the Registration Statement or incorporated therein by reference as permitted by the 1933 Act Regulations.

(r) Neither the Corporation nor any of its subsidiaries (i) is in violation of its charter or by-laws, (ii) is in default in any material respect, and no event has occurred which, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant or condition contained in any material agreement, indenture or instrument, or (iii) is in violation in any material respect of any law, ordinance, governmental



rule, regulation or court decree to which it or its property may be subject or has failed to obtain any material license, permit, certificate, franchise or other governmental authorization or permit necessary to the ownership of its property or to the conduct of its business, except, in the case of clauses (ii) and (iii), for any such defaults, violations or failures which, individually or in the aggregate, would not have a material adverse effect on the business or financial condition of the Corporation and its subsidiaries taken as a whole.

3. Offer and Sale of the Securities. Upon the execution of the Pricing Agreement applicable to any Designated Securities and authorization by the Representatives of the release of the Designated Securities, the several Underwriters propose to offer the Designated Securities for sale upon the terms and conditions set forth in the Prospectus.

4. Delivery of and Payment for the Designated Securities. Delivery of and payment for the Designated Securities shall be made on the fifth Business Day (subject to Section 9 below) following the date of the Pricing Agreement relating thereto at the place and time specified in such Pricing Agreement or at such other date or place as shall be determined by agreement between the Representatives and the Corporation. This date and time are sometimes referred to as a "Time of Delivery." At each Time of Delivery, the Corporation shall deliver or cause to be delivered certificates representing the Designated Securities to the Representatives for the account of each Underwriter against payment to or upon the order of the Corporation of the purchase price by certified or official bank check or checks payable in New York Clearing House (next-day) funds. Time shall be of the essence, and delivery at the time and place specified pursuant to any Pricing Agreement is a further condition of the obligation of each Underwriter under such Pricing Agreement. Upon delivery, the Designated Securities shall be in such denominations and, in the case of Designated Securities in registered form, shall be registered in such names as the Representatives shall request in writing not less than two full Business Days prior to the applicable Time of Delivery. For the purpose of expediting the checking and packaging of the Designated Securities, the Corporation shall make the Designated Securities available for inspection by the Representatives in New York, New York, not later than 2:00 P.M., New York City time, on the Business Day prior to the applicable Time of Delivery.

5. Further Agreements of the Corporation. The Corporation hereby covenants and agrees with each of the Underwriters of any Designated Securities:

(a) Immediately following the execution of each Pricing Agreement, the Corporation will prepare in a form approved by the Representatives a Prospectus Supplement setting forth the principal amount of Designated Securities covered thereby and

their terms not otherwise specified in the Indenture, the names of the Underwriters and the principal amount of Designated Securities which each of them severally has agreed to purchase, the price at which the Securities are to be purchased by the Underwriters from the Corporation, the initial public offering price, the selling concession and reallowance, if any, and such other information as the Representatives and the Corporation deem appropriate in connection with the offering of the Securities. The Corporation will promptly transmit copies of the Prospectus Supplement to the Commission for filing pursuant to Rule 424 under the Act and will furnish to each of the Underwriters as many copies of the Prospectus and such Prospectus Supplement as the Representatives shall reasonably request. The Corporation will make no further amendment or supplement to the Registration Statement or the Prospectus except as permitted herein.

(b) If, during such period after the first date of the public offering of the Designated Securities as in the opinion of the Underwriters' counsel the Prospectus is required to be delivered under the Act in connection with sales by any Underwriter or any dealer, any event occurs as a result of which the Prospectus as then amended or supplemented would include any untrue statement 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, or if for any other reason it shall be necessary to amend or supplement the Prospectus or to file under the Exchange Act any document incorporated by reference in the Prospectus to comply with the Act, the Exchange Act, the Trust Indenture Act or the rules and regulations promulgated by the Commission under such acts, the Corporation will notify the Representatives and, upon their request, file with the Commission an amendment, supplement or document which will correct such untrue statement or omission or which will effect such compliance.

(c) From the date of a Pricing Agreement, and (i) other than with respect to the filing of documents to be incorporated by reference into the Registration Statement or the Prospectus, for so long as a Prospectus is required to be delivered in connection with the sale of Designated Securities covered by such Pricing Agreement and (ii) with respect to the filing of documents to be incorporated by reference into the Registration Statement or the Prospectus, through the date of the Time of Delivery of the Designated Securities covered by such Pricing Agreement, the Corporation will, prior to filing with the Commission any Preliminary Prospectus, any amendment to the Registration Statement or any amendment or supplement to the Prospectus, any document to be incorporated by reference into the Registration Statement or the Prospectus or any Prospectus Supplement pursuant to Rule 424 under the Act, furnish the Representatives and Underwriters' counsel with

copies of any such amendment or supplement or other documents proposed to be filed a reasonable time in advance of filing and will obtain the consent of the Representatives to the filing (which shall not be unreasonably withheld). Subject to the consent requirements of the preceding sentence, the Corporation will file promptly with the Commission any amendment to the Registration Statement or the Prospectus or any supplement to the Prospectus that may, in the judgment of the Corporation or in the opinion of Underwriters' counsel, be required by the Act or requested by the Commission.

(d) From the date of a Pricing Agreement, and for so long as a Prospectus is required to be delivered in connection with the sale of Designated Securities covered by such Pricing Agreement, the Corporation will notify the Underwriters immediately, and confirm the notice in writing, 1. of the effectiveness of any amendment to the Registration Statement, (ii) of the mailing or the delivery to the Commission for filing of any supplement to the Prospectus or any document to be filed pursuant to the Exchange Act which will be incorporated by reference into the Registration Statement or Prospectus, (iii) of the receipt of any written comments from the Commission with respect to the Registration Statement, the Prospectus or any Prospectus Supplement, (iv) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Prospectus or for additional information, and (v) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceedings for that purpose. The Corporation will make every reasonable effort to prevent the issuance of any stop order and, if any stop order is issued, to obtain the lifting thereof at the earliest possible moment.

(e) From the date of any Pricing Agreement through the date of the Time of Delivery with respect to the Designated Securities covered thereby, the Corporation will not, without the prior written consent of the Representatives with respect to the Designated Securities covered thereby, offer for sale, sell or otherwise dispose of, directly or indirectly, any debt securities of the Corporation similar to the Designated Securities that are the subject of the Pricing Agreement, or agree to do any of the foregoing.

(f) The Corporation will deliver promptly to the Representatives such number of the following documents as the Representatives shall reasonably request: (i) conformed copies of the Registration Statement as originally filed with the Commission and each amendment thereto (in each case excluding exhibits other than this Agreement, the Indenture, any forms of notes and the computation of per share earnings), (ii) each Preliminary Prospectus, the Prospectus and any amended or supplemented Prospectus and (iii) any document incorporated by reference in the Prospectus (excluding

exhibits thereto); and the Corporation hereby consents to the use of such documents for the purposes permitted by the Act. The Corporation will deliver to each Underwriter, without charge, from time to time as requested during the period when the Prospectus is required to be delivered under the Act, such number of copies of the Prospectus as such Underwriter may reasonably request; and in case any Underwriter is required to deliver a prospectus in connection with sales of any of the Designated Securities at any time nine months or more after the date on which the offering of such Designated Securities commenced, upon such Underwriter's request, but at the expense of such Underwriter, the Corporation will prepare and deliver to such Underwriter as many copies as it may request of an amended or supplemented Prospectus complying with Section 10(a)(3) of the Act.

(g) The Corporation will endeavor in good faith to qualify the Securities for offer and sale under the securities or blue sky laws of such jurisdictions located within the United States as the Representatives may reasonably request and under the laws of any other country specified in the applicable Pricing Agreement and to maintain all such qualifications in effect for as long as may be required for the distribution of Securities; provided, however, that the Corporation shall not be obligated to file any

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general consent to service of process or to qualify as a foreign corporation in any jurisdiction in which it is not so qualified. The Corporation will file such statements and reports as may be required by the laws of each jurisdiction in which Securities have been qualified as above provided.

(h) With respect to each sale of Designated Securities, the Corporation will make generally available to its security holders and deliver to the Representatives as soon as practicable an earnings statement of the Corporation and its subsidiaries (which need not be audited) complying with Section 11(a) of the Act and the regulations thereunder (including, at the option of the Corporation, Rule 158).

(i) The Corporation will use the proceeds received from the sale of the Designated Securities in the manner specified in the Prospectus.

(j) The Corporation, during the period when the Prospectus is required to be delivered under the Act, will file promptly all documents required to be filed with the Commission pursuant to Section 13 or 14 of the Exchange Act within the time periods required under the Exchange Act (and, other than as set forth in Section 5(c) hereof, the consent of any Underwriter shall not be required in connection with any such filing).

(k) During a period of five years from the date of the Pricing Agreement applicable to such Designated Securities,

the Corporation will furnish to the Representatives copies of all reports or other communications (financial or other) furnished to security holders, and deliver to the Representatives, during such same period, as soon as they are available, copies of any reports and financial statements furnished to or filed with the Commission or the principal national securities exchange on which any of the Securities or any class of securities of the Corporation is listed.

(1) If Designated Securities are to be listed on a securities exchange, the Corporation will use its best efforts to cause such Designated Securities to be so listed, subject only to official notice of issuance.

6. Expenses. Whether or not the transactions contemplated in this Agreement and the related Pricing Agreement are consummated or this Agreement and the related Pricing Agreement are terminated, the Corporation agrees to pay (a) the costs incident to the authorization, issuance, sale and delivery of the Securities and any taxes payable in that connection; (b) the costs incident to the preparation, printing and filing (including, without limitation, the filing fees of the Commission) of the Registration Statement and any amendments and exhibits thereto, any Preliminary Prospectus, the Prospectus and any amendments or supplements thereto and the Indenture and any amendments, supplements or exhibits thereto (including, without limitation, fees and expenses of the Trustee); (c) the costs of distributing the Registration Statement as originally filed and each amendment thereto and any post-effective amendments thereof (including, in each case, exhibits), any Preliminary Prospectus, the Prospectus and any amendment or supplement to the Prospectus or any document incorporated by reference therein, all as provided in this Agreement; (d) the costs of printing or duplicating this Agreement and the related Pricing Agreement; (e) the costs of distributing the terms of agreement relating to the organization of the underwriting syndicate and the selling group to the members thereof by mail, telex or other means of communication; (f) the filing fees incident to securing any required review by the National Association of Securities Dealers, Inc. of the terms of sale of the Securities; (g) any applicable listing or other fees; (h) the fees and expenses of qualifying the Securities under the securities laws of the several jurisdictions as provided in Section 5(g) and of preparing, printing (or duplicating) and distributing a Blue Sky Memorandum (including related fees and expenses of counsel to the Underwriters); (i) the cost of printing certificates representing the Securities; (j) any fees charged by securities rating agencies for rating the Securities, (k) the cost and charges of The Depository Trust Company, Inc. and its nominee in connection with the Designated Securities, including the book-entry ownership system for the Designated Securities, to the extent that the Designated Securities are to be delivered in book-entry form, (l) the fees and expenses of the Trustee and any agent of the Trustee and the fees and disbursements of counsel for the Trustee in connection with the Indenture and the Securities, (m) the cost and

charges of any transfer agent, registrar or disbursing agent, (n) all other costs and expenses incident to the performance of the obligations of the Corporation under this Agreement and any Pricing Agreement and (o) to the Representatives for the account of the Underwriters, any other amount set forth in the Pricing Agreement as reimbursement of expenses incurred by the Underwriters in connection with the transactions contemplated hereby and thereby; provided that, except as provided in this Section 6 and in Section 12, the Underwriters shall pay their own costs and expenses, including the costs and expenses of their counsel, any transfer taxes on the Designated Securities which they may sell and the expenses of advertising any offering of the Designated Securities made by the Underwriters.

7. Conditions of Underwriters' Obligations. The respective obligations of the Underwriters under each Pricing Agreement are subject to the accuracy, at the time of the execution and delivery of such Pricing Agreement and at the applicable Time of Delivery, of the representations and warranties of the Corporation contained herein and in each Pricing Agreement, to the performance at the applicable Time of Delivery by the Corporation of its obligations hereunder and under each Pricing Agreement, and to each of the following additional terms and conditions:

(a) At the applicable Time of Delivery, no stop order suspending the effectiveness of the Registration Statement or any part thereof shall have been issued and no proceeding for that purpose shall have been initiated or threatened by the Commission; and any request of the Commission for inclusion of additional information in the Registration Statement or the Prospectus shall have been complied with. The Prospectus shall have been timely filed with the Commission in accordance with Section 5(a) hereof.

(b) No Underwriter shall have discovered and disclosed to the Corporation at or prior to the applicable Time of Delivery that the Registration Statement or the Prospectus or any amendment or supplement thereto contains an untrue statement of a fact which, in the opinion of Simpson Thacher & Bartlett, counsel for the Underwriters, is material or omits to state a fact which, in the opinion of such counsel is material and is required to be stated therein or is necessary to make the statements therein not misleading.

(c) All corporate proceedings and other legal matters incident to the authorization, form and validity of this Agreement, the applicable Pricing Agreement, the Securities, the Indenture, the Registration Statement and the Prospectus, and all other legal matters relating to this Agreement, the applicable Pricing Agreement and the transactions contemplated hereby and thereby shall be satisfactory in all material respects to counsel for the Underwriters, and the Corporation shall have furnished to such counsel all documents and

information that they may reasonably request to enable them to pass upon such matters.

(d) Miles & Stockbridge, a Professional Corporation shall have furnished to the Representatives their written opinion, as counsel to the Corporation, addressed to the Underwriters and dated as of the applicable Time of Delivery, in form and substance satisfactory to the Representatives, to the effect that:

(i) The Corporation and each of the subsidiaries of the Corporation listed on Schedule 1 hereto (the "Major Subsidiaries") have been duly incorporated and are validly existing as corporations in good standing under the laws of their respective jurisdictions of incorporation, are duly qualified to do business and are in good standing as foreign corporations in each jurisdiction in which their respective ownership or lease of property or the conduct of their respective businesses requires such qualification (other than those jurisdictions in which the failure to so qualify would not have a material adverse effect on the Corporation and its subsidiaries taken as a whole), and have all corporate power and authority necessary to own or hold their respective properties and conduct the businesses in which they are engaged;

(ii) The Corporation has the requisite corporate power and authority to issue and deliver the Designated Securities. The Designated Securities covered by the applicable Pricing Agreement are in the form contemplated by the Indenture, have been duly authorized by the Corporation and, assuming the Designated Securities have been authenticated in accordance with the terms of the Indenture and delivered to and paid for by the Underwriters in accordance with the terms of this Agreement as supplemented by the applicable Pricing Agreement, such Designated Securities are legal, valid and binding obligations of the Corporation, entitled to the benefits provided by the Indenture;

(iii) The Corporation has the requisite corporate power and authority to execute, deliver and perform its obligations under the Indenture. The Indenture has been duly authorized, executed and delivered by the Corporation and is the legal, valid and binding obligation of the Corporation;

(iv) The Indenture has been duly qualified under the Trust Indenture Act;

(v) The Corporation has the requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement and the applicable Pricing Agreement. This Agreement and the applicable Pricing Agreement have been duly authorized, executed and delivered by the Corporation;

(vi) The Corporation has an authorized capitalization as set forth in the Prospectus, and all of the issued shares of capital stock of the Corporation have been duly and validly authorized and issued, are full paid and non-assessable; and all of the issued shares of capital stock of each Major Subsidiary have been duly and validly authorized and issued and are fully paid, non-assessable and (except for directors' qualifying shares) owned directly and indirectly by the Corporation, free and clear of all liens, encumbrances, equities or claims and for such liens, encumbrances, equities or claims as would not have a material adverse effect on the business or financial condition of the Corporation and its subsidiaries taken as a whole;

(vii) To such counsel's knowledge and other than as set forth in the Prospectus, there are no legal or governmental proceedings pending to which the Corporation or any of its subsidiaries is a party or of which any property of the Corporation or any of its subsidiaries is the subject which are reasonably likely to have a material adverse effect on the consolidated financial position, stockholders' equity, results of operations, business or prospects of the Corporation and its subsidiaries taken as a whole; and, to such counsel's knowledge, except as described in the Prospectus, no such proceedings are threatened or contemplated by governmental authorities or threatened by others;

(viii) The Registration Statement was declared effective under the Act as of the date and time specified in such opinion and no stop order suspending the effectiveness of the Registration Statement has been issued and, to the knowledge of such counsel, no proceeding for that purpose is pending or threatened by the Commission;

(ix) The Registration Statement and the Prospectus and any further amendments or supplements thereto made by the Corporation prior to the Time of Delivery of the Designated Securities (other than the financial statements and related schedules and other financial data and statistical data therein, as to which such counsel need express no opinion) comply as to form in all material respects with the requirements of the Act and the 1933 Act Regulations; and the documents incorporated by reference in the Prospectus and any further amendment or supplement to any such incorporated document made by the Corporation prior to such Time of Delivery (other than the financial statements and related schedules and other financial data and statistical data therein, as to which such counsel need express no opinion), when they became effective or were filed with the Commission, as the case may be, complied as to form in all material respects with the requirements of the Exchange Act and the rules and regulations of the Commission thereunder;



(x) If any Prospectus Supplement contains statements with respect to United States federal tax considerations for holders of Debt Securities, such opinion shall state that such statements, insofar as they describe federal statutes, rules and regulations, constitute a fair summary thereof;

(xi) To such counsel's knowledge, there are no contracts or other documents which are required to be described in the Prospectus or filed as exhibits to the Registration Statement by the Act or by the 1933 Act Regulations which have not been described or filed as exhibits to the Registration Statement or incorporated therein by reference as permitted by the 1933 Act Regulations.

(xii) The issuance, sale and delivery of the Designated Securities, the execution, delivery and performance of the other Operative Documents, the compliance by the Corporation with the terms therein and the consummation by the Corporation of the transactions contemplated hereby, thereby and by the Registration Statement will not (i) to such counsel's knowledge, conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Corporation or any of its subsidiaries is subject the effect of which breach or violation would be material to the Corporation and its Subsidiaries as a whole or would adversely affect the consummation of the transactions contemplated hereby or thereby, (ii) result in any violation of the provisions of the charter or by-laws of the Corporation or any of its subsidiaries or (iii) to such counsel's knowledge, result in any violation of any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Corporation or any of its subsidiaries or any of their properties the effect of which violation would be material to the Corporation and its subsidiaries as a whole or would adversely affect the consummation of the transactions contemplated hereby or thereby. Except (i) for the registration of the Designated Securities under the Securities Act and such consents, approvals, authorizations, registrations or qualifications as may be required under the Exchange Act, the Trust Indenture Act and applicable state or foreign securities laws and (ii) such consents, approvals, authorizations, registrations and qualifications as have been obtained or made and are in full force and effect at the Time of Delivery, to such counsel's knowledge no consent, approval, authorization or order of, or filing or registration with, any such court or governmental agency or body is required for the valid authorization, issuance, sale and delivery of the Designated Securities or the authorization, execution, delivery and performance of this Agreement and the applicable Pricing Agreement by the Corporation and the consummation of the transactions contemplated hereby and thereby or for the

due authorization, execution, delivery and performance of the Indenture and the consummation of the transactions contemplated thereby.

(xiii) To such counsel's knowledge, other than rights in favor of Newell Co. which have been waived or satisfied in respect of the Registration Statement, there are no contracts, agreements or understandings between the Corporation and any person granting such person the right to require the Corporation to file a registration statement under the Act with respect to any securities of the Corporation owned or to be owned by such person or to require the Corporation to include such securities in the securities registered pursuant to the Registration Statement or in any securities being registered pursuant to any other registration statement filed by the Corporation under the Act.

(xiv) The statements set forth in the Prospectus as amended or supplemented under the caption "Description of Debt Securities," insofar as they constitute summaries of documents, are accurate in all material respects and the Indenture and the Designated Securities covered by the applicable Pricing Agreement conform in all material respects to the descriptions thereof in the Prospectus and the applicable Prospectus Supplement;

In rendering such opinion, such counsel may state that their opinion is limited to matters governed by the Federal laws of the United States of America and the laws of the State of Maryland. In addition, Miles & Stockbridge, a Professional Corporation shall state that, while they have not themselves checked the accuracy and completeness of or otherwise verified, and are not passing upon and assume no responsibility for the accuracy or completeness of, the statements contained in the Registration Statement or the Prospectus, except to the limited extent stated in paragraphs (x) and (xiv) above, in the course of their review and discussion of the contents of the Registration Statement and Prospectus with certain officers and employees of the Corporation and its independent auditors but without independent check or verification, no facts have come to their attention which cause them to believe that (a) the Registration Statement, including the Exchange Act Documents (other than the financial statements and schedules and other financial data and statistical data contained or incorporated by reference therein or omitted therefrom, as to which such counsel need express no view), at the time the same became effective, contained an 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 not misleading, or (b) the Prospectus, including the Exchange Act Documents (other than the financial statements and schedules and other financial data and statistical data contained or incorporated by reference therein or omitted therefrom, as to

which such counsel need express no view), relating to the Designated Securities on the date of such Prospectus and at the applicable Time of Delivery contained or contains any untrue statement of a material fact or omits 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.

In rendering the foregoing opinion, such counsel may also state that the opinions in paragraphs (ii) and (iii) above are subject to the qualification that the enforceability of the Corporation's obligations under the Indenture and the Designated Securities may be limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws relating to or affecting creditors' rights generally, by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law) and by an implied covenant of good faith and fair dealing.

(e) Counsel to the Underwriters shall have furnished to the Representatives its written opinion, addressed to the Underwriters and dated the Time of Delivery for such Designated Securities, as counsel for the Underwriters, covering such matters as the Underwriters may reasonably request.

(f) (i) At the time of execution of the Pricing Agreement for Designated Securities, Ernst & Young shall have furnished to the Representatives a letter dated the date of such Pricing Agreement, and (ii) at the Time of Delivery for such Designated Securities, Ernst & Young shall have furnished to the Representatives a letter dated such Time of Delivery, in each case containing statements and information of the type ordinarily included in an accountant's "comfort letter" to underwriters with respect to financial statements and certain financial information contained in the Registration Statement and the Prospectus, including the documents incorporated by reference therein.

(g) The Corporation shall have furnished to the Representatives on behalf of the Underwriters a certificate, in form satisfactory to the Underwriters, of its Chairman of the Board, its President or a Vice President, and its principal financial officer or Treasurer, dated the applicable Time of Delivery, stating that:

(i) The representations, warranties and agreements of the Corporation in Section 2 are true and correct as of such Time of Delivery; the Corporation has complied with all of its agreements contained herein; and the conditions set forth in Sections 7(a), (i) and (k) shall have been fulfilled; and

(ii) They have carefully examined the Registration Statement and the Prospectus and in their opinion (A) as of the respective dates as of which information is given in the Registration Statement and the Prospectus, the Registration Statement and the Prospectus did not include any untrue statement of a material fact and did not omit to state a material fact required to be stated therein to make the statements therein not misleading, and (B) since the respective dates as of which information is given in the Registration Statement and the Prospectus, no event has occurred which should have been set forth in a supplement or an amendment.

(h) If Designated Securities are to be listed on a securities exchange, such Designated Securities shall have been duly authorized for listing on such securities exchange on the date of the applicable Pricing Agreement, subject only to official notice of issuance thereof and notice of a satisfactory distribution of the Designated Securities.

(i) Except as may be specified in the Pricing Agreement, any rating given by Standard & Poor's Corporation and any rating given by Moody's Investors Services, Inc. for the Designated Securities shall not have been lowered, and subsequent to the execution of the Pricing Agreement 2. no downgrading shall have occurred in the rating accorded any of the Corporation's debt securities (including the Securities) or preferred stock by any "nationally recognized statistical rating organization" as that term is defined by the Commission for purposes of Rule 436(g)(2) under the Act and regulations thereunder and 3. no such organization shall have publicly announced that it has under surveillance or review, with possible negative implications, its rating of any of the Corporation's debt securities (including the Securities) or preferred stock.

(j) The Indenture shall have been executed and delivered by all parties thereto on or prior to the Time of Delivery, in substantially the form last filed by the Corporation with the Commission, and shall be in full force and effect at the Time of Delivery.

(k) Neither the Corporation nor any of its subsidiaries shall have sustained since the date of the latest audited financial statements included or incorporated by reference in the Prospectus any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as set forth or contemplated in the Prospectus and (ii) since such date there shall not have been any change in the capital stock or long-term debt of the Corporation or any of its subsidiaries otherwise than in the ordinary course of business or any change, or any development involving a prospective

change, in or affecting the general affairs, management, financial position, stockholders' equity or results of operations of the Corporation and its subsidiaries taken as a whole, otherwise than as set forth or contemplated in the Prospectus, the effect of which, in any such case described in clause (i) or (ii), is, in the judgment of the Representatives, so material and adverse to the Corporation and its subsidiaries taken as a whole as to make it impracticable or inadvisable to proceed with the public offering or the delivery of the Securities being delivered at such Time of Delivery on the terms and in the manner contemplated in the Prospectus.

(1) Subsequent to the execution and delivery of the applicable Pricing Agreement, there shall not have occurred any of the following: (i) trading in securities generally on the New York Stock Exchange, the International Stock Exchange, the American Stock Exchange or the over-the-counter market shall have been suspended or materially limited or minimum prices shall have been established on one or more of such exchanges or such market by the Commission, by such exchange or by any other regulatory body or governmental authority having jurisdiction, (ii) a banking moratorium shall have been declared by United States federal or New York State authorities, (iii) the United States (or any other country specified in the applicable Pricing Agreement) shall have become engaged in major hostilities, there shall have been an escalation in hostilities involving the United States (or any other country specified in the applicable Pricing Agreement) or there shall have been a declaration of a national emergency or war by the United States (or any other country specified in the applicable Pricing Agreement), or (iv) there shall have occurred such a material adverse change in general economic, political or financial conditions, national or international securities markets or currency exchange rates or controls as to make it, in the judgment of a majority in interest of the several Underwriters, inadvisable or impractical to proceed with the delivery of the Securities.

All opinions, letters, evidence and certificates mentioned above or elsewhere in this Agreement shall be deemed to be in compliance with the provisions hereof only if they are in form and substance satisfactory to counsel for the Underwriters.

If any of the conditions specified in this Section 7 shall not have been fulfilled when and as required by this Agreement or the applicable Pricing Agreement to be fulfilled, the applicable Pricing Agreement may be terminated by the Underwriters on notice to the Corporation at any time at or prior to the applicable Time of Delivery, and such termination shall be without liability of any party to any other party, except as provided in Section 6 and Section 12 hereof. Notwithstanding any such termination, the provisions of Sections 6, 8, 10 and 12 shall remain in effect.

8. Indemnification and Contribution.

(a) The Corporation shall indemnify and hold harmless each Underwriter and each Person, if any, who controls any Underwriter within the meaning of Section 15 of the Act or Section 20(a) of the Exchange Act, from and against any loss, claim, damage or liability, joint or several, or any action in respect thereof (including, but not limited to, any loss, claim, damage, liability or action relating to purchases and sales of Designated Securities), to which that Underwriter or controlling person may become subject, under the Act, the Exchange Act or otherwise, insofar as such loss, claim, damage, liability or action arises out of, or is based upon, (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement as originally filed or any amendment thereof, or any Preliminary Prospectus or Prospectus, or in any amendment or supplement to any of the foregoing or (ii) the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and shall reimburse each Underwriter and each such controlling person promptly upon demand for any legal or other expenses reasonably incurred by that Underwriter or controlling person in connection with investigating or defending or preparing to defend against any such loss, claim, damage, liability or action as such expenses are incurred; provided, however, that the Corporation shall not be liable in any such case to the extent that any such loss, claim, damage, liability or action arises out of, or is based upon, any untrue statement or alleged untrue statement or omission or alleged omission made (a) in any Preliminary Prospectus, the Registration Statement or the Prospectus or in any such amendment or supplement in reliance upon and in conformity with written information furnished to the Corporation through the Representatives by or on behalf of any Underwriter specifically for inclusion therein or (b) in that part of the Registration Statement which shall constitute the Statement of Eligibility and Qualification on Form T-1 of any Trustee under the Trust Indenture Act (except for statements or omissions made in such Statement in reliance upon information furnished to such Trustee by or on behalf of the Corporation for inclusion therein). Notwithstanding the foregoing, it is understood that, as to any Preliminary Prospectus this indemnity agreement shall not inure to the benefit of any Underwriter or person who controls that Underwriter on account of any loss, claim, damage, liability or action arising from the sale of Designated Securities to any person by that Underwriter if that Underwriter failed to send or give a copy of a Prospectus to the purchaser within the time required by the Act, and the untrue statement or alleged untrue statement of a material fact or omission or alleged omission to state a material fact in such Preliminary Prospectus was corrected in the Prospectus, unless such failure resulted from non-compliance by the Corporation with Section 5 hereof. For purposes of the

second proviso to the immediately preceding sentence, the term Prospectus shall not be deemed to include the documents incorporated therein by reference, and no Underwriter shall be obligated to send or give any supplement or amendment to any document incorporated by reference in any Preliminary Prospectus or any Prospectus to any person other than a person to whom such Underwriter had delivered such incorporated document or documents in response to a written request therefor. The foregoing indemnity agreement is in addition to any liability which the Corporation may otherwise have to any Underwriter or to any controlling person of that Underwriter.

(b) Each Underwriter, severally and not jointly, shall indemnify and hold harmless the Corporation, each of its directors, each of its officers who signed the Registration Statement and each person, if any, who controls the Corporation within the meaning of Section 15 of the Act or Section 20(a) of the Exchange Act, from and against any loss, claim, damage or liability, joint or several, or any action in respect thereof, to which the Corporation or any such director, officer or controlling person may become subject, under the Act or the Exchange Act or otherwise, insofar as such loss, claim, damage, liability or action arises out of, or is based upon, (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement as originally filed or any amendment thereof, or any Preliminary Prospectus or Prospectus or in any amendment or supplement to any of the foregoing or (ii) the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, but in each case only to the extent that the untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Corporation through the Representatives by or on behalf of that Underwriter specifically for inclusion therein, and shall reimburse promptly upon demand the Corporation and any such director, officer or controlling person for any legal or other expenses reasonably incurred by the Corporation or any such director, officer or controlling person in connection with investigating or defending or preparing to defend against any such loss, claim, damage, liability or action as such expenses are incurred. The foregoing indemnity agreement is in addition to any liability which any Underwriter may otherwise have to the Corporation or any such director, officer or controlling person.

(c) Promptly after receipt by an indemnified party under this Section 8 of notice of any claim or the commencement of any action, the indemnified party shall if a claim in respect thereof is to be made against the indemnifying party under this Section 8, notify the indemnifying party in writing of the claim or the commencement of that action; provided, however, that the failure to notify the indemnifying party

shall not relieve it from any liability which it may have under this Section 8 except to the extent it has been materially prejudiced by such failure and, provided, further, that the failure to notify the indemnifying party shall not relieve the indemnifying party from any liability which it may have to an indemnified party otherwise than under this Section 8. If any such claim or action shall be brought against an indemnified party, and it shall notify the indemnifying party thereof, the indemnifying party shall be entitled to participate therein and, to the extent that its wishes, jointly with any other similarly notified indemnifying party, to assume the defense thereof with counsel satisfactory to the indemnified party. After notice from the indemnifying party to the indemnified party of its election to assume the defense of such claim or action, the indemnifying party shall not be liable to the indemnified party under this Section 8 for any legal or other expenses subsequently incurred by the indemnified party in connection with the defense thereof other than reasonable costs of investigation; provided, however, that the Representatives shall have the right to employ counsel to represent jointly the Representatives and those other Underwriters and their respective controlling persons who may be subject to liability arising out of any claim in respect of which indemnity may be sought by the Underwriters against the Corporation under this Section 8 if, in the reasonable judgment of the Representatives, it is advisable for the Representatives and those Underwriters and controlling persons to be jointly represented by separate counsel and in that event the fees and expenses of such separate counsel shall be paid by the Corporation. No indemnifying party shall be liable for any settlement of any such action effected without its written consent (which consent shall not be unreasonably withheld), but if settled with its written consent or if there be a final judgment of the plaintiff in any such action, the indemnifying party agrees to indemnify and hold harmless any indemnified party from and against any loss or liability by reason of such settlement or judgment.

(d) If the indemnification provided for in this Section 8 shall for any reason be unavailable to or insufficient to hold harmless an indemnified party under Section 8(a) or 8(b) in respect of any loss, claim, damage or liability, or any action in respect thereof, referred to therein, then each indemnifying party shall in lieu of indemnifying such indemnified party, contribute to the amount paid or payable by such indemnified party as a result of such loss, claim, damage or liability, or action in respect thereof, (i) in such proportion as shall be appropriate to reflect the relative benefits received by the Corporation on the one hand and the Underwriters on the other from the offering of the Designated Securities or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of



the Corporation on the one hand and the Underwriters on the other with respect to the statements or omissions which resulted in such loss, claim, damage or liability, or action in respect thereof, as well as any other relevant equitable considerations. The relative benefits received by the Corporation on the one hand and the Underwriters on the other with respect to an offering of Designated Securities shall be deemed to be in the same proportion as the total net proceeds from such offering of Designated Securities (before deducting expenses) received by the Corporation bear to the total underwriting discounts and commissions received by the Underwriters with respect to such Designated Securities, in each case as set forth in the table on the cover page of the applicable Prospectus. The relative fault shall be determined by reference to whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Corporation or the Underwriters, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such statement or omission. The Corporation and the Underwriters agree that it would not be just and equitable if contributions pursuant to this Section 8(d) were to be determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take into account the equitable considerations referred to herein. The amount paid or payable by an indemnified party as a result of the loss, claim, damage or liability, or action in respect thereof, referred to above in this Section 8(d) shall be deemed to include, for purposes of this Section 8(d), any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 8(d), no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Designated Securities underwritten by it and distributed to the public was offered to the public exceeds the amount of any damages which such Underwriter has otherwise paid or become liable to pay by reason of any untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 8(d), each person, if any, who controls an Underwriter within the meaning of Section 15 of the Act or Section 20(a) of the Exchange Act shall have the same rights to contribution as such Underwriter, and each person, if any, who controls the Corporation within the meaning of Section 15 of the Act or Section 20(a) of the Exchange Act, each officer of the Corporation who shall have signed the Registration Statement and each director of the Corporation shall have the same rights to contribution as the Corporation, subject in each case to clauses (i) and (ii) of the first sentence of

this Section 8(d). Any party entitled to contribution will, promptly after receipt of notice of commencement of any action, suit or proceeding against such party in respect of which a claim for contribution may be made against another party or parties from whom contribution may be sought, notify such other party or parties, provided, however, that the omission to so notify such party or parties shall not relieve the party or parties from whom contribution may be sought from any obligation it or they may have under this Section 8(d) except to the extent such party or parties has or have been materially prejudiced by such failure, and provided, further, that the failure to notify a party or parties from whom contribution may be sought shall not relieve such party or parties from any contribution obligation otherwise than under this Section 8. No party shall be liable for contribution with respect to any action or claim settled without its consent; provided, however, that such consent was not unreasonably withheld. The Underwriters' obligations to contribute as provided in this Section 8(d) are several in proportion to their respective underwriting obligations and not joint.

9. Defaulting Underwriters. If, at any Time of Delivery, any Underwriter defaults in the performance of its obligations under the applicable Pricing Agreement, the remaining non-defaulting Underwriters shall be obligated to purchase the Designated Securities which the defaulting Underwriter agreed but failed to purchase at such Time of Delivery in the respective proportions which their respective underwriting obligations bear to the underwriting obligations of all non-defaulting Underwriters; provided, however, that the remaining non-defaulting Underwriters shall not be obligated to purchase any Designated Securities at such Time of Delivery if the aggregate principal amount of the Designated Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase on such date exceeds 9.09% of the aggregate principal amount of the Designated Securities to be purchased at such Time of Delivery, and any remaining non-defaulting Underwriter shall not be obligated to purchase more than 110% of the aggregate principal amount of the Designated Securities which it agreed to purchase at such Time of Delivery pursuant to the terms of the applicable Pricing Agreement. If the foregoing maximums are exceeded, the remaining non-defaulting Underwriters, or those other underwriters satisfactory to the Representatives who so agree, shall have the right, but shall not be obligated, to purchase, in such proportion as may be agreed upon among them, all the Securities to be purchased at such Time of Delivery. If the remaining Underwriters or other underwriters satisfactory to the Representatives do not elect to purchase the Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase, the applicable Pricing Agreement shall terminate without liability on the part of any non-defaulting Underwriter or the Corporation, except that the Corporation will continue to be liable for the payment of expenses to the extent set forth in Sections 6 and 12.

Nothing contained herein shall relieve a defaulting Underwriter of any liability it may have to the Corporation for damages caused by its default. If other underwriters are obligated or agree to purchase the Securities of a defaulting or withdrawing Underwriter, either the Representatives or the Corporation may postpone the applicable Time of Delivery for up to seven full business days in order to effect any changes that in the opinion of counsel for the Corporation or counsel for the Underwriters may be necessary in the Registration Statement, the Prospectus or in any other document or arrangement.

10. Survival of Representations and Agreements. All representations and warranties, covenants and agreements of the Underwriters and the Corporation contained in this Agreement or the applicable Pricing Agreement, including the agreements contained in Section 6 and the indemnity and contribution agreements contained in Section 8 shall remain operative and in full force and effect regardless of any investigation made by or on behalf of any Underwriter or any controlling person thereof or by or on behalf of the Corporation, any of its officers and directors or any controlling person thereof, and shall survive delivery of and payment for the Designated Securities to and by the several Underwriters. The representations contained in Section 2 and the agreements contained in Sections 6, 8, 10 and 12 hereof shall survive the termination of this Agreement or the applicable Pricing Agreement, including termination pursuant to Sections 9 or 11 hereof.

11. Termination. The obligations of the Underwriters under the applicable Pricing Agreement may be terminated by the Representatives, in their absolute discretion, by notice given to and received by the Corporation prior to delivery of and payment for the Designated Securities if, prior to that time, any of the events described in Sections 7(k) or 7(l) shall have occurred.

12. Reimbursement of Underwriters' Expenses. If (a) the Corporation shall fail to tender Designated Securities for delivery to the Underwriters for any reason permitted under this Agreement or the applicable Pricing Agreement or (b) the Underwriters shall decline to purchase Designated Securities for any reason permitted under this Agreement or the applicable Pricing Agreement (including the termination of the applicable Pricing Agreement pursuant to Section 11 hereof), the Corporation shall reimburse the Underwriters for the fees and expenses of their counsel and for such other out-of-pocket expenses as shall have been incurred by them in connection with this Agreement, the applicable Pricing Agreement and the proposed purchase of such Designated Securities, and upon demand the Corporation shall pay the full amount thereof to the Representatives. If the applicable Pricing Agreement is terminated pursuant to Section 9 hereof by reason of the default of one or more Underwriters, the Corporation shall not be obligated to reimburse any defaulting Underwriter pursuant to this Section 12.

13. Notices, etc. All statements, requests, notices and agreements hereunder and under each Pricing Agreement shall be in writing, and:

(a) if to the Underwriters, shall be delivered or sent by mail, telex or facsimile as set forth in the applicable Pricing Agreement;

(b) if to the Corporation, shall be delivered or sent by mail, telex or facsimile transmission to the address of the Corporation set forth in the Registration Statement, Attention: Charles E. Fenton, Esq., Vice President and General Counsel;

provided, however, that any notice to an Underwriter pursuant to Section 8(c) shall be delivered or sent by mail, telex or facsimile transmission to such Underwriter at its address set forth in its acceptance telex to the Representatives, which address will be supplied to any other party hereto by the Representatives upon request. Any such statements, requests, notices or agreements shall take effect at the time of receipt thereof. The Corporation shall be entitled to act and rely upon any request, consent, notice or agreement given or made on behalf of the Underwriters by the Representatives.

14. Persons Entitled to Benefit of Agreement. This Agreement and each Pricing Agreement shall inure to the benefit of and be binding upon the Underwriters, the Corporation, and their respective successors. This Agreement and each Pricing Agreement and the terms and provisions hereof and thereof are for the sole benefit of only those persons, except that (A) the representations, warranties, indemnities and agreements of the Corporation contained in this Agreement shall also be deemed to be for the benefit of the person or persons, if any, who control any Underwriter within the meaning of Section 15 of the Act and (B) the indemnity agreement of the Underwriters contained in Section 8(b) of this Agreement shall be deemed to be for the benefit of directors of the Corporation, officers of the Corporation who have signed the Registration Statement and any person controlling the Corporation within the meaning of Section 15 of the Act. Nothing in this Agreement or any Pricing Agreement is intended or shall be construed to give any person, other than the persons referred to in this Section 14, any legal or equitable right, remedy or claim under or in respect of this Agreement or any Pricing Agreement or any provision contained herein or therein.

15. Definition of the Terms "Business Day" and "Subsidiary". For purposes of this Agreement and each Pricing Agreement, (a) "business day" means any day on which the New York Stock Exchange, Inc. is open for trading and (b) "subsidiary" has the meaning set forth in Rule 405 of the 1933 Act Regulations.

16. Governing Law. This Agreement and each Pricing Agreement shall be governed by and construed in accordance with the laws of New York.

17. Headings. The headings herein are inserted for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement or any Pricing Agreement.

SCHEDULE 1

LIST OF MAJOR SUBSIDIARIES

Black and Decker Inc.  
Black and Decker (U.S.) Inc.  
Emhart Corporation

FORM OF  
PRICING AGREEMENT  
-----

[Name of Representative(s)]  
as Representative(s) of the  
several Underwriters named  
in Schedule I hereto

, 199

Dear Sirs:

The Black & Decker Corporation, a Maryland corporation (the "Corporation"), proposes, subject to the terms and conditions stated herein and in the Underwriting Agreement - Basic Provisions dated as of \_\_\_\_\_, 1994 (the "Underwriting Agreement") to issue and sell to the Underwriters named in Schedule I hereto (the "Underwriters") the Securities specified in Schedule II hereto (the "Designated Securities"). Each of the provisions of the Underwriting Agreement is incorporated herein by reference in its entirety and shall be deemed to be a part of this Pricing Agreement to the same extent as if such provisions had been set forth in full herein; and each of the representations and warranties set forth therein shall be deemed to have been made at and as of the date of this Pricing Agreement. Unless otherwise defined herein, terms defined in the Underwriting Agreement are used herein as therein defined. Capitalized terms not otherwise defined herein or in the Underwriting Agreement shall have the respective meanings set forth in the Indenture. The Representatives designated to act on behalf of the Representatives and on behalf of each of the Underwriters of Designated Securities pursuant to the Underwriting Agreement and the address referred to in Section 13 of the Underwriting Agreement are set forth in Schedule II hereto.

An amendment to the Registration Statement, or a supplement to the Prospectus, as the case may be, relating to the Designated Securities, in the form heretofore delivered to you, is now proposed to be filed with the Commission.

On the basis of the representations, warranties, covenants and agreements of the Corporation contained herein and in the Underwriting Agreement, but subject to the terms and conditions set forth herein and in the Underwriting Agreement incorporated herein by reference, the Corporation agrees to issue and sell to each of the Underwriters, and each of the Underwriters agrees, severally and not jointly, to purchase from the Corporation, at the time and place and at the purchase price to the Underwriters set

forth in Schedule II hereto, the principal amount of Designated Securities set forth opposite the name of such Underwriter in Schedule I hereto.

This Pricing Agreement may be executed in one or more counterparts and, if executed in more than one counterpart, the executed counterparts shall each be deemed to be an original but all such counterparts shall together constitute one and the same instrument.

If the foregoing is in accordance with your understanding, please sign and return to us a counterpart hereof, and upon acceptance hereof by you, on behalf of each of the Underwriters, this letter and such acceptance hereof, including the provisions of the Underwriting Agreement incorporated herein by reference, shall constitute a binding agreement between each of the Underwriters on the one hand and the Corporation on the other. It is understood that your acceptance of this letter on behalf of each of the Underwriters is or will be pursuant to the authority set forth in a form of Agreement Among Underwriters.

Very truly yours

THE BLACK & DECKER CORPORATION

By: \_\_\_\_\_  
Title:

Accepted as of the date hereof:

[NAME OF REPRESENTATIVE(S)]

By: \_\_\_\_\_  
Title:

For itself and the other several  
Underwriters named in Schedule I  
hereto



SCHEDULE I TO PRICING AGREEMENT  
-----

| Underwriters<br>-----                   | Principal Amount<br>of Designated<br>Securities to<br>be Purchased<br>----- |
|---|---|
| [Name of Representative(s)] . . . . .   | \$  |
| [Names of Other Underwriters] . . . . . |   |
| Total . . . . .                         | -----<br>\$<br>=====  |

SCHEDULE II TO PRICING AGREEMENT  
-----

Title of Designated Securities:  
-----

[        %] [Extendable] [Floating Rate] [Zero Coupon] [Notes]  
[Debentures] due

Aggregate Principal Amount:  
-----

\$

Denominations:  
-----

[\$1,000] [\$5,000] [\$            ]

Initial Offering Price to Public:  
-----

      % of the principal amount of the Designated  
Securities, plus accrued interest from            to  
          [and accrued amortization, if any, from  
          to            ]

Purchase Price by Underwriters:  
-----

      % of the principal amount of the Designated  
Securities, plus accrued interest from            to  
          [and accrued amortization, if any, from  
          to            ]

Maturity:  
-----

Interest Rate:  
-----

[        %] [Zero Coupon] [See Floating Rate Provisions]

Interest Payment Dates:  
-----

[months and dates]

Regular Record Dates:  
-----

[months and dates]

Redemption Provisions:  
-----

[No redemption provisions]

[The Designated Securities may be redeemed, [otherwise than  
through the sinking fund,] in whole or in part at the option  
of the Corporation, in the amount of \$            or an integral  
multiple thereof,

      [on or after            ,            at the  
      following redemption prices (expressed in  
      percentages of principal amount). If  
      [redeemed on or before            ,            %, and  
      if] redeemed during the 12-month period  
      beginning            ,

| Year | Redemption Price |
|------|------------------|
| ---- | -----            |

and thereafter at 100% of their principal amount, together in each case with accrued interest to the redemption date.]

[on any interest payment date falling on or after \_\_\_\_\_, at the election of the Corporation, at a redemption price equal to the principal amount thereof, plus accrued interest to the date of redemption.]

[Other possible redemption provisions, such as mandatory redemption upon occurrence of certain events or redemption for changes in tax law]

[Restrictions on refunding]

#### Sinking Fund Provisions:

-----

[No sinking fund provisions]

[The Designated Securities are entitled to the benefit of a sinking fund to retire \$ \_\_\_\_\_ principal amount of Designated Securities on in each of the years \_\_\_\_\_ through \_\_\_\_\_ at 100% of their principal amount plus accrued interest] [, together with [cumulative] [non-cumulative] redemptions at the option of the Corporation to retire an additional \$ \_\_\_\_\_ principal amount of Designated Securities in the years \_\_\_\_\_ through \_\_\_\_\_ at 100% of their principal amount plus accrued interest. Any sinking fund requirement shall be reduced by the aggregate principal amount of Designated Securities delivered to the Trustee by the Corporation at least \_\_\_\_\_ days prior to the date on which payments are to be made under the sinking fund and designated for that purpose.]

[If Designated Securities are Extendable Debt

-----

Securities, insert--

-----

#### Extendable Provisions:

-----

The Designated Securities are repayable on \_\_\_\_\_, at the option of the holder, at their principal amount with accrued interest. The initial annual interest rate will be \_\_\_\_\_%, and thereafter the annual interest rate will be adjusted on \_\_\_\_\_, \_\_\_\_\_, and to a rate not less than \_\_\_\_\_% of the effective annual interest rate on \_\_\_\_\_ obligations with \_\_\_\_\_ year maturities as of the [interest date 15 days prior to maturity date] prior to such [insert maturity date].]

[If Designated Securities are Convertible Securities, insert--  
-----]

Floating Rate Provisions:

[No floating rate provisions.]  
[The initial annual interest rate will be           % through  
                    [and thereafter will be adjusted [monthly]  
[on each                 ' ,                 ' and  
                    ] [to an annual rate of                 % above the  
average rate for                 -year [-month] [securities]  
[certificates of deposit] by                 and  
[insert names of banks].] [and the annual interest rate  
(thereafter) [from                 through                 ] will be the  
interest yield equivalent of the weekly average per annum  
market discount rate for                 -month Treasury bills  
plus                 % of the Interest Differential (the excess, if  
any, of (i) the then-current weekly average per annum  
secondary market yield for                 -month certificates  
of deposit over (ii) the then-current interest yield  
equivalent of the weekly average per annum market  
discount rate for                 -month Treasury bills); [from  
                    and thereafter the rate will be the then-current  
interest yield equivalent plus                 % of the Interest  
Differential].]

Form of Designated Securities:

[Book-entry] [Registered]

Name and Address of Representative(s):

[Form of Payment for Designated Securities:

[Same-day] [Next-day] funds]

Time of Delivery:

```
[time and date], 19
```

Closing Location:

Simpson Thacher & Bartlett, New York, New York

[Additional Comfort Procedures:]

[Listing Requirement:]

### Partial Reimbursement of Underwriters' Expenses:

[None] [\$\_\_\_\_\_]

[Additional Countries for Purposes of Section 5(g):]

[Additional Countries for Purposes of Section 7(1):]

[Other Terms:]

=====

THE BLACK & DECKER CORPORATION

Issuer

and

MARINE MIDLAND BANK

Trustee

\_\_\_\_\_

INDENTURE

Dated as of \_\_\_\_\_ \_\_, 1994

\_\_\_\_\_

Debt Securities

=====

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INDENTURE dated as of \_\_\_\_\_, 1994, between The Black & Decker Corporation, a Maryland corporation (the "Company"), and Marine Midland Bank, a banking corporation and trust company organized under the laws of the State of New York, as trustee (the "Trustee").

Each party agrees as follows for the benefit of the other party and, as to each series of Securities, for the equal and ratable benefit of the Holders of that series of the Company's Securities issued pursuant to this Indenture:

#### ARTICLE ONE

##### DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

###### SECTION 101. Definitions.

For all purposes of this Indenture and all Securities issued hereunder, except as otherwise expressly provided or unless the context otherwise requires:

- (1) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;
- (2) all other terms used herein which are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;
- (3) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles in the United States, and the term "generally accepted accounting principles" with respect to any computation required or permitted hereunder shall mean such accounting principles as are generally accepted in the United States at the date or time of such computation;
- (4) the words "herein," "hereof" and "hereunder," and other words of similar import, refer to this Indenture as a whole and not to any particular Article, Section or other subdivision;
- (5) any gender used in this Indenture shall be deemed to include the neuter, masculine or feminine genders; and
- (6) provisions apply to successive events and transactions.

Certain terms, used principally in Article Three, Article Six and Article Nine, are defined in those Articles.

"Act," when used with respect to any Holder, has the meaning specified in Section 104.

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control," "controlling" and "controlled" by, when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise.

"Attributable Debt" has the meaning specified in Section 901.

"Authenticating Agent" means any individual authorized to authenticate and deliver Securities in the name of the Trustee for the Securities of any series pursuant to Section 613.

"Authorized Newspaper" means a newspaper customarily published at least once a day for at least five days in each calendar week and of general circulation in New York City and in London and, so long as the Securities are listed on the Stock Exchange and the Stock Exchange shall so require, in Luxembourg or, if it shall be impracticable in the opinion of the Trustee for the Securities of the appropriate series to make such publication, in another capital city in Western Europe. Such publication (which may be in different newspapers) is expected to be made in the Eastern edition of The Wall Street Journal, in the London edition of the Financial Times and in the Luxemburger Wort.

"Bankruptcy Law" has the meaning specified in Section 501.

"Bearer Security" means any Security established pursuant to Section 201 which is payable to bearer.

"Board of Directors" means the board of directors of the Company or any committee of that board.

"Board Resolution" means a resolution of the Board of Directors or of a committee or person to which or to whom the Board of Directors has properly delegated the appropriate authority, a copy of which has been certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification and delivered to the Trustee.

"Business Day," when used with respect to any particular Place of Payment, means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in that Place of Payment are authorized or obligated by law to close, and shall otherwise mean each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions, at the place where any specified act pursuant to this Indenture is to occur, are authorized or obligated by law to close.

"CEDEL, S.A." means Centrale de Livraison de Valeurs Mobilieres, S.A.

"Certificate of a Firm of Independent Public Accountants" means a certificate signed by any firm of independent public accountants of recognized standing selected by the Company. The term "Independent" when used with respect to any specified firm of public accountants means a firm that is or would be qualified to act as the Company's accountants within the meaning of Section 210.2-01 of Regulation S-X as promulgated by the Commission, and any successor thereto.

"Code" means the Internal Revenue Code of 1986, as amended, and the regulations thereunder.

"Commission" means the United States Securities and Exchange Commission.

"Company" means the Person named as the "Company" in the first paragraph of this Indenture until a successor shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Company" shall mean such successor.

"Company Request" and "Company Order" mean, respectively, a written request or order signed in the name of the Company by (1) the Chairman of the Board, the President or any Vice President of the Company and by the Treasurer, an Assistant Treasurer, the Controller, an Assistant Controller, the Secretary or an Assistant Secretary of the Company or (2) by any two Persons designated in a Company Order previously delivered to the Trustee for Securities of any series by any two of the foregoing officers and delivered to the Trustee for Securities of that series.

"Component Currency" has the meaning specified in Section 311(h).

"Consolidated Net Tangible Assets" has the meaning specified in Section 901.

"Conversion Date" has the meaning specified in Section 311(d).

"Conversion Event" means the unavailability of any Foreign Currency or currency unit, due to the imposition of exchange controls or other circumstances beyond the control of the Company.

"Corporate Trust Office" means the office of the Trustee for Securities of any series at which at any particular time its corporate trust business shall be principally administered, which office of Marine Midland Bank, at the date of the execution of this Indenture, is located at 140 Broadway, New York, New York 10015.

"corporation" includes corporations, limited liability companies, associations, companies and business trusts.

"Coupon" means any interest coupon appertaining to a Bearer Security.

"Currency Determination Agent," with respect to Securities of any series, means a New York Clearing House bank designated pursuant to Section 301 or Section 312.

"Default" means any event that is, or after notice or passage of time or both would be, an Event of Default.

"Defaulted Interest" has the meaning specified in Section 307.

"Depository" means, with respect to the Securities of any series issuable or issued in the form of a global Security, the Person designated as Depository by the Company pursuant to Section 301 until a successor Depository shall have been appointed pursuant to the applicable provisions of this Indenture, and thereafter "Depository" shall mean or include each Person who is then a Depository hereunder, and if at any time there is more than one such Person, "Depository" as used with respect to the Securities of any such series shall mean the Depository with respect to the Securities of that series.

"Dollar Equivalent of the Currency Unit" has the meaning specified in Section 311(g).

"Dollar Equivalent of the Foreign Currency" has the meaning specified in Section 311(f).

"Dollars" and the sign "\$" mean the currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts.

"ECU" means the European Currency Unit as defined and revised from time to time by the Council of the European Communities.

"Election Date" has the meaning specified in Section 311(h).

"Euroclear" means Morgan Guaranty Trust Company of New York, Brussels office, or its successor, as operator of the Euroclear system.

"Event of Default" has the meaning specified in Section 501.

"Exchange Date" has the meaning specified in Section 304.

"Exchange Rate Officers' Certificate" means a certificate or facsimile thereof setting forth (i) the applicable Market Exchange Rate and (ii) the Dollar, Foreign Currency or currency unit amounts of principal (and premium, if any) and interest, if any (on an aggregate basis and on the basis of a Security having the lowest denomination principal amount determined in accordance with Section 302 in the relevant currency or currency unit), payable with respect to a Security of any series on the basis of such

Market Exchange Rate, signed by the Treasurer, the Controller, any Vice President, any Assistant Treasurer or any Assistant Controller of the Company.

"Exempted Debt" has the meaning specified in Section 901.

"Floating Rate Security" means a Security that provides for the payment of interest at a variable rate determined periodically by reference to an interest rate index or any other index specified pursuant to Section 301.

"Foreign Currency" means a currency issued and actively maintained as a country's or countries' recognized unit of domestic exchange by the government of any country other than the United States.

"Funded Debt" has the meaning specified in Section 901.

"Global Exchange Agent" has the meaning specified in Section 304.

"Government Obligations" means the following obligations: (i) direct obligations of the government that issued the currency in which the Securities of a particular series are payable or (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the government that issued the currency in which the Securities of such series are payable, the payment of which is unconditionally guaranteed as a full faith and credit obligation of such government.

"Holder," when used with respect to any Security, means in the case of a Registered Security the Person in whose name a Security is registered in the Security Register, and in the case of a Bearer Security the bearer thereof and, when used with respect to any coupon, means any bearer thereof.

"Indenture" means this instrument as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof and shall include the terms of a particular series of Securities established as contemplated by Section 301.

"Interest," when used with respect to an Original Issue Discount Security that by its terms bears interest only after Maturity, means interest payable after Maturity.

"Interest Payment Date," when used with respect to any Security, means the Stated Maturity of an installment of interest on such Security.

"Market Exchange Rate" means (i) for any conversion involving a currency unit on the one hand and Dollars or any Foreign Currency on the other, the exchange rate between the relevant currency unit and Dollars or such Foreign Currency calculated by the method

specified pursuant to Section 301 for the Securities of the relevant series, (ii) for any conversion of Dollars into any Foreign Currency, the noon (New York City time) buying rate for such Foreign Currency for cable transfers quoted in New York City as certified for customs purposes by the Federal Reserve Bank of New York, (iii) for any conversion of one Foreign Currency into Dollars or another Foreign Currency, the spot rate at noon local time in the relevant market at which, in accordance with normal banking procedures, the Dollars or Foreign Currency into which conversion is being made could be purchased with the Foreign Currency from which conversion is being made from major banks located in either New York City, London or any other principal market for Dollars or such purchased Foreign Currency, in each case determined by the Currency Determination Agent. In the event of the unavailability of any of the exchange rates provided for in the foregoing clauses (i), (ii) and (iii) the Currency Determination Agent shall use, in its sole discretion and without liability on its part, such quotation of the Federal Reserve Bank of New York as of the most recent available date, or quotations from one or more major banks in New York City, London or any other principal market for such currency or currency unit in question, or such other quotations as the Currency Determination Agent shall deem appropriate. Unless otherwise specified by the Currency Determination Agent, if there is more than one market for dealing in any currency or currency unit by reason of foreign exchange regulations or otherwise, the market to be used in respect of such currency or currency unit shall be that upon which a nonresident issuer of securities designated in such currency or currency unit would purchase such currency or currency unit in order to make payments in respect of such securities. For purposes of this definition, a "nonresident issuer" shall mean an issuer that is not a resident of the country or countries that issue such currency or whose currencies are included in such currency unit.

"Maturity," when used with respect to any Security, means the date on which the principal of that Security becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption, request for redemption or otherwise.

"Officer" means the Chairman of the Board, the Vice Chairman of the Board, the President, any Vice President, the Treasurer or the Secretary of the Company.

"Officers' Certificate" means a Certificate signed by two Officers or by an Officer and any Assistant Treasurer or Assistant Secretary of the Company.

"Opinion of Counsel" means a written opinion of independent legal counsel of recognized standing and, for all other purposes hereof, means a written opinion of counsel, who may be an employee of or counsel to the Company or may be other counsel satisfactory to the Trustee for the Securities of any series.

"Original Issue Discount Security" means any Security that provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 502.

"Outstanding," when used with respect to Securities, means, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, except:

(1) Securities theretofore cancelled by the Trustee for such Securities or delivered to the Trustee for cancellation;

(2) Securities or portions thereof for whose payment or redemption money in the necessary amount and in the required currency or currency unit has been theretofore deposited with the Trustee for such Securities or any Paying Agent (other than the Company or any other obligor upon the Securities) in trust or set aside and segregated in trust by the Company or any other obligor upon the Securities (if the Company or any other obligor upon the Securities shall act as its own Paying Agent) for the Holders of such Securities; provided, however, that, if such Securities or portions thereof are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture, or provision therefor satisfactory to the Trustee has been made; and

(3) Securities that have been paid pursuant to Section 306 or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, other than any such Securities in respect of which there shall have been presented proof satisfactory to the Trustee for such Securities that any such Securities are held by bona fide holders in due course;

provided, however, that in determining whether the Holders of the requisite principal amount of Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, (a) Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee for such Securities shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities that the Trustee knows to be so owned shall be so disregarded. Securities so owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor and (b) the principal amount of an Original Issue Discount Security that shall be deemed to be Outstanding for such purposes shall be the amount of the principal thereof that would be due and payable as of the



date of such determination upon a declaration of acceleration pursuant to Section 502.

"Paying Agent" means any Person authorized by the Company to pay the principal of (and premium, if any) or interest, if any, on any Securities on behalf of the Company.

"Person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Place of Payment," when used with respect to the Securities of any particular series, means the place or places where the principal of (and premium, if any) and interest if any, on the Securities of that series are payable, as contemplated by Section 301.

"Predecessor Security" of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by that particular Security, and, for the purposes of this definition, any Security authenticated and delivered under Section 306 in lieu of a mutilated, destroyed, lost or stolen Security or a Security to which a mutilated, destroyed, lost or stolen coupon appertains shall be deemed to evidence the same debt as the mutilated, lost, destroyed or stolen Security or the Security to which the mutilated, destroyed, lost or stolen coupon appertains, as the case may be.

"Principal Property" has the meaning specified in Section 901.

"Redemption Date," when used with respect to any Security to be redeemed in whole or in part, means the date fixed for such redemption by or pursuant to this Indenture.

"Redemption Price," when used with respect to any Security to be redeemed, means an amount in the currency or currency unit in which such Security is denominated or which is otherwise provided for pursuant hereto, equal to the principal amount thereof (and premium, if any, thereon) together with accrued interest, if any, to the Redemption Date.

"Registered Security" means any Security established pursuant to Section 201 that is registered in the Security Register.

"Regular Record Date" for the interest payable on any Interest Payment Date on the Registered Securities of any series, means the date, if any, specified for that purpose as contemplated by Section 301.

"Responsible Officer," when used with respect to the Trustee for any series of Securities, means the chairman or vice chairman of the board of directors, the chairman or vice chairman of the executive committee of the board of directors, the president, any

vice president (whether or not designated by a number or a word or words added before or after the title "vice president"), the secretary, any assistant secretary, the treasurer, any assistant treasurer, the cashier, any assistant cashier, any trust officer or assistant trust officer, the controller or any assistant controller or any other officer or employee of such Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer or employee to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

"Securities" means securities evidencing unsecured indebtedness of the Company authenticated and delivered under this Indenture.

"Security Register" and "Security Registrar" have the respective meanings specified in Section 305.

A "series" of Securities means all Securities denominated as part of the same series authorized by or pursuant to a particular Board Resolution.

"Special Record Date" for the payment of any Defaulted Interest on the Registered Securities of any series means a date fixed by the Trustee for such series pursuant to Section 307.

"Specified Amount" has the meaning specified in Section 311(h).

"Stated Maturity," when used with respect to any Security or any installment of principal thereof or interest thereon, means the date specified in such Security or a coupon representing such installment of interest as the fixed date on which the principal of such Security or such installment of principal or interest is due and payable.

"Stock Exchange," unless specified otherwise with respect to any particular series of Securities, means the Luxembourg Stock Exchange.

"Subsidiary" has the meaning specified in Section 901.

"Trustee" means the Person named as the "Trustee" in the first paragraph of this Indenture and, subject to the provisions of Article Six hereof, shall also include its successors and assigns as Trustee hereunder. If there shall be at one time more than one Trustee hereunder, "Trustee" shall mean each such Trustee and shall apply to each such Trustee only with respect to those series of Securities with respect to which it is serving as Trustee.

"Trust Indenture Act" means the Trust Indenture Act of 1939, as amended by the Trust Indenture Reform Act of 1990, as in effect (unless otherwise stated herein) on the date of this Indenture.

"United States" has the meaning specified in Section 901.

"Valuation Date" has the meaning specified in Section 311(c).

"Voting Stock" has the meaning specified in Section 901.

"Yield to Maturity," when used with respect to any Original Issue Discount Security, means the yield to maturity, if any, set forth on the face thereof.

#### SECTION 102. Compliance Certificates and Opinions.

Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee (i) an Officers' Certificate stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and (ii) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include (i) a statement that the person making such certificate or opinion has read such certificate or condition, (ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based, (iii) a statement that, in the opinion of such person, the person has made such examination or investigation as is necessary to enable the person to express an informed opinion as to whether such covenant or condition has been complied with, and (iv) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

#### SECTION 103. Form of Documents Delivered to Trustee.

Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to matters upon which his certificate or opinion is based are erroneous.

Any such certificate or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements,

opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

#### SECTION 104. Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by agent duly appointed in writing. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments or record or both are delivered to the Trustee for the appropriate series of Securities and, where it is hereby expressly required, to the Company. Such instrument or instruments and any such record (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments or so voting at any such meeting. Proof of execution of any such instrument or of a writing appointing any such agent, or of the holding by any Person of a Security, shall be sufficient for any purpose of this Indenture and, subject to Section 601, conclusive in favor of the Trustee for the appropriate series of Securities, the Company and any agent of such Trustee or the Company, if made in the manner provided in this Section.

The Company may set a record date for purposes of determining the identity of Holders of Registered Securities entitled to vote or consent to any action by vote or consent authorized or permitted under this Indenture, which record date shall be the later of 30 days prior to the first solicitation of such consent or the date of the most recent list of Holders furnished to the Trustee prior to such solicitation. If a record date is fixed, those persons who were Holders of Registered Securities at such record date (or their duly designated proxies), and only those persons, shall be entitled with respect to such Securities to take such action by vote or consent or to revoke any vote or consent previously given, whether or not such persons continue to be Holders after such record date.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by an officer of a corporation or association or a member of a partnership, or an official of a public or governmental body, on behalf of such corporation, association, partnership or public or governmental body or by a fiduciary, such certificate or affidavit shall also constitute sufficient proof of this authority.

(c) The fact and date of the execution by any Person of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that the Trustee for the appropriate series of Securities deems sufficient.

(d) The principal amount and serial numbers of Registered Securities held by any Person, and the date of holding the same, shall be proved by the Security Register.

(e) The principal amount and serial numbers of Bearer Securities held by any Person, and the date of holding the same, may be proved by the production of such Bearer Securities or by a certificate executed, as depositary, by any trust company, bank, banker or other depositary, wherever situated, if such certificate shall be deemed by the Trustee for such Securities to be satisfactory, showing that at the date therein mentioned such Person had on deposit with such depositary, or exhibited to it, the Bearer Securities therein described; or such facts may be proved by the certificate of the Person holding such Bearer Securities, if such certificate is deemed by such Trustee to be satisfactory. The Trustee for such Securities and the Company may assume that such ownership of any Bearer Security continues until (1) another certificate bearing a later date issued in respect of the same Bearer Security is produced, (2) such Bearer Security is produced to such Trustee by some other Person, (3) such Bearer Security is surrendered in exchange for a Registered Security or (4) such Bearer Security is no longer Outstanding. The principal amount and serial numbers of Bearer Securities held by any Person, and the date of holding the same, may also be proved in any other manner that the Company and the Trustee for such Securities deem sufficient.

(f) In determining whether the Holders of the requisite principal amount of Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver under this Indenture, the principal amount of an Original Issue Discount Security that may be counted in making such determination and that shall be deemed to be Outstanding for such purposes shall be equal to the amount of the principal thereof that would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 502 at the time the taking of such action by the Holders of such requisite principal amount is evidenced to the Trustee for such Securities.

(g) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or, in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee for such Securities, the Security Registrar, any Paying Agent, the Company in reliance thereon, whether or not notation of such action is made upon such Security.

#### SECTION 105. Notices.

Any notice or communication shall be sufficiently given if in writing and delivered in person or mailed by first-class mail addressed as follows:

if to the Company:

The Black & Decker Corporation  
701 East Joppa Road  
Towson, Maryland 21286  
Attention: Treasurer

with a copy to:

The Black & Decker Corporation  
701 East Joppa Road  
Towson, Maryland 21286  
Attention: Vice President and General Counsel

if to the Trustee:

Marine Midland Bank  
Corporate Trust Administration  
140 Broadway  
New York, New York 10005

The Company or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications. If the Trustee of any series of Securities is other than the Trustee initially named in this Indenture or any successor thereto, any notice or communication shall be sufficiently given if in writing and delivered in person or mailed by first class mail addressed to that Trustee at the address provided for in the supplemental indenture executed in connection with the appointment of that Trustee in respect of the applicable series of Securities.

SECTION 106. Notice to Holders; Waiver.

Where this Indenture provides for notice to Holders of any event, (1) such notice shall be sufficiently given (unless otherwise herein expressly provided) to Holders of Registered Securities if in writing and mailed, first class postage prepaid, to each Holder affected by such event, at his address as it appears in the Security Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice and (2) such notice shall be sufficiently given (unless otherwise herein expressly provided) to Holders of Bearer Securities who have filed their names and addresses with the Trustee for such purpose within the previous two years if in writing and mailed, first class postage prepaid, to each such Holder at his address as so filed not later than the latest date and not earlier than the earliest date prescribed for the giving of such notice, or to all other Holders of Bearer Securities if published in an Authorized Newspaper on a Business Day at least twice, the first such publication to be not earlier than the earliest date, and the second such publication to be not later than the latest date, prescribed herein for the giving of such notice.

In any case where notice to Holders of Registered Securities is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder of a Registered Security shall affect the sufficiency of such notice with respect to other Holders of Registered Securities or the sufficiency of any notice to Holders of Bearer Securities given as provided herein. Any notice mailed in the manner prescribed by this Indenture shall be deemed to have been given whether or not received by any particular Holder. In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice to Holders of Registered Securities by mail, then such notification as shall be made with the approval of the Trustee for such Securities shall constitute a sufficient notification for every purpose hereunder.

In case by reason of the suspension of publication of any Authorized Newspaper or Authorized Newspapers or by reason of any other cause it shall be impracticable to publish any notice to Holders of Bearer Securities as provided above, then such notification to Holders of Bearer Securities as shall be made with the approval of the Trustee for such Securities shall constitute sufficient notice to such Holders for every purpose hereunder. Neither the failure to give notice by publication to Holders of Bearer Securities as provided above, nor any defect in any notice so published, shall affect the sufficiency of any notice to Holders of Registered Securities given as provided herein.

Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee for such Securities, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

#### SECTION 107. Conflict with Trust Indenture Act.

If any provision hereof limits, qualifies or conflicts with the duties imposed by any of Sections 310 through 317, inclusive, of the Trust Indenture Act through the operation of Section 318(c) thereof, such imposed duties shall control.

#### SECTION 108. Effect of Headings and Table of Contents.

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

#### SECTION 109. Successors and Assigns.

All covenants and agreements in this Indenture by the Company shall bind its successors and assigns, whether so expressed or not.

SECTION 110. Separability Clause.

In any case any provision in this Indenture or in the Securities or coupons shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 111. Benefits of Indenture.

Nothing in this Indenture or in the Securities or in any coupons appertaining thereto, expressed or implied, shall give to any Person, other than the parties hereto, any Paying Agent, any Security Registrar and their successors hereunder and the Holders of Securities or coupons, any benefit or any legal or equitable right, remedy or claim under this Indenture.

SECTION 112. Governing Law.

This Indenture shall be governed by and construed in accordance with the laws of the State of New York.

SECTION 113. Non-Business Day.

In any case where any Interest Payment Date, Redemption Date or Stated Maturity of a Security of any particular series shall not be a Business Day at any Place of Payment with respect to Securities of that series, then (notwithstanding any other provision of this Indenture or of the Securities or coupons) payment of principal of (and premium, if any) and interest, if any, with respect to such Security need not be made at such Place of Payment on such date, but may be made on the next succeeding Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date or Redemption Date, or at the Stated Maturity, provided that no interest shall accrue for the period from and after such Interest Payment Date, Redemption Date or Stated Maturity, as the case may be.

SECTION 114. Immunity of Incorporators, Stockholders, Employees, Officers and Directors.

A director, officer, employee, stockholder or incorporator, as such, of the Company shall not have any liability for any obligation of the Company under the Securities or the Indenture or for any claim based on, with respect to or by reason of such obligations or their creation. All such liability is waived and released as a condition of, and as partial consideration for, the execution of this Indenture and the issue of the Securities.

SECTION 115. Certain Matters Relating to Currencies.

Subject to Section 311, each reference to any currency or currency unit in any Security, or in the Board Resolution or supplemental indenture relating thereto, shall mean only the



referenced currency or currency unit and no other currency or currency unit.

The Trustee shall segregate moneys, funds and accounts held by the Trustee in one currency or currency unit from any moneys, funds or accounts held in any other currencies or currency units, notwithstanding any provision herein which would otherwise permit the Trustee to commingle such amounts.

Whenever any action or Act is to be taken hereunder by the Holders of Securities denominated in different currencies or currency units, then for purposes of determining the principal amount of Securities held by such Holders, the aggregate principal amount of the Securities denominated in a foreign currency or currency unit shall be deemed to be that amount of Dollars that could be obtained for such principal amount on the basis of a spot rate of exchange specified to the Trustee for such series in an Officers' Certificate for such Foreign Currency or currency unit into Dollars as of the date the taking of such action or Act by the Holders of the requisite percentage in principal amount of the Securities is evidenced to such Trustee.

#### SECTION 116. Language of Notices, Etc.

Any request, demand, authorization, direction, notice, consent or waiver required or permitted under this Indenture shall be in the English language, and any published notice may also be in an official language of the country or province of publication.

### ARTICLE TWO

#### SECURITY FORMS

##### SECTION 201. Forms of Securities.

The Registered Securities, if any, of each series and the Bearer Securities, if any, of each series and related coupons shall be substantially in such form or forms (including global form) as shall be established by or pursuant to a Board Resolution, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture or any indenture supplemental hereto. Each security may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required by law, rule of any securities exchange or to conform to usage. If temporary Securities of any series are issued in global form as permitted by Section 304, the form thereof shall be established as provided in the preceding sentence.

Unless otherwise specified as contemplated by Section 301, Bearer Securities shall have interest coupons attached.

Prior to the first delivery of a Security of any series to the Trustee for authentication, the Company shall deliver to the Trustee the following:

(1) a copy of the Board Resolution, by or pursuant to which such form of Security to be endorsed thereon has been approved;

(2) an Officers' Certificate dated the date such Certificate is delivered to such Trustee stating that all conditions precedent provided for in this Indenture relating to the authentication and delivery of Securities in such form have been complied with; and

(3) an Opinion of Counsel stating that each of the Securities, together with any coupons appertaining thereto, in such form, when (a) completed by appropriate insertions and executed and delivered by the Company to such Trustee for authentication in accordance with this Indenture, (b) authenticated and delivered by such Trustee in accordance with this Indenture within the authorization as to aggregate principal amount established from time to time by the Board of Directors, and (c) sold in the manner specified in such Opinion of Counsel, will be the legal, valid and binding obligations of the Company, subject to applicable bankruptcy, reorganization, insolvency, moratorium and other laws generally affecting creditors' rights, to general equitable principles, to an implied covenant of good faith and fair dealing, and to such other qualifications as such counsel shall conclude do not materially affect the rights of Holders of such Securities.

SECTION 202. Form of Trustee's Certificate of Authentication.

The Certificate of Authentication on all Securities shall be in substantially the following form:

"This is one of the Securities of the series designated in, and issued under, the Indenture described herein.

Marine Midland Bank  
-----,  
as Trustee

By: -----  
Authorized Signatory"

SECTION 203. Securities in Global Form.

If any Security of a series is issuable in global form, such Security may provide that it shall represent the aggregate amount of Outstanding Securities from time to time endorsed thereon and may also provide that the aggregate amount of Outstanding Securities represented thereby may from time to time be reduced to

reflect exchanges. Any endorsement of a Security in global form to reflect the amount, or any increase or decrease in the amount, of Outstanding Securities represented thereby shall be made by the Trustee and in such manner as shall be specified in such Security. Any instructions by the Company with respect to a Security in global form, after its initial issuance, shall be in writing but need not comply with Section 102.

Global Securities may be issued in either registered or bearer form and in either temporary or permanent form. Permanent global Securities will be issued in definitive form.

### ARTICLE THREE

#### THE SECURITIES

##### SECTION 301. Title, Payment and Terms.

The principal amount of Securities that may be authenticated and delivered and Outstanding under this Indenture is not limited. The Securities may be issued up to the aggregate principal amount of Securities from time to time authorized by or pursuant to a Board Resolution.

The Securities may be issued in one or more series, each of which shall be issued pursuant to a Board Resolution or Board Resolutions that shall specify:

(1) the title of the Securities of that series (which shall distinguish the Securities of that series from all other series of Securities);

(2) any limit upon the aggregate principal amount of the Securities of that series which may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of that series pursuant to Section 304, 305, 306, 806 or 1007);

(3) whether Securities of that series are to be issuable as Registered Securities, Bearer Securities or both;

(4) the date or dates (or manner of determining the same) on which the principal of the Securities of that series is payable (which, if so provided in such Board Resolution, may be determined by the Company from time to time and set forth in the Securities of the series issued from time to time);

(5) the rate or rates (or the manner of calculation thereof) at which the Securities of that series shall bear interest (if any), the date or dates from which such interest shall accrue (which, in either case or both, if so provided in

such Board Resolution, may be determined by the Company from time to time and set forth in the Securities of the series issued from time to time), the Interest Payment Dates on which such interest shall be payable (or the manner of determining the same) and the Regular Record Date for the interest payable on any Registered Securities on any Interest Payment Date and the extent to which, or the manner in which, any interest payable on a temporary global Security on an Interest Payment Date will be paid if other than in the manner provided in Section 307;

(6) the place or places where, subject to the provisions of Section 909, the principal of (and premium, if any) and interest, if any, on Securities of that series shall be payable, any Registered Securities of that series may be surrendered for registration of transfer, any Securities of that series may be surrendered for exchange, and notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be served;

(7) the period or periods within which, the price or prices at which, the currency or currency unit in which, and the terms and conditions on which, Securities of that series may be redeemed or converted into another security, in whole or in part, at the option of the Company;

(8) the obligation, if any, of the Company to redeem or purchase Securities of that series pursuant to any sinking fund or analogous provisions or at the option of a Holder thereof (or to convert such Securities into other securities at the option of the Holder), and the period or periods within which, the price or prices at which, the currency or currency unit in which, and the terms and conditions upon which, Securities of that series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;

(9) if denominated in Dollars, the denominations in which any Registered Securities of that series shall be issuable, if other than denominations of \$1,000 and any integral multiple thereof, and the denominations in which any Bearer Securities of that series shall be issuable, if other than the denomination of \$5,000;

(10) if other than the principal amount thereof, the portion of the principal amount of Securities of that series which shall be payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 502;

(11) any Events of Default in addition to the Events of Default described in Section 501 and any covenants of the Company with respect to the Securities of that series, whether or not such Events of Default or covenants are consistent with the Events of Default or covenants set forth herein;

(12) if a Person other than Marine Midland Bank is to act as Trustee for the Securities of that series, the name and location of the Corporate Trust Office of such Trustee;

(13) if other than Dollars, the currency or currency unit in which payment of the principal of (and premium, if any) or interest, if any, on the Securities of that series shall be made or in which the Securities of that series shall be denominated (and the denominations thereof) and the particular provisions applicable thereto in accordance with, in addition to or in lieu of the provisions of Section 311;

(14) if the principal of (and premium, if any) and interest, if any, on the Securities of that series are to be payable, at the election of the Company or a Holder thereof, in a currency or currency unit other than that in which such Securities are denominated or stated to be payable, in accordance with provisions in addition to or in lieu of, or in accordance with the provisions of Section 311, the period or periods within which (including the Election Date), and the terms and conditions upon which, such election may be made, and the time and manner of determining the exchange rate between the currency or currency unit in which such Securities are denominated or stated to be payable and the currency or currency unit in which such Securities are to be so payable;

(15) the designation of the original Currency Determination Agent, if any;

(16) the index, if any, used to determine the amount of payments of principal of (and premium, if any) or interest, if any, on the Securities of that series;

(17) if the amount of payments of principal of (and premium, if any) or interest, if any, on the Securities of that series may be determined with reference to an index based on a currency or currency unit other than that in which such Securities are denominated, the manner in which such amounts shall be determined;

(18) if other than as set forth in Section 401, provisions for the satisfaction and discharge of this Indenture with respect to the Securities of that series;

(19) the provisions, if any, restricting defeasance of the Securities of that series;

(20) the date as of which any Bearer Securities of that series and any global Security representing Outstanding Securities of that series shall be dated if other than the

date of original issuance of the first Security of that series to be issued;

(21) whether the Securities of the series shall be issued in whole or in part in the form of a global Security or Securities and, in such case, the Depositary and Global Exchange Agent, if any, for such global Security or Securities, whether such global form shall be permanent or temporary and, if applicable, the Exchange Date;

(22) if Securities of the series are to be issuable initially in the form of a temporary global Security, the circumstances under which the temporary global Security can be exchanged for definitive Securities and whether the definitive Securities will be Registered Securities and/or Bearer Securities and will be in global form and whether interest in respect of any portion of such global Security payable in respect of an Interest Payment Date prior to the Exchange Date shall be paid to any clearing organization with respect to a portion of such global Security held for its account and, in such event, the terms and conditions (including any certification requirements) upon which any such interest payment received by a clearing organization will be credited to the Persons entitled to interest payable on such Interest Payment Date if other than as provided in this Article Three;

(23) if convertible into the Securities of another series, the terms upon which the Securities of that series will be convertible into Securities of such other series;

(24) if the right of payment with respect to Securities of that series is subordinated to the right of payment with respect to any other indebtedness of the Company, the terms and conditions of such subordination; and

(25) any other terms of that series (which terms shall not be inconsistent with the provisions of this Indenture).

All Securities of any particular series and the coupons appertaining to any Bearer Securities of such series shall be substantially identical except as to denomination, rate of interest, Stated Maturity and the date from which interest, if any, shall accrue, and except as may otherwise be provided in or pursuant to such Board Resolution relating thereto. The terms of such Securities, as set forth above, may be determined by one or more authorized officers of the Company from time to time if so provided in or established pursuant to the authority granted in a Board Resolution. All Securities of any one series need not be issued at the same time, and unless otherwise provided, a series may be reopened for issuance of additional Securities of such series.

SECTION 302. Denominations and Currencies.

Unless otherwise provided with respect to any series of Securities as contemplated by Section 301, any Registered Securities of a series shall be issuable in denominations of \$1,000 and any integral multiple thereof, and any Bearer Securities of a series shall be issuable in the denomination of \$5,000, and Registered and Bearer Securities shall be payable in Dollars. References herein to currencies shall include ECUs, unless otherwise specified or unless the context otherwise requires.

SECTION 303. Execution, Authentication, Delivery and Dating.

The Securities and any related coupons shall be executed on behalf of the Company by two Officers by manual or facsimile signature. The Securities shall be so executed under the corporate seal of the Company reproduced thereon.

Securities and coupons bearing the manual or facsimile signatures of individuals who were at any time the proper Officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of such Securities.

A Security shall not be valid until the Trustee manually signs the Certificate of Authentication on the Security. The signature of the Trustee shall be conclusive evidence that the Security has been authenticated under this Indenture.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any series together with any coupons appertaining thereto, executed by the Company to the Trustee for the Securities of such series for authentication, together with a Company Order for the authentication and delivery of such Securities, and such Trustee, in accordance with the Company Order, shall authenticate and deliver such Securities; provided, however, that, in connection with its sale, during the "restricted period" (as defined in Section 1.163-5(c)(2)(i)(D)(7), and any successor thereto, of the United States Treasury Regulations), no Bearer Security shall be mailed or otherwise delivered to any location in the United States; and provided, further that such Bearer Security (other than a temporary global Security in bearer form) may be delivered outside the United States in connection with its original issuance only if the Person entitled to receive such Bearer Security shall have furnished to Euroclear or CEDEL S.A. a certificate substantially in the form set forth in Exhibit A to this Indenture. If any Security shall be represented by a permanent global Security, then, for purposes of this Section and Section 304, the notation of a beneficial owner's interest therein upon original issuance of such Security or upon exchange of a portion of a temporary global Security shall be deemed to be delivery in connection with the original issuance of such beneficial owner's interest in such

permanent global Security. Except as permitted by Section 306 or 307, the Trustee for the Securities of a series shall not authenticate and deliver any Bearer Security unless all appurtenant coupons for interest then matured other than matured coupons in default have been detached and cancelled. If all the Securities of any one series are not to be issued at one time and if a Board Resolution relating to such Securities shall so permit, the Company Order may set forth procedures acceptable to the Trustee for the issuance of such Securities, including, without limitation, procedures with respect to interest rate, Stated Maturity, date of issuance and date from which interest, if any, shall accrue.

Notwithstanding any contrary provision herein, if all Securities of a series are not to be originally issued at one time, it shall not be necessary to deliver the Board Resolution, Officers' Certificate and Opinion of Counsel otherwise required pursuant to Sections 102 and 201 at or prior to the time of authentication of each Security of such series if such documents are delivered at or prior to the authentication upon original issuance of the first Security of such series to be issued.

Each Registered Security shall be dated the date of its authentication, and, unless otherwise specified as contemplated by Section 301, each Bearer Security shall be dated as of the date of original issuance of the first Security of such series to be issued.

Each Depositary designated pursuant to Section 301 for a global Security in registered form must, at the time of its designation and at all times while it serves as Depositary, be a clearing agency registered under the Securities Exchange Act of 1934, as amended, and any other applicable statute or regulation.

#### SECTION 304. Temporary Securities and Exchange of Securities.

Pending the preparation of definitive Securities of any particular series, the Company may execute, and upon Company Order the Trustee for the Securities of such series shall authenticate and deliver, in the manner specified in Section 303, temporary Securities that are printed, lithographed, typewritten, photocopied or otherwise produced, in any denomination, with like terms and conditions as the definitive Securities of the series in lieu of which they are issued in registered form or, if authorized, in bearer form with one or more coupons or without coupons, and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as evidenced by their execution of such Securities. Any such temporary Securities may be in global form, representing such of the Outstanding Securities of such series as shall be specified therein.

Except in the case of temporary Securities in global form (which shall be exchanged only in accordance with the provisions of the following paragraphs), if temporary Securities of any



particular series are issued, the Company will cause definitive Securities of that series to be prepared without unreasonable delay. After the preparation of such definitive Securities, the temporary Securities of such series shall be exchangeable for such definitive Securities and of a like Stated Maturity and with like terms and provisions upon surrender of the temporary Securities of such series, together with all unmatured and matured coupons in default, if any, at the office or agency of the Company in a Place of Payment for that series, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities of any particular series, the Company shall execute and (in accordance with a Company Order delivered at or prior to the authentication of the first definitive Security of such series) the Trustee for the Securities of such series shall authenticate and deliver in exchange therefor a like principal amount of definitive Securities of authorized denominations of the same series and of a like Stated Maturity and with like terms and provisions; provided, however, unless otherwise specified pursuant to Section 301, no definitive Bearer Security shall be delivered in exchange for a temporary Registered Security, and provided, further, that a definitive Bearer Security (including a permanent global Bearer Security) shall be delivered in exchange for a temporary Bearer Security only in compliance with the conditions set forth in Section 303. Until exchanged as hereinabove provided, the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of the same series and with like terms and conditions, except as to payment of interest, if any, authenticated and delivered hereunder.

Any temporary global Security and any permanent global Security shall, unless otherwise provided therein, be delivered to a Depositary designated pursuant to Section 301.

Without unnecessary delay but in any event not later than the date specified in or determined pursuant to the terms of any such temporary global Security, which (subject to any applicable laws and regulations) shall be 40 days after the closing of the sale of the Securities or within a reasonable period of time thereafter (the "Exchange Date"), the Securities represented by any temporary global Security of a series of Securities issuable in bearer form may be exchanged for definitive Securities (subject to the second succeeding paragraph), including one or more permanent global Securities in definitive form, without interest coupons. On or after the Exchange Date such temporary global Security shall be surrendered by the Depositary to the Trustee for such Security, as the Company's agent for such purpose, or the agent appointed by the Company pursuant to Section 301 to effect the exchange of the temporary global Security for definitive Securities (including any director or officer of the Global Exchange Agent authorized by the Trustee as an Authenticating Agent pursuant to Section 613) (the "Global Exchange Agent"), and following such surrender, such Trustee or the Global Exchange Agent shall (1) endorse the temporary global Security to reflect the reduction of its principal

amount by an equal aggregate principal amount of such Security, (2) endorse any applicable permanent global Security to reflect the initial amount, or an increase in the amount of Securities represented thereby, (3) manually authenticate such definitive Securities (including any permanent global Security), (4) subject to Section 303, either deliver such definitive Securities to the Holder thereof or, if such definitive Security is a permanent global Security, deliver such permanent global Security to the Depositary to be held outside the United States for the accounts of Euroclear and CEDEL, S.A., for credit to the respective accounts at Euroclear and CEDEL, S.A., designated by or on behalf of the beneficial owners of such Securities (or to such other accounts as they may direct) and (5) redeliver such temporary global Security to the Depositary, unless such temporary global Security shall have been cancelled in accordance with Section 309 hereof, provided, however, that, unless otherwise specified in such temporary global Security, upon such presentation by the Depositary, such temporary global Security shall be accompanied by a certificate dated the Exchange Date or a subsequent date and signed by Euroclear as to the portion of such temporary global Security held for its account then to be exchanged for definitive Securities (including any permanent global Security) and a certificate dated the Exchange Date or a subsequent date and signed by CEDEL, S.A., as to the portion of such temporary global Security held for its account then to be exchanged for definitive Securities (including any permanent global Security), each substantially in the form set forth in Exhibit B to this Indenture. Each certificate substantially in the form of Exhibit B hereto of Euroclear or CEDEL, S.A., as the case may be, shall be based on certificates of the account holders listed in the records of Euroclear or CEDEL, S.A., as the case may be, as being entitled to all or any portion of the applicable temporary global Security. An account holder of Euroclear or CEDEL, S.A., as the case may be, desiring to effect the exchange of an interest in a temporary global Security for an interest in definitive Securities (including any permanent global Security) shall instruct Euroclear or CEDEL, S.A., as the case may be, to request such exchange on its behalf and shall deliver to Euroclear or CEDEL, S.A., as the case may be, a certificate substantially in the form of Exhibit A hereto and dated no earlier than 15 days prior to the Exchange Date. Until so exchanged, temporary global Securities shall in all respects be entitled to the same benefits under this Indenture as definitive Securities (including any permanent global Security) of the same series authenticated and delivered hereunder, except as provided in the fourth succeeding paragraph.

The delivery to the Trustee for the Securities of the appropriate series or the Global Exchange Agent by Euroclear or CEDEL, S.A. of any certificate substantially in the form of Exhibit B hereto may be relied upon by the Company and such Trustee or the Global Exchange Agent as conclusive evidence that a corresponding certificate or certificates has or have been delivered to Euroclear or to CEDEL, S.A., as the case may be, pursuant to the terms of this Indenture.

On or prior to the Exchange Date, the Company shall deliver to the Trustee for the Securities of the appropriate series or the Global Exchange Agent definitive Securities in aggregate principal amount equal to the principal amount of such temporary global Security, executed by the Company. At any time on or after the Exchange Date, upon 30 days' notice to the Trustee for the Securities of the appropriate series or the Global Exchange Agent by Euroclear or CEDEL, S.A., as the case may be, acting at the request of or on behalf of the beneficial owner, a Security represented by a temporary global Security or a permanent global Security, as the case may be, may be exchanged, in whole or from time to time in part, for definitive Securities without charge and such Trustee or the Global Exchange Agent shall authenticate and deliver, in exchange for each portion of such temporary global Security or such permanent global Security, an equal aggregate principal amount of definitive Securities of the same series of authorized denominations and with like terms and provisions as the portion of such temporary global Security or such permanent global Security to be exchanged, which, unless the Securities of the series are not issuable both as Bearer Securities and as Registered Securities, as contemplated by Section 301, shall be in the form of Bearer Securities or Registered Securities, or any combination thereof, as shall be specified by the beneficial owner thereof, provided, however, that definitive Bearer Securities shall be delivered in exchange for a portion of the temporary global Security only in compliance with the requirements of the second preceding paragraph. On or prior to the thirtieth day following receipt by the Trustee for the Securities of the appropriate series or the Global Exchange Agent of such notice with respect to a Security, or, if such day is not a Business Day, the next succeeding Business Day, the temporary global Security or the permanent global Security, as the case may be, shall be surrendered by the Depository to such Trustee, as the Company's agent for such purpose, or the Global Exchange Agent to be exchanged in whole, or from time to time in part, for definitive Securities or other definitive Securities, as the case may be, without charge following such surrender, upon the request of Euroclear or CEDEL, S.A., as the case may be, and such Trustee or the Global Exchange Agent shall (1) endorse the applicable temporary global Security or the permanent global Security to reflect the reduction of its principal amount by the aggregate principal amount of such Security, (2) in accordance with procedures acceptable to the Trustee cause the terms of such Security and coupons, if any, to be entered on a definitive Security, (3) manually authenticate such definitive Security and (4) if a Bearer Security is to be delivered, deliver such definitive Security outside the United States to Euroclear or CEDEL, S.A., as the case may be, for or on behalf of the beneficial owner thereof, in exchange for a portion of such permanent global Security.

Unless otherwise specified in such temporary global Security or permanent global Security, any such exchange shall be made free of charge to the beneficial owners of such temporary global Security or permanent global Security, except that a Person

receiving definitive Securities must bear the cost of insurance, postage, transportation and the like in the event that such Person does not take delivery of such definitive Securities in person at the offices of Euroclear or CEDEL, S.A. Definitive Securities in bearer form to be delivered in exchange for any portion of a temporary global Security shall be delivered only outside the United States.

Until exchanged in full as hereinabove provided, any temporary global Security or definitive permanent global Security shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of the same series and with like terms and conditions, except as to payment of interest, if any, authenticated and delivered hereunder. Unless otherwise specified as contemplated by Section 301, interest payable on a temporary global Bearer Security on an Interest Payment Date for Securities of such series shall be payable to Euroclear and CEDEL, S.A. on such Interest Payment Date upon delivery by Euroclear and CEDEL, S.A. to the Trustee for the Securities of the appropriate series or the Global Exchange Agent in the case of payment of interest on a temporary global Security with respect to an Interest Payment Date occurring prior to the applicable Exchange Date of a certificate or certificates substantially in the form set forth in Exhibit C to this Indenture, for credit without further interest on or after such Interest Payment Date to the respective accounts of the Persons who are the beneficial owners of such global Security on such Interest Payment Date and who have, in the case of payment of interest on a temporary global Security with respect to an Interest Payment Date occurring prior to the applicable Exchange Date, each delivered to Euroclear or CEDEL, S.A., as the case may be, a certificate substantially in the form set forth in Exhibit D to this Indenture.

Any definitive Bearer Security authenticated and delivered by the Trustee for the Securities of the appropriate series or the Global Exchange Agent in exchange for a portion of a temporary global Security shall not bear a coupon for any interest which shall theretofore have been duly paid by such Trustee to Euroclear or CEDEL, S.A. or by the Company to such Trustee in accordance with the provisions of this Section.

With respect to Exhibits A, B, C and D to this Indenture, the Company may, in its discretion and if required or desirable under applicable law, substitute one or more other forms of such exhibits for such exhibits, eliminate the requirement that any or all certificates be provided, or change the time that any certificate may be required, provided that such substitute form or forms or notice of elimination or change of such certification requirement have theretofore been delivered to the Trustee with a Company Request and such form or forms, elimination or change is reasonably acceptable to the Trustee.

SECTION 305. Registration, Registration of Transfer and Exchange.

The Company shall cause to be kept at the Corporate Trust Office of the Trustee for the Securities of each series a security register (the security register maintained in such office being herein sometimes referred to as the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Registered Securities and of transfers of Registered Securities. The Trustee for the Securities of each series is hereby initially appointed "Security Registrar" for the purpose of registering Registered Securities and transfers of Registered Securities of such series as herein provided.

Upon surrender for registration of transfer of any Registered Security of any particular series at the office or agency of the Company in a Place of Payment for that series, the Company shall execute, and the Trustee for the Securities of each series shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Registered Securities of any authorized denominations, and of a like Stated Maturity and of a like series and aggregate principal amount and with like terms and conditions.

Except as set forth below, at the option of the Holder, Registered Securities of any particular series may be exchanged for other Registered Securities of any authorized denominations, and of a like Stated Maturity and of a like series and aggregate principal amount and with like terms and conditions, upon surrender of the Registered Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee for such Securities shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive. Except as otherwise specified pursuant to Section 301, Registered Securities may not be exchanged for Bearer Securities.

Notwithstanding any other provision of this Section or Section 304, unless and until it is exchanged in whole or in part for Registered Securities in definitive form, a global Security representing all or a portion of the Registered Securities of a series may not be transferred except as a whole by the Depositary for such series to a nominee of such Depositary or by a nominee of such Depositary to such Depositary or another nominee of such Depositary or by such Depositary or any such nominee to a successor Depositary for such series or a nominee of such successor Depositary.

At the option of the Holder, Bearer Securities of any series may be exchanged for Registered Securities of the same series of any authorized denominations and of a like aggregate principal amount and with like terms and provisions upon surrender of the Bearer Securities to be exchanged at any office or agency of the

Company in a Place of Payment for that series, with all unmatured coupons and all matured coupons in default thereto appertaining. If the Holder of a Bearer Security is unable to produce any such unmatured coupon or coupons or matured coupon or coupons in default, such exchange may be effected if the Bearer Securities are accompanied by payment in funds acceptable to the Company (or to the Trustee for the Security in case of matured coupons in default) in an amount equal to the face amount of such missing coupon or coupons, or the surrender of such missing coupon or coupons may be waived by the Company and such Trustee if there is furnished to them such security or indemnity as they may require to save each of them and any Paying Agent harmless. If thereafter the Holder of such Security shall surrender to any Paying Agent any such missing coupon in respect of which such a payment shall have been made, such Holder shall be entitled to receive the amount of such payment; provided, however, that, except as otherwise provided herein, interest represented by coupons shall be payable only upon presentation and surrender of those coupons at an office or agency of the Company in a Place of Payment for that series located outside the United States. Notwithstanding the foregoing, in case a Bearer Security of any series is surrendered at any such office or agency in exchange for a Registered Security of the same series and with like terms and conditions after the close of business at such office or agency on or after (i) any Regular Record Date and before the opening of business at such office or agency on the relevant Interest Payment Date, or (ii) any Special Record Date and before the opening of business at such office or agency on the related proposed date for payment of Defaulted Interest, such Bearer Security shall be surrendered without the coupon relating to such Interest Payment Date or proposed date for payment, as the case may be (or, if such coupon is so surrendered with such Bearer Security, such coupon shall be returned to the person so surrendering the Bearer Security), and interest or Defaulted Interest, as the case may be, will not be payable on such Interest Payment Date or proposed date for payment, as the case may be, in respect of the Registered Security issued in exchange for such Bearer Security, but will be payable only to the Holder of such coupon when due upon presentment of such coupon in accordance with the provisions of this Indenture.

Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee for such Securities shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

If at any time the Depositary for Securities of a series in registered form notifies the Company that it is unwilling or unable to continue as Depositary for the Securities of such series or if at any time the Depositary for the Securities for such series shall no longer be eligible under Section 303, the Company shall appoint a successor Depositary with respect to the Securities for such series. If a successor Depositary for the Securities of such series is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such

ineligibility, the Company's election pursuant to Section 301 shall no longer be effective with respect to the Securities for such series and the Company will execute, and the Trustee, upon receipt of a Company Order for the authentication and delivery of definitive Securities of such series, will authenticate and deliver Securities of such series in definitive form, in an aggregate principal amount equal to the principal amount of the global Security or Securities representing such series in exchange for such global Security or Securities.

The Company may at any time and in its sole discretion determine that the Registered Securities of any series issued in the form of one or more global Securities shall no longer be represented by such global Security or Securities. In such event the Company will execute, and the Trustee, upon receipt of a Company Order for the authentication and delivery of definitive Registered Securities of such series, will authenticate and deliver Registered Securities of such series in definitive form, and in an aggregate principal amount equal to the principal amount of the global Security or Securities representing such series in exchange for such global Security or Securities.

If specified by the Company pursuant to Section 301 with respect to a series of Securities in registered form, the Depositary for such series of Securities may surrender a global Security for such series of Securities in exchange in whole or in part for Securities of such series of like tenor and terms and in definitive form on such terms as are acceptable to the Company and such Depositary. Thereupon the Company shall execute, and the Trustee shall authenticate and deliver, without service charge, (i) to each Person specified by such Depositary a new Security or Securities of the same series, of like tenor and terms, and of any authorized denomination as requested by such Person in aggregate principal amount equal to and in exchange for such Person's beneficial interest in the global Security, and (ii) to such Depositary a new global Security of like tenor and terms and in a denomination equal to the difference, if any, between the principal amount of the surrendered global Security and the aggregate principal amount of Securities delivered to Holders thereof.

Upon the exchange of a global Security for Securities in definitive form, such global Security shall be cancelled by the Trustee. Registered Securities issued in exchange for a global Security pursuant to this Section shall be registered in such names and in such authorized denominations as the Depositary for such global Security, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee in writing. The Trustee shall deliver such Registered Security to the persons in whose names such Securities are so requested.

All Securities issued upon any registration of transfer or exchange of Securities shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same

benefits under this Indenture, as the Securities surrendered upon such registration of transfer or exchange.

Every Security presented or surrendered for registration of transfer or exchange shall (if so required by the Company or the Trustee for such Security) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar for such series duly executed, by the Holder thereof or his attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 304, 806 or 1007 not involving any transfer.

The Company shall not be required (i) to issue, register the transfer of or exchange Securities of any series during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of Securities of that series selected for redemption under Section 1004 and ending at the close of business on (A) if Securities of the series are issuable only as Registered Securities, the day of the mailing of the relevant notice of redemption and (B) if Securities of the series are issuable as Bearer Securities, the day of the first publication of the relevant notice of redemption or, if Securities of the series are also issuable as Registered Securities and there is no publication, the mailing of the relevant notice of redemption, or (ii) to register the transfer of or exchange any Registered Security so selected for redemption as a whole or in part, except the unredeemed portion of any Security being redeemed in part, or (iii) to exchange any Bearer Security so selected for redemption except that such a Bearer Security may be exchanged for a Registered Security of that series and like tenor provided, however, that such Registered Security shall be simultaneously surrendered for redemption.

#### SECTION 306. Mutilated, Destroyed, Lost and Stolen Securities and Coupons.

If (i) any mutilated Security or a Security with a mutilated coupon appertaining thereto is surrendered to the Trustee for such Security or the Company and the Trustee for the Security and the Company receive evidence to their satisfaction of the destruction, loss or theft of any Security or coupon and (ii) there is delivered to the Company and such Trustee such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or such Trustee that such Security or coupon has been acquired by a bona fide purchaser, the Company shall execute and upon its request such Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security or in exchange for such mutilated Security, or in exchange for the Security to which a



mutilated, destroyed, lost or stolen coupon appertains (with all appurtenant coupons not mutilated, destroyed, lost or stolen) a new Security of the same series and in a like principal amount and of a like Stated Maturity and with like terms and conditions and bearing a number not contemporaneously outstanding with coupons corresponding to the coupons, if any, appertaining to such mutilated, destroyed, lost or stolen Security or to the Security to which such mutilated, destroyed, lost or stolen coupon appertains.

In case any such mutilated, destroyed, lost or stolen Security or coupon has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security or coupon (without surrender thereof except in the case of a mutilated Security or coupon) if the applicant for such payment shall furnish to the Company and the Trustee for such Security such security or indemnity as may be required by them to save each of them harmless, and in case of destruction, loss or theft, evidence satisfactory to the Company and such Trustee and any agent of either of them of the destruction, loss or theft of such Security and the ownership thereof; provided, however, that the principal of (and premium, if any) and interest, if any, on Bearer Securities shall, except as otherwise provided herein, be payable only at an office or agency located outside the United States and, unless otherwise specified as contemplated by Section 301, any interest on a Bearer Security shall be payable only upon presentation and surrender of the coupons appertaining thereto.

Upon the issuance of any new Security under this Section, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including all fees and expenses of the Trustee to such Security) connected therewith.

Every new Security of any series, with its coupons, if any, issued pursuant to this Section in lieu of any destroyed, lost or stolen Security or in exchange for any mutilated Security, or in exchange for a Security to which a mutilated, destroyed, lost or stolen coupon appertains shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security and its coupons, if any, or the destroyed, lost or stolen coupon shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of the same series and their coupons, if any.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities or coupons.

SECTION 307. Payment of Interest; Interest Rights Preserved.

Interest on any Registered Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date

shall, if so provided in such Security, be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest payment; provided, however, that interest, if any, that is payable at maturity or upon Redemption will be payable to the person to whom principal shall be payable.

Unless otherwise provided with respect to the Securities of any series, payment of interest may be made at the option of the Company (i) in the case of Registered Securities, by check mailed or delivered to the address of the Person entitled thereto as such address shall appear in the Security Register or by wire transfer to an account maintained by the payee with a bank located inside the United States according to the written instructions of the payee signed by two authorized officers of the payee, if any, or (ii) in the case of Bearer Securities, except as otherwise provided in Section 909, upon presentation and surrender of the appropriate coupon appertaining thereto at an office or agency of the Company in a Place of Payment located outside the United States or by transfer to an account maintained by the payee with a bank located outside the United States.

Unless otherwise provided or contemplated by Section 301, every permanent global Security will provide that interest, if any, payable on any Interest Payment Date will be paid to each of Euroclear and CEDEL, S.A. with respect to that portion of such permanent global Security held for its account by the Depository. Each of Euroclear and CEDEL, S.A. will in such circumstances credit the interest received by it in respect of such permanent global Security to the accounts of the beneficial owners thereof.

Any interest on any Registered Security of any particular series which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the registered Holder on the relevant Regular Record Date by virtue of having been such Holder; and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Registered Securities of that series (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee for the Registered Securities of such series in writing of the amount of Defaulted Interest proposed to be paid on each Registered Security of that series and the date of the proposed payment, and at the same time the Company shall deposit with such Trustee an amount of money in the currency or currency unit in which the Securities of such series are payable (except as otherwise specified pursuant to Section 301 for the Securities

of such series and except as provided in Sections 311(b), 311(d) and 311(e)) equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to such Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon such Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall not be more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by such Trustee of the notice of the proposed payment. Such Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder of Registered Securities of that series at his address as it appears in the Security Register not less than 10 days prior to such Special Record Date. Such Trustee may, in its discretion, in the name and at the expense of the Company, cause a similar notice to be published at least once in a newspaper published in the English language, customarily on each Business Day and of general circulation in New York, New York, but such publication shall not be a condition precedent to the establishment of such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the Persons in whose names the Registered Securities of that series (or their respective Predecessor Securities) are registered on such Special Record Date and shall no longer be payable pursuant to the following clause (2).

(2) The Company may make payment of any Defaulted Interest on Registered Securities of any particular series in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Registered Securities may be listed, and upon such notice as may be required by such exchange, if, after notice is given by the Company to the Trustee for the Securities of such series of the proposed manner of payment pursuant to this clause, such manner of payment shall be deemed practicable by such Trustee.

Subject to the foregoing provisions of this Section and Section 305, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

#### SECTION 308. Persons Deemed Owners.

Prior to due presentment of a Registered Security for registration of transfer, the Company, the Trustee for such

Security and any agent of the Company or such Trustee may treat the Person in whose name any such Security is registered as the owner of such Security for the purpose of receiving payment of principal of (and premium, if any) and, subject to Section 307, interest, if any, on such Security and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Company, such Trustee nor any agent of the Company or such Trustee shall be affected by notice to the contrary.

Title to any Bearer Security and any coupons appertaining thereto shall pass by delivery. The Company, the Trustee for such Security and any agent of the Company or such Trustee may treat the bearer of any Bearer Security and the bearer of any coupon as the absolute owner of such Bearer Security or coupon for the purpose of receiving payment thereof or on account thereof and for all other purposes whatsoever, whether or not such Security or coupon be overdue, and neither the Company, such Trustee nor any agent of the Company or such Trustee shall be affected by notice to the contrary.

None of the Company, the Trustee, any Paying Agent or the Security Registrar will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a global Security or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

#### SECTION 309. Cancellation.

The Company at any time may deliver Securities to the Trustee for cancellation. The Security Registrar and the Paying Agent shall forward to the Trustee any Securities surrendered to them for transfer, exchange or payment. The Trustee and no one else shall cancel or destroy all Securities surrendered for transfer, exchange, payment or cancellation, and shall so certify to the Company.

All Bearer Securities and unmatured coupons so delivered to the Trustee for such Securities shall be cancelled by such Trustee. Notwithstanding any other provision of this Indenture to the contrary, in the case of a series, all the Securities of which are not to be originally issued at one time, a Security of such series shall not be deemed to have been Outstanding at any time hereunder if and to the extent that, subsequent to the authentication and delivery thereof, such Security is delivered to the Trustee for such Security for cancellation by the Company or any agent thereof upon the failure of the original purchaser thereof to make payment therefor against delivery thereof, and any Security so delivered to such Trustee shall be promptly cancelled by it. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section, except as expressly permitted by this Indenture. All cancelled Securities and coupons held by the Trustee for such Securities shall be disposed of by such Trustee in accordance with its standard procedures and a

certificate of disposition evidencing such disposition of Securities and coupons shall be provided to the Company by such Trustee. In the case of any temporary global Security, which shall be disposed of if the entire aggregate principal amount of the Securities represented thereby has been exchanged, the certificate of disposition shall state that all certificates required pursuant to Section 304 hereof, substantially in the form of Exhibit B hereto (or in the form of any substitute exhibit as provided in the last paragraph of Section 304), to be given by Euroclear or CEDEL, S.A., have been duly presented to the Trustee for such Securities by Euroclear or CEDEL, S.A., as the case may be. Permanent global Securities shall not be disposed of until exchanged in full for definitive Securities or until payment thereon is made in full.

SECTION 310. Computation of Interest.

Except as otherwise specified as contemplated by Section 301 for Securities of any particular series, interest on the Securities of each series shall be computed on the basis of a 360-day year of twelve 30-day months and, in the case of an incomplete month, the number of days elapsed, the amount of interest payable on the Securities of any series for any period to be equal to the product of (i) the principal amount of the Securities of such series Outstanding during such period, (ii) the stated rate of interest per annum (expressed as a decimal fraction) payable on the Securities of such series and (iii) a fraction, the numerator of which is the total number of full months elapsed in such period multiplied by 30, plus the number of days in any incomplete month during which such Securities were Outstanding, and the denominator of which is 360.

SECTION 311. Currency and Manner of Payments in Respect of Securities.

(a) With respect to Registered Securities of any series not permitting the election provided for in paragraph (b) below or the Holders of which have not made the election provided for in paragraph (b) below, and with respect to Bearer Securities of any series, except as provided in paragraph (d) below, payment of the principal of and interest, if any, on any Registered or Bearer Security of such series will be made in the currency or currency unit in which such Registered Security or Bearer Security, as the case may be, is payable.

(b) It may be provided pursuant to Section 301 with respect to Registered Securities of any series that Holders shall have the option, subject to paragraphs (d) and (e) below, to receive payments of principal of (and premium, if any) or interest, if any, on such Registered Securities in any of the currencies or currency units which may be designated for such election by delivering to the Trustee for such series of Registered Securities a written election with signature guarantees and in form and substance satisfactory to such Trustee, not later than the close of business on the Election Date immediately preceding the applicable payment

date. If a Holder so elects to receive such payments in any such currency or currency unit, such election will remain in effect for such Holder until changed by such Holder by written notice to the Trustee for such series of Registered Securities (but any such change must be made not later than the close of business on the Election Date immediately preceding the next payment date to be effective for the payment to be made on such payment date and no such change of election may be made with respect to payments to be made on any Registered Security of such series with respect to which an Event of Default has occurred or notice of redemption has been given by the Company pursuant to Article Ten). In the event any Holder makes any such election pursuant to the preceding sentence, such election will not be effective on any transferee of such Holder and such transferee shall be paid in the currency or currency unit indicated pursuant to paragraph (a) above unless such transferee makes an election pursuant to the preceding sentence; provided, however, that such election, if in effect while funds are on deposit with respect to the Securities of such series as described in Section 401(1)(B), Section 402(1) or Section 403(1), will be effective on any transferee of such Holder unless otherwise specified pursuant to Section 301 for the Securities of such series. Any Holder of any such Registered Security who shall not have delivered any such election to the Trustee of such series of Registered Securities not later than the close of business on the applicable Election Date will be paid the amount due on the applicable payment date in the relevant currency or currency unit as provided in paragraph (a) of this Section. In no case may a Holder of Securities of any series elect to receive payments in any currency or currency unit as described in this Section 311(b) following a deposit of funds with respect to the Securities of such series as described in Section 401(1)(B), Section 402(1) or Section 403(1). The Trustee for each such series of Registered Securities shall notify the Currency Determination Agent as soon as practicable after the Election Date of the aggregate principal amount of Registered Securities for which Holders have made such written election.

(c) If the election referred to in paragraph (b) above has been provided for pursuant to Section 301, then not later than the fourth Business Day after the Regular Record Date for each payment date for Registered Securities of any series, the Currency Determination Agent will deliver to the Company a written notice specifying, in the currency or currency unit in which Registered Securities of such series are payable, the respective aggregate amounts of principal of (and premium, if any) and interest, if any, on the Registered Securities to be made on such payment date, specifying the amounts in such currency or currency unit so payable in respect of the Registered Securities of such series as to which the Holders thereof shall have elected to be paid in a currency or currency unit other than that in which such series is denominated as provided in paragraph (b) above. If the election referred to in paragraph (b) above has been provided for pursuant to Section 301 and if at least one Holder has made such election, then, on the second Business Day preceding such payment date the Company will

deliver to the Trustee for such series of Registered Securities an Exchange Rate Officers' Certificate in respect of the Dollar, Foreign Currency, ECU or currency unit payments to be made on such payment date. The Dollar, Foreign Currency, ECU or currency unit amount receivable by Holders of Registered Securities who have elected payment in a currency or currency unit as provided in paragraph (b) above shall, unless otherwise provided pursuant to Section 301, be determined by the Company on the basis of the applicable Market Exchange Rate in effect on the third Business Day (the "Valuation Date") immediately preceding each payment date.

(d) If a Conversion Event occurs with respect to a Foreign Currency, the ECU or any other currency unit in which any of the Securities are denominated or payable other than pursuant to an election provided for pursuant to paragraph (b) above, then with respect to each date for the payment of principal of (and premium, if any) and interest, if any, on the applicable Securities denominated or payable in such Foreign Currency, the ECU or such other currency unit occurring after the last date on which such Foreign Currency, the ECU or such other currency unit was available (the "Conversion Date"), the Dollar shall be the currency of payment for use on each such payment date. The Dollar amount to be paid by the Company to the Trustee of each such series of Securities and by such Trustee or any Paying Agent to the Holders of such Securities with respect to such payment date shall be the Dollar Equivalent of the Foreign Currency or, in the case of a currency unit, the Dollar Equivalent of the Currency Unit, in each case as determined by the Currency Determination Agent in the manner provided in paragraph (f) or (g) below.

(e) If the Holder of a Registered Security denominated in any currency or currency unit shall have elected to be paid in another currency or currency unit as provided in paragraph (b) above, and a Conversion Event occurs with respect to such elected currency or currency unit, such Holder shall receive payment in the currency or currency unit in which payment would have been made in the absence of such election. If a Conversion Event occurs with respect to the currency or currency unit in which payment would have been made in the absence of such election, such Holder shall receive payment in Dollars as provided in paragraph (d) of this Section 311.

(f) The "Dollar Equivalent of the Foreign Currency" shall be determined by the Currency Determination Agent and shall be obtained for each subsequent payment after the Conversion Date by converting the specified Foreign Currency into Dollars at the Market Exchange Rate on the Conversion Date.

(g) The "Dollar Equivalent of the Currency Unit" shall be determined by the Currency Determination Agent and subject to the provisions of paragraph (h) below shall be the sum of each amount obtained by converting the Specified Amount of each Component Currency into Dollars at the Market Exchange Rate for such Component Currency on the Valuation Date with respect to each payment.

(h) For purposes of this Section 311 the following terms shall have the following meanings:

A "Component Currency" shall mean any currency which, on the Conversion Date, was a component currency of the relevant currency unit, including, but not limited to, the ECU.

A "Specified Amount" of a Component Currency shall mean the number of units of such Component Currency or fractions thereof which were represented in the relevant currency unit, including, but not limited to, the ECU, on the Conversion Date. If after the Conversion Date the official unit of any Component Currency is altered by way of combination or subdivision, the Specified Amount of such Component Currency shall be divided or multiplied in the same proportion. If after the Conversion Date two or more Component Currencies are consolidated into a single currency, the respective Specified Amounts of such Component Currencies shall be replaced by an amount in such single currency equal to the sum of the respective Specified Amounts of such consolidated Component Currencies expressed in such single currency, and such amount shall thereafter be a Specified Amount and such single currency shall thereafter be a Component Currency. If after the Conversion Date any Component Currency shall be divided into two or more currencies, the Specified Amount of such Component Currency shall be replaced by amounts of such two or more currencies, each of whose Dollar Equivalent at the Market Exchange Rate on the date of such replacement shall be equal to the Dollar Equivalent of the Specified Amount of such former Component Currency at the Market Exchange Rate on such date divided by the number of currencies into which such Component Currency was divided, and such amounts shall thereafter be Specified Amounts and such currencies shall thereafter be Component Currencies. If, after the Conversion Date of the relevant currency unit, including, but not limited to, the ECU, a Conversion Event (other than any event referred to above in this definition of "Specified Amount") occurs with respect to any Component Currency of such currency unit and is continuing on the applicable Valuation Date, the Specified Amount of such Component Currency shall, for purposes of calculating the Dollar Equivalent of the Currency Unit, be converted into Dollars at the Market Exchange Rate in effect on the Conversion Date of such Component Currency.

"Election Date" shall mean any date for any series of Registered Securities as specified pursuant to Section 301(14) by which the written election referred to in Section 311(b) may be made, such date to be not later than the Regular Record Date for the earliest payment for which such election may be effective.

All decisions and determinations of the Currency Determination Agent regarding the Dollar Equivalent of the Foreign Currency, the Dollar Equivalent of the Currency Unit, the Market Exchange Rate and changes in the Specified Amounts as specified above shall be in its sole discretion and shall, in the absence of manifest error, be conclusive for all purposes and irrevocably binding upon the



Company, the Trustee for the appropriate series of Securities and all Holders of such Securities denominated or payable in the relevant currency or currency units. The Currency Determination Agent shall promptly give written notice to the Company and the Trustee for the appropriate series of Securities of any such decision or determination.

In the event of a Conversion Event with respect to a Foreign Currency, the Company, after learning thereof, will immediately give written notice thereof to the Trustee of the appropriate series of Registered Securities and Currency Determination Agent (and such Trustee will promptly thereafter give notice in the manner provided in Section 106 to the Holders) specifying the Conversion Date. In the event of a Conversion Event with respect to the ECU or any other currency unit in which Registered Securities are denominated or payable, the Company, after learning thereof, will immediately give written notice thereof to the Trustee of the appropriate series of Registered Securities and Currency Determination Agent (and such Trustee will promptly thereafter give notice in the manner provided in Section 106 to the Holders) specifying the Conversion Date and the Specified Amount of each Component Currency on the Conversion Date. In the event of any subsequent change in any Component Currency as set forth in the definition of Specified Amount above, the Company, after learning thereof, will similarly give written notice to the Trustee of the appropriate series of Registered Securities and Currency Determination Agent.

The Trustee of the appropriate series of Registered Securities shall be fully justified and protected in relying and acting upon information received by it from the Company and the Currency Determination Agent and shall not otherwise have any duty or obligation to determine such information independently.

SECTION 312. Appointment and Resignation of Successor Currency Determination Agent.

(a) If and so long as the Securities of any series (i) are denominated in a currency unit or a currency other than Dollars or (ii) may be payable in a currency unit or a currency other than Dollars, or so long as it is required under any other provision of this Indenture, then the Company will maintain with respect to each such series of Securities, or as so required, a Currency Determination Agent. The Company will cause the Currency Determination Agent to make the necessary foreign exchange determinations at the time and in the manner specified pursuant to Section 301 for the purpose of determining the applicable rate of exchange and for the purpose of converting the issued currency or currency unit into the applicable payment currency or currency unit for the payment of principal (and premium, if any) and interest, if any, pursuant to Section 311.

(b) No resignation of the Currency Determination Agent and no appointment of a successor Currency Determination Agent pursuant to

this Section shall become effective until the acceptance of appointment by the successor Currency Determination Agent as evidenced by a written instrument delivered to the Company and the Trustee of the appropriate series of Securities accepting such appointment executed by the successor Currency Determination Agent.

(c) If the Currency Determination Agent shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of the Currency Determination Agent for any cause, with respect to the Securities of one or more series, the Company, by a Board Resolution, shall promptly appoint a successor Currency Determination Agent or Currency Determination Agents with respect to the Securities of that or those series (it being understood that any such successor Currency Determination Agent may be appointed with respect to the Securities of one or more or all of such series and that at any time there shall only be one Currency Determination Agent with respect to the Securities of any particular series).

#### ARTICLE FOUR

##### SATISFACTION, DISCHARGE AND DEFEASANCE

###### SECTION 401. Satisfaction and Discharge of Securities of any Series Under Limited Circumstances.

The Company shall be deemed to have satisfied and discharged the entire indebtedness on all the Securities of any particular series and, so long as no Event of Default shall be continuing, the Trustee for the Securities of such series, upon Company Request and at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of such indebtedness, when:

(1) either

(A) all Securities of such series theretofore authenticated and delivered and all coupons, if any, appertaining thereto (other than (i) coupons appertaining to Bearer Securities surrendered for exchange for Registered Securities and maturing after such exchange, whose surrender is not required or has been waived as provided in Section 305, (ii) any Securities and coupons of such series which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 306, (iii) coupons appertaining to Securities called for redemption and maturing after the relevant Redemption Date, whose surrender is not required as provided in Section 1006 and (iv) Securities and coupons of such series for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust as provided in Section 405) have been delivered to such Trustee for cancellation; or

(B) except as otherwise specified pursuant to Section 301 for the Securities of such series, with respect to all Outstanding Securities of such series described in (A) above (and, in the case of Bearer Securities, any coupons appertaining thereto) not theretofore so delivered to the Trustee for the Securities of such series for cancellation shall have become due and payable and the Company has deposited or caused to be deposited with such Trustee as trust funds in trust an amount in the currency or currency unit in which the Securities of such series are payable (except as otherwise specified pursuant to Section 301 for the Securities of such series and except as provided in Sections 311(b), 311(d) and 311(e), in which case the deposit to be made with respect to Securities for which an election has occurred pursuant to Section 311(b), or a Conversion Event has occurred as provided in Sections 311(d) and 311(e), shall be made in the currency or currency unit in which such Securities are payable as a result of such election or Conversion Event), sufficient to pay and discharge the entire indebtedness on all such Outstanding Securities of such series and any related coupons for principal (and premium, if any) and interest, if any, to the Stated Maturity or any Redemption Date, as the case may be; and

(2) the Company has paid or caused to be paid all other sums payable with respect to the Securities of such series and any related coupons.

The Company will reimburse the Trustee for any subsequent costs or expenses reasonably and properly incurred by the Trustee in connection with this Indenture or the Securities of such series.

#### SECTION 402. Satisfaction and Discharge.

The Company may take any action provided for in this Section unless otherwise specified pursuant to Section 301 for the Securities of any particular series. The Company at any time at its option may terminate all of its obligations under the Securities of a series previously authenticated and any related coupons and its obligations under this Indenture with respect to such series (except as provided below), and the Trustee, at the expense of the Company, shall, upon the request of the Company, execute proper instruments acknowledging satisfaction of and discharging this Indenture with respect to Securities of that series, effective on the date the following conditions are satisfied:

(1) with reference to this Section,

(i) the Company has deposited or caused to be deposited with such Trustee as trust funds in trust an amount in the currency or currency unit in which

the Securities of such series are payable (except as otherwise specified pursuant to Section 301 for the Securities of such series and except as provided in Sections 311(b), 311(d) and 311(e), in which case the deposit to be made with respect to Securities for which an election has occurred pursuant to Section 311(b), or a Conversion Event has occurred as provided in Sections 311(d) and 311(e), shall be made in the currency or currency unit in which such Securities are payable as a result of such election or Conversion Event), sufficient to pay and discharge the entire indebtedness on all such Outstanding Securities of such series and any related coupons for principal (and premium, if any) and interest, if any, to the Stated Maturity or any Redemption Date as contemplated by this Section, as the case may be; or

(ii) the Company has deposited or caused to be deposited with such Trustee as obligations in trust such amount of Government Obligations as will, as evidenced by a Certificate of a Firm of Independent Public Accountants delivered to such Trustee, together with the predetermined and certain income to accrue thereon (without consideration of any reinvestment thereof), be sufficient to pay and discharge when due the entire indebtedness on all such Outstanding Securities of such series and any related coupons for unpaid principal (and premium, if any) and interest, if any, to the Stated Maturity or any Redemption Date as contemplated by this Section, as the case may be; or

(iii) the Company has deposited or caused to be deposited with such Trustee in trust an amount equal to the amount referred to in clause (i) or (ii) in any combination of currency or currency unit or Government Obligations;

and 91 days have passed during which no Event of Default under Section 501(5) or 501(6) has occurred;

(2) such deposit will not result in a breach or violation of, or constitute a default under, this Indenture or any other agreement or instrument to which the Company is a party or by which it is bound;

(3) the Company has delivered to the Trustee an Opinion of Counsel to the effect that the Holders of Securities will not recognize income, gain or loss for federal income tax purposes as a result of such deposit, defeasance and discharge and will be subject to federal income tax on the same amount and in the same manner and at the same times as would have

been the case if such deposit, defeasance and discharge had not occurred;

(4) if the Securities are then listed on any securities exchange, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that such deposit, defeasance and discharge will not cause such Securities to be delisted; and

(5) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, complying with Section 102 relating to the Company's exercise of such option.

The trust established pursuant to Subsection 402(1) above shall be irrevocable and shall be made under the terms of an escrow trust agreement in form and substance satisfactory to the Trustee. The escrow trust agreement may, at the Company's election, grant the Company the right to substitute Government Obligations from time to time for any or all of the Government Obligations deposited with the Trustee pursuant to this Section and the escrow trust agreement; provided, however, that the condition specified in subsection (1) above is satisfied immediately following any such substitution or substitutions. If any Securities of a series are to be redeemed prior to their stated maturity pursuant to optional redemption provisions the applicable escrow trust agreement shall provide therefor and the Company shall make such arrangements as are satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company.

Upon the satisfaction of the conditions set forth in this Section with respect to the Securities of a particular series, the terms and conditions of the Securities of that series, including the terms and conditions with respect thereto set forth in this Indenture, shall no longer be binding upon, or applicable to, the Company.

Notwithstanding the satisfaction and discharge of this Indenture, (i) the Company shall not be discharged from any payment obligations in respect of Securities of any series and any related coupons which are deemed not to be Outstanding under clause (3) of the definition thereof if such obligations continue to be valid obligations of the Company under applicable law and (ii) the obligations of the Company under Sections 304, 305, 306, 311, 512, 607, 609, 610, and 909 with respect to the Securities of that series shall survive until the Securities of that series are no longer Outstanding. Notwithstanding the satisfaction of the conditions set forth in this Section, with respect to all the Securities of any series not denominated in Dollars, upon the happening of any Conversion Event the Company shall be obligated to make the payments in Dollars required by Section 311(d) to the extent that the Currency Determination Agent is unable to convert any Foreign Currency or Currency Unit in its possession pursuant to

Section 402(1) into the Dollar Equivalent of the Foreign Currency or the Dollar Equivalent of the Currency Unit, as the case may be. If, after the deposit referred to in Section 402(1) has been made, a Conversion Event occurs as contemplated in Section 311(d) or 311(e), then the indebtedness represented by such Security shall be fully discharged if the deposit made with respect to such Security shall be converted into the Currency Unit in which such Security is payable at the Dollar Equivalent of the Foreign Currency or the Dollar Equivalent of the Currency Unit. The trustee for such series of Securities shall return to the Company any non-converted funds or securities in its possession after such payments have been made.

**SECTION 403. Defeasance of Certain Obligations.**

The Company may take any action provided for in this Section unless otherwise specified pursuant to Section 301 for the Securities of any particular series. The Company at any time at its option may cease to be under any obligation to comply with Sections 903, 904 and 906 with respect to Securities of a series effective on the date the following conditions are satisfied:

(1) with reference to this Section,

(i) the Company has deposited or caused to be deposited with such Trustee as trust funds in trust an amount in the currency or currency unit in which the Securities of such series are payable (except as otherwise specified pursuant to Section 301 for the Securities of such series and except as provided in Sections 311(b), 311(d) and 311(e), in which case the deposit to be made with respect to Securities for which an election has occurred pursuant to Section 311(b), or a Conversion Event has occurred as provided in Sections 311(d) and 311(e), shall be made in the currency or currency unit in which such Securities are payable as a result of such election or Conversion Event), sufficient to pay and discharge the entire indebtedness on all such Outstanding Securities of such series and any related coupons for principal (and premium, if any) and interest, if any, to the Stated Maturity or any Redemption Date as contemplated by Section 402, as the case may be; or

(ii) the Company has deposited or caused to be deposited with such Trustee as obligations in trust such amount of Government Obligations as will, as evidenced by a Certificate of a Firm of Independent Public Accountants delivered to such Trustee, together with the predetermined and certain income to accrue thereon (without consideration of any reinvestment thereof), be

sufficient to pay and discharge when due the entire indebtedness on all such Outstanding Securities of such series and any related coupons for unpaid principal (and premium, if any) and interest, if any, to the Stated Maturity or any Redemption Date as contemplated by Section 402, as the case may be; or

(iii) the Company has deposited or caused to be deposited with such Trustee in trust an amount equal to the amount referred to in clause (i) or (ii) in any combination of currency or currency unit or Government Obligations; and

(2) such deposit will not result in a breach or violation of, or constitute a default under, this Indenture or any other agreement or instrument to which the Company is a party or by which it is bound;

(3) the Company has delivered to the Trustee an Opinion of Counsel to the effect that Holders of the Securities of such series will not recognize income, gain or loss for federal income tax purposes as a result of such deposit and defeasance of certain obligations and will be subject to federal income tax on the same amount and in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred;

(4) if the Securities are then listed on any securities exchange, the Company has delivered to the Trustee an Opinion of Counsel to the effect that such deposit and defeasance will not cause such Securities to be delisted; and

(5) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel complying with Section 102 relating to the Company's exercise of such option.

The trust established pursuant to Subsection 403(1) above shall be irrevocable and shall be made under the terms of an escrow trust agreement in form and substance satisfactory to the Trustee. The escrow trust agreement may, at the Company's election, grant the Company the right to substitute Government Obligations from time to time for any or all of the Government Obligations deposited with the Trustee pursuant to this Section and the escrow trust agreement; provided, however, that the condition specified in subsection (1) above is satisfied immediately following any such substitution or substitutions. If any Securities of a series are to be redeemed prior to their stated maturity pursuant to optional redemption provisions the applicable escrow trust agreement shall provide therefor and the Company shall make such arrangements as are satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company.

The Company's exercise of its option under this Section shall not preclude the Company from subsequently exercising its option under Section 402 hereof and the Company may so exercise that option by providing the Trustee with written notice to such effect.

SECTION 404. Application of Trust Money.

The Trustee shall hold in trust money and Government Obligations deposited with it pursuant to Sections 401, 402 or 403. It shall apply the deposited money and Government Obligations through the Paying Agent and in accordance with this Indenture, to the payment of principal (and premium, if any) and interest, if any, on the Securities of the series for the payment of which such money and Government Obligations has been deposited. The Holder of any Security or coupons appertaining thereto replaced pursuant to Section 306 shall not be entitled to any such payment and shall look only to the Company for any payment which such Holder may be entitled to collect. In connection with the satisfaction and discharge of this Indenture or the defeasance of certain obligations under this Indenture with respect to Securities of a series pursuant to Section 402 or 403 hereof, respectively, the escrow trust agreement may, at the Company's election, (1) enable the Company to direct the Trustee to invest any money received by the Trustee on the Government Obligations deposited in trust thereunder in additional Government Obligations, and (2) enable the Trustee for any series of Securities to deliver or pay to the Company from time to time upon the request of the Company any money or Government Obligations held by it as provided in Sections 401, 402 and 403 which, as evidenced by a Certificate of a Firm of Independent Public Accountants, are in excess of the amount thereof which would then have been required to be deposited for the purpose for which such money or Government Obligations were deposited or received.

SECTION 405. Repayment to Company.

The Trustee and the Paying Agent shall promptly pay to the Company upon request any excess money or securities held by them at any time. The Trustee and the Paying Agent shall pay, unless otherwise prohibited by mandatory provisions of applicable escheat or abandoned or unclaimed property law, to the Company upon request any money held by them for the payment of principal or interest that remains unclaimed for two years.

ARTICLE FIVE

REMEDIES

SECTION 501. Events of Default.

An "Event of Default" occurs with respect to a series of Securities if:



(1) the Company defaults in the payment of interest on any Security of that series or a related coupon, if any, when the same becomes due and payable and the default continues for a period of 30 days;

(2) the Company defaults in the payment of the principal (and premium, if any) of any Security of that series when the same becomes due and payable at maturity, upon redemption or otherwise;

(3) the Company fails to comply with any of its other agreements in the Securities of that series or this Indenture for the benefit of that series and the default continues for the period and after the notice specified in this Section;

(4) the Company or any Subsidiary fails to pay, in accordance with its terms and when payable, any of the principal of or interest on any Debt (other than the Securities) having, in the aggregate, a then outstanding principal amount in excess of \$20,000,000 or the maturity of any Debt in such amount shall have been accelerated by any holder or holders thereof or any trustee or agent acting on behalf of such holder or holders, or any Debt in such amount shall have been required by such holder, holders, trustee or agent to be prepaid prior to the stated maturity thereof, in accordance with the provisions of any contract evidencing, providing for the creation of or concerning such Debt;

(5) the Company pursuant to or within the meaning of any Bankruptcy Law:

(A) commences a voluntary case,

(B) consents to the entry of an order for relief against it in an involuntary case,

(C) consents to the appointment of a Custodian of it or for all or substantially all of its property, or

(D) makes a general assignment for the benefit of its creditors;

(6) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief against the Company in an involuntary case,

(B) appoints a Custodian of the Company or for all or substantially all of its property, or

(C) orders the winding up or liquidation of the Company, and the order or decree remains unstayed and in effect for 60 days; or

(7) there occurs any other event specifically described as an Event of Default by the Securities of that series.

The term "Bankruptcy Law" means Title 11, United States Code or any similar Federal or state law for the relief of debtors. The term "Custodian" means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

A default under clause (3) is not an Event of Default with respect to a series of Securities until the Trustee or the Holders of at least 25% in principal amount of the Securities of that series notify the Company of the default and the Company does not cure the default within 30 days after receipt of the notice. The notice must specify the default, demand that it be remedied and state that the notice is a "Notice of Default." Subject to the provisions of Article Six, the Trustee shall not be charged with knowledge of any default unless written notice thereof shall have been given to the Trustee by the Company, the Paying Agent, the Holder of a Security or an agent of such Holder.

#### SECTION 502. Acceleration.

If an Event of Default with respect to a series of Securities occurs and is continuing, the Trustee by notice to the Company or the Holders of at least 25% in principal amount of the Securities of that series by notice to the Company and the Trustee may declare the principal (and premium, if any) (or, in the case of Original Issue Discounted Securities, such amount of principal as may be provided for in such Securities) of and accrued interest on all the Securities of that series to be due and payable immediately. Upon a declaration such principal (and premium, if any) and interest shall be due and payable immediately. The Holders of a majority in principal amount of the Securities of any series by notice to the Trustee may rescind an acceleration (and upon such rescission any past Event of Default caused by such acceleration shall be deemed cured) with respect to that series and its consequences if all existing Events of Default with respect to the series have been cured or waived, if the rescission would not conflict with any judgment or decree, and if all payment due to the Trustee and any predecessor Trustee under Section 606 have been made.

#### SECTION 503. Other Remedies.

If an Event of Default with respect to a series of Securities occurs and is continuing, the Trustee may pursue any available remedy by proceeding at law or in equity to collect the payment of principal of (and premium, if any) (or, in the case of Original Issue Discounted Securities, such amount of principal as may be provided for in such Securities) or interest on the Securities or

related coupons of that series or to enforce the performance of any provision of such Securities or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Securities or related coupons or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative to the extent permitted by law.

#### SECTION 504. Waiver of Past Defaults.

The Holders of a majority in principal amount of the Securities of a series by notice to the Trustee may waive an existing Default or Event of Default with respect to that series and its consequences. When a Default or Event of Default is waived, it is cured and stops continuing, but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereto.

#### SECTION 505. Control by Majority.

The Holders of a majority in principal amount of the Securities of a series may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on it with respect to that series. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture, or, subject to Section 601, that the Trustee determines is unduly prejudicial to the rights of other Holders of Securities of the same series or would involve the Trustee in personal liability.

#### SECTION 506. Limitation on Suits.

No Holder of a security of any series may pursue any remedy with respect to this Indenture or the Securities unless:

- (1) the Holder gives to the Trustee written notice stating that an Event of Default with respect to the Securities of the series is continuing;
- (2) the Holders of at least 25% in principal amount of the Securities of that series make a written request to the Trustee to pursue the remedy;
- (3) such Holder or Holders offer to the Trustee indemnity satisfactory to the Trustee against any loss, liability or expense;
- (4) the Trustee does not comply with the request within 60 days after receipt of the request and the offer of indemnity; and

(5) during such 60-day period the Holders of a majority in principal amount of the Securities of that series do not give the Trustee a direction inconsistent with the request.

A Holder may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over the other Holder.

#### SECTION 507. Rights of Holders to Receive Payment.

Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of principal of (and premium, if any) and interest, if any, on the Security or related coupons, as the case may be, on or after the respective due dates expressed in the Security or related coupons, as the case may be, or to bring suit for the enforcement of any such payment on or after such respective date, shall not be impaired or affected without the consent of the Holder.

#### SECTION 508. Collection Suit by Trustee.

If an Event of Default in payment of interest or principal (and premium, if any) specified in Section 501(1) or (2) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company for the whole amount of principal (and premium, if any) and interest, if any, remaining unpaid.

#### SECTION 509. Trustee May File Proofs of Claim.

The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Holders allowed in any judicial proceedings relative to the Company, its creditors or its property, and unless prohibited by law or applicable regulations, may vote on behalf of the Holders in any election of a trustee in bankruptcy or other person performing similar functions.

#### SECTION 510. Priorities.

If the Trustee collects any money pursuant to this Article with respect to the Securities of any series, it shall pay out the money in the following order:

First: to the Trustee for amounts due under Section 606.

Second: to the Holders of Securities and related coupons of that series for amounts due and unpaid on such Securities and related coupons for principal and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities and related coupons for principal (and premium, if any) and interest, if any, respectively; and

Third: to the Company.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section.

SECTION 511. Undertaking for Costs.

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit other than the Trustee of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit including the Trustee, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 507 or a suit by Holders of more than 10% in principal amount of the Securities of any series.

SECTION 512. Judgment Currency.

If, for the purpose of obtaining a judgment in any court with respect to any obligation of the Company hereunder or under any Security or any related coupon it shall become necessary to convert into any other currency or currency unit any amount in the currency or currency unit due hereunder or under such Security or coupon then such conversion shall be made by the Currency Determination Agent at the Market Exchange Rate as in effect on the date of entry of the judgment (the "Judgment Date"). If pursuant to any such judgment, conversion shall be made on a date (the "Substitute Date") other than the Judgment Date and there shall occur a change between the Market Exchange Rate as in effect on the Judgment Date and the Market Exchange Rate as in effect on the Substitute Date, the Company agrees to pay such additional amounts (if any) as may be necessary to ensure that the amount paid is equal to the amount in such other currency or currency unit which, when converted at the Market Exchange Rate as in effect on the Judgment Date, is the amount due hereunder or under such Security or coupon. Any amount due from the Company under this Section shall be due as a separate debt and is not to be affected by or merged into any judgment being obtained for any other sums due hereunder or in respect of any Security or coupon. In no event, however, shall the Company be required to pay more in the currency or currency unit due hereunder or under such Security or coupon at the Market Exchange Rate as in effect on the Judgment Date than the amount of currency or currency unit stated to be due hereunder or under such Security or coupon so that in any event the Company's obligations hereunder or under such Security or coupon will be effectively maintained as obligations in such currency or currency unit, and the Company shall be entitled to withhold (or be reimbursed for, as the case may be) any excess of the amount actually realized upon any such conversion on the Substitute Date over the amount due and payable on the Judgment Date.

ARTICLE SIX

THE TRUSTEE

SECTION 601. Certain Duties and Responsibilities.

(a) Except during the continuance of an Event of Default with respect to the Securities of any series for which the Trustee is serving as such,

(1) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against such Trustee; and

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to such Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provisions hereof are specifically required to be furnished to such Trustee, such Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture.

(b) In case an Event of Default with respect to a series of Securities has occurred and is continuing, the Trustee for the Securities of such series shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(c) No provision of this Indenture shall be construed to relieve the Trustee for Securities of any series from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(1) this Subsection shall not be construed to limit the effect of Subsection (a) of this Section;

(2) such Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(3) such Trustee shall not be liable with respect to any action taken, suffered or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a majority in principal amount of the Outstanding Securities of any particular series relating to the time, method and place of conducting any proceeding for any remedy available to such Trustee, or exercising any trust or power conferred upon such

Trustee, under this Indenture with respect to the Securities of that series; and

(4) no provision of this Indenture shall require the Trustee for any series of Securities to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee for any series of Securities shall be subject to the provisions of this Section.

#### SECTION 602. Notice of Defaults.

Within 90 days after the occurrence of any default hereunder with respect to Securities of any particular series, the Trustee for the Securities of such series shall give to Holders of Securities of that series, in the manner set forth in Section 106, notice of such default if known to such Trustee, unless such default shall have been cured or waived; provided, however, that, except in the case of a default in the payment of the principal of (or premium, if any) or interest, if any, on any Security of that series, or in the deposit of any sinking fund payment with respect to Securities of that series, such Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of such Trustee in good faith determines that the withholding of such notice is in the interest of the Holders of Securities of that series and related coupons; and provided, further, that in the case of any default of the character specified in Section 501(3) with respect to Securities of that series no such notice to Holders shall be given until at least 60 days after the occurrence thereof. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to Securities of that series.

#### SECTION 603. Certain Rights of Trustee.

Except as otherwise provided in Section 601:

(a) the Trustee for any series of Security may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, discretion, consent, order, bond, debenture, coupon or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order, and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;

(c) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, such Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers' Certificate;

(d) such Trustee may consult with counsel and the written advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or committed by it hereunder in good faith and in reliance thereon;

(e) such Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders of Securities of any series pursuant to this Indenture for which it is acting as Trustee, unless such Holders shall have offered to such Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(f) such Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, coupon or other paper or document, but such Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters at it may see fit, and, if such Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney;

(g) such Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and such Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(h) such Trustee shall not be charged with knowledge of any Event of Default with respect to the Securities of any series for which it is acting as Trustee unless either (1) a Responsible Officer of the Trustee assigned to the Corporate Trust Department of the Trustee (or any successor division or department of the Trustee) shall have actual knowledge of the Event of Default or (2) written notice of such Event of Default shall have been given to the Trustee by the Company or



any other obligor on such Securities or by any Holder of such Securities;  
and

(i) such Trustee shall have no duties or responsibilities with respect to and shall have no liability for the actions taken or the failures to act of any other Trustees appointed hereunder.

#### SECTION 604. May Hold Securities.

The Trustee for any series of Securities, any Paying Agent, Security Registrar or any other agent of the Company or of such Trustee, in its individual or any other capacity, may become the owner or pledgee of Securities and coupons and, subject to Sections 607 and 612, may otherwise deal with the Company with the same rights it would have if it were not such Trustee, Paying Agent, Security Registrar or such other agent.

#### SECTION 605. Money Held in Trust.

Money held by the Trustee for any series of Securities in trust hereunder need not be segregated from other funds except as provided in Section 115 and except to the extent required by law. The Trustee for any series of Securities shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Company.

#### SECTION 606. Compensation and Reimbursement.

The Company agrees:

(1) to pay to the Trustee from time to time such reasonable compensation for all services rendered by it hereunder as the Company and the Trustee shall mutually agree upon (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(2) except as otherwise expressly provided herein, to reimburse the Trustee for any series of Securities upon its request for all reasonable expenses, disbursements and advances incurred or made by such Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence or bad faith; and

(3) to indemnify such Trustee and its agents, including any Authenticating Agent, for, and to hold them harmless against, any loss, liability or expense incurred without negligence or bad faith on their part, arising out of or in connection with the acceptance or administration of this trust including the costs and expenses of defending themselves

against any claim or liability in connection with the exercise or performance of any of their powers or duties hereunder.

As security for the performance of the obligations of the Company under this Section the Trustee for any series of Securities shall have a senior claim to which the Securities are hereby made subordinate on all money or property held or collected by the Trustee as such, except funds held in trust for the payment of principal of (and premium, if any) or interest if any, on particular Securities.

SECTION 607. Disqualification; Conflicting Interests.

The Trustee for the Securities shall be subject to the provisions of Section 310(b) of the Trust Indenture Act during the period of time required thereby. Nothing herein shall prevent the Trustee from filing with the Commission the application referred to in the penultimate paragraph of Section 310(b) of the Trust Indenture Act. In determining whether the Trustee has a conflicting interest as defined in Section 310(b) of the Trust Indenture Act with respect to the Securities of any series, there shall be excluded Securities of any particular series of Securities other than that series.

The Trustee shall not be deemed to have a conflict of interest under Section 310(b) of the Trust Indenture Act with respect to any other indenture entered into with the Company, provided that the Securities issued by the Company under this Indenture are wholly unsecured.

SECTION 608. Corporate Trustee Required, Different Trustees for Different Series; Eligibility.

There shall at all times be a Trustee hereunder which shall be (i) a corporation organized and doing business under the laws of the United States of America, any state thereof, or the District of Columbia, authorized under such laws to exercise corporate trust powers, and subject to supervision or examination by Federal or State authority, or (ii) a corporation or other Person organized and doing business under the laws of a foreign government that is permitted to act as Trustee pursuant to a rule, regulation, or other order of the Commission, authorized under such laws to exercise corporate trust powers, and subject to supervision or examination by authority of such foreign government or a political subdivision thereof substantially equivalent to supervision or examination applicable to United States institutional trustees, having, in the case of (i) or (ii), a combined capital and surplus of at least \$10,000,000. If such corporation publishes reports of condition at least annually, pursuant to law or to requirements of the aforesaid supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. Neither the Company nor any

Person directly or indirectly controlling, controlled by, or under common control with the Company shall serve as Trustee for the Securities. A different Trustee may be appointed by the Company for any series of Securities prior to the issuance of such Securities. If the initial Trustee for any series of Securities is to be other than Marine Midland Bank, the Company and such Trustee shall, prior to the issuance of such Securities, execute and deliver an indenture supplemental hereto, which shall provide for the appointment of such Trustee as Trustee for the Securities of such series and shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereunder specified in this Article.

SECTION 609. Resignation and Removal, Appointment of Successor.

(a) No resignation or removal of the Trustee for the Securities of any series and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 610.

(b) The Trustee for the Securities of any series may resign at any time with respect to the Securities of such series by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 610 shall not have been delivered to the Trustee for the Securities of such series within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

(c) The Trustee for the Securities of any series may be removed at any time with respect to the Securities of such series by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series, delivered to such Trustee and to the Company.

(d) If at any time:

(1) the Trustee for the Securities of any series shall fail to comply with Section 310(b) of the Trust Indenture Act pursuant to Section 607 hereof after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Security of such series for at least six months, unless the Trustee's duty to resign is stayed in accordance

with the provisions of Section 310(b) of the Trust Indenture Act, or

(2) such Trustee shall cease to be eligible under Section 608 and shall fail to resign after written request therefor by the Company or by any such Holder, or

(3) such Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of such Trustee or of its property shall be appointed or any public officer shall take charge or control of such Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (i) the Company by a Board Resolution may remove such Trustee or (ii) subject to Section 511, any Holder who has been a bona fide Holder of a Security of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of such Trustee and the appointment of a successor Trustee.

(e) If the Trustee for the Securities of any series shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for the Securities of any series for any cause, the Company, by a Board Resolution, shall promptly appoint a successor Trustee with respect to the Securities of such series and shall comply with the applicable requirements of Section 610. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Securities of such series shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 610, become the successor Trustee for the Securities of such series and supersede the successor Trustee appointed by the Company. If no successor Trustee for the Securities of such series shall have been so appointed by the Company or the Holders and shall have accepted appointment in the manner required by Section 610, and if such Trustee is still incapable of acting, any Holder who has been a bona fide Holder of a Security of such series for at least six months may, subject to Section 511, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

(f) The Company shall give notice of each resignation and each removal of the Trustee with respect to the Securities of any series and each appointment of a successor Trustee with respect to the Securities of any series in the manner and to the extent provided in Section 106. Each notice shall include the name of the successor Trustee with respect to the Securities of that series and the address of its Corporate Trust Office.

SECTION 610. Acceptance of Appointment by Successor.

(a) Every successor Trustee appointed hereunder with respect to the Securities of any series shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but on the request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder.

(b) In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Company, the retiring Trustee and each successor Trustee with respect to the Securities of one or more series shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to all Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee; and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; but, on request of the Company or any successor Trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor Trustee relates.

(c) Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in Subsections (a) or (b) of this Section, as the case may be.

(d) No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee for the Securities of any series shall be qualified and eligible under this Article.

SECTION 611. Merger, Conversion, Consolidation or Succession to Business.

Any corporation into which the Trustee for the Securities of any series may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of such Trustee, shall be the successor of such Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated, but not delivered, by the Trustee or the Authenticating Agent for such series then in office, any successor by merger, conversion or consolidation to such authenticating Trustee, or any successor Authenticating Agent, as the case may be, may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee or successor Authenticating Agent had itself authenticated such Securities.

SECTION 612. Preferential Collection of Claims Against Company.

The Trustee shall comply with Section 311(a) of the Trust Indenture Act excluding any creditor relationship listed in the Trust Indenture Act Section 311(b). A Trustee who has resigned or been removed shall be subject to the Trust Indenture Act Section 311(a) to the extent indicated therein.

SECTION 613. Authenticating Agents.

From time to time the Trustee for the Securities of any series may, subject to its sole discretion, appoint one or more Authenticating Agents with respect to the Securities of such series, which may include any director or officer of the Company or any Affiliate with power to act in the name of the Trustee and subject to its discretion in the authentication and delivery of Securities of such series in connection with transfers and exchanges under Sections 304, 305, 306 and 1007 as fully to all intents and purposes as though such Authenticating Agent had been expressly authorized by those Sections of this Indenture to authenticate and deliver Securities of such series. For all

purposes of this Indenture the authentication and delivery of such Securities of such series by an Authentication Agent for such Securities pursuant to this Section shall be deemed to be authentication and delivery of such Securities "by the Trustee" for the Securities of such series. Any such Authenticating Agent shall at all times be a director or officer of a corporation organized and doing business under the laws of the United States or of any State thereof, or the District of Columbia, authorized under such laws to exercise corporate trust powers, and, if other than an Affiliate of the Trustee, having a combined capital and surplus of at least \$10,000,000, and subject to supervision or examination by Federal, State, or District of Columbia authority. If such corporation publishes reports of condition at least annually pursuant to law or the requirements of such supervising or examining authority, then for the purposes of this Section the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent for any series of Securities shall cease to be eligible in accordance with the provisions of this Section, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section.

Any Authenticating Agent for any series of Securities may resign at any time by giving written notice of resignation to the Trustee for such series and to the Company. The Trustee for any series of Securities may at any time terminate the appointment of any Authenticating Agent by giving written notice of termination to such Authenticating Agent and to the Company in the manner set forth in Section 105. Upon receiving such a notice of resignation or upon such a termination, or in case at any time any Authenticating Agent for any series of Securities shall cease to be eligible under this Section, the Trustee for such series may appoint a successor Authenticating Agent, shall give written notice of such appointment to the Company and shall give written notice of such appointment to all Holders of Securities of such series in the manner set forth in Section 106. Any successor Authenticating Agent upon acceptance of his appointment hereunder, shall become vested with all the rights, powers and duties of his predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section.

The Trustee for the Securities of each series agrees to pay to any corporation any director or officer of which has been appointed as Authenticating Agent for such series from time to time reasonable compensation for such services, and such Trustee shall be entitled to be reimbursed for such payments, subject to Section 606.

If an appointment with respect to one or more series of Securities is made pursuant to this Section, the Securities of such series may have endorsed thereon, in addition to the Trustee's

certification of authentication, an alternate certificate of authentication in the following form:

"This is one of the Securities of the series designated therein described in the within-mentioned Indenture.

Marine Midland Bank  
-----,  
as Trustee

By: -----  
As Authenticating Agent"

SECTION 614. Reports by Trustee to Holders.

If required pursuant to Section 313(a) of the Trust Indenture Act, the Trustee, within 60 days after each May 15, shall mail to each Holder a brief report dated as of May 15 that complies with Section 313(a) of the Trust Indenture Act. The Trustee also shall comply with the reporting obligations of Section 313(b) of the Trust Indenture Act. A copy of each report at the time of its mailing to Holders shall be filed with the Commission and each stock exchange on which the Securities are listed.

ARTICLE SEVEN

MERGER, CONSOLIDATION, CONVEYANCE OR TRANSFER

SECTION 701. Where Company May Merge, Etc.

The Company shall not consolidate with or merge into, or transfer, directly or indirectly, all or substantially all of its assets to another corporation or other Person unless (1) the resulting, surviving or transferee corporation or other Person assumes by supplemental indenture all the obligations of the Company under the Securities and this Indenture, (2) immediately after giving effect to such transaction, no Event of Default and no circumstances that, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing, and (3) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indenture comply with this Indenture, and thereafter all such obligations of the Company shall terminate.



ARTICLE EIGHT

SUPPLEMENTAL INDENTURES

SECTION 801. Supplemental Indentures Without Consent of Holders.

Without notice to or the consent of any Holders of Securities or coupons, the Company, when authorized by a Board Resolution and the Trustee for the Securities of any or all series, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to such Trustee, for any of the following purposes:

(1) to evidence the succession of another corporation or other Person to the Company, and the assumption by any such successor of the covenants of the Company herein and in the Securities;

(2) to add to the covenants of the Company, for the benefit of the Holders of all or any particular series of Securities and any related coupons (and, if such covenants are to be for the benefit of fewer than all series of Securities, stating that such covenants are being included solely for the benefit of such series), to convey, transfer, assign, mortgage or pledge any property to or with the Trustee or otherwise secure any series of the Securities or to surrender any right or power herein conferred upon the Company;

(3) to add any additional Events of Default with respect to any or all series of Securities (and, if any such Event of Default applies to fewer than all series of Securities, stating each series to which such Event of Default applies);

(4) to add to or to change any of the provisions of this Indenture to provide that Bearer Securities may be registrable as to principal, to change or eliminate any restrictions on the payment of principal of or any premium or interest on Bearer Securities, to permit Bearer Securities to be issued in exchange for Registered Securities, to permit Bearer Securities to be issued in exchange for Bearer Securities of other authorized denominations, to provide (subject to applicable laws) for the issuance of uncertificated Securities of any series in addition to or in place of any certificated Securities and to make all appropriate changes for such purposes; provided, however, that any such action shall not materially adversely affect the rights of the Holders of Securities of any series or any related coupons;

(5) to change or eliminate any of the provisions of this Indenture; provided, however, that any such change or elimination shall become effective only when there is no Security Outstanding of any series created prior to the execution of such supplemental indenture which is entitled to the benefit of such provision;

(6) to evidence and provide for the acceptance of appointment hereunder of a Trustee other than Marine Midland Bank, as Trustee for a series of Securities and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 608;

(7) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 610(b);

(8) to add to the conditions, limitations and restrictions on the authorized amount, form, terms or purposes of issue, authentication and delivery of Securities, as herein set forth, other conditions, limitations and restrictions thereafter to be observed;

(9) to add to or change or eliminate any provisions of this Indenture as shall be necessary or desirable in accordance with any amendments to the Trust Indenture Act;

(10) to cure any ambiguity, defect or inconsistency; or

(11) to make any other amendment, modification, change or supplement to this Indenture or the Securities of any series that does not materially adversely affect the rights of any Holder of any Securities of that series.

The Trustee may waive compliance by the Company with any provision of this Indenture or the Securities of any series without notice to or consent of any Holder of any Security of such series if such waiver does not materially adversely affect the rights of any Holder of any Securities of such series.

#### SECTION 802. Supplemental Indentures With Consent of Holders.

The Company and the Trustee for the Securities of any or all series may enter into an indenture or indentures supplemental hereto for the purpose of amending or supplementing any of the provisions of this Indenture or the Securities and any related coupons, without notice to any Holder, but with the consent of the Holders of a majority in aggregate principal amount of the Outstanding Securities of each series of Securities then Outstanding affected thereby, in each case by Act of said Holders of Securities of each such series delivered to the Company and the Trustee for Securities of each such series. The Holders of a majority in principal amount of the Securities of each series affected may waive compliance by the Company with any provision of this Indenture or the Securities of each such series without notice

to any Holder, in each case by Act of said Holders of Securities of each such series delivered to the Company and the Trustee for Securities of each such series. No such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby:

(1) change the Stated Maturity of the principal of, or any installment of principal of or interest on, any Security or coupon, or reduce the principal amount thereof or the rate of interest thereon, if any, or any premium payable upon the redemption thereof, or change any obligation of the Company to pay additional amounts (except as contemplated by Section 701(1) and permitted by Section 801(1)) or reduce the amount of the principal of an Original Issue Discount Security that would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 502, or change the Place of Payment or the currency or currency unit in which any Security or the interest thereon is payable;

(2) reduce the percentage in principal amount of the Outstanding Securities of any particular series, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences) provided for in this Indenture; or

(3) modify any of the provisions of this Section except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Security affected thereby; provided, however, that this clause shall not be deemed to require the consent of any Holder of a Security or coupon with respect to changes in the references to "the Trustee" and concomitant changes in this Section, or the deletion of this proviso, in accordance with the requirements of Sections 608, 610(6), 801(6) and 801(7).

A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture that has expressly been included solely for the benefit of one or more particular series of Securities, or which modifies the rights of the Holders of Securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series.

It shall not be necessary for any Act of Holders under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

SECTION 803. Execution of Supplemental Indentures.

In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee for any series of Securities shall be entitled to receive, and (subject to Section 601) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. The Trustee for any series of Securities may, but shall not (except to the extent required in the case of a supplemental indenture entered into under Section 801(6) or 801(7)) be obligated to, enter into any such supplemental indenture which affects such Trustee's own rights, liabilities, duties or immunities under this Indenture or otherwise.

SECTION 804. Effect of Supplemental Indentures.

Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder and of any coupons appertaining thereto shall be bound thereby.

SECTION 805. Conformity With Trust Indenture Act.

Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act as then in effect.

SECTION 806. Reference in Securities to Supplemental Indentures.

Securities of any particular series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee for the Securities of such series, bear a notation in form approved by such Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities of any series and any related coupons so modified as to conform, in the opinion of the Trustee for the Securities of such series, to any such supplemental indenture may be prepared and executed by the Company and such Securities may be authenticated and delivered by such Trustee in exchange for Outstanding Securities of such series and any related coupons.

## ARTICLE NINE

### COVENANTS

#### SECTION 901. Certain Definitions.

"Attributable Debt" for a lease means the carrying value of the capitalized rental obligation determined under generally accepted accounting principles whether or not such obligation is required to be shown on the balance sheet as a long-term liability. The carrying value may be reduced by the capitalized value of the rental obligations, calculated on the same basis, that any sublessee has for all or part of the sample property.

"Consolidated Net Tangible Assets" means total assets less (1) total current liabilities (excluding any Debt which, at the option of the borrower, is renewable or extendible to a term exceeding 12 months and which is included in current liabilities and further excluding any deferred income taxes which are included in current liabilities) and (2) goodwill, patents, trademarks and other like intangibles, all as stated on the Company's most recent quarter-end consolidated balance sheet preceding the date of determination.

"Debt" means any debt for borrowed money, capitalized lease obligations and purchase money obligations, or any guarantee of such debt, in any such case which would appear on the consolidated balance sheet of the Company as a liability.

"Exempted Debt" means the sum, without duplication, of the following items outstanding as of the date Exempted Debt is being determined: (i) Debt incurred after the date of this Indenture and secured by liens created or assumed or permitted to exist pursuant to Section 903(b), and (ii) Attributable Debt of the Company and its Subsidiaries in respect of all sale and lease-back transactions with regard to any Principal Property entered into pursuant to Section 904(b).

"Funded Debt" means all Debt having a maturity of more than one year from the date of its creation or having a maturity of less than one year but by its terms being renewable or extendible, at the option of the obligor in respect thereof, beyond one year from its creation.

"Principal Property" means land, land improvements, buildings and associated factory and laboratory equipment owned or leased pursuant to a capital lease and used by the Company or any Subsidiary primarily for manufacturing, assembling, processing, producing, packaging or storing its products, raw materials, inventories or other materials and supplies located in the United States and having an acquisition cost plus capitalized improvements in excess of 2% of Consolidated Net Tangible Assets as of the date of determination, but shall not include any such property financed through the issuance of tax exempt governmental obligations, or any such property that has been determined by Board Resolutions of the

Company not to be of material importance to the respective businesses conducted by the Company and its Subsidiaries taken as a whole, effective as of the date such resolution is adopted.

"Subsidiary" means a corporation a majority of the Voting Stock of which is owned by the Company, the Company and one or more Subsidiaries, or one or more Subsidiaries.

"United States" means the United States of America, but excluding the Commonwealth of Puerto Rico, the Virgin Islands and other territories and possessions thereof.

"Voting Stock" means capital stock having voting power under ordinary circumstances to elect directors.

#### SECTION 902. Payment of Securities.

The Company shall promptly pay the principal of (and premium, if any) and interest, if any, on the Securities and related coupons on the dates and in the manner provided in the Securities.

To the extent lawful, the Company shall pay interest on overdue principal at the rate borne by the Securities and shall pay interest on overdue installments of interest at the same rate.

#### SECTION 903. Limitation on Liens.

(a) The Company will not, and will not permit any Subsidiary to, directly or indirectly, as security for any Debt, mortgage, pledge or create or permit to exist any lien on any shares of stock, indebtedness or other obligations of a Subsidiary or any Principal Property, whether such shares of stock, indebtedness or other obligations of a subsidiary or Principal Property are owned at the date of this Indenture or hereafter acquired, unless the Company secures or causes to be secured any outstanding Securities equally and ratably with all Debt secured by such mortgage, pledge or lien, so long as that Debt shall be secured; provided, however, that this covenant shall not apply in the case of (i) the creation of any mortgage, pledge or other lien on any shares of stock, indebtedness or other obligations of a Subsidiary or a Principal Property hereafter acquired (including acquisitions by way of merger or consolidation) by the Company or a Subsidiary contemporaneously with such acquisition, or within 120 days thereafter, to secure or provide for the payment or financing of any part of the purchase price thereof, or the assumption of any mortgage, pledge or other lien upon any shares of stock, indebtedness or other obligations of a Subsidiary or a Principal Property hereafter acquisitions existing at the time of such acquisition, or the acquisition of any shares of stock, indebtedness or other obligations of a Subsidiary or a Principal Property subject to any mortgage, pledge or other lien without the assumption thereof, provided that any mortgage, pledge or lien referred to in this clause (i) shall attach only to the shares of stock, indebtedness or other obligations of a Subsidiary or a

Principal Property so acquired and fixed improvements thereon; (ii) as to any particular series of Securities, any mortgage, pledge or other lien on any shares of stock, indebtedness or other obligations of a Subsidiary or a Principal Property existing on the date that Securities of such series are first issued; (iii) any mortgage, pledge or other lien on any shares of stock, indebtedness or other obligations of a Subsidiary or a Principal Property in favor of the Company or any other Subsidiary; (iv) any mortgage, pledge or other lien on a Principal Property being constructed or improved securing Debt incurred to finance the construction or improvements; (v) any mortgage, pledge or other lien on shares of stock, indebtedness or other obligations of a Subsidiary or a Principal Property incurred in connection with the issuance by a state or political subdivisions thereof of any securities the interest on which is exempt from Federal income taxes by virtue of Section 103 of the United States Internal Revenue Code of 1986, as amended, or any other laws and regulations in effect at the time of such issuance; and (vi) any renewal of or substitution for any mortgage, pledge or other lien permitted by any of the preceding clauses (i) through (v), provided, in the case of a mortgage, pledge or other lien permitted under clause (i), (ii) or (iv), the Debt secured is not increased nor the line extended to any additional assets.

(b) Notwithstanding the provisions of paragraph (a) of this Section 903, the Company or any Subsidiary may create or assume liens in addition to those permitted by paragraph (a) of this Section 903, and renew, extend or replace such liens, provided, that at the time of such creation, assumption, renewal, extension or replacement, and after giving effect thereto, Exempted Debt does not exceed 10% of Consolidated Net Tangible Assets.

#### SECTION 904. Limitation on Sale-Leaseback Transactions.

(a) The Company will not, and will not permit, any Subsidiary to, sell or transfer, directly or indirectly, except to the Company or a Subsidiary, a Principal Property as an entirety, or any substantial portion thereof, with the intention of taking back a lease of all or part of such property except a lease for a period of three years or less at the end of which it is intended that the use of such property by the lessee will be discontinued; provided that, notwithstanding the foregoing, the Company or any Subsidiary may sell a Principal Property and lease it back for a longer period (i) if the Company or such Subsidiary would be entitled, pursuant to the provisions of Section 903(a), to create a mortgage on the property to be leased securing Debt in an amount equal to the Attributable Debt with respect to the sale and lease-back transaction without equally and ratably securing the outstanding Securities or (ii) if (A) the Company promptly informs the Trustee of such transactions, (B) the net proceeds of such transactions are at least equal to the fair value (as determined by a Board Resolution) of such property and (C) the Company causes an amount equal to the net proceeds of the sale to be applied to the retirement (whether by redemption, cancellation after open-market

purchases, or otherwise), within 120 days after receipt of such proceeds, of Funded Debt (including the Securities) and having an outstanding principal amount equal to the net proceeds.

(b) Notwithstanding the provisions of paragraph (a) of this Section 904, the Company or any Subsidiary may enter into sale and lease-back transactions in addition to those permitted by paragraph (a) of this Section 904 and without any obligation to retire any outstanding Securities or other Funded Debt, provided that at the time of entering into such sale and lease-back transactions and after giving effect thereto, Exempted Debt does not exceed 10% of Consolidated Net Tangible Assets.

SECTION 905. No Lien Created, etc.

This Indenture and the Securities do not create a lien, charge or encumbrances on any property of the Company or any Subsidiary.

SECTION 906. Compliance Certificate.

The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company an Officers' Certificate stating whether or not the signers know of any default by the Company in performing its covenants in Section 903 or 904. If they do know of such a default, the certificate shall describe the default. The certificate need not comply with Section 102.

SECTION 907. Commission Reports.

The Company shall file with the Trustee within 15 days after it files them with the Commission copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may by rules and regulations prescribe) which the Company is required to file with the Commission pursuant to Sections 13 or 15(d) of the Securities Exchange Act of 1934. The Company also shall comply with the other provisions of Section 314(a) of the Trust Indenture Act.

SECTION 908. Money for Securities Payments to Be Held in Trust.

If the Company shall at any time act as its own Paying Agent with respect to any particular series of Securities and any related coupons, it will, on or before each date of the principal of (and premium, if any) or interest, if any, on any of the Securities of that series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum in the currency or currency unit in which the Securities of such series are payable (except as otherwise specified pursuant to Section 301 for the Securities of such series and except as provided in Sections 311(b), 311(d) and 311(e)) sufficient to pay the principal (and premium, if any) and interest, if any, so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided, and will



promptly notify the Trustee for the Securities of such series of its action or failure to so act.

Whenever the Company shall have one or more Paying Agents for any particular series of Securities and any related coupons, the Company will, on or prior to each due date of the principal of (and premium, if any) or interest, if any, on any such Securities, deposit with a Paying Agent for the Securities of such series a sum (in the currency or currency unit described in the preceding paragraph) sufficient to pay the principal (and premium, if any) and interest, if any, so becoming due, such sum to be held in trust for the benefit of the Persons entitled thereto, and (unless such Paying Agent is the Trustee for the Securities of such series) the Company will promptly notify such Trustee of its action or failure so to act.

The Company will cause each Paying Agent for any particular series of Securities other than the Trustee for the Securities of such series to execute and deliver to such Trustee an instrument in which such Paying Agent shall agree with such Trustee, subject to the provisions of this Section, that such Paying Agent will:

(1) hold all sums held by it for the payment of the principal of (and premium, if any) or interest, if any, on Securities of that series in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(2) give such Trustee notice of any default by the Company (or any other obligor upon the Securities) in the making of any payment of principal of (or premium, if any) and interest, if any, on Securities of that series; and

(3) at any time during the continuation of any such default, upon the written request of such Trustee, forthwith pay to such Trustee all sums so held in trust by such Paying Agent.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee for the Securities of any series all sums held in trust by the Company or such Paying Agent, such sums to be held by such Trustee upon the same trusts as those upon which sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to such Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Any money deposited with the Trustee for the Securities of any series or any Paying Agent, or then held by the Company, in trust for the payment of the principal of (and premium, if any) and interest, if any, on any Securities of any particular series and remaining unclaimed for two years after such principal (and premium, if any) and interest, if any, has become due and payable shall, unless otherwise required by mandatory provisions of

applicable escheat, or abandoned or unclaimed property law, be paid to the Company on Company Request or (if then held by the Company) shall be discharged from such trusts; and the Holder of such Security shall, thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of such Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; provided, however, that such Trustee or such Paying Agent, before being required to make any such repayment may give written notice to the Holder of such Security in the manner set forth in Section 106, or may, in its discretion, in the name and at the expense of the Company, cause to be published at least once in a newspaper published in the English language, customarily on each Business Day and of general circulation in New York, New York notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money then remaining will, unless otherwise required by mandatory provisions of applicable escheat, or abandoned or unclaimed property law, be repaid to the Company.

SECTION 909. Maintenance of Office or Agency.

If Securities of a series are issuable only as Registered Securities, the Company will maintain in each Place of Payment for that series an office or agency where Securities of that series may be presented or surrendered for payment, and an office or agency where Securities of that series may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company with respect to the Securities of that series and this Indenture may be served. If Securities of a series are issuable as Bearer Securities, the Company will maintain (A) an office or agency in a Place of Payment for that series in the United States where any Registered Securities of that series may be presented or surrendered for payment, where any Registered Securities of that series may be surrendered for registration of transfer, where Securities of that series may be surrendered for exchange for Registered Securities, where notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be served and where Bearer Securities of that series and related coupons may be presented or surrendered for payment in the circumstances described in the following paragraph (and not otherwise), (B) subject to any laws or regulations applicable thereto, in a Place of Payment for that series which is located outside the United States, an office or agency where Securities of that series and related coupons may be presented and surrendered for payment; provided, however, that if the Securities of that series are listed on the Stock Exchange or any other stock exchange located outside the United States and such stock exchange shall so require, the Company will maintain a Paying Agent for the Securities of that series in Luxembourg or any other required city located outside the United States, as the case may be, so long as the Securities of that series are listed on such exchange, and (C) subject to any laws or regulations applicable thereto, in a

Place of Payment for that series located outside the United States an office or agency where any Registered Securities of that series may be surrendered for registration of transfer, where Securities of that series may be surrendered for exchange and where notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be served. The Company will give prompt written notice to the Trustee for the Securities of that series of the location, and any change in the location, of any such office or agency. If at any time the Company shall fail to maintain any such required office or agency in respect of any series of Securities or shall fail to furnish the Trustee for the Securities of that series with the address thereof, such presentations (to the extent permitted by law) and surrenders of Securities of that series may be made and notices and demands may be made or served at the Corporate Trust Office of such Trustee, except that Bearer Securities of that series and the related coupons may be presented and surrendered for payment at the offices specified in the Security, and the Company hereby appoints the same as its agent to receive such respective presentations, surrenders, notices and demands.

No payment of principal (and premium, if any) or interest, if any, on Bearer Securities shall be made at any office or agency of the Company in the United States or by check mailed to any address in the United States or by transfer to an account maintained with a bank located in the United States. Payments will not be made in respect of Bearer Securities or coupons appertaining thereto pursuant to presentation to the Company or their respective designated Paying Agents within the United States. Notwithstanding the foregoing, payment of principal of (and premium, if any) and interest, if any, on any Bearer Security denominated and payable in Dollars will be made at the office of the Company's Paying Agent in the United States, if, and only if, payment in Dollars of the full amount of such principal, premium or interest, as the case may be, at all offices or agencies outside the United States maintained for that purpose by the Company in accordance with this Indenture is illegal or effectively precluded by exchange controls or other similar restrictions.

The Company may also from time to time designate one or more other offices or agencies (in or outside the Place of Payment) where the Securities of one or more series may be presented or surrendered for any or all of the purposes specified above in this Section and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in each Place of Payment for such purpose. The Company will give prompt written notice to the Trustee for the Securities of each series so affected of any such designation or rescission and of any change in the location of any such office or agency.

If and so long as the Securities of any series (i) are denominated in a currency other than Dollars or (ii) may be payable

in a currency other than Dollars, or so long as it is required under any other provision of the Indenture, then the Company will maintain with respect to each such series of Securities, or as so required, a Currency Determination Agent.

## ARTICLE TEN

### REDEMPTION OF SECURITIES

#### SECTION 1001. Applicability of This Article.

Redemption of Securities of any series (whether by operation of a sinking fund or otherwise) as permitted or required by any form of Security issued pursuant to this Indenture shall be made in accordance with such form of Security and this Article, provided, however, that if any provision of any such form of Security shall conflict with any provision of this Article, the provision of such form of Security shall govern.

#### SECTION 1002. Election to Redeem; Notice to Trustee.

The election of the Company to redeem any Securities of any series shall be evidenced by or pursuant to a Board Resolution. In case of any redemption at the election of the Company of less than all of the Securities of any particular series, the Company shall, at least 60 days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee for the Securities of such series) notify such Trustee by Company Request of such Redemption Date and of the principal amount of Securities of that series to be redeemed and shall deliver to such Trustee such documentation and records as shall enable such Trustee to select the Securities to be redeemed pursuant to Section 1003. In the case of any redemption of Securities of any series prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture, the Company shall furnish the Trustee for Securities of such series with an Officers' Certificate evidencing compliance with such restriction.

#### SECTION 1003. Selection by Trustee of Securities to Be Redeemed.

If less than all the Securities are to be redeemed, the Company may select the series to be redeemed, and if less than all of the Securities of any series are to be redeemed, the particular Securities of that series to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee for the Securities of such series, from the Outstanding Securities of that series not previously called for redemption, by such method as such Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions (equal to the minimum authorized denomination for Securities of that series, or any integral multiple thereof) of the principal amount of Securities of that series of a denomination larger than the minimum authorized

denomination for Securities of that series pursuant to Section 302 in the currency or currency unit in which the Securities of such series are denominated.

The Trustee for the Securities of any series to be redeemed shall promptly notify the Company in writing of the Securities of such series selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Security redeemed or to be redeemed only in part, to the portion of the principal amount of such Securities which has been or is to be redeemed.

#### SECTION 1004. Notice of Redemption.

Notice of redemption shall be given in the manner provided in Section 106 not later than the thirtieth day and not earlier than the sixtieth day prior to the Redemption Date, to each Holder of Securities to be redeemed.

All notices of redemption shall state:

- (1) the Redemption Date,
- (2) the Redemption Price,
- (3) if less than all Outstanding Securities of a particular series are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the particular Securities to be redeemed,
- (4) that on the Redemption Date the Redemption Price will become due and payable upon each such Security or portion thereof, and that interest thereon, if any, shall cease to accrue on and after said date,
- (5) the place or places where such Securities, together in the case of Bearer Securities with all coupons appertaining thereto, if any, maturing after the Redemption Date are to be surrendered for payment of the Redemption Price,
- (6) that the redemption is for a sinking fund, if such is the case,
- (7) that, unless otherwise specified in such notice, Bearer Securities of any series, if any, surrendered for redemption must be accompanied by all coupons maturing subsequent to the date fixed for redemption or the amount of any such missing coupon or coupons will be deducted from the Redemption Price or security or indemnity satisfactory to the

Company, the Trustee for such series and any Paying Agent is furnished, and

(8) if Bearer Securities of any series are to be redeemed and any Registered Securities of such series are not to be redeemed, and if such Bearer Securities may be exchanged for Registered Securities not subject to redemption on this Redemption Date pursuant to Section 305 or otherwise, the last date, as determined by the Company, on which such exchanges may be made.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's request, by the Trustee for such Securities in the name and at the expense of the Company.

#### SECTION 1005. Deposit of Redemption Price.

Prior to the opening of business on any Redemption Date, the Company shall deposit with the Trustee for the Securities to be redeemed or with a Paying Agent for such Securities (or, if the Company is acting as its own Paying Agent for such Securities, segregate and hold in trust) an amount of money in the currency or currency unit in which the Securities of such series are payable (except as otherwise specified pursuant to Section 301 for the Securities of such series and except as provided in Sections 311(b), 311(d) and 311(e)) sufficient to pay the principal amount of (and premium, if any, thereon), and (except if the Redemption Date shall be an Interest Payment Date) any accrued interest on, all the Securities which are to be redeemed on that date.

#### SECTION 1006. Securities Payable on Redemption Date.

Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified in the currency or currency unit in which the Securities of such series are payable (except as otherwise provided pursuant to Section 301 for the Securities of such series and except as provided in Sections 311(b), 311(d) and 311(e)) and from and after such date (unless the Company shall default in the payment of the Redemption Price) such Securities shall cease to bear interest and the coupons for such interest appertaining to any Bearer Securities so to be redeemed, except to the extent provided below, shall be void. Upon surrender of such Security for redemption in accordance with said notice together with all coupons, if any, appertaining thereto maturing after the Redemption Date, such Security or specified portions thereof shall be paid by the Company at the Redemption Price; provided, however, that installments of interest on Bearer Securities whose Stated Maturity is on or prior to the Redemption Date shall be payable only at an office or agency located outside the United States and, unless otherwise specified as contemplated by Section 301, only upon presentation and surrender of coupons for

such interest, and provided, further, that unless otherwise specified as contemplated by Section 301, installments of interest on Registered Securities whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Record Dates according to their terms and the provisions of Section 307.

If any Bearer Security surrendered for redemption shall not be accompanied by all coupons appertaining thereto maturing after the Redemption Date, such Security may be paid after deducting from the Redemption Price an amount equal to the face amount of all such missing coupons or the surrender of such missing coupon or coupons may be waived by the Company if there is furnished to the Company, the Trustee for such Security and any Paying Agent such security or indemnity as they may require to save the Company, such Trustee and any Paying Agent harmless. If thereafter the Holder of such Security shall surrender to such Trustee or any Paying Agent any such missing coupon in respect of which a deduction shall have been made from the Redemption Price, such Holder shall be entitled to receive the amount so deducted; provided, however, that interest represented by coupons shall be payable only at an office or agency located outside the United States and, unless otherwise specified as contemplated by Section 301, only upon presentation and surrender of those coupons.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal thereof (and premium, if any, thereon) shall, until paid, bear interest from the Redemption Date at a rate per annum equal to the rate borne by the Security (or, in the case of Original Issue Discount Securities, the Security's Yield to Maturity).

#### SECTION 1007. Securities Redeemed in Part.

Any Registered Security which is to be redeemed only in part shall be surrendered at the Place of Payment (with, if the Company or the Trustee for such Security so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Security Registrar for such Security duly executed by, the Holder thereof or his attorney duly authorized in writing), and the Company shall execute and such Trustee shall authenticate and deliver to the Holder of such Security without service charge, a new Registered Security or Securities, of any authorized denomination as requested by such Holder, of the same series and having the same terms and provisions and in an aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Registered Security so surrendered.

## ARTICLE ELEVEN

### HOLDERS' MEETINGS

#### SECTION 1101. Purposes of Meetings.

A meeting of Holders of any or all series may be called at any time and from time to time pursuant to the provisions of this Article Eleven for any of the following purposes:

(1) to give any notice to the Company or to the Trustee for such series, or to give any directions to the Trustee for such series, or to consent to the waiving of any default hereunder and its consequences, or to take any other action authorized to be taken by Holders pursuant to any of the provisions of Article Five;

(2) to remove the Trustee for such series and appoint a successor Trustee pursuant to the provisions of Article Six;

(3) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Article Eight; or

(4) to take any other action authorized to be taken by or on behalf of the Holders of any specified aggregate principal amount of the Outstanding Securities of any one or more or all series, as the case may be, under any other provision of this Indenture or under applicable law.

#### SECTION 1102. Call of Meetings by Trustee.

The Trustee for any series may at any time call a meeting of Holders of such series to take any action specified in Section 1101, to be held at such time or times and at such place or places as the Trustee for such series shall determine. Notice of every meeting of the Holders of any series, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given to Holders of such series in the manner and to the extent provided in Section 106. Such notice shall be given not less than 20 days nor more than 90 days prior to the date fixed for the meeting.

#### SECTION 1103. Call of Meetings by Company or Holders.

In case at any time the Company, pursuant to a Board Resolution, or the Holders of a majority in aggregate principal amount of the Outstanding Securities of a series or of all series, as the case may be, shall have requested the Trustee for such series to call a meeting of Holders of any or all such series by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have given the notice of such meeting within 20 days after the receipt of such request, then the Company or such Holders may determine the



time or times and the place or places for such meetings and may call such meetings to take any action authorized in Section 1101, by given notice thereof as provided in Section 1102.

SECTION 1104. Qualifications for Voting.

To be entitled to vote at any meeting of Holders a Person shall be (a) a Holder of a Security of the series with respect to which such meeting is being held or (b) a Person appointed by an instrument in writing as agent or proxy by such Holder. The only Persons who shall be entitled to be present or to speak at any meeting of Holders shall be the Persons entitled to vote at such meeting and their counsel and any representatives of the Trustee for the series with respect to which such meeting is being held and its counsel and all representatives of the Company and its counsel.

SECTION 1105. Regulations.

Notwithstanding any other provisions of this Indenture, the Trustee for any series may make such reasonable regulations as it may deem advisable for any meeting of Holders of such series, in regard to proof of the holding of Securities of such series and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall deem appropriate.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Holders of such series as provided in Section 1103, in which case the Company or the Holders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by a majority vote of the meeting.

Subject to the provisos in the definition of "Outstanding," at any meeting each Holder of a Security of the series with respect to which such meeting is being held or proxy therefor shall be entitled to one vote for each \$1,000 principal amount (or such other amount as shall be specified as contemplated by Section 301) of Debt Securities of such series held or represented by him; provided, however, that no vote shall be cast or counted at any meeting in respect of any Security challenged as not Outstanding and ruled by the chairman of the meeting to be not Outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Outstanding Securities of such series held by him or instruments in writing duly designating him as the person to vote on behalf of Holders of Securities of such series. Any meeting of Holders with respect to which a meeting was duly called pursuant to the provisions of Section 1102 or 1103 may be adjourned from time to time by a majority of such Holders present and the meeting may be held as so adjourned without further notice.

SECTION 1106. Voting.

The vote upon any resolution submitted to any meeting of Holders with respect to which such meeting is being held shall be by written ballots on which shall be subscribed the signatures of such Holders or of their representatives by proxy and the serial number or numbers of the Securities held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Holders shall be taken and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was transmitted as provided in Section 1102. The record shall show the serial numbers of the Securities voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

SECTION 1107. No Delay of Rights by Meeting.

Nothing contained in this Article Eleven shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Holders or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to any Holder under any of the provisions of this Indenture or of the Securities of any series.

\* \* \*

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed, and their respective corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

THE BLACK & DECKER CORPORATION

[SEAL] By: \_\_\_\_\_  
Title

Attest: \_\_\_\_\_  
Secretary

MARINE MIDLAND BANK,  
TRUSTEE

[SEAL] By: \_\_\_\_\_  
Vice President

Attest: \_\_\_\_\_  
Trust Officer

EXHIBIT A

[FORM OF CERTIFICATE TO BE DELIVERED TO EUROCLEAR OR CEDEL, S.A. BY OR ON BEHALF OF A BENEFICIAL OWNER OF SECURITIES, IN ORDER TO RECEIVE A DEFINITIVE BEARER SECURITY IN EXCHANGE FOR AN INTEREST IN A TEMPORARY GLOBAL SECURITY OR TO EXCHANGE AN INTEREST IN A TEMPORARY GLOBAL SECURITY FOR AN INTEREST IN A PERMANENT GLOBAL SECURITY IN DEFINITIVE FORM]

The Black & Decker Corporation

[Insert title or description of Securities]

Reference is hereby made to the Indenture dated as of \_\_\_\_\_, 1994 (the "Indenture") between The Black & Decker Corporation (the "Issuer") and \_\_\_\_\_, as Trustee. Unless otherwise herein defined, terms used herein have the same meaning as in the Indenture.

This is to certify that as of the date hereof and except as set forth below, \_\_\_\_\_ principal amount of the above-captioned Securities held by you for our account (i) is owned by person(s) that are not United States person(s) (as defined below), (ii) is owned by United States person(s) that are (a) foreign branches of United States financial institutions (as defined in Section 1.165-12(c)(1)(v) of the United States Treasury regulations) ("financial institutions") purchasing for their own account or for resale, or (b) United States person(s) who acquired the Securities through foreign branches of United States financial institutions and who hold the Securities through such United States financial institutions on the date hereof (and in either case (a) or (b), each such United States financial institution hereby agrees, on its own behalf or through its agent that you may advise the Issuer or the Issuer's agent that it will comply with the requirements of Section 165(j)(3)(A), (B) or (C) of the United States Internal Revenue Code of 1986, as amended, and the Treasury regulations thereunder), or (iii) is owned by United States or foreign financial institution(s) for the purpose of resale during the restricted period (as defined in Section 1.163-5(c)(2)(i)(D)(7) of the United States Treasury regulations), and in addition if the owner of the Securities is a United States or foreign financial institution described in clause (iii) above (whether or not also described in clause (i) or (ii)) this is to further certify that such financial institution has not acquired the Securities for the purpose of resale directly or indirectly to a United States person or to a person within the United States or its possessions.

We undertake to advise you promptly by tested telex on or prior to the date on which you intend to submit your certification relating to the beneficial interest in the temporary global Security held by you for our account in accordance with your operating procedures if any applicable statement herein is not

correct on such date, and in the absence of any such notification it may be assumed that this certification applies as of such date.

This certificate excepts and does not relate to principal amount of \_\_\_\_\_ Securities held by you for our account as to which we are not able to provide a certificate in this form. We understand that exchange of such portion of the temporary Global Security for definitive Bearer Securities or interests in a permanent Global Security cannot be made until we are able to provide a certificate in this form.

We understand that this certificate is required in connection with certain tax laws and regulations of the United States. If administrative or legal proceedings are commenced or threatened in connection with which this certificate is or would be relevant, we irrevocably authorize you to produce this certificate or a copy thereof to any interested party in such proceedings. "United States person" means any citizen or resident of the United States, any corporation, partnership or other entity created or organized in or under the laws of the United States and any estate or trust the income of which is subject to United States federal income taxation regardless of its source. "United States" means the United States of America (including the States and the District of Columbia); and its "possessions" include Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and the Northern Marina Islands.

By: \_\_\_\_\_  
As, or as agent for, the beneficial  
owner(s) of the portion of the  
temporary Global Security to which  
this certificate relates.

Dated: \_\_\_\_\_  
[Not earlier than 15 days  
prior to Exchange Date]

EXHIBIT B

[FORM OF CERTIFICATE TO BE GIVEN TO THE APPROPRIATE TRUSTEE BY EUROCLEAR OR CEDEL, S.A. REGARDING THE EXCHANGE OF A TEMPORARY GLOBAL SECURITY FOR DEFINITIVE SECURITIES OR FOR A PORTION OF A PERMANENT GLOBAL SECURITY IN DEFINITIVE FORM]

The Black & Decker Corporation

[Insert title or description of Securities]

Reference is hereby made to the Indenture dated as of \_\_\_\_\_, 1994 (the "Indenture") between The Black & Decker Corporation (the "Issuer") and \_\_\_\_\_, as Trustee. Unless otherwise herein defined, terms used herein shall have the same meaning as in the Indenture.

The undersigned certifies that based solely on certifications we have received in writing, by tested telex or by electronic transmission from member organizations appearing in our records as persons being entitled to a portion of the principal amount set forth below (our "Member Organizations") substantially to the effect set forth in the Indenture as of the date hereof, \_\_\_\_\_ principal amount of the above-captioned Securities (i) is owned by person(s) that are not United States person(s) (as defined below), (ii) is owned by United States person(s) that are (a) foreign branches of United States financial institutions (as defined in Section 1.165-12(c)(1)(v) of the United States Treasury regulations) ("financial institutions") purchasing for their own account or for resale, or (b) United States person(s) who acquired the Securities through foreign branches of United States financial institutions and who hold the Securities through such United States financial institutions on the date hereof (and in either case (a) or (b), each such United States financial institution has agreed, on its own behalf or through its agent, that we may advise the Issuer or the Issuer's agent that it will comply with the requirements of Section 165(j)(3)(A), (B) or (C) of the United States Internal Revenue Code of 1986, as amended, and the Treasury regulations thereunder), or (iii) is owned by United States or foreign financial institution(s) for the purpose of resale during the restricted period (as defined in Section 1.163-5(c)(2)(i)(D)(7) of the United States Treasury regulations), and in addition United States or foreign financial institutions described in clause (iii) above (whether or not also described in clause (i) or (ii)) have certified that they have not acquired the Securities for the purpose of resale directly or indirectly to a United States person or to a person within the United States or its possessions.

We further certify (i) that we are not making available for exchange or collection of any interest any portion of the temporary Global Security excepted in such certifications and (ii) that as of the date hereof we have not received any notification from any of

our Member Organizations to the effect that the statements made by such Member Organizations with respect to any portion of the part submitted herewith for exchange or collection of any interest are no longer true and cannot be relied upon as of the date hereof.

We understand that this certificate is required in connection with certain tax laws and regulations of the United States. If administrative or legal proceedings are commenced or threatened in connection with which this certificate is or would be relevant, we irrevocably authorize you to produce this certificate or a copy thereof to any interested party in such proceedings. "United States person" means any citizen or resident of the United States, any corporation, partnership or other entity created or organized in or under the laws of the United States and any estate or trust the income of which is subject to United States federal income taxation regardless of its source. "United States" means the United States of America (including the States and the District of Columbia), and its "possessions" include Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and the Northern Marina Islands.

By: \_\_\_\_\_

Dated: \_\_\_\_\_  
[Not earlier than  
Exchange Date]

EXHIBIT C

[FORM OF CERTIFICATE TO BE GIVEN TO THE APPROPRIATE TRUSTEE BY EUROCLEAR OR CEDEL, S.A. REGARDING PAYMENTS ON A TEMPORARY GLOBAL SECURITY PRIOR TO AN EXCHANGE DATE]

The Black & Decker Corporation

[Insert title or description of Securities]

Reference is hereby made to the Indenture dated as of \_\_\_\_\_, 1994 (the "Indenture") between The Black & Decker Corporation (the "Issuer") and \_\_\_\_\_, as Trustee. Unless otherwise herein defined, terms used herein shall have the same meaning as in the Indenture.

The undersigned certifies that based solely on certifications we have received in writing, by tested telex or by electronic transmission from member organizations appearing in our records as persons being entitled to a portion of the principal amount set forth below (our "Member Organizations") substantially to the effect set forth in the Indenture as of the date hereof, \_\_\_\_\_ principal amount of the above-captioned Securities (i) is owned by person(s) that are not United States person(s) (as defined below), (ii) is owned by United States person(s) that are (a) foreign branches of United States financial institutions (as defined in Section 1.165-12(c)(1)(v) of the United States Treasury regulations) ("financial institutions") purchasing for their own account or for resale, or (b) United States person(s) who acquired the Securities through foreign branches of United States financial institutions and who hold the Securities through such United States financial institutions on the date hereof (and in either case (a) or (b), each such United States financial institution has agreed, on its own behalf or through its agent, that we may advise the Issuer or the Issuer's agent that it will comply with the requirements of Section 165(j)(3)(A), (B) or (C) of the United States Internal Revenue Code of 1986, as amended, and the Treasury regulations thereunder), or (iii) is owned by United States or foreign financial institution(s) for the purpose of resale during the restricted period (as defined in Section 1.163-5(c)(2)(i)(D)(7) of the United States Treasury regulations), and in addition United States or foreign financial institutions described in clause (iii) above (whether or not also described in clause (i) or (ii)) have certified that they have not acquired the Securities for the purpose of resale directly or indirectly to a United States person or to a person within the United States or its possessions.

We further certify (i) that we are not making available for exchange or collection of any interest any portion of the temporary Global Security excepted in such certificates and (ii) that as of the date hereof we have not received any notification from any of our Member Organizations to the effect that the statements made by such Member Organizations with respect to any portion of the part



submitted herewith for exchange or collection of any interest are no longer true and cannot be relied upon as of the date hereof.

We understand that this certificate is required in connection with certain tax laws and regulations of the United States. If administrative or legal proceedings are commenced or threatened in connection with which this certificate is or would be relevant, we irrevocably authorize you to produce this certificate of a copy thereof to any interested party in such proceedings. "United States person" means any citizen or resident of the United States, any corporation, partnership or other entity created or organized in or under the laws of the United States and any estate or trust the income of which is subject to United States federal income taxation regardless of its source. "United States" means the United States of America (including the States and the District of Columbia); and its "possessions" include Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and the Northern Marina Islands.

Dated: [Not earlier than Payment Date]

By:\_\_\_\_\_

EXHIBIT D

[FORM OF CERTIFICATE TO BE DELIVERED TO EUROCLEAR OR CEDEL, S.A. BY OR ON BEHALF OF A BENEFICIAL OWNER OF SECURITIES, IN ORDER TO RECEIVE PAYMENT ON A TEMPORARY GLOBAL SECURITY PRIOR TO AN EXCHANGE DATE]

The Black & Decker Corporation

[Insert title or description of Securities]

Reference is hereby made to the Indenture dated as of \_\_\_\_\_, 1994 (the "Indenture") between The Black & Decker Corporation (the "Issuer") and \_\_\_\_\_, as Trustee. Unless otherwise herein defined, terms used herein have the same meaning as in the Indenture.

This is to certify that as of the date hereof and except as set forth below, \_\_\_\_\_ principal amount of the above-captioned Securities held by you for our account (i) is owned by person(s) that are not United States person(s) (as defined below), (ii) is owned by United States person(s) that are (a) foreign branches of United States financial institutions (as defined in Section 1.165-12(c)(1)(v) of the United States Treasury regulations) ("financial institutions") purchasing for their own account or for resale, or (b) United States person(s) who acquired the Securities through foreign branches of United States financial institutions and who hold the Securities through such United States financial institutions on the date hereof (and in either case (a) or (b), each such United States financial institution hereby agrees, on its own behalf or through its agent, that you may advise the Issuer or the Issuer's agent that it will comply with the requirements of Section 165(j)(3)(A), (B) or (C) of the United States Internal Revenue Code of 1986, as amended, and the Treasury regulations thereunder), or (iii) is owned by financial institution(s) for the purpose of resale during the restricted period (as defined in Section 1.1635(c)(2)(i)(D)(7) of the United States Treasury regulations), and in addition if the owner of the Securities is a United States or foreign financial institution described in clause (iii) above (whether or not also described in clause (i) or (ii)) this is to further certify that such financial institution has not acquired the beneficial interest in the Securities for the purpose of resale directly or indirectly to a United States person or to a person within the United States or its possessions.

We undertake to advise you promptly by tested telex if the foregoing statement as to beneficial ownership is not correct on the [insert relevant payment date], and in the absence of any such notification it may be assumed that this certification applies as of such date.

This certificate excepts and does not relate to \_\_\_\_\_ principal amount of Securities held by you for our account as to which we are not able to provide a certificate in this form. We understand that payments, if any, due prior to the Exchange Date with respect to such portion of the temporary Global Security cannot be made until we are able to provide a certificate in this form.

We understand that this certificate is required in connection with certain tax laws and regulations of the United States. If administrative or legal proceedings are commenced or threatened in connection with which this certificate is or would be relevant, we irrevocably authorize you to produce this certificate or a copy thereof to any interested party in such proceedings. "United States person" means any citizen or resident of the United States, any corporation, partnership or other entity created or organized in or under the laws of the United States and any estate or trust the income of which is subject to United States federal income taxation regardless of its source. "United States" means the United States of America (including the States and the District of Columbia); and its "Possessions" include Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and the Northern Marina Islands.

Dated: [Not earlier than 15 days prior to Payment Date]

By: \_\_\_\_\_  
As, or as agent for, the beneficial  
owner(s) of the portion of the  
temporary Global Security to which  
this certificate relates.

Miles & Stockbridge,  
a Professional Corporation  
10 Light Street  
Baltimore, Maryland 21202

May 25, 1994

The Black & Decker Corporation  
701 East Joppa Road  
Towson, Maryland 21286

Ladies and Gentlemen:

We have acted as counsel to The Black & Decker Corporation, a Maryland corporation (the "Corporation"), in connection with the filing of a Registration Statement on Form S-3 (the "Registration Statement") on the date hereof under the Securities Act of 1933, as amended (the "Act"), in respect of the Corporation's Debt Securities to be issued from time to time pursuant to Rule 415 under the Act. In this capacity we have reviewed the Charter and By-Laws of the Corporation, the form of Indenture to be entered into by and between the Corporation and Marine Midland Bank, as Trustee (as supplemented or modified by the Trust Indenture Act of 1939, collectively, the "Indenture"), the Registration Statement including the exhibits thereto, the corporate proceedings of the Corporation relating to the authorization of the issuance of the Debt Securities and such certificates and other documents as we deemed necessary or advisable for the purposes of this opinion.

Members of our firm are admitted to the Bar in the State of Maryland. We express no opinion as to the laws of any state or jurisdiction other than, and our opinions expressed herein are limited to, the laws of the State of Maryland and the federal laws of the United States of America.

Based on the foregoing, we are of the opinion that the Debt Securities, when duly authorized and executed in accordance with the terms of the resolutions adopted by the Board of Directors of the Corporation and the terms of the Indenture, authenticated by the Trustee in accordance with the terms of the Indenture, and issued and delivered against payment therefor, will be legally issued and will constitute valid and binding obligations of the Corporation entitled to the benefits of the Indenture.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the reference to us under the heading "Validity" in the Prospectus. In giving our consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Securities and Exchange Commission thereunder.

Very truly yours,

Miles & Stockbridge, a Professional  
Corporation

By: GLENN C. CAMPBELL

-----  
Principal

THE BLACK & DECKER CORPORATION  
COMPUTATION OF RATIO OF EARNINGS TO FIXED CHARGES

(in millions, except ratios)

|  | Quarter<br>Ended                     |                 | Year Ended<br>December 31 |           |          |          |                      |                                    |
|--|--------------------------------------|-----------------|---------------------------|-----------|----------|----------|----------------------|------------------------------------|
|  | April 3<br>1994                      | April 4<br>1993 | 1993                      | 1992      | 1991     | 1990     | Transition<br>Period | Year Ended<br>September 24<br>1989 |
|  | -----                                | -----           | ----                      | ----      | ----     | ----     | -----                | -----                              |
|  | (Dollars in millions)<br>(unaudited) |                 |                           |           |          |          |                      |                                    |
| EARNINGS:  |                                      |                 |                           |           |          |          |                      |                                    |
| Earnings (loss) before income taxes,<br>extraordinary item, and cumulative<br>effects of changes in accounting<br>principles . . . . . | \$ 21.8                              | \$ 23.6         | \$ 155.9                  | \$ (29.0) | \$ 107.5 | \$ 123.5 | \$ (2.0)             | \$ 62.9                            |
| Interest expense . . . . .   | 46.0                                 | 43.5            | 180.0                     | 227.6     | 308.5    | 398.2    | 106.9                | 232.0                              |
| Portion of rent expense<br>representative of an interest<br>factor . . . . .   | 7.1                                  | 7.9             | 28.5                      | 35.0      | 32.3     | 32.0     | 8.0                  | 17.0                               |
|  | -----                                | -----           | -----                     | -----     | -----    | -----    | -----                | -----                              |
| Adjusted earnings before taxes and<br>fixed charges. . . . .   | \$ 74.9                              | \$ 75.0         | \$ 364.4                  | \$ 233.6  | \$ 448.3 | \$ 553.7 | \$ 112.9             | \$ 311.9                           |
|  | =====                                | =====           | =====                     | =====     | =====    | =====    | =====                | =====                              |
| FIXED CHARGES:   |                                      |                 |                           |           |          |          |                      |                                    |
| Interest expense . . . . .   | \$ 46.0                              | \$ 43.5         | \$ 180.0                  | \$ 227.6  | \$ 308.5 | \$ 398.2 | \$ 106.9             | \$ 232.0                           |
| Portion of rent expense<br>representative of an interest<br>factor . . . . .   | 7.1                                  | 7.9             | 28.5                      | 35.0      | 32.3     | 32.0     | 8.0                  | 17.0                               |
|  | -----                                | -----           | -----                     | -----     | -----    | -----    | -----                | -----                              |
| Total fixed charges. . . . .   | \$ 53.1                              | \$ 51.4         | \$ 208.5                  | \$ 262.6  | \$ 340.8 | \$ 430.2 | \$ 114.9             | \$ 249.0                           |
|  | =====                                | =====           | =====                     | =====     | =====    | =====    | =====                | =====                              |
| RATIO OF EARNINGS TO FIXED CHARGES . . . .   | 1.41                                 | 1.46            | 1.75                      | --        | 1.32     | 1.29     | --                   | 1.25                               |
| DEFICIENCY IN CONVERAGE. . . . .   | --                                   | --              | --                        | \$ 29.0   | --       | --       | \$ 2.0               | --                                 |

## Consent of Independent Auditors

We consent to the reference to our firm under the caption "Experts" in the Registration Statement on Form S-3 and related Prospectus of The Black & Decker Corporation for the registration of debt securities in the amount of \$500,000,000 and to the incorporation by reference therein of our report dated February 16, 1994, with respect to the consolidated financial statements and schedules of The Black & Decker Corporation included in its Annual Report (Form 10-K) for the year ended December 31, 1993, filed with the Securities and Exchange Commission.

/s/ Ernst & Young

Baltimore, Maryland  
May 19, 1994

POWER OF ATTORNEY  
-----

We, the undersigned Directors and Officers of The Black & Decker Corporation (the "Corporation"), hereby constitute and appoint Nolan D. Archibald, Charles E. Fenton and Thomas M. Schoewe, and each of them, with power of substitution, our true and lawful attorneys-in-fact with full power to sign for us, in our names and in the capacities indicated below, a registration statement or registration statements on Form S-3, and all amendments and supplements thereto (including post-effective amendments), for the purpose of registering under the Securities Act of 1933, as amended, Debt Securities of the Corporation with an aggregate initial public offering price of up to \$750,000,000.

|                    |                               |                |
|--------------------|-------------------------------|----------------|
| NOLAN D. ARCHIBALD | Director, Chairman,           | April 26, 1994 |
| - - - - -          | President and Chief           |                |
| Nolan D. Archibald | Executive Officer             |                |
|                    | (Principal Executive Officer) |                |

|                   |          |                |
|-------------------|----------|----------------|
| BARBARA L. BOWLES | Director | April 26, 1994 |
| - - - - -         |          |                |
| Barbara L. Bowles |          |                |

|                  |          |                |
|------------------|----------|----------------|
| MALCOLM CANDLISH | Director | April 26, 1994 |
| - - - - -        |          |                |
| Malcolm Candlish |          |                |

|                       |          |                |
|-----------------------|----------|----------------|
| ALONZO G. DECKER, JR. | Director | April 26, 1994 |
| - - - - -             |          |                |
| Alonzo G. Decker, Jr. |          |                |

|               |          |                |
|---------------|----------|----------------|
| ANTHONY LUISO | Director | April 26, 1994 |
| - - - - -     |          |                |
| Anthony Luiso |          |                |

|                   |          |                |
|-------------------|----------|----------------|
| J. DEAN MUNCASTER | Director | April 26, 1994 |
| - - - - -         |          |                |
| J. Dean Muncaster |          |                |

|                  |          |                |
|------------------|----------|----------------|
| LAWRENCE R. PUGH | Director | April 26, 1994 |
| - - - - -        |          |                |
| Lawrence R. Pugh |          |                |

|                |          |                |
|----------------|----------|----------------|
| MARK H. WILLES | Director | April 26, 1994 |
| - - - - -      |          |                |
| Mark H. Willes |          |                |

|                         |          |                |
|-------------------------|----------|----------------|
| M. CABELL WOODWARD, JR. | Director | April 26, 1994 |
| - - - - -               |          |                |
| M. Cabell Woodward, Jr. |          |                |

|                   |                               |             |
|-------------------|-------------------------------|-------------|
| THOMAS M. SCHOEWE | Vice President--              | May 5, 1994 |
| - - - - -         | Finance and Treasurer         |             |
| Thomas M. Schoewe | (Principal Financial Officer) |             |

|                   |                                |             |
|-------------------|--------------------------------|-------------|
| STEPHEN F. REEVES | Corporate Controller           | May 5, 1994 |
| - - - - -         | (Principal Accounting Officer) |             |
| Stephen F. Reeves |                                |             |



SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

-----

FORM T-1  
STATEMENT OF ELIGIBILITY UNDER THE TRUST  
INDENTURE ACT OF 1939 OF A CORPORATION  
DESIGNATED TO ACT AS TRUSTEE

-----  
CHECK IF AN APPLICATION TO DETERMINE  
ELIGIBILITY OF A TRUSTEE PURSUANT TO  
SECTION 305(b)(2)  
-----

Marine Midland Bank  
(Exact name of trustee as specified in its charter)

|   |   |
|---|---|
| New York  | 16-1057879                              |
| (Jurisdiction of incorporation<br>or organization if not a U.S.<br>national bank) | (I.R.S. Employer<br>Identification No.) |

|  |            |
|--|------------|
| 140 Broadway, New York, N.Y.             | 10005-1180 |
| (212) 658-1000                           | (Zip Code) |
| (Address of principal executive offices) |            |

The Black & Decker Corporation  
(Exact name of obligor as specified in its charter)

|   |   |
|---|---|
| Maryland  | 52-0248090                              |
| (State or other jurisdiction<br>of incorporation or organization) | (I.R.S. Employer<br>Identification No.) |

|  |            |
|--|------------|
| 701 East Joppa Road                      |            |
| Towson, Maryland                         | 21286      |
| (410) 716-3900                           |            |
| (Address of principal executive offices) | (Zip Code) |

Debt Securities  
(Title of Indenture Securities)

General

Item 1. General Information.  
-----

Furnish the following information as to the trustee:

(a) Name and address of each examining or supervisory authority to which it is subject.

State of New York Banking Department.

Federal Deposit Insurance Corporation, Washington, D.C.

Board of Governors of the Federal Reserve System,  
Washington, D.C.

(b) Whether it is authorized to exercise corporate trust powers.

Yes.

Item 2. Affiliations with Obligor.  
-----

If the obligor is an affiliate of the trustee, describe each such affiliation.

None

Item 16. List of Exhibits.  
-----

Exhibit  
- -----

- |           |   |  |
|-----------|---|--|
| T1A(i)    | - | Copy of the Organization Certificate of Marine Midland Bank.   |
| T1A(ii)   | - | Certificate of the State of New York Banking Department dated December 31, 1993 as to the authority of Marine Midland Bank to commence business.                   |
| T1A(iii)  | - | Not applicable.  |
| T1A(iv)   | - | Copy of the existing By-Laws of Marine Midland Bank as adopted on January 20, 1994.  |
| T1A(v)    | - | Not applicable.  |
| T1A(vi)   | - | Consent of Marine Midland Bank required by Section 321(b) of the Trust Indenture Act of 1939.  |
| T1A(vii)  | - | Copy of the latest report of condition of the trustee (December 31, 1993), published pursuant to law or the requirement of its supervisory or examining authority. |
| T1A(viii) | - | Not applicable.  |
| T1A(ix)   | - | Not applicable.  |

SIGNATURE

Pursuant to the requirements of the Trust Indenture Act of 1939, the Trustee, Marine Midland Bank, a banking corporation and trust company organized under the laws of the State of New York, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of New York and State of New York on the 23rd day of May, 1994.

MARINE MIDLAND BANK

By: /s/ BarbaraJean McCauley

-----  
BarbaraJean McCauley  
Assistant Vice President

ORGANIZATION CERTIFICATE

of

"MARINE MIDLAND BANK"

We, the undersigned, all being of full age, all but one of us being citizens of the United States and all of us being residents of the State of New York, having associated ourselves together for the purpose of forming a trust company under and pursuant to the Banking Law of the State of New York, do hereby certify:

First. That the name by which the corporation is to be known is Marine  
-----  
Midland Bank.

Second. That the place where its principal office is to be located is  
-----  
Buffalo, New York.

Third. That the amount of its capital stock is to be One Hundred Eighty-  
-----  
five Million and no/100 Dollars (\$185,000,000.00) and the number of shares into which such capital stock is to be divided is 1,850,000 with a par value of \$100.00 each.

Fourth. The shares are not to be classified as preferred and common.  
-----

If the shares are to be so classified,

(a) The number and par value of shares to be included in each class are as follows: not applicable.

(b) All the designations, preferences, privileges and voting powers of the shares of each class, and the restrictions or qualifications thereof are as follows: not applicable.

(c) The number of shares of common stock which are to be reserved for issuance in exchange for preferred shares or otherwise to replace any capital stock represented by preferred shares is none.

Fifth. The name, place of residence and citizenship of each incorporator,  
-----  
and the number of shares subscribed for by each are:

| Full Name<br>----- | Residence<br>----- | *Citizenship<br>----- | No. of<br>Shares<br>----- |
|--------------------|--------------------|-----------------------|---------------------------|
| James H. Cleave    | New York           | Canada                | 0                         |
| John M. Endries    | New York           | New York              | 0                         |
| Bernard J. Kennedy | New York           | New York              | 0                         |
| Northrup R. Knox   | New York           | New York              | 0                         |
| Henry J. Nowak     | New York           | New York              | 0                         |

Sixth. The term of existence of the corporation is to be perpetual.  
-----

Seventh. The number of directors is to be not less than seven or more than  
-----  
thirty.

Eighth. The names of the incorporators who shall be the directors until  
-----  
the first annual meeting of stockholders are: James H. Cleave, John M. Endries,  
Bernard J. Kennedy, Northrup R. Knox and Henry J. Nowak.

Ninth. The corporation is to exercise the powers conferred by Section 100  
-----  
of the Banking Law.

- -----  
\* If a citizen of New York or a contiguous state, insert name of such state.

IN WITNESS WHEREOF, We have made, signed and acknowledged this certificate in duplicate, this 16th day of September, 1993.

/s/ James H. Cleave  
- - - - -

/s/ John M. Endries  
- - - - -

/s/ Bernard J. Kennedy  
- - - - -

/s/ Northrup R. Knox  
- - - - -

/s/ Henry J. Nowak  
- - - - -

STATE OF NEW YORK )  
                          ) ss.:  
COUNTY OF ERIE        )

On this 16th day of September, 1993, personally appeared before me James H. Cleave, John M. Endries, Bernard J. Kennedy, Northrup R. Knox and Henry J. Nowak, to me known to be the persons described in and who executed the foregoing certificate and severally acknowledged that they executed the same.

                  /s/ Helen Kujawa  
-----  
Notary Public

(Attach County Clerk's certificate  
authenticating signature of Notary  
Public who takes acknowledgement)

[NOTARIAL SEAL]

Ninth. The corporation is to exercise the powers conferred by Section 100  
-----  
of the Banking Law.

IN WITNESS WHEREOF, We have made, signed and acknowledged this certificate  
in duplicate, this 16th day of September, 1993.

/s/ James H. Cleave  
-----

/s/ John M. Endries  
-----

/s/ Bernard J. Kennedy  
-----

/s/ Northrup R. Knox  
-----

/s/ Henry J. Nowak  
-----

STATE OF NEW YORK )  
                  ) ss.:  
COUNTY OF ERIE     )

I, David J. Swarts, Clerk of the County of Erie, and also Clerk of the  
Supreme and County Courts for said County, the same being Courts of Record, do  
hereby certify that HELEN KUJAWA, whose name is subscribed to the deposition  
certificate of acknowledgement of proof of the annexed instrument, was at the  
time of taking the same a NOTARY PUBLIC in and for the State of New York, duly  
commissioned and sworn and qualified to act as such throughout the State of New  
York; that pursuant to law a commission, or a certificate of his appointment and  
qualifications and his autograph signature, have been filed in my office; that  
as such Notary Public he was duly authorized by the laws of the State of New  
York to administer oaths and affirmations to receive and certify that  
acknowledgement of proof of deeds, mortgages, powers of attorney and other  
written instruments for lands, tenements and hereditaments to be read in  
evidence or recorded in this State, to protect notes and to take and certify  
affidavits and depositions; and that I am well acquainted with the handwriting  
of such Notary Public, or have compared the signature on the annexed instrument  
and with his autograph signature deposited in my office, and believe that the  
signature is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of  
said County and Courts at Buffalo, this 17th day of September, 1993.

[SEAL]

N.P. No. 7502

/s/ David S. Swarts  
-----

Clerk



ORGANIZATION CERTIFICATE

of

"MARINE MIDLAND BANK"

Received this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Superintendent of Banks

Filed for examination this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Superintendent of Banks

\_\_\_\_\_ by the Banking Board at a meeting held on the  
\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Secretary of the Banking Board

\_\_\_\_\_ this \_\_\_\_ day of  
\_\_\_\_\_, 19\_\_\_\_.

Superintendent of Banks

Filed in the office of \_\_\_\_\_ this \_\_\_\_ day of  
\_\_\_\_\_, 19\_\_\_\_.

Recorded in the office of \_\_\_\_\_ this \_\_\_\_ day of  
\_\_\_\_\_, 19\_\_\_\_.

STATE OF NEW YORK  
BANKING DEPARTMENT  
-----

KNOW ALL MEN BY THESE PRESENTS,

WHEREAS, the organization certificate of MARINE MIDLAND BANK of Buffalo, New York has heretofore been duly approved and said MARINE MIDLAND BANK has complied with the provisions of Chapter 2 of the Consolidated Laws, in respect of the conversion of MARINE MIDLAND BANK, N.A. into a State trust company under the name MARINE MIDLAND BANK,

NOW THEREFORE, I, DERICK D. CEPHAS, as Superintendent of Banks of the State of New York, do hereby authorize the said MARINE MIDLAND BANK to transact the business of a Trust Company at One Marine Midland Center, Buffalo, Erie County, within this State.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Banking Department, this 31st day of December in the year one thousand nine hundred and ninety-three.

[SEAL]

/s/ Derrick D. Cephas  
-----  
Superintendent

BY-LAWS  
of  
MARINE MIDLAND BANK

ARTICLE I

STOCKHOLDERS' MEETINGS

Section 1.1 Annual Meeting. The annual meeting of the stockholders for  
-----  
the election of directors and the transaction of such other business as may properly come before the meeting shall be held in April each year at the office of the Bank, One Marine Midland Center, City of Buffalo, State of New York.

Section 1.2 Special Meetings. Except as otherwise specifically provided  
-----  
by statute, special meetings of the stockholders may be called for any purpose at any time by the Board of Directors, the Chairman of the Board, the President, the Chief Executive Officer or the Secretary at such place and time and on such day as may be designated in the notice of meeting. Business transacted at all special meetings of stockholders shall be confined to the purposes stated in the notice of meeting.

Section 1.3 Quorum. The holders of a majority of the stock issued and  
-----  
outstanding, and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of stockholders, unless otherwise provided by law.

Section 1.4 Voting.  
-----

a. At any meeting of the stockholders each stockholder may vote in person or by proxy duly authorized in writing. Each stockholder shall at every meeting of stockholders be entitled to one vote for each share of stock held by such stockholder. A majority of the votes cast shall decide every question or matter submitted to the stockholders at any meeting, unless otherwise provided by law or by the Organization Certificate.

b. Any action required to be taken at an annual or special meeting of stockholders may be taken without a meeting by written consent setting forth the action and signed by the holders of all of outstanding shares entitled to vote thereon.

Section 1.5 Notice of Meeting. Written notice of each meeting of  
-----  
stockholders stating the place, date and hour of the meeting and, in the case of a special meeting, the

purpose or purposes for which the meeting is called and the person or persons calling the meeting, shall be delivered personally or shall be mailed postage prepaid to each stockholder entitled to vote at such meeting, directed to the stockholder at his or her address as it appears on the records of the Bank, not less than ten or more than 50 days before the date of the meeting.

## ARTICLE II

### DIRECTORS

#### Section 2.1 Board of Directors. The Board of Directors (the "Board")

-----  
shall have power to manage and administer the business and affairs of the Bank and, except as expressly limited by law, all corporate powers of the Bank shall be vested in and may be exercised by the Board unless such powers are required by statute, the Organization Certificate or these By-Laws to be exercised by the stockholders.

#### Section 2.2 Number and Term. The Board shall consist of not less than

-----  
seven or more than thirty directors, the exact number within such minimum and maximum limits to be fixed and determined from time to time by resolution of a majority of the entire Board or by resolution of the stockholders at any meeting of stockholders. Unless sooner removed or disqualified, each director shall hold office until the next annual meeting of the stockholders and until the director's successor has been elected and qualified.

#### Section 2.3 Organization Meeting. At its first meeting after each annual

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meeting of stockholders, the Board shall choose a Chairman of the Board, a President and a Chief Executive Officer from its own members and otherwise organize the new Board and appoint officers of the Bank for the succeeding year.

#### Section 2.4 Chairman of the Board. The Chairman of the Board shall

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preside at all meetings of the Board and of stockholders and perform such duties as shall be assigned from time to time by the Board. In the absence of the Chairman of the Executive Committee, the Chairman of the Board shall act as Chairman of the Executive Committee. Except as may be otherwise provided by the By-Laws or the Board, the Chairman of the Board shall be a member ex officio of

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all committees authorized by these By-Laws or the Board. The Chairman of the Board shall be kept informed by the executive officers about the affairs of the Bank.

#### Section 2.5 Regular Meetings. The regular meetings of the Board shall be

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held each month at the time and location designated by the Board. No notice of a regular meeting shall be required if the meeting is held according to a schedule of regular meetings approved by the Board.

#### Section 2.6 Special Meetings. Special meetings of the Board may be

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called by the Chairman of the Board, the President, the Chief Executive Officer or the Secretary or at the written request of any three or more directors. Each member of the Board shall be

given notice stating the time and place of each such special meeting by telegram, telephone or similar electronic means or in person at least one day prior to such meeting, or by mail at least three days prior.

Section 2.7 Quorum. One third of the entire Board shall constitute a  
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quorum at any meeting, except when otherwise provided by law. If a quorum is not present at any meeting, a majority of the directors present may adjourn the meeting, and the meeting may be held, as adjourned, without further notice provided that a quorum is then present. The act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board, unless otherwise specifically provided by statute, the Organization Certificate or these By-Laws.

Section 2.8 Vacancies. When any vacancy occurs among the directors, the  
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remaining members of the Board may appoint a director to fill each such vacancy at any regular meeting of the Board or at a special meeting called for that purpose. Any director so appointed shall hold office until the next annual meeting of the stockholders and until the director's successor has been elected and qualified, unless sooner displaced.

Section 2.9 Removal of Directors. Any director may be removed either  
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with or without cause, at any time, by a vote of the holders of a majority of the shares of the Bank at any meeting of stockholders called for that purpose. A director may be removed for cause by vote of a majority of the entire Board.

Section 2.10 Compensation of Directors. The Board shall fix the amounts  
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to be paid directors for their services as directors and for their attendance at the meetings of the Board or of committees or otherwise. No director who receives a salary from the Bank shall receive any fee for attending meetings of the Board or of any of its committees.

Section 2.11 Action by the Board. Except as otherwise provided by law,  
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corporate action to be taken by the Board shall mean such action at a meeting of the Board or the Executive Committee of the Board. Any one or more members of the Board or any committee may participate in a meeting of the Board or committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

Section 2.12 Waiver of Notice. Notice of a meeting need not be given to  
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any director who submits a signed waiver of notice before or after the meeting or who attends the meeting without protesting the lack of such notice prior to or at the commencement of the meeting.

Section 2.13 Advisory and Regional Boards. The Board, the Chairman of  
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the Board, the President, the Chief Executive Officer or any Regional President may establish Advisory Boards or Regional Boards and committees thereof for any one or more of the Bank's regions, offices, or departments and make or authorize appointments to be made thereto. Appointees to such boards and committees need not be stockholders, directors or

officers of the Bank, and they shall have and perform only such functions as may be assigned to them by, shall serve at the pleasure of, and shall be compensated by fees fixed by the Board, the Chairman of the Board, the President, the Chief Executive Officer or the Regional President making the appointment.

### ARTICLE III

#### COMMITTEES OF THE BOARD

##### Section 3.1 Executive Committee.

a. There shall be an Executive Committee which shall be composed of at least five members elected by the Board from among its members at its first meeting following the annual meeting of stockholders to serve for the ensuing year and shall include the Chairman of the Board, the President, the Chief Executive Officer and the Chairman of the Executive Committee, all of which offices may be held by one person. The Chairman of the Board may appoint one or more directors as alternate members to serve in place of any absent members of the Executive Committee. Any vacancy in the Executive Committee shall be filled by the Board, but until its next regular Board meeting may be filled temporarily by the Chairman of the Board.

b. The Executive Committee shall possess and exercise all of the powers of the Board except (i) when the latter is in session and (ii) as provided otherwise in the New York Banking Law.

##### Section 3.2 Chairman of the Executive Committee. The Board shall appoint

one of its members to be Chairman of the Executive Committee. The Chairman of the Board, the President or the Chief Executive Officer may at the same time be appointed Chairman of the Executive Committee. The Chairman of the Executive Committee shall preside at all meetings of the Executive Committee, and the Chairman of the Executive Committee shall, in the absence of the Chairman of the Board, the President and the Chief Executive Officer, preside at all meetings of stockholders and the Board. The Chairman of the Executive Committee shall also perform such other duties and be vested with such other powers as may from time to time be conferred upon him or her by these By-Laws or as shall be assigned to him or her from time to time by the Board or the Chief Executive Officer.

##### Section 3.3 Meetings of the Executive Committee. Meetings of the

Executive Committee may be called by the Chairman of the Board, the Chairman of the Executive Committee, the President, the Chief Executive Officer or the Secretary and may be held at any place and at any time designated in the notice thereof. Each member of the Executive Committee shall be given notice stating the time and place of each such meeting, by telegram, telephone or similar electronic means or in person at least one day prior to such meeting, or by mail at least three days prior.

##### Section 3.4 Examining Committee. The Board shall designate an Examining

Committee, which shall hold office until the next annual meeting of the Board following the annual meeting of stockholders, consisting of not less than three of its members, other than officers of the Bank, and whose duty it shall be to make an examination at least once during each calendar year and within 15 months of the last such examination into the affairs of the Bank including the administration of fiduciary powers, or cause suitable examinations to be made by auditors responsible only to the Board and to report the result of such examination in writing to the Board. Such report shall state whether the Bank is in a sound condition, whether adequate internal controls and procedures are being maintained and shall recommend to the Board such changes in the manner of conducting the affairs of the Bank as shall be deemed advisable. The Committee shall at such time ascertain whether the Bank's fiduciary responsibilities have been administered in accordance with law and sound fiduciary principles.

Section 3.5 Other Committees. The Board may appoint, from time to time,  
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from its own members, committees of the Board of three or more persons, for such purposes and with such powers as the Board may determine.

#### ARTICLE IV

##### OFFICERS

Section 4.1 Appointment of Officers. At its annual meeting following the  
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annual meeting of stockholders, the Board shall appoint from among its members a Chairman of the Board, a President, a Chief Executive Officer and a Secretary. The Chairman of the Board or the President may also be appointed as the Chief Executive Officer. At such meeting, the Board shall also appoint one or more Vice Presidents, and may at such meeting or at other meetings of the Board appoint such other officers as it may determine from time to time. The Board may also authorize a committee of the Board to appoint such officers as are not required to be appointed by the Board at a meeting.

Section 4.2 Duties of President. In the absence of the Chairman of the  
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Board, the President shall preside at all meetings of the Board and of stockholders and in the absence of the Chairman of the Executive Committee and the Chairman of the Board shall preside at all meetings of the Executive Committee. Except as may be otherwise provided by the By-Laws or the Board, the President shall be a member ex officio of all committees authorized by these By-  
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Laws or the Board. The President shall have general executive powers, shall participate actively in all major policy decisions and shall have and may exercise any and all other powers and duties pertaining by law, regulation or practice to the Office of President or imposed by these By-Laws. The President shall also have and may exercise such further powers and duties as from time to time may be conferred or assigned by the Board or the Chief Executive Officer.

Section 4.3 Duties of Chief Executive Officer. The Chief Executive  
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Officer shall exercise general supervision over the policies and business affairs of the Bank and the carrying out of the policies adopted or approved by the Board. Except as otherwise



provided by these By-Laws, the Chief Executive Officer shall have the power to determine the duties of the officers of the Bank and to employ and discharge officers and employees. Except as otherwise provided by the By-Laws or the Board, the Chief Executive Officer shall be a member ex officio of all

committees authorized by these By-Laws or created by the Board. In the absence of the Chairman of the Board and the President, the Chief Executive Officer shall preside at all meetings of the Board and of stockholders.

Section 4.4 Duties of Vice Presidents. Each Vice President shall have

such titles, seniority, powers and duties as may be assigned by the Board, a committee of the Board, the President or the Chief Executive Officer.

Section 4.5 Secretary. The Secretary shall be Secretary of the Board and

of the Bank and shall keep accurate minutes of all meetings of stockholders and of the Board. The Secretary shall attend to the giving of all notices required to be given by these By-Laws; shall be custodian of the corporate seal, records, documents and papers of the Bank; shall provide for the keeping of proper records of all transactions of the Bank; shall have and may exercise any and all other powers and duties pertaining by law, regulation or practice to the office of Secretary or imposed by these By-Laws; and shall also perform such other duties as may be assigned from time to time by the Board, the president or the Chief Executive Officer.

Section 4.6 Other Officers. The President or the Chief Executive Officer

or his or her designee may appoint all officers whose appointment does not require approval by the Board or a committee of the Board and assign to them such titles as from time to time may appear to be required or desirable to transact the business of the Bank. Each such officer shall have such powers and duties as may be assigned by the Board, the president or the Chief Executive Officer.

Section 4.7 Tenure of Office. The Chairman of the Board, the President,

the Chief Executive Officer, the Chairman of the Executive Committee, the Secretary and the Vice Presidents shall hold office for the current year for which the Board was elected and until their successors have been appointed and qualified, unless they shall resign, become disqualified or be removed. All other officers shall hold office until their successors have been appointed and qualify, unless they shall resign, become disqualified or be removed. The Board shall have the power to remove the Chairman of the Board, the President, the Chief Executive Officer, the Chairman of the Executive Committee and the Secretary. The Board or the Chief Executive Officer or his or her designee shall have the power to remove all other officers and employees. Any vacancy occurring in the offices of Chairman of the Board, President or Chief Executive Officer shall be filled promptly by the Board.

Section 4.8 Compensation. The Board shall by resolution determine from

time to time the officers whose compensation will require approval by the Board or a committee of the Board. The Chief Executive Officer shall fix the compensation of all officers and employees whose compensation does not require approval by the Board or a committee of the Board.

Section 4.9 Auditor. The Board or the Chief Executive Officer shall

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appoint an officer to fill the position of Auditor for the Bank and assign to such officer such title as is deemed appropriate. The Auditor shall perform all duties incident to the audit of all departments and offices and of all affairs of the Bank. The Auditor shall be responsible to the Chief Executive Officer. The Auditor may at any time report to the Board any matter concerning the affairs of the Bank that, in the Auditor's judgment, should be brought to its attention.

Section 4.10 Regional Presidents. The Board may appoint one or more

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Regional Presidents. Each Regional President shall have such powers and duties as may be assigned by the Board or the Chief Executive Officer.

## ARTICLE V

### FIDUCIARY POWERS

Section 5.10 Fiduciary Responsibility. The Board shall appoint an

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officer or officers or a committee or committees of this Bank whose duties shall be to manage, supervise and direct the fiduciary activities of the Bank as assigned by the Board. Such officer or committee shall do or cause to be done all things necessary or proper in carrying on the assigned activities in accordance with provisions of law and applicable regulations and shall act pursuant to opinion of counsel where such opinion is deemed necessary. Opinions of counsel shall be retained on file in connection with all important matters pertaining to fiduciary activities. The officer or committee shall be responsible for all assets and documents held by the Bank in connection with fiduciary matters assigned by the Board.

Section 5.11 Fiduciary Files. Files shall be maintained containing all

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fiduciary records necessary to assure that fiduciary responsibilities have been properly undertaken and discharged.

Section 5.12 Fiduciary Investments. Funds held in a fiduciary capacity

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shall be invested in accordance with the instrument establishing the fiduciary relationship and applicable law. Where such instrument does not specify the character and class of investments to be made and does not vest in the Bank a discretion in the matter, funds held pursuant to such instrument shall be invested in investments in which corporate fiduciaries may invest under applicable law.

## ARTICLE VI

### STOCK AND STOCK CERTIFICATES

Section 6.1 Transfers. Shares of the stock of the Bank shall be

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transferable on the books of the Bank, only by the person named in the certificate or by an attorney, lawfully constituted in writing, and upon surrender of the certificate therefor. Every person

becoming a stockholder by such transfer shall, in proportion to his or her shares, succeed to all rights of the prior holder of such shares.

Section 6.2 Stock Certificates. The certificates of stock of the Bank  
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shall be numbered and shall be entered in the books of the Bank as they are issued. They shall exhibit the holder's name and number of shares and shall be signed by the Chairman of the Board, the President, the Chief Executive Officer or any Vice President and by the Secretary or an Assistant Secretary.

ARTICLE VII

CORPORATE SEAL

Section 7.1 Corporate Seal. The Chairman of the Board, the President,  
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the Chief Executive Officer, the Secretary or any Assistant Secretary, a Vice President or Assistant Vice President or other officer designated by the Board or the Chief Executive Officer or his or her designee shall have authority to affix the corporate seal to any document requiring such seal and to attest the same. Such seal shall be substantially in the following form:

(impression)  
( of )  
( seal )

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 8.1 Fiscal Year. The fiscal year of the Bank shall be the  
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calendar year.

Section 8.2 Execution of Instruments.  
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a. All agreements, indentures, mortgages, deeds, conveyances, transfers, certificates, declarations, receipts, discharges, releases, satisfactions, settlements, petitions, schedules, accounts, affidavits, bonds, undertakings, proxies and other instruments or documents may be signed, executed, acknowledged, verified, delivered or accepted in behalf of the Bank or in connection with the exercise of the fiduciary powers of the Bank, by the Chairman of the Board, the President, the Chief Executive Officer, the Secretary or any other officer or employee (other than the Auditor) designated by the Board or the Chief Executive Officer or his or her designee. Any such instruments may also be executed, acknowledged, verified, delivered or accepted in behalf of the Bank in such other manner and by such other officers as the Board may from time to time direct. The provisions of this Section 8.2 are supplementary to any other provision of these By-Laws.

b. When required, the Secretary or any officer or agent designated by the Board or the Chief Executive Officer or his designee shall countersign and certify all bonds or certificates issued by the Bank as trustee, transfer agent, registrar or depository. The Chief Executive Officer or any officer designated by the Board or the Chief Executive Officer or his or her designee shall have the power to accept in behalf of the Bank any guardianship, receivership, executorship or other special or general trust permitted by law. Each of the foregoing authorizations shall be at the pleasure of the Board, and each such authorization by the Chief Executive Officer or his or her designee also shall be at the pleasure of the Chief Executive Officer.

Section 8.3 Records. The By-Laws and the proceedings of all meetings of  
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the stockholders, the Board and standing committees of the Board shall be recorded in appropriate minute books provided for the purpose. The minutes of each meeting shall be signed by the Secretary or other officer appointed to act as secretary of the meeting.

Section 8.4 Emergency Operations. In the event of war or warlike damage  
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or disaster of sufficient severity to prevent the conduct and management of the affairs, business and property of the Bank by its directors and officers as contemplated by these By-Laws, any two or more available members of the then-incumbent Executive Committee shall constitute a quorum of that committee for the full conduct and management of the affairs, business and property of the Bank. In the event of the unavailability at such time of a minimum of two members of the then-incumbent Executive Committee, any three available directors shall constitute the Executive Committee for the full conduct and management of the affairs, business and property of the Bank. This by-law shall be subject to implementation by resolutions of the Board passed from time to time for that purpose, and any provisions of these By-Laws (other than this section) and any resolutions which are contrary to the provisions of this section or to the provisions of any such implementary resolutions shall be suspended until it shall be determined by any interim Executive Committee acting under this section that it shall be to the advantage of the Bank to resume the conduct and management of its affairs, business and property under all of the other provisions of these By-Laws.

Section 8.5 Indemnification.  
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a. The Bank shall indemnify each person made or threatened to be made a party to any action or proceeding, whether civil or criminal, by reason of the fact that such person or such person's testator or intestate is or was a director or officer of the Bank, or, while a director or officer, serves or served, at the request of the Bank, any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity, against judgments, fines, penalties, amounts paid in settlement and reasonable expenses, including attorney's fees, incurred in connection with such action or proceeding, or any appeal therein, provided that no such indemnification shall be made if a judgment or other final adjudication adverse to such director or officer establishes that his or her acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled, and provided further that no such indemnification shall be required with respect to any settlement or

other nonjudicated disposition of any threatened or pending action or proceeding unless the Bank has given its prior consent to such settlement or other disposition.

b. The Bank shall advance or promptly reimburse upon request any director or officer seeking indemnification hereunder for all expenses, including attorneys' fees, reasonably incurred in defending any action or proceeding in advance or the final disposition thereof upon receipt of an undertaking by or on behalf of such person to repay such amount if such person is ultimately found not to be entitled to indemnification or, where indemnification is granted, to the extent the expenses so advanced or reimbursed exceed the amount to which such person is entitled.

c. This Section 8.5 shall be given retroactive effect, and the full benefits hereof shall be available in respect of any alleged or actual occurrences, acts or failures to act prior to the date of the adoption of this Section 8.5. The right to indemnification of advancement of expenses under this Section 8.5 shall be a contract right.

Section 8.6 Amendments. These By-Laws may be added to, amended, altered  
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or repealed at any regular meeting of the Board by a vote of a majority of the total number of the directors, or at any meeting of stockholders, duly called and held, by a majority of the stock represented at such meeting.

I, \_\_\_\_\_, CERTIFY that I am the duly appointed Secretary of Marine Midland Bank and, as such officer, have access to its official records and the foregoing By-Laws are the By-Laws of the Bank, and all of them are now lawfully in force and effect.

IN TESTIMONY WHEREOF, I have hereunto affixed my official signature and the seal of the Bank, in New York, on \_\_\_\_\_.

Secretary

[SEAL]

Securities and Exchange Commission  
Washington, D.C. 20549

Dear Sirs:

Pursuant to Section 321(b) of the Trust Indenture Act of 1939 and subject to the qualifications and limitation of 321(b) and the other provisions of the Trust Indenture Act of 1939, the undersigned Marine Midland Bank consents that reports of examination by Federal, State, Territorial or District authorities may be furnished by such authorities to the Commission upon request therefor.

Yours very truly,

MARINE MIDLAND BANK

By:/s/ Metin Caner

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Metin Caner  
Assistant Vice President

Attest:

By:

Eileen M. Hughes  
Corporate Trust Officer

## REPORT OF CONDITION

Consolidated Report of Condition of Marine Midland Bank of Buffalo, New York and Foreign and Domestic Subsidiaries, a member of the Federal Reserve System, at the close of business on December 31, 1993, published in accordance with a call made by the Federal Reserve Bank of this District pursuant to the provisions of the Federal Reserve Act.

| ASSETS  | (Dollar Amounts in<br>Thousands) |
|---|----------------------------------|
| Cash and balance due from<br>depository institutions:   |                                  |
| Noninterest-bearing balances<br>and currency and coin.....  | \$ 1,071,645                     |
| Interest-bearing balances.....  | 1,492,007                        |
| Securities.....   | 1,919,704                        |
| Federal funds sold and<br>securities purchased under<br>agreements to resell in<br>domestic offices of the<br>bank and of its Edge and<br>Agreement subsidiaries, and<br>in IBF's |                                  |
| Federal funds sold.....   | 357,000                          |
| Securities purchased<br>under agreements to<br>resell.....  | 593,002                          |
| Loans and lease financing<br>receivables:   |                                  |
| Loans and leases, net of<br>unearned income.....  | 9,930,891                        |
| LESS: Allowance for loan<br>and lease losses.....   | 342,089                          |
| LESS: Allocated transfer  |                                  |



|  |            |
|--|------------|
| risk reserve.....  | 0          |
| Loans and lease, net of unearned<br>income, allowance, and reserve.....        | 9,588,802  |
| Assets held in trading accounts.....   | 1,615,072  |
| Premises and fixed assets<br>(including capitalized leases).....               | 193,194    |
| Other real estate owned.....   | 142,240    |
| Investments in unconsolidated<br>subsidiaries and associated<br>companies..... | 0          |
| Customers' liability to this<br>bank on acceptances outstanding                | 15,007     |
| Intangible assets.....   | 69,056     |
| Other assets.....  | 428,500    |
|  | -----      |
| Total assets.....  | 17,485,229 |
|  | =====      |

#### LIABILITIES

|   |            |
|---|------------|
| Deposits:   |            |
| In domestic offices.....  | 12,377,782 |
| Noninterest-bearing.....  | 3,259,659  |
| Interest-bearing.....   | 9,118,123  |
| In foreign offices, Edge<br>and Agreement Subsid-<br>iaries, and IBF's.....   | 1,002,884  |
| Noninterest-bearing.....  | 0          |
| Interest-bearing.....   | 1,002,884  |
| Federal funds purchased<br>securities sold under<br>agreements to repurchase<br>in domestic offices of<br>the bank and of its Edge<br>and Agreement subsidiar-<br>ies, and in IBF's |            |
| Federal funds purchased.....  | 1,115,269  |
| Securities sold under<br>agreements to repurchase.....  | 260,530    |
| Demand notes issued to the U.S.<br>Treasury.....  | 300,000    |
| Other borrowed money.....   | 510,549    |
| Mortgage indebtedness and<br>obligations under capital-<br>ized leases.....   | 41,852     |
| Bank's liability on acceptances   |            |

|   |            |
|---|------------|
| executed and outstanding.....   | 17,591     |
| Subordinated notes and<br>debentures.....                               | 225,000    |
| Other liabilities.....  | 317,656    |
|   | -----      |
| Total Liabilities.....  | 16,169,113 |
| Limited-Life preferred<br>stock and related surplus.....                | 0          |
| EQUITY CAPITAL  |            |
| Perpetual preferred stock<br>and related surplus.....                   | 0          |
| Common Stock.....   | 185,000    |
| Surplus.....  | 1,182,745  |
| Undivided profits and capital<br>reserves.....                          | (51,629)   |
| LESS: Net unrealized loss<br>on marketable equity<br>securities.....    | 0          |
| Cumulative foreign currency<br>translation adjustments.....             | 0          |
| Total equity capital.....   | 1,316,116  |
|   | -----      |
| Total   |            |
| Liabilities, limited-life<br>preferred stock and equity<br>capital..... | 17,485,229 |
|   | =====      |

I, Gerald A. Ronning, Executive Vice President and Controller of the above-named bank do hereby declare that this Report of Condition has been prepared in conformance with the instructions issued by the Board of Governors of the Federal Reserve System and is true to the best of my knowledge and belief.

/s/ Gerald A. Ronning

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GERALD A. RONNING

We the undersigned directors, attest to the correctness of this Report of Condition and declare that it has been examined by us and to the best of our knowledge and belief has been prepared in conformance with the instructions issued by the Board of Governors of the Federal Reserve System and is true and correct.

/s/ James H. Cleave  
Director

/s/ Bernard J. Kennedy  
Director

/s/ Northrup R. Knox  
Director