



# **FORM 10-K**

**WATERS CORP /DE/ - WAT**

**Filed: March 15, 2005 (period: December 31, 2004)**

Annual report which provides a comprehensive overview of the company for the past year

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SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

Form 10-K

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

For the fiscal year ended December 31, 2004

or

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

Commission File Number: 01-14010

**Waters Corporation**

*(Exact name of registrant as specified in its charter)*

**Delaware**  
*(State or other jurisdiction of  
incorporation or organization)*

**13-3668640**  
*(I.R.S. Employer  
Identification No.)*

**34 Maple Street**  
**Milford, Massachusetts 01757**  
*(Address, including zip code, of principal executive offices)*

**Registrant's telephone number, including area code: (508) 478-2000**

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

Common Stock, par value \$0.01 per share  
New York Stock Exchange, Inc.

Securities registered pursuant to Section 12(g) of the Act:

None

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the Registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act). Yes  No

State the aggregate market value of the registrant's common stock held by non-affiliates of the registrant as of June 30, 2004: \$6,754,498,394.

Indicate the number of shares outstanding of the registrant's common stock as of March 10, 2005: 117,831,688.

**DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the proxy statement for the 2005 Annual Meeting of Stockholders are incorporated by reference in Part III.

**WATERS CORPORATION AND SUBSIDIARIES**  
**ANNUAL REPORT ON FORM 10-K**

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## PART I

### Item 1: *Business*

#### General

Waters Corporation, (“Waters” or the “Company”) an analytical instrument manufacturer, designs, manufactures, sells and services, through its Waters Division, high performance liquid chromatography (“HPLC”), ultra performance liquid chromatography (“UPLC”) together with HPLC, herein referred to as (“LC”) and mass spectrometry (“MS”) instrument systems and associated service and support products, including chromatography columns and other consumable products. Additionally, and as a result of the acquisitions by Waters Division of Creon Lab Control AG (“Creon”) in July 2003 and NuGenesis Technologies Corporation (“NuGenesis”) in February 2004, the Company entered the laboratory informatics market (“Laboratory Informatics”), which consists of laboratory-to-enterprise scale software systems for managing and storing scientific information collected from a wide variety of instrument test methods. Through its TA Instruments Division (“TA”), the Company designs, manufactures, sells and services thermal analysis and rheometry instruments which are used in predicting the suitability of polymers and viscous liquids for various industrial, consumer goods and health care products. The Company is also a developer of and supplier of software based products which interface with the Company’s instruments and are typically purchased by customers as part of the instrument system.

The Company’s products are used by pharmaceutical, life science, biochemical, industrial, academic and government customers working in research and development, quality assurance and other laboratory applications. The Company’s LC instruments are utilized in this broad range of industries to detect, identify, monitor and measure the chemical, physical and biological composition of materials as well as to purify a full range of compounds. MS instruments are used in drug discovery and development, including clinical trial testing, the analysis of proteins in disease processes (known as “proteomics”), food safety analyses and environmental testing. The Company’s thermal analysis and rheometry instruments are used in predicting the suitability of fine chemicals and polymers for uses in various industrial, consumer goods and health care products.

Waters is a holding company that owns all of the outstanding common stock of Waters Technologies Corporation, its operating subsidiary. The Company previously operated as the Waters Chromatography division of Millipore Corporation, prior to a management buyout of the division that became effective on August 18, 1994. Waters became a publicly traded company with its initial public offering (“IPO”) in November 1995. Since the IPO, the Company has added two significant and complementary technologies to its range of products with the acquisitions of Micromass Limited (“Micromass”) in September 1997 and TA in May 1996.

#### Business Segments

The Company evaluated its business activities that are regularly reviewed by the Chief Executive Officer for which discrete financial information is available. As a result of this evaluation, the Company determined that it has two operating segments: Waters Division and TA Division.

As indicated above, the Company operates in the analytical instruments industry, manufacturing, distributing and servicing products in three complementary technologies: LC instruments, columns and other consumables, MS, and thermal analysis and rheometry instruments. Laboratory Informatics consists of laboratory-to-enterprise scale software systems for managing and storing scientific information collected from a wide variety of LC and MS instrument test methods and is an integral product line within the Waters Division.

The Company’s two operating segments, Waters Division and TA, have similar economic characteristics, product processes, products and services, types and classes of customers, methods of distribution, and regulatory environments. Because of these similarities, the two segments have been aggregated into one reporting segment for financial statement purposes.

## **Waters Division**

### ***High Performance and Ultra Performance Liquid Chromatography***

Developed in the 1950's, HPLC is the standard technique used to identify and analyze the constituent components of a variety of chemicals and other materials. HPLC's performance capabilities enable it to separate and identify 80% of all known chemicals and materials. As a result, HPLC is used to analyze substances in a wide variety of industries for research and development purposes, quality control and process engineering applications.

The most significant end-use markets for HPLC are those served by the pharmaceutical and life science industries. In these markets, HPLC is used extensively to identify new drugs, to develop manufacturing methods, and to assure the potency and purity of new pharmaceuticals. HPLC is also used in a variety of other applications such as the identification of food content for nutritional labeling in the food and beverage industry, the testing of water and air purity within the environmental testing industry, as well as applications in other industries, such as chemical and consumer products. HPLC is also used by universities, research institutions and government agencies, and in many instances, the United States Food and Drug Administration ("FDA") and the United States Environmental Protection Agency ("EPA"), and their international counterparts, mandate testing that requires HPLC instrumentation.

A complete HPLC system consists of five basic components: solvent delivery system, sample injector, separation column, detector and data acquisition unit. The solvent delivery system pumps the solvent through the HPLC system, while the sample injector introduces the sample into the solvent flow. The chromatography column then separates the sample into its components for analysis by the detector, which measures the presence and amount of the constituents. The data acquisition unit, usually referred to as the instrument's software or data system, then records and stores the information from the detector.

The primary "consumable products" for HPLC are chromatography columns. These columns are packed with separation media used in the HPLC testing process and are replaced at regular intervals. The chromatography column contains one of several types of packing, typically stationary phase particles made from silica. As the sample flows through the column, it is separated into its constituent components.

Waters columns can be used on Waters branded as well as competitors' HPLC systems. The Company believes that it is one of the few suppliers in the world that processes silica, packs columns and distributes its own products. In doing so, the Company believes it can better ensure product consistency, a key attribute for its customers in quality control laboratories, and react quickly to new customer requirements.

During 2003 and 2004, the Company experienced growth in its HPLC chromatography column and sample preparation businesses, especially in the Xterra™ and Atlantis™ columns as well as in Oasis™ sample preparation cartridges, all newly introduced in 2003. In 2004, the Company introduced a new column brand called Sunfire™.

Based upon reports from independent marketing research firms and publicly disclosed sales figures from competitors, the Company believes that it is the world's largest manufacturer and distributor of HPLC instruments, chromatography columns and other consumables and related services. The Company also believes that it has the leading HPLC market share in the United States, Europe and non-Japan/Asia and believes it has a leading market share position in Japan.

Waters manufactures HPLC instruments that are offered in configurations that allow for varying degrees of automation, from Breeze™ systems for academic research applications to fully automated Alliance®2795 systems for high speed screening, and with a variety of detection technologies, from UV absorbance to MS, optimized for certain analyses. In 2003, the Company introduced new application tailored HPLC systems for the analysis of biologics as well as a new HPLC detector utilizing evaporative light scattering technology to expand the usage of HPLC to compounds that are not amenable to UV absorbance detection.

In March 2004, Waters introduced a novel HPLC-type technology that the Company described as Ultra-Performance Liquid Chromatography which utilizes a packing material with narrow diameter particles and a specialized instrument, the ACQUITY UPLC™, to accommodate the increased pressure and narrow



chromatographic bands that are generated by these small particles. By using UPLC and the ACQUITY instrument, researchers and analysts are able to achieve more comprehensive chemical separations and faster analysis times in comparison with many analyses performed by HPLC. In addition, in using UPLC, researchers have the potential to extend the range of application beyond that of HPLC, enabling the uncovering of new levels of scientific information. Though UPLC and the ACQUITY instrument are an extension of HPLC, the instrument is compatible with the Company's software products and the general operating protocols of HPLC. For these reasons, the Company's customers and field sales and support organizations are well positioned to utilize this new technology and instrument. The Company began shipping the ACQUITY UPLC system for demonstration and evaluation in the second quarter of 2004, with a normalized shipping plan, similar delivery schedules as compared to HPLC products, beginning in the third quarter of 2004.

The servicing and support of LC instruments and accessories is an important source of revenue for the Waters Division. These revenues are derived primarily through the sale of support plans, demand service, customer training and performance validation services. Support plans most typically involve scheduled instrument maintenance, a commitment to supply software and firmware upgrades and an agreement to promptly repair a non-functioning instrument in return for a fee described in a one or two year contract that is priced according to the configuration of the instrument.

In the third quarter of 2003, Waters expanded its data management product lines through the acquisition of Creon and further enhanced its capability in this area through the acquisition of NuGenesis in the first quarter of 2004. These new Laboratory Informatics software products available for sale by the Waters Division as a result of these acquisitions expand the range of the Company's information management offerings. The Company's existing server based software products, Millennium® and Empower™, are now augmented by the addition of Creon's internet or "web" based software that enables the reporting of scientific data sourced from a broader array of instruments.

Broadly defined, Laboratory Informatics products are involved with the safe keeping and organization of laboratory procedures and experimental results. The products developed by Creon and NuGenesis are software-based systems designed to accommodate the general information archiving and retrieving needs of laboratories involved in instrumental analyses, typically within pharmaceutical, chemical and academic institutions. Customers buying these products are often using them to replace paper-based or internally developed (home grown) software-based systems that lack the capacity, security and ease of use that is either desired or required. The Company feels it has retained the development resources from the acquired companies to ensure continued leadership in this emerging market and plans to continue selling and supporting its informatics customers through the worldwide field-based resources of the Waters Division augmented by a smaller group of specialists.

In 2004, the Company introduced a new informatics product, the Electronic Laboratory Notebook, ("eLab Notebook™"), designed to replace and augment the paper-based safekeeping and archiving of laboratory procedures and results. In combination with the Company's Scientific Data Management System ("SDMS") product, eLab Notebook functions as a portal to laboratory scale information storage and retrieval systems as well as a flexible and personally manageable notation and display device. The pricing of eLab Notebook is based upon the number of users or seats that the customer decides to purchase. The Company began shipping eLab Notebook in the fourth quarter of 2004.

### ***Mass Spectrometry***

Mass spectrometry is a powerful analytical technique that is used to identify unknown compounds, to quantify known materials, and to elucidate the structural and chemical properties of molecules by measuring the masses of individual molecules that have been converted into ions.

The Company believes it is a market leader in the development, manufacture, sale and distribution of MS instruments. These instruments can be integrated and used along with other complementary analytical instruments and systems such as HPLC, UPLC, chemical electrophoresis, chemical electrophoresis chromatography, gas chromatography and elemental analysis systems. A wide variety of instrumental designs fall

within the overall category of MS instrumentation including devices that incorporate quadrupole, ion trap, time of flight (“Tof”) and classical magnetic sector technologies. Furthermore, these technologies are often used in tandem to maximize the efficacy of certain experiments.

Currently, the Company offers and provides service, support and training for a wide range of MS instruments utilizing various combinations of quadrupole, Tof and magnetic sector designs. These instruments are used in drug discovery and development as well as for environmental testing. The majority of mass spectrometers sold by Waters are designed to utilize an HPLC or UPLC system as the sample introduction device. These products supply a diverse market with a strong emphasis on the life science, pharmaceutical, biomedical, clinical and environmental markets worldwide. Service revenues are primarily related to the sale of parts and to billed labor associated with instrument repair and routine maintenance.

The mass spectrometer is an increasingly important detection device for HPLC and UPLC. The Company’s smaller sized mass spectrometers (such as the single quadrupole ZQ™ and Waters EMD™) are often referred to as HPLC “detectors” and are either sold as part of an HPLC system or as an HPLC upgrade. Tandem quadrupole systems, such as the Waters Quattro micro™ and Quattro Ultima® instruments, are used primarily for experiments performed for late stage drug development, including clinical trial testing, and Q-Tof Instruments such as the Company’s Q-Tof micro™ and Q-Tof Ultima® instruments, are typically used to analyze the role of proteins in disease processes, an application sometimes referred to as “proteomics”.

In 2003, the Company introduced two new mass spectrometry systems, the Quattro Premier™ and the LCT Premier™. The Quattro Premier is a tandem quadrupole instrument that is designed to deliver a higher level of speed, sensitivity and reliability in a more compact configuration. The LCT Premier is a LC, electrospray-Tof instrument designed to deliver a higher level of mass accuracy and the ability for more precise quantitative analysis.

In 2004, the Company introduced a new Q-Tof configuration mass spectrometry system, the Q-Tof Premier™ to replace its Q-Tof Ultima line of systems and offer a new level of instrument performance to its customers. The Q-Tof Premier is a tandem mass spectrometry system developed to provide increased levels of sensitivity and specificity to customers involved in challenging analyses such as those often encountered in proteomics and metabolite profiling experiments. The Company began shipping the Q-Tof Premier in the fourth quarter of 2004. The Q-Tof Premier is compatible and often purchased with an HPLC or UPLC system as an inlet, a device to efficiently introduce a separated sample into the mass spectrometer.

## ***LC-MS***

Liquid chromatography (HPLC and UPLC) and mass spectrometry (MS) are instrumental technologies often embodied within an analytical system tailored for either a dedicated class of analyses or as a general purpose analytical device. An increasing percentage of the Company’s customers are purchasing LC and MS components simultaneously and it is becoming common for LC and MS instrumentation to be used within the same laboratory and be operated by the same user. The descriptions of LC and MS above reflect the historical segmentation of these analytical technologies and the historical categorization of their respective practitioners. Increasingly in today’s instrument market, this segmentation and categorization is becoming obsolete as a high percentage of instruments used in the laboratory embody both LC and MS technologies as part of a single device. In response to this development and to further promote the high utilization of these hybrid instruments, the Company has organized its Waters Division to develop, manufacture, sell and support integrated LC-MS systems.

## **TA Division**

### ***Thermal Analysis***

Thermal analysis measures the physical characteristics of materials as a function of temperature. Changes in temperature affect several characteristics of materials such as their physical state, weight, dimension and mechanical and electrical properties, which may be measured by one or more thermal analysis techniques. Consequently, thermal analysis techniques are widely used in the development, production and characteriza-

tion of materials in various industries such as plastics, chemicals, automobiles, pharmaceuticals and electronics.

Rheometry instruments complement thermal analyzers in characterizing materials. Rheometry characterizes the flow properties of materials and measures their viscosity, elasticity and deformation under different types of “loading” or conditions. The information obtained under such conditions provides insight to a material’s behavior during manufacturing, transport, usage and storage.

Thermal analysis and rheometry instruments are heavily used in material testing laboratories and in many cases provide information useful in predicting the suitability of polymers and viscous liquids for various industrial, consumer goods and health care products. As with HPLC, a range of instrumentation is available with increasing levels of sample handling and information processing automation. In addition, systems and accompanying software packages can be tailored for specific applications. For example, the Q-Series™ family of differential scanning calorimeters includes a range of instruments from basic dedicated analyzers to more expensive systems that can accommodate robotic sample handlers and a variety of sample cells and temperature control features for analyzing a broad range of materials. In 2002, TA introduced a new dynamic mechanical analyzer (“DMA”), the Q800™ DMA. In 2003, TA introduced two new DMA’s, the Q400™ DMA and the Q600™ DMA. Additionally, in the first quarter of 2003, TA expanded its rheometry product line through the acquisition of Rheometrics Scientific, Inc. (“Rheometrics”). During 2003, the Rheometrics product line was successfully integrated within the TA Instruments Division.

The Company sells, supports and services these product offerings through TA, headquartered in New Castle, Delaware. The TA division operates independently from the Waters Division though several of its overseas offices are situated in Waters facilities. TA has dedicated field sales and service operations and service revenue primarily derived from the sale of replacement parts and from billed labor expenses associated with the repair, maintenance and upgrade of installed systems.

### **Customers**

The Company has a broad and diversified customer base that includes pharmaceutical accounts, other industrial accounts, universities and government agencies. The pharmaceutical segment represents the Company’s largest sector and includes multinational pharmaceutical companies, generic drug manufacturers and biotechnology companies. The Company’s other industrial customers include chemical manufacturers, polymer manufacturers, food and beverage companies and environmental testing laboratories. The Company also sells to various universities and government agencies worldwide. The Company’s technical support staff works closely with its customers in developing and implementing applications that meet their full range of analytical requirements.

The Company does not rely on any single customer or one group of customers for a material portion of its sales. During fiscal years 2004 and 2003, no single customer accounted for more than 3% of the Company’s net sales.

### **Sales and Service**

The Company has one of the largest sales and service organizations in the industry focused exclusively on LC, MS and thermal analysis markets. Across these technologies, using respective specialized sales and service forces, the Company serves its customer base with approximately 1,990 field representatives in 89 sales offices throughout the world as of December 31, 2004 compared to approximately 1,890 field representatives in 97 sales offices as of December 31, 2003. The sales representatives have direct responsibility for account relationships, while service representatives work in the field to install instruments and minimize instrument downtime for customers. Technical support representatives work directly with customers, helping them to develop applications and procedures. The Company provides customers with comprehensive product literature and also makes consumable products available through a dedicated catalog.

## **Manufacturing**

The Company provides high quality LC products by controlling each stage of production of its instruments and columns. The Company assembles most of its LC instruments at its facility in Milford, Massachusetts, where it performs machining, wiring, assembly and testing. The Milford facility employs manufacturing techniques that are expected to meet the strict ISO 9002 quality manufacturing standards and FDA mandated Good Manufacturing Practices. The Company outsources manufacturing of certain electronic components such as computers, monitors and circuit boards to outside vendors that can meet the Company's quality requirements.

The Company manufactures its LC columns at its facilities in Taunton, Massachusetts and Wexford, Ireland, where it processes, sizes and treats silica and polymer media that are packed into columns, solid phase extraction cartridges and bulk shipping containers. The Wexford facility also manufactures and distributes certain data, instruments and software components for the Company's LC, MS and thermal analysis product lines. These facilities meet the same ISO and FDA standards met by the Milford, Massachusetts facility and are approved by the FDA.

The Company manufactures most of its MS products at its facilities in Manchester, England, Cheshire, England and Wexford, Ireland. Certain components or modules of the Company's MS instruments are manufactured by long-standing outside contractors. Each stage of this supply chain is closely monitored by the Company to maintain its high quality and performance standards. The instruments, components or modules are then returned to the Company's facilities where its engineers perform final assembly, calibrations to customer specifications and quality control procedures. The Company's MS facilities meet similar ISO and FDA standards met by the Milford, Massachusetts facility and are approved by the FDA.

Thermal analysis products are manufactured at the Company's New Castle, Delaware facility and rheometry products are manufactured at the Company's New Castle, Delaware and Crawley, England facilities. Similar to MS, certain elements of TA's products are manufactured by outside contractors and are then returned to the Company's facilities for final assembly, calibration and quality control. The Company's thermal analysis facilities meet similar ISO standards met by the Milford, Massachusetts facility.

## **Research and Development**

The Company maintains an active research and development program focused on the development and commercialization of products which both complement and update the existing product offering. The Company's research and development expenditures for 2004, 2003 and 2002 were \$65.2 million, \$59.2 million and \$51.9 million, respectively. Nearly all of the current LC products of the Company have been developed at the Company's main research and development center located in Milford, Massachusetts, with input and feedback from the Company's extensive field organizations. The majority of the MS products have been developed at facilities in England and nearly all of the current thermal analysis products have been developed at the Company's research and development center in New Castle, Delaware. At December 31, 2004, there were approximately 525 employees involved in the Company's research and development efforts. The Company has increased research and development expenses relating to acquisitions and the Company's continued commitment to invest significantly in new product development and existing product enhancements. Despite the Company's active research and development programs, there can be no assurances that the Company's product development and commercialization efforts will be successful or that the products developed by the Company will be accepted by the marketplace.

## **Employees**

The Company employed approximately 4,200 employees, with 49% located in the United States, and 3,900 employees, with 48% located in the United States at December 31, 2004 and 2003, respectively. The increase of 8% over 2003 is primarily due to the acquisition of NuGenesis and increases in service personnel in support of the Company's growing installed base of instrument systems. The Company considers its employee relations, in general, to be good, and the Company's employees are not represented by any unions. The Company believes that its future success depends, in a large part, upon its continued ability to attract and

retain highly skilled employees. During 2004, the Company announced and commenced a small restructuring effort to realign its personnel between various support functions and field sales and service organizations around the world. The employment of approximately 70 people was terminated as a result of this restructuring, all of whom had left the Company as of December 31, 2004.

## **Competition**

The analytical instrument and systems market is highly competitive. The Company encounters competition from several worldwide instrument manufacturers in both domestic and foreign markets for each of its three technologies. The Company competes in its markets primarily on the basis of instrument performance, reliability and service and, to a lesser extent, price. Some competitors have instrument businesses that are more diversified than the Company's business, but are typically less focused on the Company's chosen markets. Some competitors have greater financial and other resources than the Company.

In the markets served by HPLC, UPLC, MS and LC-MS, the Company's principal competitors include: Applied BioSystems, Inc., Agilent Technologies, Inc., Thermo Electron Corporation, Varian, Inc., Shimadzu Corporation and Bruker BioSciences Corporation. In the markets served by TA, the Company's principal competitors include: PerkinElmer Inc., Mettler-Toledo International Inc., Shimadzu Corporation, HAAKE and Parr-Physica. The Company is not aware of a competitor offering a UPLC system comparable to its ACQUITY instrument.

The market for consumable HPLC products, including separation columns, is also highly competitive but is more fragmented than the analytical instruments market. The Company encounters competition in the consumable columns market from chemical companies that produce column chemicals and small specialized companies that pack and distribute columns. The Company believes that it is one of the few suppliers that process silica, packs columns, and distributes its own product. The Company competes in this market on the basis of reproducibility, reputation and performance, and, to a lesser extent, price. The Company's principal competitors for consumable products include Phenomenex, Supelco Inc., Agilent Technologies, Inc., Alltech International Holdings, Inc. and Merck and Co., Inc. The ACQUITY instrument is designed to offer a predictable level of performance when used with UPLC columns to effect the chemical separation. UPLC columns are both fluidically and electronically connected to the ACQUITY instrument to allow users to simultaneously employ and track the performance status of the UPLC column. The Company believes that the expansion of UPLC technology will enhance its chromatographic column business because of the high level of synergy between UPLC and the ACQUITY UPLC instrument.

## **Patents, Trademarks and Licenses**

The Company owns a number of United States and foreign patents and has patent applications pending in the United States and abroad. Certain technology and software is licensed from third parties. The Company also owns a number of trademarks. The Company's patents, trademarks and licenses are viewed as valuable assets to its operations. However, the Company believes that no one patent or group of patents, or trademark or license is, in and of itself, essential to the Company such that its loss would materially affect the Company's business as a whole.

## **Environmental Matters**

The Company is subject to federal, state and local laws, regulations and ordinances that (i) govern activities or operations that may have adverse environmental effects, such as discharges to air and water, as well as handling and disposal practices for solid and hazardous wastes, and (ii) impose liability for the costs of cleaning up, and certain damages resulting from sites of past spills, disposals or other releases of hazardous substances. The Company believes that it currently conducts its operations, and in the past has operated its business, in substantial compliance with applicable environmental laws. From time to time, operations of the Company have resulted or may result in noncompliance with or liability for cleanup pursuant to environmental laws. In July 2003, the Company entered into a settlement agreement (the "Environmental Settlement Agreement") with the Commonwealth of Massachusetts, acting by and through the Attorney General and the

Department of Environmental Protection (“DEP”), with respect to alleged non-compliance with state environmental laws at its Taunton, Massachusetts facility. Pursuant to the terms of a final judgment entered in the Superior Court of the Commonwealth on July 10, 2003, the Company paid a civil penalty of \$5.9 million. In addition, the Company agreed to conduct a Supplemental Environmental Project in the amount of \$0.6 million, comprised of investments in capital infrastructure, to study the effects of bio-filtration on certain air emissions from the Taunton facility and for the purchase of equipment in connection therewith. Pursuant to the terms of the Environmental Settlement Agreement, the Company also agreed to undertake a variety of actions to ensure that air emissions from the facility do not exceed certain limits and that the facility is brought into full compliance with all applicable environmental regulations. The Company does not currently anticipate any material adverse effect on its operations, financial condition or competitive position as a result of its efforts to comply with environmental laws.

### **Available Information**

The Company files all required reports with the Securities and Exchange Commission (“SEC”). The public may read and copy any materials the Company files with the SEC at the SEC’s Public Reference Room at 450 Fifth Street, N.W., Washington, DC 20549. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330.

The Company is an electronic filer and the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC. The address of the SEC electronic filing web-site is <http://www.sec.gov>. The Company also makes available free of charge on its web-site its annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports as soon as reasonably practicable after such material is electronically filed with or furnished to the SEC. The Internet address for Waters Corporation is <http://www.waters.com> and SEC filings can be found under the caption About Waters > Investor Information.

### **Forward-Looking Statements**

Certain of the statements in this Form 10-K and the documents incorporated in this form are forward-looking statements, including statements regarding, among other items, (i) the impact of the Company’s new products, (ii) the Company’s growth strategies, including its intention to make acquisitions and introduce new products, (iii) anticipated trends in the Company’s business and (iv) the Company’s ability to continue to control costs and maintain quality. You can identify these forward-looking statements by the use of the words “believes”, “anticipates”, “plans”, “expects”, “may”, “will”, “would”, “intends”, “estimates” and similar expressions, whether in the negative or affirmative. These statements are subject to various risks and uncertainties, many of which are outside the control of the Company, including (i) changes in the HPLC, UPLC, MS and thermal analysis portions of the analytical instrument marketplace as a result of economic or regulatory influences, (ii) general changes in the economy or marketplace including currency fluctuations, in particular with regard to the Euro, British pound and Japanese yen, (iii) changes in the competitive marketplace, including obsolescence resulting from the introduction of technically advanced new products and pricing changes by the Company’s competitors, (iv) the ability of the Company to generate increased sales and profitability from new product introductions, (v) the reduction in capital spending of pharmaceutical customers, (vi) the loss of intellectual property rights in the Company’s research and development efforts, as well as additional risk factors set forth below. Actual results or events could differ materially from the plans, intentions and expectations disclosed in the forward-looking statements, whether because of these factors or for other reasons. The Company does not assume any obligation to update any forward-looking statements.

### **Risk Factors**

#### *Competition and the Analytical Instrument Market:*

The analytical instrument market, and, in particular, the portion related to the Company’s HPLC, UPLC, MS, LC-MS, thermal analysis and rheometry product lines, is highly competitive, and the Company encounters competition from several international instrument manufacturers and other companies in both

domestic and foreign markets. Some competitors have instrument businesses that are more diversified than the Company's business, but are typically less focused on the Company's chosen markets. There can be no assurances that the Company's competitors will not introduce more effective and less costly products than those of the Company, or that the Company will be able to increase its sales and profitability from new product introductions. There can be no assurances that the Company's sales and marketing forces will compete successfully against its competitors in the future.

Additionally, the market may, from time to time, experience low sales growth. Approximately 53% of the Company's net sales in 2004 were to the worldwide pharmaceutical and biotechnology industries, which may be periodically subject to unfavorable market conditions and consolidations. Unfavorable industry conditions could have a material adverse effect on the Company's results of operations.

*Risk of Disruption:*

The Company manufactures HPLC and UPLC instruments at its facility in Milford, Massachusetts, separation columns at its facilities in Taunton, Massachusetts and Wexford, Ireland, MS products at its facilities in Manchester, England, Cheshire, England and Wexford, Ireland, thermal analysis products at its facility in New Castle, Delaware and rheometry products at its facilities in New Castle, Delaware and Crawley, England. Any prolonged disruption to the operations at any of these facilities, whether due to labor difficulties, destruction of or damage to either facility or other reasons, could have a material adverse effect on the Company's results of operations and financial condition.

*Foreign Operations and Exchange Rates:*

Approximately 64% of the Company's 2004 net sales were outside of the United States and were primarily denominated in foreign currencies. As a result, a significant portion of the Company's sales and operations are subject to certain risks, including adverse developments in the foreign political and economic environment, tariffs and other trade barriers, difficulties in staffing and managing foreign operations and potentially adverse tax consequences.

Additionally, the U.S. dollar value of the Company's net sales varies with currency exchange rate fluctuations. Significant increases in the value of the U.S. dollar relative to certain foreign currencies could have a material adverse effect on the Company's results of operations.

*Reliance on Key Management:*

The operation of the Company requires managerial and operational expertise. None of the key management employees has an employment contract with the Company, and there can be no assurance that such individuals will remain with the Company. If, for any reason, such key personnel do not continue to be active in management, the Company's operations could be adversely affected.

*Protection of Intellectual Property:*

The Company vigorously protects its intellectual property rights and seeks patent coverage on all developments that it regards as material and patentable. However, there can be no assurances that any patents held by the Company will not be challenged, invalidated or circumvented or that the rights granted thereunder will provide competitive advantages to the Company. Conversely, there could be successful claims against the Company where its intellectual property does not cover competitor products or is invalidated. The Company's patents, including those licensed from others, expire on various dates. If the Company is unable to protect its intellectual property rights, it could have an adverse and material effect on the Company's results of operations and financial conditions.

*Reliance on Customer Demand:*

The demand for the Company's products is dependent upon the size of the markets for its HPLC, UPLC, MS, thermal analysis and rheometry products, the level of capital expenditures of the Company's customers, the rate of economic growth in the Company's major markets and competitive considerations. There can be no assurances that the Company's results of operations will not be adversely impacted by a change in any of the factors listed above.

*Reliance on Suppliers:*

Most of the raw materials, components and supplies purchased by the Company are available from a number of different suppliers; however, a number of items are purchased from limited or single sources of supply, and disruption of these sources could have a temporary adverse effect on shipments and the financial results of the Company. The Company believes alternative sources could ordinarily be obtained to supply these materials, but a prolonged inability to obtain certain materials or components could have an adverse effect on the Company's financial condition or results of operations and could result in damage to its relationships with its customers and, accordingly, adversely affect the Company's business.

*Reliance on Outside Manufacturers:*

Certain components or modules of the Company's MS instruments are manufactured by long-standing outside contractors. Disruptions of service by these outside contractors could have an adverse effect on the supply chain and the financial results of the Company. The Company believes that it could obtain alternative sources for these components or modules, but a prolonged inability to obtain these components or modules could have an adverse effect on the Company's financial condition or results of operations.

**Item 2: Properties**

Waters operates 20 United States facilities and 74 international facilities, including field offices. In 2004, the Company purchased a 250,000 square foot building adjacent to the Company's headquarters. The Company intends to use this building to consolidate certain functions and facilities in Massachusetts in 2005. The Company believes its facilities are suitable and adequate for its current production level and for reasonable growth over the next several years. The Company's primary facilities are summarized in the table below.

**Primary Facility Locations**

<u>Location</u>	<u>Function (1)</u>	<u>Owned/Leased</u>	<u>Square Feet (000's)</u>
Franklin, MA	D	Leased	30
Milford, MA	M, R, S, A	Owned	747
Taunton, MA	M	Owned	32
Westborough, MA	R, S, A	Leased	35 (2)
Etten-Leur, Netherlands	S, D, A	Leased	36
St. Quentin, France	S, A	Leased	60
Singapore	S, A	Leased	6
Tokyo, Japan	S, A	Leased	28
Wexford, Ireland	M, R, S	Owned/Leased	48
New Castle, DE	M, R, S, D, A	Leased	86
Crawley, England	M, R, S, D, A	Leased	14
Beverly, MA	S, A	Leased	77
Cheshire, England	M, R, D	Leased	29
Manchester, England	M, R, S, D, A	Leased	104
Almere, Netherlands	S, A	Leased	16
Romania	R, A	Leased	9

(1) M = Manufacturing; R = Research; S = Sales and service; D = Distribution; A = Administration

(2) The Westborough, MA facility was added as a result of the NuGenesis acquisition. This facility will be closed upon expiration of its lease term in June 2005.



The Company operates and maintains 13 field offices in the United States and 62 field offices abroad in addition to sales offices in the primary facilities listed above. The Company's field office locations are listed below.

**Field Office Locations (3)**

<u>United States</u>	<u>International</u>		
Dublin, CA	Australia	Ireland	Switzerland
Felton, CA	Austria	Italy	Taiwan
Irvine, CA	Belgium	Japan	United Kingdom
Collinville, CT	Brazil	Korea	
Schaumburg, IL	Canada	Mexico	
Wood Dale, IL	Czech Republic	Netherlands	
Columbia, MD	Denmark	Norway	
Ann Arbor, MI	Finland	People's Republic of China	
Cary, NC	France	Poland	
Parsippany, NJ	Germany	Puerto Rico	
Huntingdon, PA	Hong Kong	Russia	
Bellaire, TX	Hungary	Spain	
Spring, TX	India	Sweden	

(3) The Company operates more than one office within certain states and foreign countries.

**Item 3: Legal Proceedings****Hewlett-Packard Company**

The Company filed suit in the United States against Hewlett-Packard Company and Hewlett-Packard GmbH (collectively, "HP"), seeking a declaration that certain products sold under the mark "Alliance" do not constitute an infringement of one or more patents owned by HP or its foreign subsidiaries (the "HP patents"). The action in the United States was dismissed for lack of controversy. Actions seeking revocation or nullification of foreign HP patents were filed by the Company in Germany, France and England. A German patent tribunal found the HP German patent to be valid. In Germany, France and England, HP and its successor, Agilent Technologies Deutschland GmbH, have brought an action alleging that certain features of the Alliance pump may infringe the HP patents. In England, the Court of Appeal has found the HP patent valid and infringed. The Company's petitions for leave to appeal to the House of Lords were denied. A trial on damages was scheduled for November 2004. In March 2004, Agilent Technologies GmbH brought a new action against the Company alleging that certain features of the Alliance pump continue to infringe the HP patents. At a hearing held in the UK on June 8, 2004, the UK court postponed the previously scheduled November 2004 damages trial until March 2005. Instead, the court scheduled the trial in the new action for November 2004. In December 2004, the UK court ruled in the new action that the Company did not infringe the HP patents. HP has filed an appeal in that action and the damages trial scheduled for March 2005 has been postponed pending this appeal and rescheduled for November 2005. In France, the Paris District Court has found the HP patent valid and infringed by the Alliance pump. The Company appealed the French decision and on April 12, 2004, the French appeals court affirmed the Paris District Court's finding of infringement. The Company has filed a further appeal in the case. In the German case, a German court has found the patent infringed. The Company appealed the German decision, and in December 2004, the German appeals court reversed the trial court and issued a finding of non-infringement in favor of the Company. HP is seeking an appeal in that action. The Company recorded provisions in the quarters ended June 30, 2002 and April 3, 2004 for estimated damages, legal fees, and court costs incurred with respect to this ongoing litigation. The provision represents management's best estimate of the probable and reasonably estimable loss related to the litigation.

*Other:*

Cohesive Technologies, Inc. (“Cohesive”) has brought three suits against the Company in the U.S. District Court of Massachusetts. Cohesive alleges that several products of the Company, which are part of a much larger product line, are an infringement of two Cohesive U.S. Patents. The Company has denied infringement of such patents and has asserted several defenses. Two of the products alleged to be an infringement are now obsolete and are no longer sold in the United States. During the fourth quarter of 2001, a jury returned a verdict in one of the suits finding the Company liable for infringement of one of the two patents. The Company intends to continue to vigorously defend its position. Judgment has not been entered on the jury’s verdict and further proceedings may preclude such entry. The Company believes it has meritorious positions and should prevail either through judgment or on appeal, although the outcome is not certain. The Company believes that any outcome of the proceedings will not be material to the Company.

Viscotek Corporation (“Viscotek”) filed a civil action against the Company in the Federal District Court for the Southern District of Texas, Houston Division, alleging that one option offered by the Company with a high temperature gel permeation chromatography instrument is an infringement of two of its patents. These patents are owned by E.I. DuPont de Nemours and Company (“DuPont”) and claimed to be exclusively licensed to Viscotek. DuPont is not a party to the suit. On January 16, 2004, a jury returned a verdict finding that the Company had not infringed Viscotek’s patents. Judgment has been entered on the jury’s verdict in favor of the Company. Viscotek has appealed the judgment. The Company believes it should prevail on appeal and, in any event, that any outcome of the proceedings will not be material to the Company.

**Item 4: *Submission of Matters to a Vote of Security Holders***

None.

**PART II****Item 5: *Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities***

Equity compensation plan information is incorporated by reference from Part III, Item 12, Security Ownership of Certain Beneficial Owners and Management, of this document, and should be considered an integral part of this Item 5. The Company’s Common Stock is registered under the Securities Exchange Act of 1934 as amended the (“Exchange Act”) and is listed on the New York Stock Exchange under the symbol WAT. As of March 10, 2005, the Company had approximately 279 common stockholders of record. The Company has not declared or paid any dividends on its Common Stock in its past three fiscal years and does not plan to pay dividends in the foreseeable future.

The quarterly range of high and low sales prices for the Common Stock as reported by the New York Stock Exchange is as follows:

	Price Range	
	High	Low
<b>For the Quarter Ended</b>		
March 29, 2003	\$ 24.50	\$ 19.79
June 28, 2003	31.05	20.26
September 27, 2003	32.35	26.33
December 31, 2003	33.42	26.58
April 3, 2004	41.50	33.10
July 3, 2004	48.34	39.16
October 2, 2004	49.80	37.75
December 31, 2004	48.10	38.66

The following table provides information about purchases by the Company during the three months ended December 31, 2004 of equity securities registered by the Company pursuant to the Exchange Act (in thousands, except per share data):

Period	(a) Total Number of Shares Purchased (1)	(b) Average Price Paid per Share	(c) Total Number of Shares Purchased as Part of Publicly Announced Programs (2)	(d) Maximum Dollar Value of Shares that May Yet Be Purchased Under the Programs (3)
October 3 to 30, 2004	50	\$ 40.58	50	\$ 497,971
October 31 to November 27, 2004	925	44.88	925	456,458
November 28 to December 31, 2004	271	47.10	271	443,709
Total	<u>1,246</u>	<u>\$ 45.19</u>	<u>1,246</u>	<u>\$ 443,709</u>

- (1) The Company purchased an aggregate of 1,246 shares of its common stock in open market transactions pursuant to a repurchase program (the "Program") that was announced on October 25, 2004.
- (2) The Company's Board of Directors approved the repurchase by the Company of up to \$500.0 million of its outstanding common stock pursuant to the Program. The expiration date of the Program is October 25, 2006.
- (3) The approximate dollar value of shares that may yet be purchased under the Program was \$443.7 million at December 31, 2004.

**Item 6: Selected Financial Data**

Reference is made to information contained in the section entitled "Selected Financial Data" on page 76 of this Form 10-K, included in Item 8, Financial Statements and Supplementary Data.

**Item 7: Management's Discussion and Analysis of Financial Condition and Results of Operations**

**Business and Financial Overview:**

The Company's business in 2004 continued to benefit from stable pharmaceutical customer demand, improved industrial chemical customer demand and the impact of new product initiatives. Sales grew by 15% in 2004 and by 8% in 2003. Excluding currency effects, sales grew by 11% in 2004 and were flat in 2003. Geographically, business was strongest in the U.S., Japan, and Asia, particularly India and China, while trending positively in Europe during the second half of the year. Growth in these geographies was across all of the Company's product lines and in particular mass spectrometry ("MS") products and ACQUITY UPLC™ systems, which accelerated sales in the second-half of the year.

From a product line perspective and excluding the impact of currency translation, the Waters Division liquid chromatography products ("LC") — including high performance liquid chromatography ("HPLC") and Ultra Performance Liquid Chromatography ("UPLC") — grew approximately 9% in 2004 and benefited from shipment of the ACQUITY systems, growth in LC service revenues of 13% and growth in LC chemical products of 10%. In mass spectrometry, sales grew approximately 6% in 2004, as initial shipments of the Q-T of Premier™ augmented the full-year performance of tandem quadrupole instrument sales. As a result of the acquisition of Creon Lab Control AG ("Creon") in July 2003 and NuGenesis Technologies Corporation ("NuGenesis") in February 2004, the Waters Division entered the laboratory informatics market ("Laboratory Informatics"). Laboratory Informatics products and service added approximately 2% to the Company's sales growth in 2004. The Thermal Analysis Division ("TA") sales grew approximately 11% in 2004, benefiting from overall stronger industrial chemical customer demand, recent new product introductions and from the expansion of the business into overseas markets.

Operating income was \$284.9 million and \$219.2 million in 2004 and 2003, respectively, an increase of \$65.7 million or 30% for the year. In 2004, operating income included the benefit of a litigation judgment in the amount of \$17.1 million from Perkin-Elmer Corporation offset by litigation provisions of \$7.8 million and

a technology license asset impairment of \$4.0 million. In 2003, operating income included expensed in-process research and development of \$6.0 million, a loss on sale of a business of \$5.0 million, restructuring charges of \$0.9 million and litigation provisions of \$1.5 million. The remaining increase in operating income of \$47.0 million is primarily a result of sales volume growth, reductions in manufacturing costs, operating expense leverage, and the effects of currency translations.

Operating cash flow increased to \$259.4 million in 2004 compared to \$157.0 million in 2003. The increase of \$102.4 million for the year is primarily attributable to the increase in net income and a decrease in the change of accrued litigation from \$60.1 million in 2003 to \$16.1 million in 2004 primarily related to the Applera patent litigation. In addition, the Company received \$17.1 million in 2004 related to the Perkin-Elmer Corporation patent litigation judgment. Capital expenditures related to property, plant, equipment, software capitalization and other intangibles were \$66.2 million in 2004 compared to \$34.6 million in 2003. During 2004, the Company purchased a 250,000 square foot building adjacent to the Company's headquarters for \$18.1 million. The Company intends to use this building to consolidate certain functions and facilities in Massachusetts in 2005 and spent an additional \$3.2 million in 2004 to prepare the building for its intended use.

In June 2004, the Company effectively concluded its \$400.0 million stock buyback program previously announced in May 2003. The Company repurchased approximately 11.8 million shares under this program. In October 2004, the Company's Board of Directors authorized the Company to repurchase up to \$500.0 million in outstanding common shares over a two-year period. The Company believes that the share repurchase program is beneficial to shareholders by increasing earnings per share through reducing the outstanding shares and has financial flexibility to fund these share repurchases given current cash and debt levels. In 2004, the Company repurchased a total of 5.5 million shares of its common stock for \$231.3 million, of which 1.2 million shares were purchased under the October 2004 program for \$56.3 million. This follows a 2003 repurchase of a total 11.9 million shares of common stock for \$324.6 million.

In December 2004, the Company terminated its existing credit agreement early without penalty and entered into a new Credit Agreement ("Credit Agreement") with a syndicate of banks, many of which participated in the prior credit agreement. The new Credit Agreement increases the Company's borrowing capacity from \$375.0 million to \$700.0 million and provides for lower borrowing costs and less restrictive covenants. The Company believes that this additional borrowing capacity will provide the Company the flexibility to fund working capital needs, potential acquisitions and stock repurchases. The Company had outstanding borrowings at the end of 2004 of \$456.7 million, primarily relating to borrowings in the U.S. under the Company's new Credit Agreement.

#### **Year Ended December 31, 2004 Compared to Year Ended December 31, 2003**

*(The Company has included references to the Notes of the Company's Consolidated Financial Statements included in Item 8 below.)*

##### *Net Sales:*

Net sales for 2004 were \$1,104.5 million, an increase of 15% compared to \$958.2 million for 2003. Excluding currency effects, net sales grew 11% over 2003. Currency translation effect increased sales growth in 2004 by 4% primarily due to the strengthening of the Euro, British pound, Japanese Yen and Canadian dollar against the U.S. dollar. In 2004, product sales increased \$83.7 million or 12% and service sales increased \$62.7 million or 27% over sales in 2003. The increase in product sales, aside from the effects of foreign currency translation, is primarily due to the continued strength of LC, MS and TA sales growth, the mid-year launch of the ACQUITY UPLC system and the impact of acquired businesses. The increase in service sales, aside from the effects of foreign currency translation, is primarily due to growth in the Company's instrument installed base and sales of service contracts, including the effect of the Company's recent acquisitions.

##### *Waters Division Net Sales:*

With respect to the Waters Division's performance by product line (excluding the effects of currency translation), LC sales (Liquid Chromatography — including HPLC and UPLC product lines) grew approxi-

mately 9%. The growth in LC instrument sales in 2004 was 7%. This growth was due principally to the introduction of new products, such as the ACQUITY UPLC instrument, and steady demand for existing instruments. In 2004, the sales of LC consumables (sample preparation devices) in the Company's chemistry operations grew 10% primarily as a result of continued strength in demand related to pharmaceutical production and the introduction of new chromatography columns, most notably the Sunfire™ product line. LC service sales grew 13% over 2003 due to increased sales of service plans to the Company's growing installed base of customers. For the LC business, service revenue was approximately 28% of total LC revenue in 2004. The growth of LC service revenue was geographically broad-based and was driven by increased demand primarily from large multi-national customers for service plans to maintain a higher percentage of their installed base and newly purchased Waters instruments. LC consumables account for approximately 19% of overall LC sales.

MS sales grew approximately 6% in 2004 (excluding the effects of currency translation). The increase in sales over 2003 is primarily a result of strong growth of tandem quadrupole instruments throughout the year and the positive impact of new product shipments, especially the Q-ToF Premier, late in the year. The growth in 2004 is also a result of weak 2003 MS performance, during which MS sales declined 18% over the prior year, due primarily to the effects of a patent litigation loss sustained in 2002. During 2004, the Company re-entered all instrument categories impacted by the patent litigation loss. Service revenue for the MS product line accounted for approximately 19% of total MS revenue in 2004 and 2003, and grew approximately 12% in 2004 due to increased sales of service plans to the Company's growing installed base of customers.

The Laboratory Informatics product line was expanded in 2004 with the acquisition of NuGenesis in the first quarter. In 2003, the Laboratory Informatics product and service offerings consisted of those from Creon, a company that Waters acquired in 2003. In 2004, Laboratory Informatics sales added approximately 2% to sales growth. Revenues consisted of new product sales as well as revenue associated with the servicing of the user base.

Geographically, Waters LC and MS sales in Asia had the highest growth in 2004. Growth in Asia was highlighted by business associated with growth of the pharmaceutical industry in India and more broad-based growth in China. More regulations for food and drinking water testing contributed to sales growth in Japan and in Southeast Asia. In Asia and in Japan, the Company's growth rates in sales (excluding the effects of currency translation) were 27% and 14%, respectively. Sales in the U.S. grew 12% while Europe experienced a modest 1% increase in sales due to slower sales volume in the first half of the year.

*TA Instruments Division Net Sales:*

Sales for thermal analysis instruments, rheometry instruments and related service revenues grew 11% in 2004 (excluding the effects of currency translation). The growth of this business was influenced by strong sales growth of 16% outside of the U.S., primarily from Europe and Asia, as a result of expanded sales and marketing efforts in the regions. Sales in the U.S. grew 5%. In 2004 and 2003, service revenue was approximately 26% of overall revenue and grew approximately 10% in 2004 primarily as a result of providing service to a larger installed base of instruments.

*Gross Profit:*

Gross profit for 2004 was \$649.7 million compared to \$560.4 million for 2003, an increase of \$89.3 million or 16% and is generally consistent with the increase in net sales. Gross profit as a percentage of sales increased to 58.8% in 2004 from 58.5% in 2003. The increase in gross profit percentage is a net result of favorable foreign currency translation along with the continuing success of the Company's manufacturing cost reduction programs, offset by costs associated with additional service resources added to the Waters Division in support of the service product line growth. Within MS, there was a decrease in gross profit as a percentage of net sales as a result of a product mix shift away from the higher margin Q-ToF product line.

*Selling and Administrative Expenses:*

Selling and administrative expenses for 2004 and 2003 were \$300.2 million and \$264.3 million, respectively. As a percentage of net sales, selling and administrative expenses declined slightly to 27.2% for 2004 compared

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to 27.6% for 2003. The \$35.9 million, or 14%, increase in total selling and administrative expenses for 2004 included an increase of approximately \$11.9 million as a result of currency translation; an incremental \$10.4 million attributed to the Laboratory Informatics acquisition; an increase of \$18.6 million in personnel costs attributed to higher headcount, selling related expenses related to the higher sales volume, annual merit increases and increased employee incentive plans costs as a result of the Company's 2004 performance. An increase in costs related to Sarbanes-Oxley compliance of \$3.2 million was offset by a decrease in litigation costs of \$3.8 million. The increase in selling and administrative expenses was partially offset by \$6.6 million of realized and unrealized foreign currency transaction gains compared to the \$2.2 million of realized and unrealized foreign currency transaction gains in 2003.

### *Research and Development Expenses:*

Research and development expenses were \$65.2 million for 2004 and \$59.2 million for 2003, an increase of \$6.0 million or 10%. The increase is primarily attributable to an increase in headcount due to Laboratory Informatics acquisitions, the effects of foreign currency translation, and to the Company's continued commitment to invest significantly in the development of new and improved LC, MS, thermal analysis and rheometry products.

### *Purchased Intangibles Amortization:*

Purchased intangibles amortization for 2004 was \$4.8 million compared to \$4.2 million for 2003, an increase of \$0.6 million or 14%. The increase primarily relates to the amortization of purchased intangibles resulting from the Laboratory Informatics acquisitions.

### *Litigation Settlement and Provisions:*

Net litigation settlements and provisions for 2004 were a \$9.3 million benefit compared to a litigation provision of \$1.5 million for 2003. The Company recorded the benefit of a litigation judgment in the second quarter of 2004 in the amount of \$17.1 million and a provision expense of \$7.8 million in the first quarter of 2004. The benefit in 2004 is related to the conclusion of the Company's litigation with Perkin-Elmer. The provision in 2004 is related to the on-going patent infringement suit with Hewlett-Packard. In 2004, the Company made payments for legal fees and potential award deposits regarding the Hewlett-Packard litigation in the amount of approximately \$4.1 million. The Company recorded a \$1.5 million expense in 2003 for an environmental matter concerning the Company's Taunton facility (Note 13).

### *Loss on Sale of Business:*

The Company recorded a \$5.0 million charge relating to the loss on the sale (Note 8) of the inorganic MS product line in 2003. There was no such charge in 2004.

### *Impairment of Long-Lived Asset:*

In 2004, the Company recorded a \$4.0 million charge for an other-than-temporary impairment of its technology license with Sandia National Laboratories, as a significant portion of the technology collaboration program was suspended. The remaining value of the license is approximately \$1.0 million at December 31, 2004. There was no such charge in 2003.

### *Restructuring and Other Unusual Charges, net:*

#### *2004 Restructuring:*

In January 2004, the Company initiated a restructuring effort to realign its personnel between various support functions and field sales and service organizations around the world. As a result, 70 employees were terminated, all of which had left the Company as of December 31, 2004. The provision of \$2.1 million represents costs incurred, including severance costs, for the 70 people and other directly related incremental costs of this realignment effort.

The following is a rollforward of the Company's 2004 restructuring liability (in thousands):

	<u>Balance December 31, 2003</u>	<u>Charges</u>	<u>Utilization</u>	<u>Reserve Reversals</u>	<u>Balance December 31, 2004</u>
Severance	\$ —	\$ 1,968	\$ (1,968)	\$ —	\$ —
Other	—	115	(115)	—	—
Total	<u>\$ —</u>	<u>\$ 2,083</u>	<u>\$ (2,083)</u>	<u>\$ —</u>	<u>\$ —</u>

*2002 Restructuring:*

In July 2002, the Company took action to restructure and combine its field sales, service and distribution of its Micromass and LC operations. The objective of this integration was to leverage the strengths of both divisions and align and reduce operating expenses. The integration efforts impacted the U.S., Canada, continental Europe and the United Kingdom. Approximately 55 employees were terminated, all of which had left the Company as of December 31, 2003. In addition, the Company originally committed to closing four sales and distribution facilities, two of which were closed by December 31, 2004.

The Company recorded \$2.6 million of charges for the year ended December 31, 2003 and \$7.4 million for the year ended December 31, 2002, for restructuring and other directly related incremental charges relating to its integration of the worldwide LC and MS sales, service and support organizations. The charge for the year ended December 31, 2003 includes severance costs for 13 people, distributor termination costs and other directly related incremental costs of this integration effort. The charge for the year ended December 31, 2002 includes severance costs for 42 people, contract cancellation fees, non-cancelable lease obligations and other directly related incremental costs.

During the year ended December 31, 2004, the Company reversed approximately \$2.2 million in restructuring reserves, primarily attributable to a change in plans with respect to two facilities previously selected for closure and distributor contract settlements being less than previously estimated. During the year ended December 31, 2003, the Company reversed approximately \$1.9 million in restructuring reserves, primarily attributable to facility closure and distributor termination costs being less than previously estimated and the retention of certain employees previously selected for termination.

The following is a rollforward of the Company's LC and MS integration restructuring liability (in thousands):

	<u>Balance December 31, 2003</u>	<u>Charges</u>	<u>Utilization</u>	<u>Reserve Reversals</u>	<u>Balance December 31, 2004</u>
Severance	\$ 31	\$ 23	\$ (54)	\$ —	\$ —
Facilities	1,937	—	(338)	(1,599)	—
Distributor terminations	475	—	(75)	(400)	—
Other	163	5	(10)	(158)	—
Total	<u>\$ 2,606</u>	<u>\$ 28</u>	<u>\$ (477)</u>	<u>\$ (2,157)</u>	<u>\$ —</u>

The Company also recorded an unrelated restructuring provision of \$0.1 million at its TA subsidiary for severance and other related costs in the year ended December 31, 2003. There were no such charges for the years ended December 31, 2004 and 2002.

*Expensed In-Process Research and Development:*

In 2003, in connection with the acquisition of Creon, the Company wrote off the fair value of purchased in-process research and development ("IPR&D") of various projects for the development of new products and technologies in the amount of \$6.0 million. The amount was determined by identifying research projects for which technological feasibility had not been established and which had no alternative future uses. As of the Creon acquisition date (the "Acquisition Date"), there were four projects that met the above criteria. The

significant IPR&D projects identified consist of the eLab Notebook and the automatic LC-MS dereplication system. The IPR&D charges associated with these projects were \$4.5 million and \$0.8 million, respectively.

Management determined the valuation of the IPR&D using a number of factors, including engaging a third party valuation firm to provide an independent appraisal. The value was based primarily on the discounted cash flow method. This valuation included consideration of (i) the stage of completion of each of the projects, (ii) the technological feasibility of each of the projects, (iii) whether the projects had an alternative future use, and (iv) the estimated future residual cash flows that could be generated from the various projects and technologies over their respective projected economic lives.

The primary basis for determining the technological feasibility of these projects was whether the product met predetermined design specifications and complex functionality. As of the Acquisition Date, none of the IPR&D projects had reached predetermined design specifications and complex functionality. In assessing the technological feasibility of a project, consideration was also given to the level of complexity in future technological hurdles that each project had to overcome.

Future residual cash flows that could be generated from each of the projects were determined based upon management's estimate of future revenue and expected profitability of the various products and technologies involved. These projected cash flows were then discounted to their present values taking into account management's estimate of future expenses that would be necessary to bring the projects to completion. The discount rates include a rate of return, which accounts for the time value of money, as well as risk factors that reflect the economic risk that the cash flows projected may not be realized. The cash flows were discounted at discount rates ranging from 55% to 60% per annum, depending on the project's stage of completion and the type of complex functionality needed. This discounted cash flow methodology for the various projects included in the purchased IPR&D resulted in a total valuation of \$6.0 million. Although work on the projects related to the IPR&D continued after the acquisition, the amount of the purchase price allocated to IPR&D was written off because the projects underlying the IPR&D that was being developed were not considered technologically feasible as of the Acquisition Date. As of December 31, 2004, the IPR&D automatic LC-MS dereplication system project still had not reached technological feasibility. The expected remaining cost to complete this project is not considered material to the Company and there are currently no expected material variations between projected results from the projects versus those at the time of the acquisition. The Company expects the project to be completed within the next twelve months.

*Other Income (Expense), Net:*

In 2004 and 2003, the Company recorded \$1.0 million and \$0.3 million, respectively, of pre-tax charges for other-than-temporary impairments to the carrying amounts of certain equity investments (Note 5). The 2004 pre-tax charge of \$1.0 million is for the Company's remaining investment carrying value of GeneProt. This charge was recorded based on the Company's current assessment of GeneProt's financial condition.

*Interest Expense:*

Interest expense was \$10.1 million and \$2.4 million for 2004 and 2003, respectively. The increase in 2004 interest expense is primarily attributed to the additional borrowings in the U.S. to fund the stock repurchase programs (Note 10).

*Interest Income:*

Interest income for 2004 and 2003 was \$11.9 million and \$7.1 million, respectively. The increase in interest income is primarily due to higher cash balances and higher interest rate yields.

*Provision for Income Taxes:*

The Company's effective tax rate was 21.6% in 2004 and 23.6% in 2003. The change in effective tax rates for the period was impacted by the net tax effect of the Perkin-Elmer litigation judgment received and litigation provisions and restructuring charges made during 2004, compared to the tax effect of certain litigation provisions, restructuring charges, expensed in-process research and development and loss on sale of a business incurred during 2003. The effective tax rates, excluding these items and corresponding tax effects, were 21.0%



and 23.0% for the years ended December 31, 2004 and 2003, respectively. This decrease is primarily attributable to the increase in income in international jurisdictions with lower effective tax rates.

### **Year Ended December 31, 2003 Compared to Year Ended December 31, 2002**

*(The Company has included references to the Notes of the Company's Consolidated Financial Statements included in Item 8 below.)*

#### *Net Sales:*

Net sales for 2003 were \$958.2 million, an increase of 8% compared to \$890.0 million for 2002. Excluding the favorable currency effects, net sales remained essentially flat over 2002. In 2003, product sales increased \$25.9 million or 4% and service sales increased \$42.4 million or 22% over sales in 2002.

With respect to the Company's performance by product line (excluding the effects of currency translation), LC sales overall grew approximately 5%. In 2003, LC chemistry grew 11% primarily as a result of continued strength in sales related to pharmaceutical production. LC service sales grew 14% over 2002 due to increased sales of service plans to our growing installed base of customers. Growth in chemistry and service were offset by a decline of 1% in instrument sales during 2003. The decline in instrument sales is largely attributable to a combination of postponements and delays in purchase decisions for such instruments by the Company's customers for new and replacement products. For the LC business, service revenue was approximately 27% of total LC revenue in 2003 compared to 25% of revenue in 2002. The growth of service revenue was geographically broad-based and was driven by increased demand from large multi-national customers for service plans to maintain a higher percentage of their installed base and newly purchased Waters instruments. Chromatography consumables account for approximately 19% of overall LC sales and grew by approximately 11% in 2003. Chromatography consumable growth was driven by increased utilization of existing LC equipment and by the successful launch of a new line of chromatography columns and sample preparation devices. Geographically, the strongest growth areas of the world for LC in 2003 were Asia, Japan and Eastern Europe, achieving 16%, 10% and 40% growth, respectively. The U.S. grew modestly at 2%, while Europe experienced a decline of 4%. Sales growth in Asian and Eastern European geographies is related to economic modernization and development of basic infrastructure. Japan continues to be a robust market as Waters continues to offer Japanese language software products that meet local needs. Markets in the U.S. and Europe languished in 2003 as we saw a continuation of delays in instrument replacements early in the year at many of our pharmaceutical customers.

MS sales declined approximately 18% in 2003, excluding the impact of the sale of the inorganic product line. The decline in sales over 2002 was across most geographic areas, primarily due to the impact of the Applera patent litigation, reduced MS instrument prices and a decline in pharmaceutical capital spending. Sales to customers working on proteomics applications in the pharmaceutical industry, government and academic sector and biotech all experienced declines in instrument purchases in 2003. The Company believes that its sales decline is a result of a temporary market decline in 2003 as well as a loss of market share to competing technologies that resulted in the overall 18% sales decline in MS. Service revenue for the MS product line accounted for approximately 19% of total MS revenue in 2003 compared to 12% in 2002, and grew approximately 27% during this period. The growth in MS service revenue as a percentage of overall MS revenue was primarily due to the decline in MS instrument revenue, which is attributed to reduced demand from proteomics customers.

Sales for thermal analysis products grew 20% in 2003, excluding the impact of the acquired rheometry business. The growth of this business is geographically broad-based with increased spending by core industrial chemical and pharmaceutical companies. The impact of sales in 2003 from the rheometry business acquisition added an additional 16% to the thermal analysis business growth. TA service revenue was approximately 26% of total TA revenue. Compared to 2002, TA service revenue grew by approximately 41% primarily as a result of providing service to a larger installed base of instruments and the Rheometrics acquisition.

*Gross Profit:*

Gross profit for 2003 was \$560.4 million compared to \$516.5 million for 2002, an increase of \$43.9 million or 8%. Gross profit as a percentage of sales increased to 58.5% in 2003 from 58.0% in 2002. The increase in gross profit of 8% is generally linear with the net sales increase of 8%, which is mostly attributed to favorable foreign exchange in 2003.

*Selling and Administrative Expenses:*

Selling and administrative expenses for 2003 and 2002 were \$264.3 million and \$246.8 million, respectively. As a percentage of net sales, selling and administrative expenses remained relatively flat at 27.6% for 2003 compared to 27.7% for 2002. The \$17.4 million or 7% increase in total selling and administrative expenses for 2003 included an increase of approximately \$17.7 million as a result of currency translation, offset by a reduction in operating expenses of \$0.3 million. The reduction in operating expenses includes cost savings of \$4.5 million from the recently completed LC and MS field sales and service integration efforts, generating lower headcount and labor costs, associated fringe benefits and travel costs. These reductions were offset by annual merit increases across most divisions and other headcount additions and related fringe benefits and indirect costs associated with the 2003 acquisitions totaling approximately \$4.2 million. The Company experienced realized and unrealized foreign currency transaction gains of approximately \$2.2 million in 2003 compared to losses of \$0.8 million in 2002, an increase of \$3.0 million.

*Research and Development Expenses:*

Research and development expenses were \$59.2 million for 2003 and \$51.9 million for 2002, an increase of \$7.3 million or 14%. The increase is primarily attributable to an increase in headcount due to acquisitions, specifically Creon and Rheometrics, and to the Company's continued commitment to invest significantly in the development of new and improved LC, MS, thermal analysis and rheometry products. In addition, the Company incurred contract research and development costs of \$1.8 million related to new product development efforts for the Q-ToF product line.

*Purchased Intangibles Amortization:*

Purchased intangibles amortization for 2003 was \$4.2 million compared to \$3.6 million for 2002, an increase of \$0.6 million or 18%. The increase primarily relates to amortization associated with the intangible assets purchased as part of the Rheometrics and Creon acquisitions.

*Litigation Provisions:*

Litigation provision for 2003 was \$1.5 million compared to \$7.9 million for 2002. The Company recorded \$1.5 million and \$5.1 million in 2003 and 2002, respectively, relating to an environmental matter concerning the Company's Taunton facility (Note 13). In 2002, the Company recorded \$2.8 million for the Applera patent litigation for liabilities associated with product sales made prior to the day of the unfavorable jury's verdict in March 2002 (Note 12).

*Loss on Sale of Business:*

The Company recorded a \$5.0 million charge relating to the loss on the sale of the inorganic MS product line in 2003. There was no such charge in 2002 (Note 8).

*Impairment of Long-Lived Asset:*

In 2002, the Company recorded a \$2.4 million charge for an other-than-temporary impairment of its technology license with Variagenics, as the technology collaboration program was discontinued (Note 5). There was no such charge in 2003.

*Restructuring and Other Unusual Charges, net:*

The Company recorded \$2.6 million in 2003 and \$7.4 million in 2002 for restructuring and other directly related incremental costs relating to its integration of the worldwide LC and MS sales, service, manufacturing and support organizations. The charge in 2003 includes severance costs for 13 people, distributor terminations and other directly related incremental costs of this integration effort. The charge in 2002 includes severance

costs for 42 people, contract cancellation fees, non-cancelable lease obligations and other directly related incremental costs.

During 2003, the Company reversed approximately \$1.9 million in restructuring reserves, primarily attributable to distribution and facility settlements being less than previously estimated and the retention of certain employees previously selected for employment termination. There were no such reversals in 2002.

The Company has included in the consolidated balance sheet in other long-term liabilities approximately \$1.5 million and \$1.8 million at December 31, 2003 and 2002, respectively, for non-cancelable lease obligations with a portion to be paid out extending to 2012. The remaining \$1.1 million and \$3.7 million of the liability is included in other current liabilities in the consolidated balance sheet at December 31, 2003 and 2002, respectively.

The following is a rollforward of the Company's LC and MS integration restructuring liability (in thousands):

	<u>Balance December 31, 2002</u>	<u>Charges</u>	<u>Utilization</u>	<u>Reserve Reversals</u>	<u>Balance December 31, 2003</u>
Severance	\$ 1,655	\$ 1,553	\$ (2,672)	\$ (505)	\$ 31
Facilities	2,388	—	(60)	(391)	1,937
Distributor terminations	1,350	400	(325)	(950)	475
Other	78	661	(568)	(8)	163
Total	<u>\$ 5,471</u>	<u>\$ 2,614</u>	<u>\$ (3,625)</u>	<u>\$ (1,854)</u>	<u>\$ 2,606</u>

The amount of expected annual cost savings is approximately \$6.0 million. The Company began realizing savings of approximately \$1.5 million per quarter beginning in the second quarter of 2003. The Company believes that there were no material increases in other expenses or reductions in revenues as a result of this restructuring. The annual cost savings is comprised of head count reductions of approximately \$4.2 million, reductions in related travel, promotional and other expenses of approximately \$1.6 million and facility closures of approximately \$0.2 million.

The Company also recorded an unrelated restructuring provision of \$0.1 million at its TA subsidiary for severance and other related costs in 2003. There were no such charges in 2002.

*Expensed In-Process Research and Development:*

See Expensed In-Process Research and Development herein under the Year Ended December 31, 2004 Compared to Year Ended December 31, 2003 discussion.

*Other Income (Expense), Net:*

In 2003 and 2002, the Company recorded \$0.3 million and \$6.0 million, respectively, in pre-tax charges for other-than-temporary impairments to the carrying amounts of certain equity investments, including investments in GeneProt and Variagenics (Note 5). During 2002, the Company recorded a \$1.0 million charge to other income (expense), in the consolidated statements of operations, for an other-than-temporary impairment of the equity investment and warrants resulting from Variagenics public stock price declines. In addition, in 2002, the Company recorded pre-tax charges of \$12.6 million to other income (expense) for an other-than-temporary impairment of its investment in GeneProt. This charge was recorded because to the Company's knowledge, GeneProt had been unable to generate enough commercial interest to expand its business in the U.S. market. Additionally, during 2003 and 2002, the Company recorded a \$0.3 million and \$0.1 million charge, respectively, to other income (expense) for the impairment of certain other equity investments. The impairment charges in 2002 were offset by a \$7.7 million termination fee received from GeneProt for cancellation of its \$20.0 million order. There were no such off-setting charges in 2003.

*Interest Expense:*

Interest expense was \$2.4 million and \$2.5 million for 2003 and 2002, respectively. Total interest expense in 2003 was offset by a \$0.9 million reduction in an interest expense estimate relating to the calculation of interest expense for the Applera litigation paid in April 2003 (Note 12). Excluding this reduction, interest expense for 2003 would have been \$3.3 million, or an increase of 32%. This increase primarily relates to interest expense on borrowings against the Company's credit facility to fund the stock repurchase program (Note 10). In 2002, the interest expense primarily related to accrued post-judgment interest associated with the Applera litigation.

*Interest Income:*

Interest income for 2003 and 2002 was \$7.1 million and \$7.5 million, respectively. The decline in interest income is primarily due to lower yields on cash investments.

*Provision for Income Taxes:*

The Company's effective income tax rate was 23.6% in 2003 and 22.1% in 2002. The 2003 effective tax rate increased primarily due to lower effective tax rates on special charges and the expensed in-process research and development charge related to the Creon acquisition of \$6.0 million not being tax deductible under German statutory law.

*Cumulative Effect of Change in Accounting Principle:*

In 2002, the method of accounting for patent related costs associated with patent litigation was changed effective January 1, 2002 from a method of capitalizing the patent related costs and amortizing them over their estimated remaining economic life to expensing the costs as incurred. The Company believes that this change is preferable because it will provide a better comparison with the Company's industry peers, the majority of which expense these costs as incurred. The \$4.5 million cumulative effect of the change on prior years (after reduction for income taxes of \$1.3 million) is included as a charge to net income for 2002. There were no such charges for 2003.

**Liquidity and Capital Resources***Condensed Consolidated Statements of Cash Flows (in thousands):*

	Year Ended December 31,	
	2004	2003
Net income	\$ 224,053	\$ 170,891
Depreciation and amortization	41,926	33,848
Tax benefit related to stock option plans	32,012	17,582
Change in accounts receivable	(36,453)	11,973
Change in inventories	(11,575)	(4,302)
Change in accounts payable and other current liabilities	12,203	(30,005)
Change in accrued litigation	(16,095)	(60,120)
Other changes in operating activities	13,378	17,138
Net cash provided by operating activities	259,449	157,005
Net cash used in investing activities	(108,605)	(18,663)
Net cash provided by (used in) financing activities	21,507	(63,640)
Effect of exchange rate changes on cash and cash equivalents	9,945	18,767
Increase in cash and cash equivalents	\$ 182,296	\$ 93,469

Net cash provided from operating activities was \$259.4 million and \$157.0 million in 2004 and 2003, respectively. The primary sources of net cash provided from operating activities were net income, the effect of depreciation and amortization, and the increase in the tax benefit related to stock option plans from stock

options exercised. Included in net income for 2004 was \$17.1 million in proceeds for the Perkin-Elmer litigation judgment. Depreciation and amortization increased in 2004 primarily from the increase in capital spending, higher software capitalization amortization and the effect of the Laboratory Informatics acquisitions. Days-sales-outstanding (“DSO”) increased by 5 days to 76 days in 2004 from 71 days in 2003. The increase in accounts receivable and DSO are directly related to the timing of the Company’s sales within the quarter, and foreign currency translation. The increase in inventory at December 31, 2004 is related to the development of new products, primarily the ACQUITY UPLC and the Q-ToF Premier.

The changes in accounts payable and other current liabilities are primarily related to the timing of payments of income tax, compensation, and retirement accruals. Accrued litigation decreased by \$16.1 million primarily due to the \$18.1 million payment to Applied Biosystems/ MDS Sciex Instruments for the settlement of a patent litigation matter and approximately \$4.1 million of payments in connection with the Hewlett-Packard patent litigation matter, offset by a \$7.8 million provision for the Hewlett-Packard patent litigation in 2004. The remaining change in accrued litigation is attributed to payment of legal fees directly associated with existing litigation accruals.

Net cash used in investing activities totaled \$108.6 million in 2004 compared to \$18.7 million in 2003. Additions to fixed assets and intangible assets were \$66.2 million in 2004 and \$34.6 million in 2003. Included in 2004 was a 250,000 square foot building purchase adjacent to the Company’s headquarters for \$18.1 million as well as approximately \$3.2 million of costs in construction in-progress related to improvements made to the building. The Company intends to use this building to consolidate certain functions and facilities in Massachusetts in 2005 and to accommodate growth over the next several years. Aside from the purchase of this building, fixed asset and intangible asset additions were consistent with capital spending trends and expectations throughout the respective years. Business acquisitions were \$42.4 million and \$35.2 million in 2004 and 2003, respectively, as the Company continues to seek growth opportunities through acquisitions. Included in 2003 was approximately \$49.9 million of cash provided by a decrease in restricted cash. The Company held approximately \$49.9 million of restricted cash at December 31, 2002 in connection with the standby letter of credit issued by the Company in 2002 for the unfavorable judgment in the Applera patent litigation. Due to the March 2003 affirmed judgment in the case, the Company paid \$53.7 million to Applera in April 2003. As a result of that payment, the Company will no longer be required to maintain a restricted cash balance.

Regarding cash provided by (used in) financing activities, the Company repurchased 5.5 million and 11.9 million common stock shares at a cost of \$231.3 million and \$324.6 million, during 2004 and 2003, respectively. In October 2004, the Company’s Board of Directors authorized the Company to repurchase up to \$500.0 million in outstanding common shares over a two-year period. The Company believes that the share repurchase program is beneficial to shareholders by increasing earnings per share via reducing the outstanding shares through open market purchases and that it has adequate financial flexibility to fund these share repurchases given current cash and debt levels. During 2004, the Company purchased 1.2 million shares at a cost of \$56.3 million under the October 2004 Board of Directors authorized repurchase program and 4.3 million shares at a cost of approximately \$175.0 million under a previously authorized program under which the Company has purchased the maximum amount of authorized shares. The Company believes it has the resources to fund the common stock repurchases as well as to pursue acquisition opportunities in the future. The Company received \$45.0 million and \$27.8 million of proceeds from other financing activities, including the exercise of stock options and the purchase of shares pursuant to employee stock purchase plans in 2004 and 2003, respectively.

In December 2004, the Company entered into a Credit Agreement (the “Credit Agreement”) to replace its existing credit facility. The Credit Agreement provides for a \$250.0 million term loan facility, a \$300.0 million revolving facility (“US Tranche”), and a \$150.0 million revolving facility (“European Tranche”). The term loan facility and the revolving facilities both mature on December 15, 2009, and require no scheduled prepayments before that date. At December 31, 2004, the Company had \$250.0 million outstanding under the term loan facility which is classified as long-term debt and \$190.0 million outstanding under the US Tranche revolving facility. The Company terminated its existing credit agreement early without penalty. The interest rates applicable to the term loan and revolving loans under the new credit agreement are

equal to either the base rate (which is the higher of the prime rate or the federal funds rate plus 1/2%) or the applicable 1, 2, 3, 6, 9 or 12 month LIBOR rate, in each case plus an interest rate margin based upon the Company's leverage ratio, which can range between 29.5 basis points and 80.0 basis points. The Credit Agreement is unsecured in nature, and requires that the Company comply with an interest coverage ratio test of not less than 3.5:1, and a leverage ratio test of not more than 3:1, for any period of four consecutive fiscal quarters, respectively. The minimum interest coverage ratio on the terminated agreement was 5:1 and the maximum leverage ratio test was 2.5:1. In addition, the new credit agreement includes negative covenants that are customary for investment grade credit facilities. The new credit agreement also contains certain customary representations and warranties, affirmative covenants and events of default. The new Credit Agreement increased the Company's committed syndicated borrowing capacity from \$375.0 million to \$700.0 million and provides for lower borrowing costs. The additional borrowing capacity will provide the Company the flexibility to fund working capital needs, potential acquisitions and stock repurchases.

The Company believes that the cash and cash equivalent balance of \$539.1 million at the end of 2004 and expected cash flow from operating activities together with borrowing capacity from committed credit facilities will be sufficient to fund working capital, capital spending requirements, authorized share repurchase amounts and any adverse final determination of ongoing litigation for at least the next twelve months. Management believes, as of the date of this report, that its financial position along with expected future cash flows from earnings based on historical trends and the ability to raise funds from a number of financing alternatives and external sources, will be sufficient to meet future operating and investing needs beyond the next twelve months.

In October 2004, the American Jobs Creation Act of 2004 ("AJCA") was signed into law. The AJCA contains a series of provisions, several of which are pertinent to the Company. The AJCA creates a temporary incentive for U.S. multi-national corporations to repatriate accumulated income abroad by providing an 85% dividends received deduction for certain dividends from controlled foreign corporations. It has been the Company's practice to permanently reinvest all foreign earnings into foreign operations and the Company currently still plans to continue to reinvest foreign earnings permanently into its foreign operations. The deduction is subject to a number of limitations and uncertainty remains as to how to interpret numerous provisions of the AJCA. As such, the Company is not yet in a position to decide on whether, and to what extent, it might repatriate foreign earnings that have not yet been remitted to the U.S. Should the Company determine that it plans to repatriate any foreign earnings, it will be required to establish an income tax expense and related tax liability on such earnings. If the Company elects this provision before it expires at the end of 2005, the Company could repatriate a maximum of \$500.0 million in qualified foreign earnings. If the maximum was repatriated, the Company estimates an increase in the income tax provision of between \$20.0 million and \$45.0 million depending on the final technical clarifications.

*Commitments:*

The Company licenses certain technology and software from third parties, which expire at various dates through 2008. Fees paid for licenses were approximately \$1.1 million in 2004, \$2.9 million in 2003 and \$5.4 million in 2002. Future minimum licenses payable under existing license agreements as of December 31, 2004 are immaterial.

**Contractual Obligations and Commercial Commitments**

The following is a summary of the Company's commitments as of December 31, 2004 (in thousands):

<b>Contractual Obligations</b>	<b>Payments Due by Year</b>					
	<b>Total</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>After 2008</b>
Long-term debt	\$ 250,000	\$ —	\$ —	\$ —	\$ —	\$ 250,000
Operating leases	85,105	17,520	13,349	10,529	8,297	35,410
Other long-term liabilities	527	527	—	—	—	—
Total	<u>\$ 335,632</u>	<u>\$ 18,047</u>	<u>\$ 13,349</u>	<u>\$ 10,529</u>	<u>\$ 8,297</u>	<u>\$ 285,410</u>

<u>Other Commercial Commitments</u>	<u>Amount of Commitments Expiration Per Period</u>					
	<u>Total</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>After 2008</u>
Letters of credit	\$ 3,222	\$ 3,222	\$ —	\$ —	\$ —	\$ —

From time to time, the Company and its subsidiaries are involved in various litigation matters arising in the ordinary course of business. The Company believes it has meritorious arguments in its current litigation matters and any outcome, either individually or in the aggregate, with the exception of the current litigation described in Note 12, Patent Litigation, will not be material to the financial position or results of operations.

During fiscal year 2005, the Company expects to contribute approximately \$7.5 million to the Company's retirement plans. Capital expenditures are expected to be modestly higher in 2005, excluding the recent building purchase, due to expected capital needs to support the growth in the business.

The Company is not aware of any undisclosed risks and uncertainties, including but not limited to product technical obsolescence, regulatory compliance, protection of intellectual property rights, changes in pharmaceutical industry spending, competitive advantages, current and pending litigation, and changes in foreign exchange rates, that are reasonably likely to occur and could materially and negatively affect the Company's existing cash balance or its ability to borrow funds from its credit facility. The Company also believes there are no provisions in the new credit facility, its real estate leases, and supplier and collaborative agreements that would accelerate payments, require additional collateral or impair its ability to continue to enter into critical transactions. The Company has not paid any dividends and does not plan to pay any dividends in the foreseeable future.

### **Critical Accounting Policies and Estimates**

#### *Summary:*

The preparation of consolidated financial statements requires the Company to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent liabilities. Critical accounting policies are those that are central to the presentation of the Company's financial condition and results of operations that require management to make estimates about matters that are highly uncertain. On an on-going basis, the Company evaluates its policies and estimates. The Company bases its estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

#### *Revenue Recognition:*

Sales of products and services are generally recorded based on product shipment and performance of service, respectively. Partial proceeds received in advance of product shipment or performance of service are recorded as deferred revenue in the consolidated balance sheets. Once the product is shipped, all advance payments received associated with that particular order are reclassified to accounts receivable to offset against the customer invoice. Shipping and handling costs are included in cost of sales net of amounts invoiced to the customer per the order. The Company's products generally carry one year of warranty. These costs are accrued at the point of shipment. Once the warranty period has expired, the customer may purchase a service contract. Service contract billings are generally invoiced to the customer at the beginning of the contract term, and revenue is amortized on a straight-line basis over the contract term. At December 31, 2004, the Company had current and long-term deferred revenue liabilities of approximately \$66.8 million and \$7.3 million, respectively.

Product shipments, including those for demonstration or evaluation, and service contracts are not recorded as revenues until a valid purchase order or master agreement is received specifying fixed terms and prices. Revenues are adjusted accordingly for changes in contract terms or if collectibility is not reasonably assured. The Company's method of revenue recognition for certain products requiring installation is in accordance with Staff Accounting Bulletin ("SAB") 104, "Revenue Recognition in Financial Statements." Accordingly, the larger of the contractual cash holdback or the fair value of the installation service is deferred

when the product is shipped and revenue is recognized as a multiple element arrangement when installation is complete. The Company determines the fair value of installation based upon a number of factors, including hourly service billing rates, estimated installation hours and comparisons of amounts charged by third parties. The Company believes that this amount approximates the amount that a third party would charge for the installation effort.

*Loss Provisions on Accounts Receivable and Inventory:*

The Company maintains allowances for doubtful accounts for estimated losses resulting from the inability of its customers to make required payments. If the financial condition of the Company's customers were to deteriorate, resulting in an impairment of their ability to make payments, additional allowances may be required. The Company does not request collateral from its customers but collectibility is enhanced through the use of credit card payments and letters of credit. The Company assesses collectibility based on a number of factors including, but not limited to, past transaction history with the customer, the credit-worthiness of the customer, industry trends and the macro-economic environment. Sales returns and allowances are estimates of future product returns related to current period revenue. Material differences may result in the amount and timing of revenue for any period if management made different judgments or utilized different estimates for sales returns and allowances for doubtful accounts. The Company's accounts receivable balance at December 31, 2004 was \$271.7 million, net of allowances for doubtful accounts and sales returns of \$7.1 million. Historically, the Company has not experienced significant bad debt losses.

The Company values all of its inventories at the lower of cost or market on a first-in, first-out basis ("FIFO"). The Company estimates revisions to its inventory valuations based on technical obsolescence, historical demand, projections of future demand including that in the Company's current backlog of orders, and industry and market conditions. If actual future demand or market conditions are less favorable than those projected by management, additional write-downs may be required. The Company's inventory balance at December 31, 2004 was \$139.9 million, net of write-downs to net realizable value of \$14.1 million.

*Valuation of Equity Investments:*

The Company holds minority equity interests in companies having operations or technology in areas within its strategic focus, some of which are publicly traded and have highly volatile share prices. For investments where a company is not publicly traded, the Company obtains and reviews quarterly and annual financial statements and progress of technological expectations. The Company records an investment impairment charge when it believes an investment has experienced a decline in value that is other-than-temporary. Future adverse changes in market conditions or poor operating results of underlying investments could result in losses or an inability to recover the carrying value of the investments that may not be reflected in an investment's current carrying value, thereby possibly requiring an impairment charge in the future. In 2004 and 2003, the Company recorded \$1.0 million and \$0.3 million charges to other expense, respectively, in the consolidated statements of operations, for the impairment of certain equity investments. At December 31, 2004, the Company had equity investments totaling \$17.9 million included in other assets on the balance sheet.

*Long-Lived Assets, Intangible Assets and Goodwill:*

The Company assesses the impairment of identifiable intangibles, long-lived assets and related goodwill whenever events or changes in circumstances indicate that the carrying value may not be recoverable. Factors the Company considers important which could trigger an impairment review include but are not limited to the following:

- significant underperformance relative to expected historical or projected future operating results;
- significant negative industry or economic trends; and
- significant changes or developments in strategic technological collaborations or legal matters which affect the Company's capitalized patent, trademark and intellectual properties such as licenses.

When the Company determines that the carrying value of intangibles, long-lived assets and related goodwill may not be recoverable based upon the existence of one or more of the above indicators, it measures



any impairment based on a projected discounted cash flow method using a discount rate determined by management to be commensurate with the risk inherent in the Company's current business model. In 2004, the Company recorded a \$4.0 million charge for an other-than-temporary impairment of its technology licenses with Sandia National Laboratories as a significant portion of the technology collaboration program was suspended. Net intangible assets, long-lived assets, and goodwill amounted to \$85.2 million, \$135.9 million, and \$228.5 million, respectively, as of December 31, 2004. The Company performs annual impairment reviews of its goodwill. The Company performed its annual review during 2004 and currently does not expect to record an impairment charge in the foreseeable future. However, there can be no assurance that at the time future reviews are completed, a material impairment charge will not be recorded.

*Warranty:*

Product warranties are recorded at the time revenue is recognized for certain product shipments. While the Company engages in extensive product quality programs and processes, including actively monitoring and evaluating the quality of its component suppliers, the Company's warranty obligation is affected by product failure rates, material usage and service delivery costs incurred in correcting a product failure. Should actual product failure rates, material usage or service delivery costs differ from the Company's previous estimates, revisions to the estimated warranty liability would be required. At December 31, 2004, the Company's warranty liability was \$10.6 million.

*Income Taxes:*

As part of the process of preparing the consolidated financial statements, the Company is required to estimate its income taxes in each of the jurisdictions in which it operates. This process involves the Company estimating its actual current tax exposure together with assessing temporary differences resulting from differing treatment of items, such as depreciation, amortization, and inventory reserves, for tax and accounting purposes. These differences result in deferred tax assets and liabilities, which are included within the consolidated balance sheets. The Company must then assess the likelihood that its deferred tax assets will be recovered from future taxable income and, to the extent it believes that recovery is not likely, the Company must establish a valuation allowance. In the event that actual results differ from these estimates, or the Company adjusts these estimates in future periods, the Company may need to establish an additional valuation allowance which could materially impact its financial position and results of operations.

The Company has realized significant income tax benefits associated with the exercise of its nonqualified stock options. The corresponding credit was to additional paid-in-capital. Because of the outstanding stock options, the Company believes that it is more likely than not that the U.S. deferred tax assets will not be realized. Therefore, a valuation allowance has reduced to zero all the deferred tax assets relating to U.S. income. In the future event there is U.S. taxable income, the valuation allowance would be reversed and deferred tax assets recorded with a corresponding credit to additional paid-in-capital.

*Litigation:*

As described in Item 3 of Part I of this Form 10-K, the Company is a party to various pending litigation matters. With respect to each pending claim, management determines whether it can reasonably estimate whether a loss is probable and, if so, the probable range of that loss. If and when management has determined, with respect to a particular claim, both that a loss is probable and that it can reasonably estimate the range of that loss, the Company records a charge equal to either its best estimate of that loss or the lowest amount in that probable range of loss. The Company will disclose additional exposures when the range of loss is subject to considerable interpretation.

With respect to the claims referenced in Item 3, management of the Company to date has been able to make this determination, and thus has recorded charges, with respect to the claims described under the heading "Hewlett-Packard Company." As developments occur in these matters and additional information becomes available, management of the Company will reassess the probability of any losses and of their range, which may result in its recording charges or additional charges, which could materially impact the Company's results of operation or financial position.

*Pension and Other Post-retirement Benefits:*

Assumptions used in determining projected benefit obligations and the fair values of plan assets for the Company's pension plans and other post-retirement benefits are evaluated periodically by management in consultation with outside actuaries and investment advisors. Changes in assumptions are based on relevant company data. Critical assumptions, such as the discount rate used to measure the benefit obligations and the expected long-term rate of return on plan assets are evaluated and updated annually. The Company has assumed that the expected long-term rate of return on plan assets will be 8.00%.

At the end of each year, the Company determines the discount rate that reflects the current rate at which the pension liabilities could be effectively settled. This rate should be in line with rates for high quality fixed income investments available for the period to maturity of the pension benefits, and changes as long-term interest rates change. At year-end 2004, the Company determined this rate to be 5.75%. Post-retirement benefit plan discount rates are the same as those used by the Company's defined benefit pension plan in accordance with the provisions of SFAS No. 106, "Employers' Accounting for Post-retirement Benefits other than Pensions."

**Recent Accounting Standards Changes**

In December 2004, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standard ("SFAS") No. 123(R), "Share-Based Payments", which amends SFAS No. 123, "Accounting for Stock-Based Compensation". This standard requires that all share-based payments to employees, including grants of employee stock options, be recognized in the statement of operations based on their fair values. The standard is effective for public companies for interim periods beginning after June 15, 2005. The final standard allows alternative methods for determining fair value. At the present time, the Company has not determined which valuation method it will use; however, under the Black-Scholes valuation model, it is estimated that the pre-tax compensation expense recorded in the consolidated statements of operations for the second half of 2005 would be approximately \$14.5 million.

In December 2004, the FASB issued SFAS No. 153 "Exchanges of Nonmonetary Assets" which amends Accounting Principles Board Opinion No. 29. This standard requires that exchanges of nonmonetary assets be measured based on the fair value of the assets exchanged. This standard is effective for nonmonetary asset exchanges occurring in fiscal periods beginning after June 15, 2005 and should be applied prospectively. At the present time, the Company does not believe that adoption of SFAS 153 will have a material effect on its financial position, results of operations or cash flows.

In November 2004, the FASB issued SFAS No. 151 "Inventory Costs" which amends Accounting Research Bulletin No. 43 Chapter 4. This standard clarifies that abnormal amounts of idle facility expense, freight, handling costs, and wasted materials (spoilage) should be recognized as current period charges and requires the allocation of fixed production overheads to inventory based on the normal capacity of the production facilities. This standard is effective for inventory costs incurred during fiscal years beginning after June 15, 2005. At the present time, the Company is evaluating SFAS 151 but does not believe that it will have a material effect on its financial position, results of operations or cash flows.

In October 2004, the American Jobs Creation Act of 2004 ("AJCA") was signed into law. The AJCA contains a series of provisions, several of which are pertinent to the Company. The AJCA creates a temporary incentive for U.S. multi-national corporations to repatriate accumulated income abroad by providing an 85% dividends received deduction for certain dividends from controlled foreign corporations. It has been the Company's practice to permanently reinvest all foreign earnings into foreign operations and the Company currently still plans to continue to reinvest foreign earnings permanently into its foreign operations. The deduction is subject to a number of limitations and uncertainty remains as to how to interpret numerous provisions of the AJCA. As such, the Company is not yet in a position to decide on whether, and to what extent, the Company might repatriate foreign earnings that have not yet been remitted to the U.S. Should the Company determine that it plans to repatriate any foreign earnings, it will be required to establish an income tax expense and related tax liability on such earnings. If the Company elects this provision before it expires at the end of 2005, the Company could repatriate a maximum of \$500.0 million in qualified foreign earnings. If

the maximum was repatriated, the Company estimates an increase in the income tax provision of between \$20.0 million and \$45.0 million depending on the final technical clarifications.

**Item 7a: *Quantitative and Qualitative Disclosures About Market Risk***

The Company operates on a global basis and is exposed to the risk that its earnings, cash flows and stockholders' equity could be adversely impacted by fluctuations in currency exchange rates and interest rates. The Company attempts to minimize its exposures by using certain financial instruments, for purposes other than trading, in accordance with the Company's overall risk management guidelines. Further information regarding the Company's accounting policies for financial instruments and disclosures of financial instruments can be found in Notes 2 and 10 to the Company's consolidated financial statements.

The Company is primarily exposed to currency exchange-rate risk with respect to certain inter-company balances, forecasted transactions and net assets denominated in Euro, Japanese Yen and British pound. The Company manages its foreign currency exposures on a consolidated basis, which allows the Company to analyze exposures globally and take into account offsetting exposures in certain balances. In addition, the Company utilizes derivative and non-derivative financial instruments to further reduce the net exposure to currency fluctuations.

The Company is also exposed to the risk that its earnings and cash flows could be adversely impacted by fluctuations in interest rates. The Company's policy is to manage interest costs by using a mix of fixed and floating rate debt that management believes is appropriate. At times, to manage this mix in a cost efficient manner, the Company has periodically entered into interest rate swaps, in which the Company agrees to exchange, at specified intervals, the difference between fixed and floating interest amounts calculated by reference to an agreed upon notional amount.

*Cash Flow Hedges*

The Company uses interest rate swap agreements to hedge the risk to earnings associated with fluctuations in interest rates related to outstanding U.S. dollar floating rate debt.

During the first quarter of 2004, the Company entered into a floating to fixed rate interest rate swap with a notional amount of \$125.0 million, to hedge floating rate debt related to the term loan tranche of its outstanding debt, with a maturity date of 21 months. The Company subsequently closed out the swap in the second quarter of 2004, with a realized gain of \$1.6 million. The total pre-tax amount of the gain that was re-classified to earnings in 2004 was \$0.7 million. The remaining \$0.9 million will be re-classified to earnings in 2005 over the original term of the interest rate swap. As of December 31, 2004, the Company had no outstanding cash flow hedges.

*Hedges of Net Investments in Foreign Operations*

The Company has operations in various countries and currencies throughout the world, with approximately 31% of its sales denominated in Euros, 11% in Yen and smaller sales exposures in other currencies. As a result, the Company's financial position, results of operations and cash flows can be affected by fluctuations in foreign currency exchange rates. The Company uses cross-currency interest rate swaps, forward contracts and range forward contracts to hedge its stockholders' equity balance from the effects of fluctuations in currency exchange rates. These agreements are designated as foreign currency hedges of a net investment in foreign operations. Any increase or decrease in the fair value of cross-currency interest rate swap agreements, forward contracts or range forward contracts is offset by the change in the value of the hedged net assets of the Company's consolidated foreign affiliates. Therefore, these derivative instruments are intended to serve as an effective hedge of certain foreign net assets of the Company.

During 2004, the Company hedged its net investment in Yen foreign affiliates with cross-currency interest rate swaps, with notional values ranging from approximately \$25.0 million to approximately \$37.0 million. At December 31, 2004 and 2003, the notional amounts of outstanding contracts were approximately \$37.0 million and \$25.0 million, respectively. For the year ended December 31, 2004, the Company recorded cumulative net pre-tax losses of \$2.4 million in accumulated other comprehensive income, which consisted of realized losses

of \$1.6 million relating to closed cross-currency interest rate swap agreements and unrealized losses of \$0.8 million relating to the Japanese Yen cross-currency interest rate swap agreements. For the year ended December 31, 2003, the Company recorded cumulative net pre-tax gains of \$1.6 million in accumulated other comprehensive income, which consisted of realized gains of \$1.3 million and unrealized gains of \$0.3 million. For the year ended December 31, 2002, the Company recorded cumulative net pre-tax losses of \$1.0 million in accumulated other comprehensive income, which consisted of realized losses of \$1.4 million and unrealized gains of \$0.4 million.

During 2004, the Company hedged its net investment in British pound foreign affiliates with forward foreign exchange contracts in British pounds. For the year ended December 31, 2004, the Company recorded a cumulative net pre-tax gain of \$0.7 million in accumulated other comprehensive income, which consisted of realized gains of \$0.5 million related to closed forward agreements and unrealized gains of \$0.2 million related to the British pound forward agreements. As of December 31, 2004, the Company had forward foreign exchange contracts in British pounds with a notional amount of approximately 45.0 million British pounds outstanding. For the year ended December 31, 2003, the Company recorded realized losses of \$3.3 million in accumulated other comprehensive income relating to forward foreign exchange contracts in British pounds that were entered into and closed in 2003. As of December 31, 2003, the Company had no open forward foreign exchange contracts in British pounds. For the year ended December 31, 2002, the Company recorded unrealized gains of \$0.3 million in accumulated other comprehensive income relating to forward foreign exchange contracts in British pounds.

During 2004, the Company hedged its net investment in British pound foreign affiliates with range forward agreements in British pounds. Under the terms of the agreement the Company purchases an option below the current spot rate to sell British pounds, and sells an option to their counterparties above the current spot rate to buy British pounds, with option premiums that offset. For the year ended December 31, 2004, the Company recorded a realized cumulative net pre-tax loss of \$8.6 million to accumulated other comprehensive income, related to the closed range forward agreements. As of December 31, 2004, the Company had no open range forward agreements in British pounds.

Assuming a hypothetical adverse change of 10% in year-end exchange rates (a weakening of the U.S. dollar), the fair market value of the cross-currency interest rate swap and foreign exchange contracts agreements, designated as hedges of net investment in foreign operations, as of December 31, 2004, would decrease accumulated other comprehensive income by approximately \$12.3 million.

#### *Other*

The Company enters into forward foreign exchange contracts, principally to hedge the impact of currency fluctuations on certain inter-company balances. Principal hedged currencies include the Euro, Japanese Yen and British pound. The periods of these forward contracts typically range from one to three months and have varying notional amounts which are intended to be consistent with changes in inter-company balances. Gains and losses on these forward contracts are recorded in selling and administrative expenses in the consolidated statement of operations. At December 31, 2004 and December 31, 2003, the Company held forward foreign exchange contracts with notional amounts totaling approximately \$62.9 million and \$32.0 million, respectively.

Assuming a hypothetical adverse change of 10% in year-end exchange rates (a strengthening of the U.S. dollar), the fair market value of the forward contracts, designated as fair value hedges, as of December 31, 2004 would decrease earnings by approximately \$6.3 million.

The Company is exposed to the risk of interest rate fluctuations from the investments of cash generated from operations. The Company's cash equivalents represent highly liquid investments, with original maturities of 90 days or less, in repurchase agreements and money market funds. Cash equivalents are convertible to a known amount of cash and carry an insignificant risk of change in value. The Company periodically maintains balances in various operating accounts in excess of federally insured limits.

**Item 8: *Financial Statements and Supplementary Data***

**Report of Independent Registered Public Accounting Firm**

To the Board of Directors and Stockholders of Waters Corporation:

We have completed an integrated audit of Waters Corporation's 2004 consolidated financial statements and of its internal control over financial reporting as of December 31, 2004 and audits of its 2003 and 2002 consolidated financial statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Our opinions, based on our audits, are presented below.

**Consolidated financial statements and financial statement schedule**

In our opinion, the accompanying consolidated balance sheets and related consolidated statements of operations, of stockholders' equity and comprehensive income, and of cash flows present fairly, in all material respects, the financial position of Waters Corporation and its subsidiaries at December 31, 2004 and 2003, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2004 in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement schedule at Item 15(a)(2) presents fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements. These financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and financial statement schedule based on our audits. We conducted our audits of these statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit of financial statements includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

As discussed in Note 2 to the consolidated financial statements, the Company changed its method of accounting for patent related costs in 2002.

**Internal control over financial reporting**

Also, in our opinion, management's assessment, included in Management's Annual Report on Internal Control Over Financial Reporting appearing under Item 9a, that the Company maintained effective internal control over financial reporting as of December 31, 2004 based on criteria established in Internal Control - Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), is fairly stated, in all material respects, based on those criteria. Furthermore, in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2004, based on criteria established in Internal Control - Integrated Framework issued by the COSO. The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express opinions on management's assessment and on the effectiveness of the Company's internal control over financial reporting based on our audit. We conducted our audit of internal control over financial reporting in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. An audit of internal control over financial reporting includes obtaining an understanding of internal control over financial reporting, evaluating management's assessment, testing and evaluating the design and operating

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effectiveness of internal control, and performing such other procedures as we consider necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinions.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ PricewaterhouseCoopers LLP

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PricewaterhouseCoopers LLP

Boston, Massachusetts  
March 15, 2005

**WATERS CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**

	December 31,	
	2004	2003
(In thousands, except per share data)		
<i>Assets</i>		
Current assets:		
Cash and cash equivalents	\$ 539,077	\$ 356,781
Accounts receivable, less allowances for doubtful accounts and sales returns of \$7,100 and \$5,638 at December 31, 2004 and 2003, respectively	271,731	214,260
Inventories	139,900	128,810
Other current assets	<u>23,176</u>	<u>18,505</u>
Total current assets	973,884	718,356
Property, plant and equipment, net	135,908	108,162
Intangible assets, net	85,249	72,164
Goodwill	228,537	197,417
Other assets	<u>36,848</u>	<u>34,762</u>
Total assets	<u>\$ 1,460,426</u>	<u>\$ 1,130,861</u>
<i>Liabilities and Stockholders' Equity</i>		
Current liabilities:		
Notes payable and debt	\$ 206,663	\$ 121,309
Accounts payable	46,180	43,884
Accrued employee compensation	33,709	19,802
Deferred revenue and customer advances	66,783	55,923
Accrued retirement plan contributions	10,655	14,025
Accrued income taxes	49,120	42,638
Accrued other taxes	12,547	8,255
Accrued warranty	10,565	11,051
Accrued litigation	4,652	20,747
Other current liabilities	<u>52,116</u>	<u>40,887</u>
Total current liabilities	492,990	378,521
Long-term liabilities:		
Long-term debt	250,000	125,000
Long-term portion of post retirement benefits	30,980	28,863
Other long-term liabilities	<u>7,770</u>	<u>8,000</u>
Total long-term liabilities	<u>288,750</u>	<u>161,863</u>
Total liabilities	781,740	540,384
Commitments and contingencies (Notes 10, 12, 13, 15 and 19)		
Stockholders' equity:		
Preferred stock, par value \$0.01 per share, 4,000 shares authorized, none issued at December 31, 2004 and 2003	—	—
Common stock, par value \$0.01 per share, 400,000 shares authorized, 141,367 and 136,708 shares issued (including treasury shares) at December 31, 2004 and 2003, respectively	1,414	1,367
Additional paid-in capital	366,224	289,046
Retained earnings	902,582	678,529
Treasury stock, at cost, 21,532 and 16,017 shares at December 31, 2004 and 2003, respectively	(655,161)	(423,874)
Deferred compensation	(157)	—
Accumulated other comprehensive income	<u>63,784</u>	<u>45,409</u>
Total stockholders' equity	<u>678,686</u>	<u>590,477</u>
Total liabilities and stockholders' equity	<u>\$ 1,460,426</u>	<u>\$ 1,130,861</u>

The accompanying notes are an integral part of the consolidated financial statements.

**WATERS CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**

	Year Ended December 31,		
	2004	2003	2002
	(In thousands, except per share data)		
Product sales	\$ 806,801	\$ 723,151	\$ 697,266
Service sales	297,735	235,054	192,701
Total net sales	1,104,536	958,205	889,967
Cost of product sales	307,627	285,752	273,166
Cost of service sales	147,180	112,096	100,302
Total cost of sales	454,807	397,848	373,468
Gross profit	649,729	560,357	516,499
Selling and administrative expenses	300,150	264,252	246,816
Research and development expenses	65,241	59,242	51,923
Purchased intangibles amortization	4,814	4,242	3,600
Litigation settlement and provisions (Notes 12 and 13)	(9,277)	1,500	7,900
Loss on sale of business (Note 8)	—	5,031	—
Impairment of long-lived intangible asset (Notes 5 and 9)	3,997	—	2,445
Restructuring and other charges, net (Note 14)	(54)	918	7,404
Expensed in-process research and development (Note 7)	—	6,000	—
Operating income	284,858	219,172	196,411
Other expense, net (Note 5)	(1,014)	(250)	(5,997)
Interest expense	(10,074)	(2,367)	(2,480)
Interest income	11,901	7,131	7,477
Income from operations before income taxes	285,671	223,686	195,411
Provision for income taxes	61,618	52,795	43,193
Income before cumulative effect of changes in accounting principles	224,053	170,891	152,218
Cumulative effect of changes in accounting principles, net of tax of \$1,345 for 2002 (Note 2)	—	—	(4,506)
Net income	\$ 224,053	\$ 170,891	\$ 147,712
Income per basic common share:			
Income before cumulative effect of changes in accounting principles per basic common share	\$ 1.87	\$ 1.39	\$ 1.17
Cumulative effect of changes in accounting principles	—	—	(0.03)
Net income per basic common share	\$ 1.87	\$ 1.39	\$ 1.13
Weighted average number of basic common shares	119,640	123,189	130,489
Income per diluted common share:			
Income before cumulative effect of changes in accounting principles per diluted common share	\$ 1.82	\$ 1.34	\$ 1.12
Cumulative effect of changes in accounting principles	—	—	(0.03)
Net income per diluted common share	\$ 1.82	\$ 1.34	\$ 1.09
Weighted average number of diluted common shares and equivalents	123,069	127,579	135,762

The accompanying notes are an integral part of the consolidated financial statements.



**WATERS CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**

	Year Ended December 31,		
	2004	2003	2002
	(In thousands)		
<b>Cash flows from operating activities:</b>			
Net income	\$ 224,053	\$ 170,891	\$ 147,712
Adjustments to reconcile net income to net cash provided by operating activities:			
Cumulative effect of accounting change for patent related costs	—	—	4,506
Loss on sale of business	—	5,031	—
Provisions (recoveries) for doubtful accounts on accounts receivable	1,332	(188)	749
Expensed in process research and development	—	6,000	—
Provisions on inventory	7,349	8,848	2,646
Impairment of investments and other assets	5,011	250	16,121
Deferred income taxes	1,468	(5,926)	(756)
Depreciation	22,075	21,983	26,044
Amortization of intangibles	19,851	11,865	11,150
Tax benefit related to stock option plans	32,012	17,582	7,033
Change in operating assets and liabilities, net of acquisitions and divestitures:			
(Increase) decrease in accounts receivable	(36,453)	11,973	(2,019)
Increase in inventories	(11,575)	(4,302)	(4,575)
(Increase) decrease in other current assets	(7,344)	(3,199)	383
Decrease (increase) in other assets	3,716	501	(5,791)
Increase (decrease) in accounts payable and other current liabilities	12,203	(30,005)	5,163
Increase (decrease) in deferred revenue and customer advances	1,526	3,277	(727)
(Decrease) increase in accrued litigation	(16,095)	(60,120)	5,830
Increase in other liabilities	320	2,544	5,951
Net cash provided by operating activities	259,449	157,005	219,420
<b>Cash flows from investing activities:</b>			
Additions to property, plant, equipment, software capitalization and other intangibles	(66,236)	(34,586)	(37,965)
Business acquisitions, net of cash acquired	(42,369)	(35,204)	(5,851)
Investments in unaffiliated companies	—	—	(14,500)
Proceeds from sale of business	—	1,183	—
Decrease (increase) in restricted cash	—	49,944	(49,944)
Net cash used in investing activities	(108,605)	(18,663)	(108,260)

	<b>Year Ended December 31.</b>		
	<u>2004</u>	<u>2003</u>	<u>2002</u>
	(In thousands)		
<b>Cash flows from financing activities:</b>			
Net borrowings on bank revolvers	199,304	238,823	1,751
Proceeds from the debt refinancing	445,000	125,000	—
Payments on debt refinancing	(433,950)	(125,000)	—
Payments of debt issuance costs	(1,578)	(436)	(827)
Proceeds from stock plans	44,982	27,824	11,276
Purchase of treasury shares	(231,287)	(324,578)	(99,296)
Payments of debt swaps and other derivatives contracts	(964)	(5,273)	(1,423)
Net cash provided by (used in) financing activities	21,507	(63,640)	(88,519)
Effect of exchange rate changes on cash and cash equivalents	9,945	18,767	13,873
Increase in cash and cash equivalents	182,296	93,469	36,514
Cash and cash equivalents at beginning of period	356,781	263,312	226,798
Cash and cash equivalents at end of period	<u>\$ 539,077</u>	<u>\$ 356,781</u>	<u>\$ 263,312</u>
<b>Supplemental cash flow information:</b>			
Income taxes paid	\$ 28,574	\$ 39,353	\$ 35,878
Interest paid	\$ 9,676	\$ 3,457	\$ 491

The accompanying notes are an integral part of the consolidated financial statements.

**WATERS CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY AND COMPREHENSIVE INCOME**

	Number of Common Shares	Common Stock	Additional Paid-in Capital	Deferred Compensation	Retained Earnings	Treasury Stock	Accumulated Other Comprehensive Income (Loss)	Total Stockholders' Equity	Statement of Comprehensive Income
	(In thousands)								
Balance December 31, 2001	130,918	\$ 1,309	\$ 232,907	\$ —	\$ 359,926	\$ —	\$ (12,397)	\$ 581,745	
Comprehensive income, net of tax:									
Net income	—	—	—	—	147,712	—	—	147,712	\$ 147,712
Other comprehensive income (loss):									
Foreign currency translation	—	—	—	—	—	—	26,489	26,489	26,489
Net appreciation (depreciation) and realized gains (losses) on derivative instruments, net of tax	—	—	—	—	—	—	(495)	(495)	(495)
Minimum pension liability adjustment	—	—	—	—	—	—	(9,189)	(9,189)	(9,189)
Unrealized gains (losses) on investments, net	—	—	—	—	—	—	35	35	35
Other comprehensive income	—	—	—	—	—	—	16,840	16,840	16,840
Comprehensive income									\$ 164,552
Issuance of common stock for:									
Employee Stock Purchase Plan	88	1	2,318	—	—	—	—	2,319	
Stock options exercised	1,176	12	8,945	—	—	—	—	8,957	
Tax benefit related to stock option plans	—	—	7,033	—	—	—	—	7,033	
Treasury stock	—	—	—	—	—	(99,296)	—	(99,296)	
Balance December 31, 2002	<u>132,182</u>	<u>\$ 1,322</u>	<u>\$ 251,203</u>	<u>\$ —</u>	<u>\$ 507,638</u>	<u>\$ (99,296)</u>	<u>\$ 4,443</u>	<u>\$ 665,310</u>	
Comprehensive income, net of tax:									
Net income	—	—	—	—	170,891	—	—	170,891	\$ 170,891
Other comprehensive income (loss):									
Foreign currency translation	—	—	—	—	—	—	40,443	40,443	40,443
Net appreciation (depreciation) and realized gains (losses) on derivative instruments, net of tax	—	—	—	—	—	—	(1,121)	(1,121)	(1,121)
Minimum pension liability adjustment	—	—	—	—	—	—	116	116	116
Unrealized gains (losses) on investments, net	—	—	—	—	—	—	1,528	1,528	1,528
Other comprehensive income	—	—	—	—	—	—	40,966	40,966	40,966
Comprehensive income									\$ 211,857
Issuance of common stock for:									
Employee Stock Purchase Plan	95	1	2,196	—	—	—	—	2,197	
Stock options exercised	4,431	44	25,583	—	—	—	—	25,627	
Tax benefit related to stock option plans	—	—	17,582	—	—	—	—	17,582	
Valuation allowance related to stock option deferred tax asset	—	—	(7,518)	—	—	—	—	(7,518)	
Treasury stock	—	—	—	—	—	(324,578)	—	(324,578)	
Balance December 31, 2003	<u>136,708</u>	<u>\$ 1,367</u>	<u>\$ 289,046</u>	<u>\$ —</u>	<u>\$ 678,529</u>	<u>\$ (423,874)</u>	<u>\$ 45,409</u>	<u>\$ 590,477</u>	
Comprehensive income, net of tax:									
Net income	—	—	—	—	224,053	—	—	224,053	\$ 224,053
Other comprehensive income (loss):									
Foreign currency translation	—	—	—	—	—	—	24,059	24,059	24,059
Net appreciation (depreciation) and realized gains (losses) on derivative instruments, net of tax	—	—	—	—	—	—	(5,987)	(5,987)	(5,987)
Minimum pension liability adjustment	—	—	—	—	—	—	427	427	427
Unrealized gains (losses) on investments, net	—	—	—	—	—	—	(124)	(124)	(124)
Other comprehensive income	—	—	—	—	—	—	18,375	18,375	18,375
Comprehensive income									\$ 242,428

Issuance of common stock for									
Employee Stock Purchase Plan	67	1	2,172	—	—	—	—	—	2,173
Stock options exercised	4,585	46	42,763	—	—	—	—	—	42,809
Tax benefit related to stock option plans	—	—	32,012	—	—	—	—	—	32,012
Treasury stock	—	—	—	—	—	(231,287)	—	—	(231,287)
Issuance of restricted common stock	7	—	231	(157)	—	—	—	—	74
Balance December 31, 2004	141,367	\$ 1,414	\$ 366,224	\$ (157)	\$ 902,582	\$ (655,161)	\$ 63,784	\$ 678,686	

The accompanying notes are an integral part of the consolidated financial statements.

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**(In thousands, except per share data)**

**1 Description of Business, Organization and Basis of Presentation**

Waters Corporation, (“Waters” or the “Company”) an analytical instrument manufacturer, designs, manufactures sells and services, through its Waters Division, high performance liquid chromatography (“HPLC”), ultra performance liquid chromatography (“UPLC”) together with HPLC, herein referred to as (“LC”) and mass spectrometry (“MS”) instrument systems and associated service and support products including chromatography columns and other “consumable” products. These systems are complementary products that can be integrated together and used along with other analytical instruments. LC is a standard technique and is utilized in a broad range of industries to detect, identify, monitor and measure the chemical, physical and biological composition of materials, and to purify a full range of compounds. MS instruments are used in drug discovery and development, including clinical trial testing, the analysis of proteins in disease processes (known as “proteomics”) and environmental testing. Liquid chromatography (LC or UPLC) is often combined with MS to create LC-MS instruments that include a liquid phase sample introduction and separation system with mass spectrometric compound identification and quantification. As a result of the acquisitions of Creon Lab Control AG (“Creon”) in July 2003 and NuGenesis Technologies Corporation in February 2004, Waters Division entered the laboratory informatics market (“Laboratory Informatics”). Laboratory Informatics consists of laboratory-to-enterprise scale software systems for managing and storing scientific information collected from a wide variety of instrumental test methods. Through its TA Instruments Division (“TA”), the Company designs, manufactures, sells and services thermal analysis and rheometry instruments which are used in predicting the suitability of polymers and viscous liquids for various industrial, consumer goods and health care products. In the third quarter of fiscal year 2003, the Company completed the integration of the LC and MS worldwide sales, service and support organizations. Accordingly, the Micromass operating segment (“Micromass”) has been integrated into the Waters operating segment. As discussed in Note 20 to the consolidated financial statements, the Company has two operating segments, Waters Division and TA, which have been aggregated into one reporting segment for financial statement purposes.

**2 Summary of Significant Accounting Policies**

*Use of Estimates*

The preparation of consolidated financial statements in conformity with generally accepted accounting principles (“GAAP”) requires the Company to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent liabilities. On an on-going basis, Waters evaluates its estimates, including those related to revenue recognition, product returns and allowances, bad debts, inventory valuation, equity investments, goodwill and intangible assets, income taxes, warranty and installation provisions, pension obligations, contingencies and litigation. Waters bases its estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual amounts may differ from these estimates under different assumptions or conditions.

*Risks and Uncertainties*

The Company is subject to risks common to companies in the analytical instrument industry, including, but not limited to, development by its competitors of new technological innovations, dependence on key personnel, protection of proprietary technology, fluctuations in foreign currency exchange rates, and compliance with regulations of the U.S. Food and Drug Administration and similar foreign regulatory authorities and agencies.

*Reclassifications*

Certain amounts from prior years have been reclassified in the accompanying financial statements in order to be consistent with the current year’s classifications.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

### *Principles of Consolidation*

The consolidated financial statements include the accounts of the Company and its subsidiaries, most of which are wholly owned. The Company consolidates entities in which it owns or controls fifty percent or more of the voting shares. All material inter-company balances and transactions have been eliminated.

### *Translation of Foreign Currencies*

For most of the Company's foreign operations, assets and liabilities are translated into U.S. dollars at exchange rates prevailing on the balance sheet date while revenues and expenses are translated at average exchange rates prevailing during the period. Any resulting translation gains or losses are included in accumulated other comprehensive income in the consolidated balance sheets. The Company's net sales derived from operations outside the United States were 64% in 2004, 63% in 2003 and 59% in 2002. Gains and losses from foreign currency transactions are included in net income in the consolidated statements of operations and were not material for the years presented.

### *Cash and Cash Equivalents*

Cash equivalents primarily represent highly liquid investments, with original maturities of 90 days or less, in repurchase agreements and money market funds which are convertible to a known amount of cash and carry an insignificant risk of change in value. The Company has periodically maintained balances in various operating accounts in excess of federally insured limits.

### *Restricted Cash*

At December 31, 2002, restricted cash was \$49.9 million, which represented credit support for a standby letter of credit issued securing damages awarded plus interest with respect to the Applera patent litigation (Note 12). In April 2003, the Company made a payment of \$53.7 million for damages and interest relating to this patent litigation and, as a result, the Company is no longer required to maintain a restricted cash balance.

### *Concentration of Credit Risk*

The Company sells its products and services to a significant number of large and small customers throughout the world, with net sales to the pharmaceutical industry of approximately 53% in 2004, 53% in 2003 and 54% in 2002. None of the Company's individual customers accounted for more than 3% of annual Company sales in 2004, 2003 and 2002. The Company performs continuing credit evaluations of its customers and generally does not require collateral, but in certain circumstances may require letters of credit or deposits. Historically, the Company has not experienced significant bad debt losses.

### *Accounts Receivable and Allowance for Doubtful Accounts*

Trade accounts receivable are recorded at the invoiced amount and do not bear interest. The allowance for doubtful accounts is the best estimate of the amount of probable credit losses in the existing accounts receivable. The allowance is based on historical write-off experience. The allowance for doubtful accounts is reviewed on a monthly basis. Past due balances over 90 days and over a specified amount are reviewed individually for collectibility. Account balances are charged off against the allowance when the Company feels it is probable the receivable will not be recovered. The Company does not have any off-balance-sheet credit exposure related to its customers.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

### *Inventory*

The Company values all of its inventories at the lower of cost or market on a first-in, first-out basis (“FIFO”).

### *Income Taxes*

Deferred income taxes are recognized for temporary differences between financial statement and income tax basis of assets and liabilities using tax rates in effect for the years in which the differences are expected to reverse. A valuation allowance is provided to offset any net deferred tax assets if, based upon the available evidence, it is more likely than not that some or all of the deferred tax assets will not be realized.

### *Property, Plant and Equipment*

Property, plant and equipment is recorded at cost. Expenditures for maintenance and repairs are charged to expense while the costs of significant improvements are capitalized. Depreciation is provided using the straight-line method over the following estimated useful lives: buildings — thirty years, building improvements — seven to thirty years, leasehold improvements — the shorter of the economic useful life or life of lease, and production and other equipment -two to ten years. Upon retirement or sale, the cost of the assets disposed of and the related accumulated depreciation are eliminated from the balance sheet and related gains or losses are reflected in the statement of operations. There were no material gains or losses from retirement or sale of assets in 2004, 2003 and 2002.

### *Goodwill and Other Intangible Assets*

The Company tests for goodwill impairment using a fair value approach at the reporting unit level annually, or earlier if an event occurs or circumstances change that would more likely than not reduce the fair value of a reporting unit below its carrying amount. Additionally, the Company has elected to make January 1 the annual impairment assessment date for its reporting units. Statement of Financial Accounting Standards (“SFAS”) 142, “Goodwill and Other Intangible Assets”, defines a reporting unit as an operating segment, or one level below an operating segment, if discrete financial information is prepared and reviewed by management. Goodwill is allocated to the reporting units at the time of acquisition. Under the impairment test, if a reporting unit’s carrying amount exceeds its estimated fair value, goodwill impairment is recognized to the extent that the carrying amount of goodwill exceeds the implied fair value of the goodwill. The fair value of reporting units were estimated using a discounted cash flows technique which includes certain management assumptions such as estimated future cash flows, estimated growth rates and discount rates.

The Company’s intangible assets include purchased technology, capitalized software development costs, costs associated with acquiring Company patents, trademarks and intellectual properties, such as licenses, and debt issuance costs. Purchased intangibles are recorded at their fair market values as of the acquisition date and amortized over their estimated useful lives ranging from two to fifteen years. Other intangibles are amortized over a period ranging from three to thirteen years. Debt issuance costs are amortized over the life of the related debt.

### *Software Development Costs*

The Company capitalizes software development costs for products offered for sale in accordance with SFAS 86, “Accounting for the Costs of Computer Software to be Sold, Leased, or Otherwise Marketed”. Capitalized costs are amortized to cost of sales over the period of economic benefit, which approximates a straight-line basis over the estimated useful lives of the related software products, generally three to four years (Note 9).

The Company capitalizes internal software development costs in accordance with Statement of Position (“SOP”) 98-1, “Accounting for the Costs of Computer Software Developed or Obtained for Internal Use”. Capitalized internal software development costs are amortized over the period of economic benefit which

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

approximates a straight-line basis over ten years. At December 31, 2004 and 2003, capitalized internal software included in property, plant and equipment totaled \$2.7 million and \$1.7 million net of accumulated amortization of \$2.5 million and \$2.1 million, respectively.

### *Change in Accounting for Patent Related Costs*

In the second quarter of 2002, the Company changed its method of accounting for legal costs associated with litigating patents effective January 1, 2002. Prior to the change, the Company capitalized these patent costs and amortized them over the estimated remaining economic life of the patent. Under the new method, these costs are expensed as incurred. The Company believes that this change is preferable because it will provide a better comparison with the Company's industry peers, the majority of which expense these costs as incurred. The \$4.5 million cumulative effect of the change on prior years (after reduction for income taxes of \$1.3 million) is included as a charge to net income as of January 1, 2002. The effect of the change for the year ended December 31, 2002 was to decrease income before cumulative effect of change in accounting principle approximately \$2.8 million or \$0.02 per diluted share and net income \$7.3 million or \$0.05 per diluted share.

### *Investments*

The Company accounts for its investments that represent less than twenty percent ownership using SFAS 115, "Accounting for Certain Investments in Debt and Equity Securities." This standard requires that certain debt and equity securities be adjusted to market value at the end of each accounting period. Unrealized market gains and losses are charged to earnings if the securities are traded for short-term profit. Otherwise, these securities are considered available-for-sale investments and unrealized gains and losses are charged or credited to other comprehensive income (loss) in stockholders' equity. Realized gains and losses on sales of investments are included in the consolidated statements of operations.

Investments for which the Company does not have the ability to exercise significant influence and for which there is not a readily determinable market value are accounted for under the cost method of accounting. The Company periodically evaluates the carrying value of its investments accounted for under the cost method of accounting and carries them at the lower of cost or estimated net realizable value. For investments in which the Company owns or controls between twenty and forty-nine percent of the voting shares, or over which it exerts significant influence over operating and financial policies, the equity method of accounting is used. The Company's share of net income or losses of equity investments is included in the consolidated statements of operations and was not material in any period presented. All investments at December 31, 2004 and 2003 are included in other assets.

### *Asset Impairments*

The Company reviews its long-lived assets for impairment in accordance with SFAS 144, "Accounting for the Impairment or Disposal of Long-Lived Assets." Whenever events or circumstances indicate that the carrying amount of an asset may not be recoverable, the Company evaluates the fair value of the asset, relying on a number of factors including but not limited to operating results, business plans, economic projections and anticipated future cash flows. Any change in the carrying amount of an asset as a result of the Company's evaluation is separately identified in the consolidated statements of operations.

### *Fair Values of Financial Instruments*

Fair values of cash and cash equivalents, accounts receivable, accounts payable and debt approximate cost.

### *Stockholders' Equity*

On August 9, 2002, the Board of Directors approved the adoption of a stock purchase rights plan where a dividend of one fractional preferred share purchase right (a "Right") was declared for each outstanding share of common stock, par value \$0.01 per share, of the Company. The dividend was paid on August 27, 2002 to



**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

the stockholders of record on that date. The Rights, which expire on August 27, 2012, become exercisable only under certain conditions. When they first become exercisable, each Right will entitle its holder to buy from Waters one one-hundredth of a share of new Series A Junior Participating Preferred Stock (authorized limit of 4,000) for \$120.00. When a person or group actually has acquired 15% or more of Waters' common stock, the Rights will then become exercisable for a number of shares of Waters' common stock with a market value of twice the exercise price (\$120.00) of each Right. In addition, the Rights will then become exercisable for a number of shares of common stock of the acquiring company with a market value of twice the exercise price per Right. The Board of Directors may redeem the Rights at a price of \$0.001 per Right up until 10 days following a public announcement that any person or group has acquired 15% or more of the Company's common stock.

On June 25, 2002, the Board of Directors authorized the Company to repurchase up to \$200.0 million of its outstanding common shares over a one-year period. During the years ended December 31, 2003 and 2002, the Company purchased 4,399 shares of its common stock for \$100.6 million and 4,078 shares of its common stock for \$99.3 million, respectively. The total shares purchased under this program were 8,477 thus completing its \$200.0 million stock buyback program.

On May 6, 2003, the Company's Board of Directors authorized the Company to repurchase up to \$400.0 million of its outstanding common shares over a two-year period. During the years ended December 31, 2004 and 2003, the Company purchased 4,270 shares of its common stock for \$175.0 million and 7,540 shares of its common stock for \$224.0 million, respectively. At December 31, 2003, the Company had borrowings outstanding under its credit facility of \$236.5 million principally to finance share repurchases. The total shares purchased under this program were 11,810, effectively completing its \$400.0 million stock buyback program.

On October 25, 2004, the Company's Board of Directors authorized the Company to repurchase up to \$500.0 million in outstanding common shares over a two-year period. During the year ended December 31, 2004, the Company purchased 1,246 shares of its common stock for \$56.3 million. At December 31, 2004, the Company had borrowings outstanding under its credit facility of \$440.0 million principally to finance share repurchases.

In the aggregate, the Company has repurchased 5,516 shares of its common stock for \$231.3 million during the year ended December 31, 2004. The Company believes that the current share repurchase program is beneficial to shareholders by increasing earnings per share via reducing the outstanding number of shares through open market purchases.

*Hedge Transactions*

The Company records its hedge transactions in accordance with SFAS 133, "Accounting for Derivative Instruments and Hedging Activities", as amended, which establishes accounting and reporting standards for derivative instruments, including certain derivative instruments embedded in other contracts, and for hedging activities. All derivatives, whether designated in hedging relationships or not, are required to be recorded on the balance sheet at fair value as either assets or liabilities. If the derivative is designated as a fair value hedge, the changes in the fair value of the derivative and of the hedged item attributable to the hedged risk are recognized in earnings. If the derivative is designated as a cash flow hedge, the effective portions of changes in the fair value of the derivative are recorded in other comprehensive income ("OCI") and are recognized in earnings when the hedged item affects earnings; ineffective portions of changes in fair value are recognized in earnings.

The Company currently uses derivative instruments to manage exposures to foreign currency risks. The Company's objectives for holding derivatives are to minimize foreign currency risk using the most effective methods to eliminate or reduce the impact of foreign currency exposure. The Company documents all relationships between hedging instruments and hedged items, and links all derivatives designated as fair value, cash flow or net investment hedges to specific assets and liabilities on the balance sheet or to specific forecasted transactions. The Company also assesses and documents, both at the hedges' inception and on an

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

ongoing basis, whether the derivatives that are used in hedging transactions are highly effective in offsetting changes in fair values or cash flows associated with the hedged items.

The Company operates on a global basis and is exposed to the risk that its earnings, cash flows and stockholders' equity could be adversely impacted by fluctuations in currency exchange rates and interest rates.

*Cash Flow Hedges*

The Company uses interest rate swap agreements to hedge the risk to earnings associated with fluctuations in interest rates related to outstanding U.S. dollar floating rate debt.

During the first quarter of 2004, the Company entered into a floating to fixed rate interest rate swap with a notional amount of \$125.0 million, to hedge floating rate debt related to the term loan tranche of its outstanding debt, with a maturity date of 21 months. The Company subsequently closed out the swap in the second quarter of 2004, with a realized gain of \$1.6 million. The total pre-tax amount of the gain that was re-classified to earnings in 2004 was \$0.7 million. The remaining \$0.9 million will be re-classified to earnings in 2005 over the original term of the interest rate swap. As of December 31, 2004, the Company had no outstanding cash flow hedges.

*Hedges of Net Investments in Foreign Operations*

The Company has operations in various countries and currencies throughout the world, with approximately 31% of its sales denominated in Euros, 11% in Yen and smaller sales exposures in other currencies. As a result, the Company's financial position, results of operations and cash flows can be affected by fluctuations in foreign currency exchange rates. The Company uses cross-currency interest rate swaps, forward contracts and range forward contracts to hedge its stockholders' equity balance from the effects of fluctuations in currency exchange rates. These agreements are designated as foreign currency hedges of a net investment in foreign operations. Any increase or decrease in the fair value of cross-currency interest rate swap agreements, forward contracts or range forward contracts is offset by the change in the value of the hedged net assets of the Company's consolidated foreign affiliates. Therefore, these derivative instruments are intended to serve as an effective hedge of certain foreign net assets of the Company.

During 2004, the Company hedged its net investment in Yen foreign affiliates with cross-currency interest rate swaps, with notional values ranging from approximately \$25.0 million to approximately \$37.0 million. At December 31, 2004 and 2003, the notional amounts of outstanding contracts were approximately \$37.0 million and \$25.0 million, respectively. For the year ended December 31, 2004, the Company recorded cumulative net pre-tax losses of \$2.4 million in accumulated other comprehensive income, which consisted of realized losses of \$1.6 million relating to closed cross-currency interest rate swap agreements and unrealized losses of \$0.8 million relating to the Japanese Yen cross-currency interest rate swap agreements. For the year ended December 31, 2003, the Company recorded cumulative net pre-tax gains of \$1.6 million in accumulated other comprehensive income, which consisted of realized gains of \$1.3 million and unrealized gains of \$0.3 million. For the year ended December 31, 2002, the Company recorded cumulative net pre-tax losses of \$1.0 million in accumulated other comprehensive income, which consisted of realized losses of \$1.4 million and unrealized gains of \$0.4 million.

During 2004, the Company hedged its net investment in British pound foreign affiliates with forward foreign exchange contracts in British pounds. For the year ended December 31, 2004, the Company recorded a cumulative net pre-tax gain of \$0.7 million in accumulated other comprehensive income, which consisted of realized gains of \$0.5 million related to closed forward agreements and unrealized gains of \$0.2 million related to the British pound forward agreements. As of December 31, 2004, the Company had forward foreign exchange contracts in British pounds with a notional amount of approximately 45.0 million British pounds outstanding. For the year ended December 31, 2003, the Company recorded realized losses of \$3.3 million in accumulated other comprehensive income relating to forward foreign exchange contracts in British pounds that were entered into and closed in 2003. As of December 31, 2003, the Company had no open forward

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

foreign exchange contracts in British pounds. For the year ended December 31, 2002, the Company recorded unrealized gains of \$0.3 million in accumulated other comprehensive income relating to forward foreign exchange contracts in British pounds.

During 2004, the Company hedged its net investment in British pound foreign affiliates with range forward agreements in British pounds. Under the terms of the agreement, the Company purchases an option below the current spot rate to sell British pounds, and sells an option to its counterparties above the current spot rate to buy British pounds, with option premiums that offset. For the year ended December 31, 2004, the Company recorded a realized cumulative net pre-tax loss of \$8.6 million to accumulated other comprehensive income, related to the closed range forward agreements. As of December 31, 2004, the Company had no open range forward agreements in British pounds.

### *Other*

The Company enters into forward foreign exchange contracts, principally to hedge the impact of currency fluctuations on certain inter-company balances. Principal hedged currencies include the Euro, Japanese Yen and British pound. The periods of these forward contracts typically range from one to three months and have varying notional amounts which are intended to be consistent with changes in inter-company balances. Gains and losses on these forward contracts are recorded in selling and administrative expenses in the consolidated statement of operations. At December 31, 2004 and December 31, 2003, the Company held forward foreign exchange contracts with notional amounts totaling approximately \$62.9 million and \$32.0 million, respectively.

### *Revenue Recognition*

Sales of products and services are generally recorded based on product shipment and performance of service, respectively. Product shipments, including those for demonstration or evaluation, and service contracts are not recorded as revenues until a valid purchase order or master agreement is received specifying fixed terms and prices. Proceeds received in advance of product shipment or performance of service are recorded as deferred revenue in the consolidated balance sheets. Shipping and handling costs are included in cost of sales net of amounts invoiced to the customer per the order.

The Company's method of revenue recognition for certain products requiring installation is in accordance with Staff Accounting Bulletin ("SAB") 104, "Revenue Recognition in Financial Statements." Accordingly, the larger of the contractual cash holdback or the fair value of the installation service is deferred when the product is shipped and revenue is recognized as a multiple element arrangement when installation is complete. The Company determines the fair value of installation based on several factors, including hourly service billing rates, estimated installation hours and comparisons of amounts charged by third parties.

The Company recognizes product revenue when legal title has transferred and risk of loss passes to the customer. The Company generally structures its sales arrangements as FOB shipping point or international equivalent and accordingly, recognizes revenue upon shipment. In some cases, FOB destination based shipping terms are included in sales arrangements in which cases revenue is recognized when the products arrive at the customer site.

Returns and customer credits are infrequent and recorded as a reduction to sales. Rights of return are generally not included in sales arrangements. Revenue associated with products that contain specific customer acceptance criteria is not recognized before the customer acceptance criteria is satisfied. Discounts from list prices are recorded as a reduction to sales.

Nearly all of the Company's instruments contain embedded operating system and data management software, which is included in the purchase price. Software is also sold separately and revenue is recognized upon shipment under the provisions of SOP 97-2, "Software Revenue Recognition," as no significant post-delivery obligations remain. Software upgrades are typically sold as part of a service contract with revenue recognized ratably over the term of the service contract.

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The Company assists customers in obtaining financing with an independent third-party leasing company with respect to certain product sales. Revenue is generally recognized upon product shipment under these arrangements. The Company receives payment from the leasing company shortly after shipment, provided delivery and credit documentation meets contractual criteria. The customer is obligated to pay the leasing company but the Company retains some credit risk if the customer is unable to pay. Accordingly, the Company reduces revenue equal to pre-established loss-pool criteria, including contracts with recourse. The Company's credit risk is significantly reduced through loss-pool limitations and re-marketing rights in the event of a default.

*Product Warranty Costs*

The Company accrues estimated product warranty costs at the time of sale which are included in cost of sales in the consolidated statements of operations. While the Company engages in extensive product quality programs and processes, including actively monitoring and evaluating the quality of its component supplies, the Company's warranty obligation is affected by product failure rates, material usage and service delivery costs incurred in correcting a product failure. The amount of the accrued warranty liability is based on historical information such as past experience, product failure rates, number of units repaired and estimated cost of material and labor. The liability is reviewed for reasonableness at least quarterly.

The following is a rollforward of the Company's accrued warranty liability for the year ended December 31, 2004 (in thousands):

	<u>Balance at Beginning of Period</u>	<u>Accruals for warranties</u>	<u>Settlements made</u>	<u>Balance at End of Period</u>
Accrued warranty liability:				
2004	\$ 11,051	\$ 19,915	\$ (20,401)	\$ 10,565
2003	\$ 9,562	\$ 15,611	\$ (14,122)	\$ 11,051

*Advertising Costs*

All advertising costs are expensed as incurred and included in selling and administrative expenses in the consolidated statements of operations. Advertising expenses for 2004, 2003 and 2002 were \$6.4 million, \$7.5 million and \$8.3 million, respectively.

*Research and Development Expenses*

Research and development expenses are comprised of costs incurred in performing research and development activities including salaries and benefits, facilities costs, overhead costs, contract services and other outside costs. Research and development expenses are expensed as incurred.

*Expensed In-Process Research and Developments Expenses*

Costs to acquire in-process research and development ("IPR&D") projects and technologies, which have not reached technological feasibility at the date of acquisition and have no alternative future use, are expensed as incurred (Note 7).

*Stock-Based Compensation*

The Company has five stock-based compensation plans, which are described in Note 16. The Company uses the intrinsic value method of accounting prescribed by Accounting Principles Board Opinion 25, "Accounting for Stock Issued to Employees," and related interpretations, including Interpretation 44, "Accounting for Certain Transactions Involving Stock Compensation," for its plans. Accordingly, no compensation expense has been recognized for its fixed employee stock option plans and its employee stock purchase plan since all

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

stock based compensation awards are granted at the current fair value of the Company's common stock as of the date of the award.

The following table illustrates the effect on net income and earnings per share had the Company applied the fair value recognition provisions of SFAS No. 123, "Accounting for Stock-Based Compensation" for the Company's five stock-based compensation plans.

<b>Compensation Expense — Fair Value Method (in thousands, except per share data)</b>	<b>2004</b>	<b>2003</b>	<b>2002</b>
Net income, as reported December 31	\$ 224,053	\$ 170,891	\$ 147,712
Deduct: total stock-based employee compensation expense, net of related tax effects	(39,437)	(25,999)	(25,222)
Pro forma net income	<u>\$ 184,616</u>	<u>\$ 144,892</u>	<u>\$ 122,490</u>
Net income per share:			
Basic — as reported	\$ 1.87	\$ 1.39	\$ 1.13
Basic — pro forma	\$ 1.54	\$ 1.18	\$ 0.94
Diluted — as reported	\$ 1.82	\$ 1.34	\$ 1.09
Diluted — pro forma	\$ 1.50	\$ 1.14	\$ 0.90

The fair value of each option grant under SFAS 123 was estimated on the date of grant using the Black-Scholes option-pricing model. Relevant data are described below (options issued are in thousands):

<b>Options Issued and Significant Assumptions Used to Estimate Option Fair Values</b>	<b>2004</b>	<b>2003</b>	<b>2002</b>
Options issued	1,975	2,104	1,602
Risk-free interest rate	3.8	4.1	3.3
Expected life in years	5.5	7.5	7.5
Expected volatility	.552	.541	.561
Expected dividends	0	0	0

In 2004, the Company modified the expected life of stock options granted to 5.5 years based on a review of the historical activity of stock options exercised.

<b>Weighted Average Exercise Price and Fair Values of Options on the Date of Grant</b>	<b>2004</b>	<b>2003</b>	<b>2002</b>
Exercise price	\$ 46.79	\$ 31.60	\$ 21.74
Fair value	\$ 25.10	\$ 20.13	\$ 13.28

In December 2004, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards ("SFAS") No. 123R (revised 2004), "Share-Based Payment", which requires the expensing of unvested stock options. SFAS 123R is effective as of the third fiscal quarter of 2005. Assuming SFAS 123R is adopted as expected beginning July 1, 2005, pre-tax compensation expense recognized in the 2005 financial statements is expected to approximate \$14.5 million (unaudited).

On December 31, 2004, the Company approved an amendment to accelerate the vesting of approximately 238 thousand unvested stock options granted between December 2000 and February 2001 to certain employees of the Company. These options had an exercise price significantly greater than the market value of the Company's stock at that time. Each stock option was scheduled to vest primarily in 2005, but became fully vested and exercisable on December 31, 2004. The exercise price and number of shares underlying each affected stock option were unchanged. The acceleration of these options was primarily done as a result of the issuance of SFAS 123R which, under the modified prospective method, requires the expensing of unvested stock options in the first interim or annual reporting period that begins after June 15, 2005. As a result of this acceleration, the Company would not be required to recognize share-based compensation, net of related tax effects, of \$4.1 million (unaudited) in the second half of 2005, based on valuation calculations using the

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Black-Scholes methodology. Total 2004 stock-based compensation expense, net of related tax effects, is \$39.4 million including approximately \$11.4 million of expense, net of related tax effects, as a result of the acceleration of the 238 thousand unvested stock options on December 31, 2004.

### *Income Per Share*

In accordance with SFAS 128, "Earnings Per Share," the Company presents two earnings per share ("EPS") amounts. Income per basic common share is based on income available to common shareholders and the weighted average number of common shares outstanding during the periods presented. Income per diluted common share includes additional dilution from potential common stock, such as stock issuable pursuant to the exercise of stock options outstanding.

### *Comprehensive Income*

The Company accounts for comprehensive income in accordance with SFAS 130, "Reporting Comprehensive Income." The statement establishes standards for reporting and displaying comprehensive income and its components in a full set of general-purpose financial statements. The statement requires that all components of comprehensive income be reported in a financial statement that is displayed with the same prominence as other financial statements.

### *Recent Accounting Standards Changes*

In December 2004, the FASB issued SFAS 123R, which amends SFAS No. 123, "Accounting for Stock-Based Compensation". This standard requires that all share-based payments to employees, including grants of employee stock options, be recognized in the statement of operations based on their fair values. The standard is effective for public companies for interim periods beginning after June 15, 2005. The final standard allows alternative methods for determining fair value. At the present time, the Company has not yet determined which valuation method it will use; however, under the Black-Scholes valuation model, it is estimated that the pre-tax compensation expense recorded in the consolidated statements of operations for the second half of 2005 would be approximately \$14.5 million (unaudited).

In December 2004, the FASB issued SFAS No. 153 "Exchanges of Nonmonetary Assets" which amends Accounting Principles Board Opinion No. 29. This standard requires that exchanges of nonmonetary assets be measured based on the fair value of the assets exchanged. This standard is effective for nonmonetary asset exchanges occurring in fiscal periods beginning after June 15, 2005 and should be applied prospectively. At the present time, the Company does not believe that adoption of SFAS 153 will have a material effect on its financial position, results of operations or cash flows.

In November 2004, the FASB issued SFAS No. 151 "Inventory Costs" which amends Accounting Research Bulletin No. 43 Chapter 4. This standard clarifies that abnormal amounts of idle facility expense, freight, handling costs, and wasted materials (spoilage) should be recognized as current period charges and requires the allocation of fixed production overheads to inventory based on the normal capacity of the production facilities. This standard is effective for inventory costs incurred during fiscal years beginning after June 15, 2005. At the present time, the Company is evaluating SFAS 151 but does not believe that it will have a material effect on its financial position, results of operations or cash flows.

In October 2004, the American Jobs Creation Act of 2004 ("AJCA") was signed into law. The AJCA contains a series of provisions, several of which are pertinent to the Company. The AJCA creates a temporary incentive for U.S. multi-national corporations to repatriate accumulated income abroad by providing an 85% dividends received deduction for certain dividends from controlled foreign corporations. It has been the Company's practice to permanently reinvest all foreign earnings into foreign operations and the Company currently still plans to continue to reinvest foreign earnings permanently into its foreign operations. The deduction is subject to a number of limitations and uncertainty remains as to how to interpret numerous provisions of the AJCA. As such, the Company is not yet in a position to decide on whether, and to what

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

extent, the Company might repatriate foreign earnings that have not yet been remitted to the U.S. Should the Company determine that it plans to repatriate any foreign earnings, it will be required to establish an income tax expense and related tax liability on such earnings. If the Company elects this provision before it expires at the end of 2005, the Company could repatriate a maximum of \$500.0 million (unaudited) in qualified foreign earnings. If the maximum was repatriated, the Company estimates an increase in the income tax provision of between \$20.0 million (unaudited) and \$45.0 million (unaudited) depending on the final technical clarifications.

**3 Inventories**

Inventories are classified as follows (in thousands):

	<u>December 31,</u>	
	<u>2004</u>	<u>2003</u>
Raw materials	\$ 51,777	\$ 41,768
Work in progress	14,125	14,031
Finished goods	<u>73,998</u>	<u>73,011</u>
Total inventories	<u>\$ 139,900</u>	<u>\$ 128,810</u>

**4 Property, Plant and Equipment**

Property, plant and equipment consists of the following (in thousands):

	<u>December 31,</u>	
	<u>2004</u>	<u>2003</u>
Land and land improvements	\$ 7,877	\$ 5,633
Buildings and leasehold improvements	88,834	59,167
Production and other equipment	181,800	168,394
Construction in progress	<u>8,859</u>	<u>6,372</u>
Total property, plant and equipment	287,370	239,566
Less: accumulated depreciation and amortization	<u>(151,462)</u>	<u>(131,404)</u>
Property, plant and equipment, net	<u>\$ 135,908</u>	<u>\$ 108,162</u>

**5 Business Investments**

In November 2000 and February 2002, the Company made minority equity investments in GeneProt™, Inc. (“GeneProt”), a privately held company, of \$3.6 million and \$10.0 million, respectively. The investment in GeneProt is accounted for under the cost method of accounting. To the Company’s knowledge, due to changes in GeneProt’s ability to generate enough commercial interest to expand its business in the U.S. market, the Company recorded pre-tax charges of \$1.0 million and \$12.6 million to other income (expense) in the consolidated statements of operations during the years ended December, 31, 2004 and 2002, respectively, for an other-than-temporary impairment of its investment in GeneProt. The investment in GeneProt is zero at December 31, 2004 and approximately \$1.0 million at December 31, 2003, and is included in other assets. In connection with GeneProt’s canceled order of up to \$20.0 million of mass spectrometry equipment, related systems and services, the Company received approximately \$7.7 million from GeneProt as a cancellation fee, which is recorded in other income (expense) in the consolidated statements of operations for the year ended December 31, 2002.

In June 2000, the Company formed a strategic alliance with Variagenics, Inc. (“Variagenics”), a publicly traded company, to develop and commercialize genetic variance reagent kits for use in the clinical

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

development of pharmaceutical products. Variagenics was considered a leader in applying genetic variance information to the drug development process. In July 2000, the Company paid Variagenics \$7.5 million for a minority common stock equity ownership and \$3.0 million for a license to manufacture and sell reagents. The investment in Variagenics is included in other assets and carried at fair value with unrealized gains and losses reported as a separate component of other comprehensive income (loss). During 2002, the Company recorded a \$1.0 million charge to other income (expense), in the consolidated statements of operations, for an other than temporary impairment of the equity investment and warrants resulting from Variagenics public stock price declines. In the fourth quarter of 2002, the license with Variagenics described above was deemed fully impaired as the technology collaboration program ceased, and the Company abandoned the technology and the Company recorded a \$2.4 million charge to impairment of long-lived intangible asset in the consolidated statements of operations. On January 31, 2003 Variagenics was merged with Hyseq Pharmaceuticals and is now named Nuvelo, Inc. ("Nuvelo"). The carrying amount, which approximates market value, of the investment was approximately \$3.0 million and \$3.2 million at December 31, 2004 and 2003, respectively.

Other minority equity investments made during 2003 were \$1.8 million. Excluding the effects of currency, sales to these entities during 2004 and 2003 were approximately \$0.9 million and \$1.4 million, respectively.

During 2003, the Company recorded a \$0.3 million charge to other income (expense) in the consolidated statements of operations for the impairment of certain other equity investments.

### **6 Acquisitions**

#### *NuGenesis:*

In February 2004, the Company acquired all of the capital stock of NuGenesis Technologies Corporation ("NuGenesis"), a company headquartered in Westborough, Massachusetts, for approximately \$42.9 million in cash. NuGenesis develops and markets the NuGenesis Scientific Data Management System ("SDMS").

The acquisition of NuGenesis was accounted for under the purchase method of accounting and the results of operations of NuGenesis have been included in the consolidated results of the Company from the acquisition date. The purchase price of the acquisition was allocated to tangible and intangible assets and assumed liabilities based on their estimated fair values. The Company has allocated \$13.1 million of the purchase price to intangible assets comprised of customer lists, trademarks and other purchased intangibles. The excess purchase price of \$34.7 million after this allocation has been accounted for as goodwill.

The Company considered a number of factors to determine the purchase price allocation, including engaging a third party valuation firm to independently appraise the fair value of certain assets acquired. The



**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

following table presents the fair values of assets and liabilities recorded in connection with the NuGenesis acquisition (in thousands):

Cash	\$ 1,983
Accounts receivable	3,079
Inventory	121
Other current assets	194
Goodwill	34,741
Intangible assets	13,100
Fixed assets	722
Other assets	<u>162</u>
Total assets acquired	<u>54,102</u>
Accrued expenses and other current liabilities	6,817
Deferred tax liability	<u>4,348</u>
Total liabilities acquired	<u>11,165</u>
Cash consideration paid	<u>\$ 42,937</u>

In connection with the NuGenesis purchase price allocation, deferred tax liabilities were established for the amortization of intangible assets for book purposes that were not deductible for tax purposes in the U.S. In the third quarter of 2004, the Company transferred the NuGenesis intangible assets to a foreign wholly-owned subsidiary, where the Company expects to deduct the amortization of the intangible assets for book and tax purposes. As a result, deferred tax liabilities and goodwill were reduced by \$4.6 million during the year ended December 31, 2004.

The Company recorded approximately \$1.1 million in purchase accounting liabilities relating to the NuGenesis acquisition. Approximately \$0.3 million has been utilized and \$0.7 million has been reversed as of December 31, 2004. The reversal was due to a change in management's plan to continue use of a facility lease assumed as part of the acquisition until the end of its term in June 2005.

The following is a rollforward of the NuGenesis acquisition schedule of amounts accrued under purchase accounting and related utilization (in thousands):

	<u>Amounts</u>	<u>Utilization</u>	<u>Reversals</u>	<u>Balance December 31, 2004</u>
Facility related costs	\$ 660	—	(660)	\$ —
Other	400	(339)	—	61
Total	<u>\$ 1,060</u>	<u>\$ (339)</u>	<u>\$ (660)</u>	<u>\$ 61</u>

*Creon:*

Effective July 1, 2003, the Company acquired all of the capital stock of Creon, a Company headquartered in Cologne, Germany, for approximately \$16.3 million in cash. Creon specializes in Laboratory Information Management Software ("LIMS") solutions.

The acquisition of Creon was accounted for under the purchase method of accounting and the results of operations of Creon have been included in the consolidated results of the Company from the acquisition date. The purchase price of the acquisition was allocated to tangible and intangible assets and assumed liabilities based on their estimated fair values. In conjunction with the acquisition, the Company recorded a charge of \$6.0 million for the write-off of acquired in-process research and development. The technological feasibility of

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

in-process research and development projects had not been established at the date of acquisition and they had no alternative future use. The Company has allocated \$4.4 million of the purchase price to intangible assets comprised of customer lists and other purchased intangibles. The excess purchase price of \$5.6 million after this allocation has been accounted for as goodwill.

The Company considered a number of factors to determine the purchase price allocation, including engaging a third party valuation firm to independently appraise the fair value of certain assets acquired. The following table presents the fair values of assets and liabilities recorded in connection with the Creon acquisition (in thousands):

Accounts receivable	\$ 2,201
Inventory	145
Deferred tax asset	2,500
Other current assets	74
Goodwill	5,552
Intangible assets	4,421
Other assets	<u>371</u>
Total assets acquired	<u>15,264</u>
Accrued expenses and other current liabilities	4,175
Other liabilities	<u>748</u>
Total liabilities acquired	<u>4,923</u>
Expensed in-process research and development	<u>6,000</u>
Cash consideration paid	\$ <u>16,341</u>

*Rheometrics:*

On January 15, 2003, the Company acquired the worldwide rheometry business of Rheometrics for approximately \$16.5 million in cash. This transaction was accounted for under the purchase method of accounting and the results of operations of Rheometrics have been included in the consolidated results of the Company from the acquisition date. This business has been integrated into existing worldwide TA operations. The purchase price of the acquisition was allocated to tangible and intangible assets and assumed liabilities based on their estimated fair values. The Company has allocated \$5.5 million of the purchase price to intangible assets comprised of customer lists, trademarks and other purchased intangibles. The excess purchase price of \$15.0 million after this allocation has been accounted for as goodwill.

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The Company considered a number of factors to determine the purchase price allocation, including engaging a third party valuation firm to independently appraise the fair value of certain assets acquired. The following table presents the fair values of assets and liabilities recorded in connection with the Rheometrics acquisition (in thousands):

Accounts receivable	\$ 3,932
Inventories	1,784
Goodwill	15,007
Intangible assets	5,450
Other assets	<u>679</u>
Total assets acquired	<u>26,852</u>
Accounts payable	3,046
Accrued expenses and other current liabilities	6,408
Other liabilities	<u>885</u>
Total liabilities acquired	<u>10,339</u>
Cash consideration paid	<u>\$ 16,513</u>

The Company recorded approximately \$4.1 million in purchase accounting liabilities relating to the Rheometrics acquisition. The purchase accounting liabilities included \$1.2 million for severance costs for approximately 65 employees, all of whom were terminated as of December 31, 2004, and \$0.9 million in facilities related costs for three facilities, all of which have been closed as of December 31, 2004.

The following is a rollforward of the Rheometrics acquisition schedule of amounts accrued under purchase accounting and related utilization (in thousands):

	<u>Balance December 31, 2003</u>	<u>Amounts</u>	<u>Utilization</u>	<u>Balance December 31, 2004</u>
Severance	\$ 57	\$ —	\$ (57)	\$ —
Relocation	295	—	(222)	73
Supplier and contract terminations	67	—	(32)	35
Facility related costs	206	—	(53)	153
Other	<u>8</u>	<u>—</u>	<u>(8)</u>	<u>—</u>
Total	<u>\$ 633</u>	<u>\$ —</u>	<u>\$ (372)</u>	<u>\$ 261</u>

*Other:*

During the year ended December 31, 2004, the Company acquired various tangible and intangible assets of certain Asian distributors totaling approximately \$1.4 million. In 2003, the Company made similar acquisitions in Asia and Ireland totaling approximately \$5.4 million.

During 2002, the Company made business acquisitions totaling \$5.9 million. The business acquisitions were accounted for under the purchase method of accounting and the results of operations of the acquired companies have been included in the consolidated results of the Company from the acquisition date. The purchase prices of the acquisitions have been allocated to tangible and intangible assets and any assumed liabilities based on respective fair market values. Any excess purchase price after this allocation has been accounted for as goodwill. With respect to the 2002 acquisitions, the Company allocated approximately \$2.6 million of the purchase price to customer contracts and non-compete covenants. Fixed assets and intangible assets are being amortized over their expected useful lives.

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The following represents the pro forma results of the ongoing operations for Waters, NuGenesis and Creon as though the acquisitions of NuGenesis and Creon had occurred at the beginning of each period shown (in thousands, except per share data). The pro forma results exclude expensed in-process research and development. The pro forma information, however, is not necessarily indicative of the results that would have resulted had the acquisition occurred at the beginning of the periods presented, nor is it necessarily indicative of future results.

	Year Ended December 31, 2004	Year Ended December 31, 2003	Year Ended December 31, 2002
Net revenues	\$ 1,105,852	\$ 984,080	\$ 919,000
Income before cumulative effect of changes in accounting principles	221,188	173,918	146,525
Net income	221,188	173,918	142,019
Income per basic common share (excluding expensed in-process research and development charge):			
Income before cumulative effect of changes in accounting principles	\$ 1.85	\$ 1.41	\$ 1.12
Net income	\$ 1.85	\$ 1.41	\$ 1.09
Income per diluted common share (excluding expensed in-process research and development charge):			
Income before cumulative effect of changes in accounting principles	\$ 1.80	\$ 1.36	\$ 1.08
Net income	\$ 1.80	\$ 1.36	\$ 1.05

The pro forma effects of the Rheometrics and other acquisitions are immaterial.

**7 Expensed In-Process Research and Development**

In connection with the acquisition of Creon, the Company wrote off the fair value of purchased IPR&D of various projects for the development of new products and technologies in the amount of \$6.0 million. The amount was determined by identifying research projects for which technological feasibility had not been established and had no alternative future uses. As of the acquisition date, there were four projects that met the above criteria. The significant IPR&D projects identified consist of the eLab Notebook and the automatic LC-MS dereplication system. The IPR&D charges associated with these projects were \$4.5 million and \$0.8 million, respectively.

Management determined the valuation of the IPR&D using a number of factors, including engaging a third party valuation firm to provide an independent appraisal. The value was based primarily on the discounted cash flow method. This valuation included consideration of (i) the stage of completion of each of the projects, (ii) the technological feasibility of each of the projects, (iii) whether the projects had an alternative future use, and (iv) the estimated future residual cash flows that could be generated from the various projects and technologies over their respective projected economic lives.

The primary basis for determining the technological feasibility of these projects was whether the product has met predetermined design specifications and complex functionality. As of the acquisition date, the IPR&D projects had not reached predetermined design specifications and complex functionality. In assessing the technological feasibility of a project, consideration was also given to the level of complexity in future technological hurdles that each project had to overcome.

Future residual cash flows that could be generated from each of the projects were determined based upon management's estimate of future revenue and expected profitability of the various products and technologies involved. These projected cash flows were then discounted to their present values taking into account

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

management's estimate of future expenses that would be necessary to bring the projects to completion. The discount rates include a rate of return, which accounts for the time value of money, as well as risk factors that reflect the economic risk that the cash flows projected may not be realized. The cash flows were discounted at discount rates ranging from 55% to 60% per annum, depending on the project's stage of completion and the type of complex functionality needed. This discounted cash flow methodology for the various projects included in the purchased IPR&D resulted in a total valuation of \$6.0 million. Although work on the projects related to the IPR&D continued after the acquisition, the amount of the purchase price allocated to IPR&D was written off because the projects underlying the IPR&D that was being developed were not considered technologically feasible as of the acquisition date. As of December 31, 2004, the IPR&D automatic LC-MS dereplication system project still had not reached technological feasibility. The expected remaining cost to complete this project is not considered material to the Company and there are currently no expected material variations between projected results from the projects versus those at the time of the acquisition. The Company expects the project to be completed within the next twelve months.

**8 Divestiture of Business**

On March 26, 2003, the Company sold the net assets of its mass spectrometry inorganic product line for approximately \$1.2 million in cash and the balance in notes receivable. Assets sold included inventory and certain accounts receivable, and liabilities assumed by the acquirer consisted of deferred service revenue and advance payment obligations, and warranty and installation obligations. The Company recorded a loss on disposal of approximately \$5.0 million, including severance costs of approximately \$0.3 million. This business generated sales of approximately \$14.0 million per year with no significant effects to earnings per share results.

**9 Goodwill and Other Intangibles**

The carrying amount of goodwill was \$228.5 million and \$197.4 million at December 31, 2004 and 2003, respectively. The increase of \$31.1 million is attributable to the Company's acquisitions (Note 6) during the period of approximately \$28.3 million, including certain adjustments made in the third quarter of 2004, and currency translation adjustments of approximately \$2.8 million.

The Company's intangible assets included in the consolidated balance sheets are detailed as follows (in thousands):

	December 31, 2004			December 31, 2003		
	Gross Carrying Amount	Accumulated Amortization	Weighted-Average Amortization Period	Gross Carrying Amount	Accumulated Amortization	Weighted-Average Amortization Period
Purchased intangibles	\$ 64,814	\$ 22,812	11 years	\$ 54,676	\$ 25,532	11 years
Capitalized software	66,186	35,384	3 years	53,879	26,215	3 years
Licenses	9,500	4,122	10 years	12,965	2,546	10 years
Patents and other intangibles	9,829	2,762	8 years	6,737	1,800	8 years
Total	\$ 150,329	\$ 65,080	7 years	\$ 128,257	\$ 56,093	7 years

During the year ended December 31, 2004, the Company acquired approximately \$16.1 million of purchased intangibles as a result of the NuGenesis acquisition (Note 6) and other various customer lists and distributor rights, mostly in Asia. In addition, foreign currency translation increased intangible assets by approximately \$1.9 million in 2004.

During the year ended December 31, 2004, the Company retired approximately \$7.9 million in fully amortized purchased intangibles and \$2.8 million in fully amortized capitalized software related to thermal analysis technology no longer in use. During 2004, the Company recorded a \$4.0 million charge to operating income in the consolidated statement of operations for the impairment of a license with Sandia National Laboratories. There was no such charge in 2003.

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

For the years ended December 31, 2004, 2003 and 2002, amortization expense for intangible assets was \$19.9 million, \$11.9 million and \$11.2 million, respectively. Amortization expense for intangible assets is estimated to be approximately \$20.0 million for each of the next five years. Accumulated amortization for intangible assets increased approximately \$0.2 million in 2004 due to the effect of foreign currency translation.

**10 Debt**

In December 2004, the Company entered into a syndicated committed Credit Agreement (the "Credit Agreement") that provided for a \$250.0 million term loan facility, a \$300.0 million revolving facility ("US Tranche"), which includes both a letter of credit and a swingline subfacility, and a \$150.0 million revolving facility ("European Tranche"). The Company may, on a single occasion, request of the lender group that commitments for the US Tranche or European Tranche be increased up to an additional \$100.0 million. Existing lenders are not obligated to increase commitments, and the Company can seek to bring in additional lenders. The term loan facility and the revolving facilities both mature on December 15, 2009, and require no scheduled prepayments before that date.

On December 15, 2004, the Company borrowed \$250.0 million under the term loan facility and \$195.0 million under the US Tranche revolving facility. The Company used the proceeds of the term loan and the revolving borrowing for the primary purpose of repaying outstanding amounts under the Prior Credit Agreement (defined below). The Company terminated such agreement early without penalty. The terminated credit agreement consisted of a term loan tranche of \$125.0 million and a revolving tranche of \$250.0 million. The terminated credit agreement was unsecured in nature.

The interest rates applicable to term loan and revolving loans under the new credit agreement are, at the Company's option, equal to either the base rate (which is the higher of the prime rate or the federal funds rate plus 1/2%) or the applicable 1, 2, 3, 6, 9 or 12 month LIBOR rate, in each case plus an interest rate margin based upon the Company's leverage ratio, which can range between 29.5 basis points and 80.0 basis points. The Credit Agreement requires that the Company comply with an interest coverage ratio test of not less than 3.5:1, and a leverage ratio test of not more than 3:1, for any period of four consecutive fiscal quarters, respectively. The minimum interest coverage ratio on the Prior Credit Agreement was 5:1 and the maximum leverage ratio test was 2.5:1. In addition, the Credit Agreement includes negative covenants that are customary for investment grade credit facilities and are similar in nature to ones contained in the Prior Credit Agreement. The Credit Agreement also contains certain customary representations and warranties, affirmative covenants and events of default, similar in nature to those in the terminated credit agreement.

In February 2002, the Company entered into an agreement ("Prior Credit Agreement") that provided for a \$250.0 million line of credit, unsecured in nature and an expiration date in February 2007. Loans under the Prior Credit Agreement bore interest for each calendar quarter at an annual rate equal to, at the Company's option, 1) the applicable LIBOR rate plus a varying margin between 0.60% and 1.50% or 2) prime rate.

In December 2003, the Company amended its existing \$250.0 million Prior Credit Agreement ("Amended Credit Agreement") dated February 2002 by closing on a \$125.0 million Add-On Term Loan Facility ("Term Loan"). Proceeds from the Term Loan were used to repay borrowings under the Prior Credit Agreement, repurchase stock and for general corporate purposes and was classified as long-term debt at December 31, 2003. The applicable interest changed from being based on the ratio of debt to total capitalization to debt to EBITDA. Loans under the Amended Credit Agreement bore interest for each quarter at a floating rate equal to, at the Company's option, 1) the applicable LIBOR rate plus a varying margin between 0.60% and 1.50% or 2) prime rate.

At December 31, 2004, the Company had aggregate borrowings under the Credit Agreement of \$440.0 million and an amount available to borrow of \$256.8 million, after outstanding letters of credit. At December 31, 2004, the \$250.0 million term loan was fully drawn and classified as long-term debt. At December 31, 2003, the Company had aggregate borrowings under the Amended Credit Agreement of \$100.0 million and an amount available to borrow of \$147.7 million, after outstanding letters of credit.

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The Company, and its foreign subsidiaries, also had available short-term lines of credit, totaling \$95.7 million at December 31, 2004 and \$96.0 million at December 31, 2003. At December 31, 2004 and 2003, related short-term borrowings were \$16.7 million at a weighted average interest rate of 2.45% and \$21.3 million at a weighted average interest rate of 2.11%, respectively.

**11 Income Taxes**

Income tax data for the years ended December 31, 2004, 2003 and 2002 follow in the tables below (in thousands):

	<b>Year Ended December 31.</b>		
	<b>2004</b>	<b>2003</b>	<b>2002</b>
The components of income from operations before income taxes were as follows:			
Domestic	\$ 83,573	\$ 55,580	\$ 17,604
Foreign	<u>202,098</u>	<u>168,106</u>	<u>177,807</u>
Total	<u>\$ 285,671</u>	<u>\$ 223,686</u>	<u>\$ 195,411</u>
The components of the current and deferred income tax provision from operations were as follows:			
Current	\$ 58,674	\$ 46,008	\$ 46,527
Deferred	<u>2,944</u>	<u>6,787</u>	<u>(3,334)</u>
Total	<u>\$ 61,618</u>	<u>\$ 52,795</u>	<u>\$ 43,193</u>
The components of the provision for income taxes from operations were as follows:			
Federal	\$ 28,262	\$ 20,077	\$ 4,413
State	4,061	2,066	1,379
Foreign	<u>29,295</u>	<u>30,652</u>	<u>37,401</u>
Total	<u>\$ 61,618</u>	<u>\$ 52,795</u>	<u>\$ 43,193</u>
The differences between income taxes computed at the United States statutory rate and the provision for income taxes are summarized as follows:			
Federal tax computed at U.S. statutory income tax rate	\$ 99,985	\$ 78,290	\$ 68,394
Extraterritorial income exclusion	(3,061)	(2,665)	(2,275)
State income tax, net of federal income tax benefit	2,640	1,343	896
Net effect of foreign operations	(37,875)	(23,811)	(23,885)
Other, net	<u>(71)</u>	<u>(362)</u>	<u>63</u>
Provision for income taxes	<u>\$ 61,618</u>	<u>\$ 52,795</u>	<u>\$ 43,193</u>

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

	December 31,	
	2004	2003
The tax effects of temporary differences and carryforwards which gave rise to deferred tax assets and deferred tax (liabilities) were as follows:		
Deferred tax assets:		
Net operating losses and credits	\$ 136,313	\$ 111,020
Amortization	6,357	9,022
Deferred compensation	9,193	7,844
Revaluation of equity investments	10,390	8,135
Inventory	2,735	2,620
Accrued liabilities and reserves	5,887	4,575
Interest	5,161	—
Other	7,337	4,728
	<u>183,373</u>	<u>147,944</u>
Valuation allowance	<u>(167,501)</u>	<u>(128,280)</u>
Deferred tax asset, net of valuation allowance	15,872	19,664
Deferred tax liabilities:		
Depreciation and capitalized software	(8,469)	(12,022)
Amortization	(1,625)	(1,816)
Indefinite lived intangibles	(8,766)	(7,518)
Other	<u>(3,283)</u>	<u>(3,111)</u>
	<u>(22,143)</u>	<u>(24,467)</u>
Net deferred tax (liabilities) assets	<u>\$ (6,271)</u>	<u>\$ (4,803)</u>

The income tax benefits associated with nonqualified stock option compensation expense recognized for tax purposes and credited to additional paid-in capital were \$32.0 million, \$17.6 million and \$7.0 million for the years ended December 31, 2004, 2003 and 2002, respectively. The deferred tax benefit of net operating losses and credits is broken out as follows: \$73.0 million (\$197.3 million pre-tax) in U.S. operating loss carryforwards that begin to expire in 2020; \$48.4 million in foreign tax credits, which begin to expire in 2009; \$5.6 million in research and development credits that begin to expire in 2009; \$1.6 million in alternative minimum income tax credits with no expiration date; and \$7.7 million (\$26.7 million pre-tax) in foreign net operating losses with expiration dates ranging from 2005 to unlimited. The Company believes that it is more likely than not that the U.S. deferred tax benefit of \$154.9 million will not be realized, therefore, a valuation allowance has reduced to zero all the deferred tax benefit relating to U.S. income. In addition, the Company has provided a full valuation allowance of \$12.6 million against certain foreign net operating losses and deferred interest. The deferred tax liabilities relate primarily to the U.S. To the extent that the deferred tax assets relate to stock option deductions, the resultant benefits, if and when realized, will be credited to stockholders' equity.

Net deferred tax assets included in other current assets totaled \$4.1 million and \$4.5 million at December 31, 2004 and 2003, respectively. Net deferred tax liabilities included in other current liabilities totaled \$10.4 million and \$9.3 million at December 31, 2004 and 2003, respectively.

The Company's effective tax rate for the years ended December 31, 2004, 2003 and 2002 were 21.6%, 23.6% and 22.1%, respectively. The Company's effective tax rate benefited primarily from the preferential tax rate of 10% afforded its Irish operations. The Irish rate will increase to 12.5% in 2011. The effect of the Irish operation is a benefit of approximately \$42.9 million or \$0.35 per diluted share for the year ended December 31, 2004.



## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

At December 31, 2004, there were unremitted earnings of foreign subsidiaries of approximately \$806.5 million. The Company has not provided for U.S. income taxes or foreign withholding taxes on these earnings as it is the Company's current intention to permanently reinvest the earnings outside the U.S.

In October 2004, the American Jobs Creation Act of 2004 ("AJCA") was signed into law. The AJCA contains a series of provisions, several of which are pertinent to the Company. The AJCA creates a temporary incentive for U.S. multi-national corporations to repatriate accumulated income abroad by providing an 85% dividends received deduction for certain dividends from controlled foreign corporations. It has been the Company's practice to permanently reinvest all foreign earnings into foreign operations and the Company currently still plans to continue to reinvest foreign earnings permanently into its foreign operations. The deduction is subject to a number of limitations and uncertainty remains as to how to interpret numerous provisions of the AJCA. As such, the Company is not yet in a position to decide on whether, and to what extent, the Company might repatriate foreign earnings that have not yet been remitted to the U.S. Should the Company determine that it plans to repatriate any foreign earnings, it will be required to establish an income tax expense and related tax liability on such earnings. If the Company elects this provision before it expires at the end of 2005, the Company could repatriate a maximum of \$500.0 million (unaudited) in qualified foreign earnings. If the maximum was repatriated, the Company estimates an increase in the income tax provision of between \$20.0 million (unaudited) and \$45.0 million (unaudited) depending on the final technical clarifications.

### 12 Patent Litigation

#### *Applera Corporation:*

PE Corporation (since renamed Applera Corporation), MDS, Inc. and Applied Biosystems/ MDS Sciex ("the Plaintiffs") filed a civil action against Micromass UK Limited and Micromass, Inc., wholly owned subsidiaries of the Company, in the U.S. District Court for the District of Delaware (the "Court") on February 18, 2000. The Plaintiffs alleged that the Quattro Ultima triple quadrupole mass spectrometer infringes U.S. Patent No. 4,963,736 ("the patent"). The patent is owned by MDS, Inc. and licensed to a joint venture with Applied Biosystems/ MDS Sciex Instruments.

In March 2002, the Company was informed of a jury's finding that the Quattro Ultima with Mass Transit ion tunnel technology infringes the patent. The same jury found that the infringement was not willful and determined damages in the amount of \$47.5 million. The Court entered an injunction in which the Company is enjoined from making, using and selling in the U.S. the Quattro Ultima triple quadrupole mass spectrometer incorporating features of the patent.

In March 2003, the Court's decision was affirmed on appeal. In April 2003, the Company paid total damages and interest of approximately \$53.7 million to the Plaintiffs. These instruments are manufactured in the United Kingdom and shipments to the rest of the world outside the United States were not subject to this litigation. Similar claims were asserted against the Company by the Plaintiffs in Japan and Canada. Also, in 2003, the Company reversed approximately \$0.9 million of interest as a one-time credit to interest expense.

Previously, in July 2002, the Company filed a civil action against Applera Corporation alleging patent infringement of U.S. Patent No. 5,304,798 owned by the Company. In November 2002, the University of Manitoba (the "University") and Applera Corporation, its licensee, filed a civil action against the Company alleging patent infringement of U.S. Patent No. 6,331,702 owned by the University.

On October 31, 2003, MDS, Inc. and Applied Biosystems/ MDS Sciex Instruments filed a civil action against Micromass UK Limited, Waters Limited, wholly-owned subsidiaries of the Company, and the Company, in the High Court of Justice, Chancery Division, Patents Courts, UK. The case alleged that certain of the Company's MS products infringe European Patent (UK) No. 0 373 835 (the "European Patent"). To the Company's knowledge, the European Patent is owned by MDS, Inc. and licensed to a joint venture with

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

Applied Biosystems/ MDS Sciex Instruments. The Plaintiffs in this action were seeking an injunction against the Company to restrain it from infringing the European Patent and an unspecified award of damages.

On March 2, 2004, the Company and MDS, Inc., through its Applied Biosystems/ MDS Sciex Instruments partnership, and Applied Biosystems entered into a settlement agreement (the “Applera Settlement Agreement”) with respect to the various civil actions pending against each of them, both in the United States and internationally. Stipulations of Dismissal or their foreign equivalents (the “Stipulations”) with respect to the disposal of all such actions have been entered in the applicable courts and tribunals in each of the United States, the United Kingdom, Canada and Japan.

The Applera Settlement Agreement provides for the resolution of all patent infringement claims in the United States made by certain of the parties against the other and of international cases brought by MDS, Inc. and Applied Biosystems/ MDS Sciex Instruments against the Company with respect to alleged infringements of those parties’ patents at issue in the United Kingdom, Canada and Japan.

In consideration of entering into the Applera Settlement Agreement and the Stipulations, the Company and MDS, Inc. and Applied Biosystems/ MDS Sciex Instruments have entered into royalty paying license agreements, cross licensing the use of the technology described in the parties’ respective patents at issue. In addition, the Company made a one-time payment to Applied Biosystems/ MDS Sciex Instruments of \$18.1 million on March 11, 2004.

The accrued patent litigation expenses in the consolidated balance sheets as of December 31, 2004 and December 31, 2003 were \$0.1 million and \$19.9 million, respectively. The accrued expense at December 31, 2004 represents the Company’s best estimate of remaining legal expenses necessary to conclude this litigation. The change in the liability from December 31, 2003 is attributed to the one-time payment of \$18.1 million and payments of legal fees directly associated with these cases. There were no charges in the statements of operations for the year ended December 31, 2004 and 2003 related to these cases.

*Hewlett-Packard Company:*

The Company filed suit in the United States against Hewlett-Packard Company and Hewlett-Packard GmbH (collectively, “HP”), seeking a declaration that certain products sold under the mark “Alliance” do not constitute an infringement of one or more patents owned by HP or its foreign subsidiaries (the “HP patents”). The action in the United States was dismissed for lack of controversy. Actions seeking revocation or nullification of foreign HP patents were filed by the Company in Germany, France and England. A German patent tribunal found the HP German patent to be valid. In Germany, France and England, HP and its successor, Agilent Technologies Deutschland GmbH, have brought an action alleging that certain features of the Alliance pump may infringe the HP patents. In England, the Court of Appeal has found the HP patent valid and infringed. The Company’s petitions for leave to appeal to the House of Lords were denied. A trial on damages was scheduled for November 2004. In March 2004, Agilent Technologies GmbH brought a new action against the Company alleging that certain features of the Alliance pump continue to infringe the HP patents. At a hearing held in the UK on June 8, 2004, the UK court postponed the previously scheduled November 2004 damages trial until March 2005. Instead, the court scheduled the trial in the new action for November 2004. In December 2004, the UK court ruled in the new action that the Company did not infringe the HP patents. HP has filed an appeal in that action and the damages trial scheduled for March 2005 has been postponed pending this appeal and rescheduled for November 2005. In France, the Paris District Court has found the HP patent valid and infringed by the Alliance pump. The Company appealed the French decision and on April 12, 2004, the French appeals court affirmed the Paris District Court’s finding of infringement. The Company has filed a further appeal in the case. In the German case, a German court has found the patent infringed. The Company appealed the German decision, and in December 2004, the German appeals court reversed the trial court and issued a finding of non-infringement in favor of the Company. HP is seeking an appeal in that action.

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The Company recorded a provision of \$7.8 million in the first quarter of 2004 for estimated damages and fees to be incurred with respect to the ongoing litigation for the England and France suits, excluding the effect of the recent suit filed in March 2004. This provision represents management's best estimate of the probable and reasonably estimable loss related to this litigation. No provision has been made for the Germany suit and the Company believes the outcome, if the plaintiff ultimately prevails, will not have a material impact on the Company's financial position. The accrued patent litigation expense in the consolidated balance sheets at December 31, 2004 was \$4.5 million for the England and France suits. The liability includes a provision of \$0.8 million made in 2002. The change in the liability through December 31, 2004 is attributable to a payment of initial deposits of potential damages of \$3.2 million and payments of legal fees directly associated with the cases.

*Perkin-Elmer Corporation:*

The Company, through its subsidiary TA, asserted a claim against The Perkin-Elmer Corporation ("PE") alleging patent infringement of three patents owned by TA (the "TAI patents"). PE counterclaimed for infringement of a patent owned by PE (the "PE patent"). The U.S. District Court for the District of Delaware granted judgment as a matter of law in favor of TA and enjoined PE from infringing the TAI patents. PE appealed the District Court judgment in favor of TA to the federal appellate court. The District Court's judgment, with respect to PE's infringement of the TAI patents, was affirmed. The District Court's judgment with respect to TA's non-infringement of the PE patent was reversed and remanded to the District Court for further proceedings.

On remand to the District Court in October 2002, a jury found PE liable to TA for damages of \$13.3 million and found TA did not infringe the PE patent. In May 2003, the District Court entered judgment on the jury's verdict in favor of the Company. PE has appealed the judgment with respect to TA's non-infringement of the PE patent. A hearing on the matter was held on May 4, 2004. On May 5, 2004, the United States Court of Appeals for the Federal Circuit affirmed the judgment of non-infringement of the PE Patent. On May 11, 2004, PE, now known as Applera Corporation, paid the Company \$17.4 million, including \$0.2 million in post-judgment interest which has been classified as interest income in the consolidated statements of operations. Approximately \$0.1 million in legal fees were incurred and were offset against the recording of settlement proceeds.

**13 Environmental Contingency**

In July 2003, the Company entered into a settlement agreement (the "Environmental Settlement Agreement") with the Commonwealth of Massachusetts, acting by and through the Attorney General and the Department of Environmental Protection, with respect to alleged non-compliance with state environmental laws at its Taunton, Massachusetts facility. Pursuant to the terms of a final judgment entered in the Superior Court of the Commonwealth on July 10, 2003, the Company paid a civil penalty of \$5.9 million. In addition, the Company agreed to conduct a Supplemental Environmental Project in the amount of \$0.6 million, comprised of investments in capital infrastructure, to study the effects of bio-filtration on certain air emissions from the Taunton facility and for the purchase of equipment in connection therewith. Pursuant to the terms of the Environmental Settlement Agreement, the Company also agreed to undertake a variety of actions to ensure that air emissions from the facility do not exceed certain limits and that the facility is brought into full compliance with all applicable environmental regulations.

**14 Restructuring and Other Charges***2004 Restructuring:*

In January 2004, the Company initiated a small restructuring effort to realign its personnel between various support functions and field sales and service organizations around the world. As a result, 70 employees were to be terminated, all of whom had left the Company as of December 31, 2004. The provision of \$2.1 million

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

represents costs incurred, including severance costs, for the 70 people and other directly related incremental costs of this realignment effort.

The following is a rollforward of the Company's 2004 restructuring liability (in thousands):

	<u>Balance December 31, 2003</u>	<u>Charges</u>	<u>Utilization</u>	<u>Balance December 31, 2004</u>
Severance	\$ —	\$ 1,968	\$ (1,968)	\$ —
Other	—	115	(115)	—
Total	<u>\$ —</u>	<u>\$ 2,083</u>	<u>\$ (2,083)</u>	<u>\$ —</u>

*2002 Restructuring:*

In July 2002, the Company took action to restructure and combine its field sales, service and distribution of its Micromass and LC operations. The objective of this integration is to leverage the strengths of both divisions and align and reduce operating expenses. The integration efforts impacted the U.S., Canada, continental Europe and the United Kingdom. Approximately 55 employees were terminated, of whom all had left the Company as of December 31, 2004. In addition, the Company originally committed to closing four sales and distribution facilities, two of which were closed by December 31, 2004.

The Company recorded \$2.6 million of charges for the year ended December 31, 2003 and \$7.4 million for the year ended December 31, 2002, for restructuring and other directly related incremental charges relating to its integration of the worldwide LC and MS sales, service and support organizations. The charge for the year ended December 31, 2003 includes severance costs for 13 people, distributor termination costs and other directly related incremental costs of this integration effort. The charge for the year ended December 31, 2002 includes severance costs for 42 people, contract cancellation fees, non-cancelable lease obligations and other directly related incremental costs.

During the year ended December 31, 2004, the Company reversed approximately \$2.2 million in restructuring reserves, primarily attributable to a change in plans with respect to two facilities previously selected for closure and distributor contract settlements being less than previously estimated. During the year ended December 31, 2003, the Company reversed approximately \$1.9 million in restructuring reserves, primarily attributable to facility closure and distributor termination costs being less than previously estimated and the retention of certain employees previously selected for termination. There were no such reversals in 2002.

The following is a rollforward of the Company's LC and MS integration restructuring liability (in thousands):

	<u>Balance December 31, 2003</u>	<u>Charges</u>	<u>Utilization</u>	<u>Reserve Reversals</u>	<u>Balance December 31, 2004</u>
Severance	\$ 31	\$ 23	\$ (54)	\$ —	\$ —
Facilities	1,937	—	(338)	(1,599)	—
Distributor terminations	475	—	(75)	(400)	—
Other	163	5	(10)	(158)	—
Total	<u>\$ 2,606</u>	<u>\$ 28</u>	<u>\$ (477)</u>	<u>\$ (2,157)</u>	<u>\$ —</u>

The Company also recorded an unrelated restructuring provision of \$0.1 million at its TA subsidiary for severance and other related costs in the year ended December 31, 2003. There were no such charges for the years ended December 31, 2004 and 2002.

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)****15 Other Commitments and Contingencies**

Lease agreements, expiring at various dates through 2022, cover buildings, office equipment and automobiles. Rental expense was \$19.7 million, \$19.6 million and \$13.9 million during the years ended December 31, 2004, 2003 and 2002, respectively. Future minimum rents payable as of December 31, 2004 under non-cancelable leases with initial terms exceeding one year are as follows (in thousands):

2005	\$	17,520
2006		13,349
2007		10,529
2008		8,297
2009 and thereafter		35,410

The Company licenses certain technology and software from third parties, which expire at various dates through 2008. Fees paid for licenses were approximately \$1.1 million, \$2.9 million and \$5.4 million during the years ended December 31, 2004, 2003 and 2002, respectively. Future minimum licenses payable under existing license agreements as of December 31, 2004 are \$0.5 million for the year ended December 31, 2005, and are immaterial for the years ended December 31, 2006 and thereafter.

From time to time, the Company and its subsidiaries are involved in various litigation matters arising in the ordinary course of business. The Company believes it has meritorious arguments in its current litigation matters and any outcome, either individually or in the aggregate, with the exception of the current litigation described in Note 12, will not be material to the financial position or results of operations.

The Company enters into standard indemnification agreements in its ordinary course of business. Pursuant to these agreements, the Company indemnifies, holds harmless, and agrees to reimburse the indemnified party for losses suffered or incurred by the indemnified party, generally the Company's business partners or customers, in connection with patent, copyright or other intellectual property infringement claims by any third party with respect to its current products, as well as claims relating to property damage or personal injury resulting from the performance of services by the Company or its subcontractors. The maximum potential amount of future payments the Company could be required to make under these indemnification agreements is unlimited. Historically, the Company's costs to defend lawsuits or settle claims relating to such indemnity agreements have been minimal and management accordingly believes the estimated fair value of these agreements is immaterial.

**16 Stock Option and Purchase Plans***Stock Option Plans*

On May 7, 1996, the Company's shareholders approved the 1996 Long-Term Incentive Plan ("1996 Plan"), which provides for the granting of 4,000 shares of Common Stock, in the form of incentive or non-qualified stock options, stock appreciation rights ("SARs"), restricted stock or other types of awards. Under the 1996 Plan, the exercise price for stock options may not be less than the fair market value of the underlying stock at the date of grant. On May 7, 2002 and May 12, 1998, the Company's shareholders approved an additional 5,750 and 8,000 shares, respectively, of Common Stock for issuance under the 1996 Plan. The 1996 Plan is scheduled to terminate on May 7, 2006, unless extended for a period of up to five years by action of the Board of Directors. Options generally will expire no later than ten years after the date on which they are granted and will become exercisable as directed by the Compensation Committee of the Board of Directors. A SAR may be granted alone or in conjunction with an option or other award.

The Company's 1994 Stock Option Plan ("1994 Plan") provided for the granting of 20,141 options to purchase shares of Common Stock to certain key employees of the Company. The exercise price of the options was determined by a committee of the Board of Directors of the Company. Options granted have a term of ten years and vest in five equal installments on the first five anniversaries after the grant.

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

On May 7, 1996, the Company’s shareholders approved the 1996 Non-Employee Director Deferred Compensation Plan (“Deferred Compensation Plan”) and the 1996 Non-Employee Director Stock Option Plan (“Director Stock Option Plan”). Under the Deferred Compensation Plan, outside directors may elect to defer their fees and credit such fees to either a cash account which earns interest at a market-based rate or to a common stock unit account, for which four hundred thousand shares of Common Stock have been reserved. Under the Director Stock Option Plan, each outside director will receive an annual option to purchase four thousand shares of Common Stock. Two hundred thousand shares of Common Stock may be issued under the plan. Options have a term of ten years and, with the exception of options granted in 1996, which vest in one year, vest in five equal installments on the first five anniversaries following the date of grant and have option prices no less than fair market value at the date of grant.

On November 20, 2003, the Company’s shareholders approved the 2003 Equity Incentive Plan (“2003 Plan”). The 2003 Plan replaced the 1996 Plan, the Director Stock Option Plan and the 1994 Plan, under all of which 5,697 shares remained available for granting in the form of incentive or non-qualified stock options, SARs, restricted stock or other types of awards. Under the 2003 Plan the exercise price for stock options may not be less than the fair market value of the underlying stock at the date of grant. The 2003 Plan is scheduled to terminate on March 4, 2013. Options generally will expire no later than 10 years after the date on which they are granted and will become exercisable as directed by the Compensation Committee of the Board of Directors. A SAR may be granted alone or in conjunction with an option or other award. Shares of restricted stock shall be issued under the 2003 Plan for such consideration as is determined by the Compensation Committee of the Board of Directors. No award of restricted stock shall have a restriction period of less than three years except as may be recommended by the Compensation Committee of the Board of Directors, or with respect to any award of restricted stock which provides solely for a performance-based risk of forfeiture so long as such award has a restriction period of at least one year. Except for stock options and restricted stock, no SARs or other types of awards were outstanding as of December 31, 2004.

The following table details the weighted average remaining contractual life of options outstanding at December 31, 2004 by range of exercise prices (in thousands, except per share data):

<u>Exercise Price Range</u>	<u>Number of Shares Outstanding</u>	<u>Weighted Average Exercise Price</u>	<u>Remaining Contractual Life of Options Outstanding</u>	<u>Number of Shares Exercisable</u>	<u>Weighted Average Exercise Price</u>
\$ 1.02 to \$ 2.00	22	\$ 1.02	0.0 years	22	\$ 1.02
\$ 2.01 to \$ 5.00	153	\$ 2.62	0.6 years	153	\$ 2.62
\$ 5.01 to \$10.00	364	\$ 8.56	1.4 years	364	\$ 8.56
\$10.01 to \$15.00	663	\$ 10.69	2.9 years	663	\$ 10.69
\$15.01 to \$20.00	861	\$ 19.68	3.9 years	861	\$ 19.68
\$20.01 to \$30.00	2,504	\$ 22.32	6.7 years	1,546	\$ 22.70
\$30.01 to \$40.00	3,573	\$ 34.09	8.0 years	1,236	\$ 35.11
\$40.01 to \$80.97	<u>3,182</u>	\$ 56.72	8.3 years	<u>1,239</u>	\$ 71.44
	<u>11,322</u>	\$ 34.07	6.9 years	<u>6,084</u>	\$ 31.98

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The following table summarizes stock option activity for the plans (in thousands, except per share data):

	<u>Number of Shares</u>	<u>Price per Share</u>	<u>Weighted Average Exercise Price</u>
Outstanding at December 31, 2001	17,196	\$1.02 to \$80.97	\$ 18.98
Granted	1,602	\$21.39 to \$38.41	\$ 21.74
Exercised	(1,176)	\$1.02 to \$23.06	\$ 7.62
Canceled	<u>(295)</u>	\$8.05 to \$72.06	\$ 38.37
Outstanding at December 31, 2002	17,327	\$1.02 to \$80.97	\$ 19.68
Granted	2,104	\$21.05 to \$32.12	\$ 31.60
Exercised	(4,431)	\$1.02 to \$23.06	\$ 5.78
Canceled	<u>(462)</u>	\$19.69 to \$72.06	\$ 41.69
Outstanding at December 31, 2003	14,538	\$1.02 to \$80.97	\$ 24.93
Granted	1,975	\$33.12 to \$47.12	\$ 46.79
Exercised	(4,585)	\$2.38 to \$36.25	\$ 9.34
Canceled	<u>(606)</u>	\$21.39 to \$72.06	\$ 43.39
Outstanding at December 31, 2004	<u>11,322</u>	\$1.02 to \$80.97	\$ 34.07

Options exercisable at December 31, 2004, 2003 and 2002 were 6,084, 9,080 and 11,950, respectively. The weighted average exercise prices of options exercisable at December 31, 2004, 2003 and 2002 were \$31.98, \$19.48 and \$12.63, respectively.

During 2004, the Company granted seven thousand shares of restricted stock. The restrictions on these shares lapse January 30, 2007. The Company has recorded \$0.1 million of compensation expense during 2004 related to the restricted stock grant. The weighted-average grant date fair value on the grant date of the restricted stock was \$33.12.

Shares available for grant under the 2003 Plan at December 31, 2004 were 2,680.

As described in Note 2, regarding stock-based compensation, the Company accelerated the vesting of approximately 238 thousand unvested stock options on December 31, 2004. This vesting acceleration has been reflected in the table above for number of shares exercisable.

*Employee Stock Purchase Plan*

On February 26, 1996, the Company adopted the 1996 Employee Stock Purchase Plan under which eligible employees may contribute up to 15% of their earnings toward the quarterly purchase of the Company's Common Stock. The plan makes available 1,000 shares of the Company's Common Stock commencing October 1, 1996. As of December 31, 2004, approximately 610 shares have been issued under the plan. Each plan period lasts three months beginning on January 1, April 1, July 1 and October 1 of each year. The purchase price for each share of stock is the lesser of 90% of the market price on the first day of the plan period or 100% of the market price on the last day of the plan period. No compensation expense is recorded in connection with the plan.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**17 Earnings per Share**

Basic and diluted EPS calculations are detailed as follows (in thousands, except per share data):

	<b>Year Ended 2004</b>		
	<b>Income (Numerator)</b>	<b>Shares (Denominator)</b>	<b>Per Share Amount</b>
Income before cumulative effect of change in accounting principle per basic common share	\$ 224,053	119,640	\$ 1.87
Effect of dilutive securities:			
Options outstanding		2,192	
Options exercised and cancellations		1,237	
Income before cumulative effect of change in accounting principle per diluted common share	\$ 224,053	123,069	\$ 1.82

	<b>Year Ended 2003</b>		
	<b>Income (Numerator)</b>	<b>Shares (Denominator)</b>	<b>Per Share Amount</b>
Income before cumulative effect of change in accounting principle per basic common share	\$ 170,891	123,189	\$ 1.39
Effect of dilutive securities:			
Options outstanding		2,993	
Options exercised and cancellations		1,397	
Income before cumulative effect of change in accounting principle per diluted common share	\$ 170,891	127,579	\$ 1.34

	<b>Year Ended 2002</b>		
	<b>Income (Numerator)</b>	<b>Shares (Denominator)</b>	<b>Per Share Amount</b>
Income before cumulative effect of change in accounting principle per basic common share	\$ 152,218	130,489	\$ 1.17
Effect of dilutive securities:			
Options outstanding		5,042	
Options exercised and cancellations		231	
Income before cumulative effect of change in accounting principle per diluted common share	\$ 152,218	135,762	\$ 1.12

For the years ended December 31, 2004, 2003 and 2002, the Company had 3,182, 5,512 and 3,802 stock option securities that were antidilutive, respectively, due to having higher exercise prices than the average price during the period. These securities were not included in the computation of diluted EPS. The effect of dilutive securities was calculated using the treasury stock method.



NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**18 Comprehensive Income**

Comprehensive income details follow (in thousands):

	Year Ended December 31,		
	2004	2003	2002
Net income	\$ 224,053	\$ 170,891	\$ 147,712
Foreign currency translation	24,059	40,443	26,489
Net appreciation (depreciation) and realized gains (losses) on derivative instruments	(9,211)	(1,724)	(762)
Income tax (benefit)	(3,224)	(603)	(267)
Net appreciation (depreciation) and realized gains (losses) on derivative instruments, net of tax	(5,987)	(1,121)	(495)
Net foreign currency adjustments	18,072	39,322	25,994
Minimum pension liability adjustment	427	116	(9,189)
Unrealized gains (losses) on investments before income taxes	(191)	2,351	54
Income tax (benefit)	(67)	823	19
Unrealized gains (losses) on investments, net of tax	(124)	1,528	35
Other comprehensive income	18,375	40,966	16,840
Comprehensive income	\$ 242,428	\$ 211,857	\$ 164,552

As described in Note 5 of these financial statements, the Company reclassified the unrealized loss on its investment in Variagenics, Inc. to other income (expense) in the consolidated statements of operations in 2002.

**19 Retirement Plans**

*U.S. Retirement Plans*

The Company has two retirement plans for U.S. employees: the Waters Employee Investment Plan, a defined contribution plan, and the Waters Retirement Plan, a defined benefit cash balance plan.

U.S. employees are eligible to participate in the Waters Employee Investment Plan after one month of service. Employees may contribute from 1% to 30% of eligible pay on a pre-tax basis. After one year of service, the Company makes a matching contribution of 50% for contributions up to 6% of eligible pay. Employees are 100% vested in employee and company matching contributions. For the years ended December 31, 2004, 2003 and 2002, the Company's matching contributions amounted to \$3.1 million, \$2.9 million and \$2.7 million, respectively.

U.S. employees are eligible to participate in the Waters Retirement Plan after one year of service. Annually, the Company credits each employee's account as a percentage of eligible pay based on years of service. In addition, each employee's account is credited for investment returns at the beginning of each year for the prior year at the average 12 month Treasury Bill rate plus 0.5%, limited to a minimum rate of 5% and a maximum rate of 10%. An employee does not vest until the completion of five years of service at which time the employee becomes 100% vested.

The net periodic pension cost under SFAS 87, "Employers' Accounting for Pensions", is made up of several components that reflect different aspects of the Company's financial arrangements as well as the cost of benefits earned by employees. These components are determined using the projected unit credit actuarial cost method and are based on certain actuarial assumptions. The Company's accounting policy is to reflect in the projected benefit obligation all benefit changes to which the Company is committed as of the current

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

valuation date; use a market-related value of assets to determine pension expense; amortize increases in prior service costs on a straight-line basis over the expected future service of active participants as of the date such costs are first recognized; and amortize cumulative actuarial gains and losses in excess of 10% of the larger of the market-related value of plan assets and the projected benefit obligation over the expected future service of active participants.

Summary data for the Waters Retirement Plan are presented in the following tables, using the measurement date of December 31, 2004 (in thousands):

<b>Reconciliation of Projected Benefit Obligation</b>	<b>2004</b>	<b>2003</b>
Benefit obligation, January 1	\$ 55,974	\$ 43,801
Service cost	5,800	4,339
Interest cost	3,406	3,231
Employee rollovers	517	410
Actuarial loss	3,251	4,910
Disbursements	(931)	(717)
Benefit obligation, December 31	<u>\$ 68,017</u>	<u>\$ 55,974</u>

<b>Reconciliation of Fair Value of Assets</b>	<b>2004</b>	<b>2003</b>
Fair value of assets, January 1	\$ 37,295	\$ 24,364
Actual return (loss) on plan assets	4,834	6,160
Company contributions	10,000	7,078
Disbursements	(931)	(717)
Employee rollovers	517	410
Fair value of assets, December 31	<u>\$ 51,715</u>	<u>\$ 37,295</u>

<b>Reconciliation of Funded Status, December 31</b>	<b>2004</b>	<b>2003</b>
Projected benefit obligation	\$ (68,017)	\$ (55,974)
Fair value of plan assets	<u>51,715</u>	<u>37,295</u>
Projected benefit obligation in excess of fair value of plan assets	(16,302)	(18,679)
Unrecognized prior service cost	(731)	(830)
Unrecognized net actuarial loss	<u>21,232</u>	<u>20,329</u>
Net amount recognized at December 31	<u>\$ 4,199</u>	<u>\$ 820</u>
Accrued liability	\$ (9,126)	\$ (12,932)
Minimum pension liability adjustment (Note 18)	<u>13,325</u>	<u>13,752</u>
Net amount recognized at December 31	<u>\$ 4,199</u>	<u>\$ 820</u>

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

<b>Components of Net Periodic Pension Cost, Year Ended December 31</b>		<b>2004</b>	<b>2003</b>	<b>2002</b>
Service cost		\$ 5,800	\$ 4,339	\$ 3,480
Interest cost		3,406	3,231	2,757
Return on plan assets		(3,389)	(2,829)	(2,833)
Net amortization:				
	Prior service cost	(99)	(99)	(99)
	Net actuarial loss	903	394	22
Net periodic pension cost		<u>\$ 6,621</u>	<u>\$ 5,036</u>	<u>\$ 3,327</u>

<b>Reconciliation of Accrued Pension Cost</b>		<b>2004</b>	<b>2003</b>	<b>2002</b>
Accrued pension cost, January 1		\$ (12,932)	\$ (15,090)	\$ (6,910)
	FAS 87 cost	(6,621)	(5,036)	(3,327)
	Company contributions made during the year	10,000	7,078	4,336
	Minimum pension liability adjustment (Note 18)	427	116	(9,189)
Accrued pension cost, December 31		<u>\$ (9,126)</u>	<u>\$ (12,932)</u>	<u>\$ (15,090)</u>

The projected benefit obligation, accumulated benefit obligation, and fair value of plan assets for the Waters Retirement Plan were approximately \$68.0 million, \$60.8 million and \$51.7 million, respectively, at December 31, 2004 and \$56.0 million, \$50.2 million and \$37.3 million, respectively, at December 31, 2003.

The Company also sponsors other unfunded employee benefit plans in the U.S., including a post-retirement health care plan, which provides reimbursement for medical expenses and is contributory. The Company's accrued post-retirement benefit obligation for this plan was \$3.1 million at December 31, 2004 and 2003, and is included in long-term portion of post retirement benefits in the consolidated balance sheets.

The Company also maintains an unfunded Supplemental Executive Retirement Plan ("SERP"), which is nonqualified and restores the benefits under the Waters Retirement Plan that are limited by IRS benefit and compensation maximums. The Company's accrued post-retirement benefit obligation for this plan was \$2.4 million and \$2.3 million at December 31, 2004 and 2003, respectively, and is included in long-term portion of post retirement benefits in the consolidated balance sheets. Also included in the long-term portion of post retirement benefits is \$12.8 million and \$12.2 million at December 31, 2004 and 2003, respectively, relating to the liability associated with the SERP plan.

<b>Asset Disclosure, December 31,</b>		<b>2004</b>	<b>2003</b>
Equity securities		67%	66%
Debt securities		32%	32%
Cash and cash equivalents		1%	2%
Total		<u>100%</u>	<u>100%</u>

The retirement plan's investment policy was last amended in September 2002 to include the following asset allocation guidelines:

<b>Asset Class, December 31,</b>	<b>Policy Target</b>	<b>Range</b>
Equity securities	60%	40% — 80%
Debt securities	40%	20% — 60%
Cash and cash equivalents	0%	0% — 20%

Prior to September 2002, the asset allocation targets were 72% equity and 28% fixed income. The rebalancing towards the new targets is accomplished through the investment of future contributions.

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The asset allocation policy was developed in consideration of the following long-term investment objectives: achieving a return on assets consistent with the investment policy, maximizing portfolio returns with at least a return of 2.5% above the one-year Treasury Bill rate, and achieving portfolio returns which exceeds the average return for similarly invested funds.

The Company increased its allocation to debt securities during 2003 from 26% to 32% based on the new target allocation. The increase in fixed income securities will help better match the interest rate sensitivity of the pension liabilities and limit the risk associated with equity funds. Within the equity portfolio, investments are diversified among capitalization and style. Up to 20% of the equity portfolio may be invested in financial markets outside of the United States. The Company does not invest in its own stock within the pension assets.

The Company prohibits the following types of assets or transactions: short selling, margin transactions, commodities and future contracts, private placements, options and letter stock.

<b>Weighted-Average Assumptions for benefit obligations, December 31,</b>	<b>2004</b>	<b>2003</b>	<b>2002</b>
Discount rate	5.75%	6.00%	6.75%
Increases in compensation levels	4.75%	4.75%	4.75%

<b>Weighted-Average Assumptions for expense calculation, December 31,</b>	<b>2004</b>	<b>2003</b>	<b>2002</b>
Discount rate	6.00%	6.75%	7.25%
Return on assets	8.00%	8.00%	9.00%
Increases in compensation levels	4.75%	4.75%	4.75%

To develop the expected long-term rate of return on assets assumption, the Company considered the historical returns and the future expectations for returns for each asset class, as well as the target asset allocation of the pension portfolio and historical expenses paid by the plan. This resulted in the selection of the 8.00% long-term rate of return on assets assumption, net of expenses paid by the plan.

During fiscal year 2005, the Company expects to contribute approximately \$7.5 million to the Plan.

*Non-U.S. Retirement Plans*

The Company sponsors various non-U.S. retirement plans. Summary data for these plans are presented in the following tables, using the measurement date of December 31, 2004 (in thousands):

<b>Reconciliation of Projected Benefit Obligation</b>	<b>2004</b>	<b>2003</b>
Benefit obligation, January 1	\$ 17,102	\$ 13,822
Service cost	1,046	920
Interest cost	651	538
Actuarial loss	1,269	29
Disbursements	(814)	(345)
Currency impact	1,209	2,138
Benefit obligation, December 31	\$ 20,463	\$ 17,102

<b>Reconciliation of Fair Value of Assets</b>	<b>2004</b>	<b>2003</b>
Fair value of assets, January 1	\$ 7,014	\$ 5,166
Actual return (loss) on plan assets	754	620
Company contributions	443	482
Currency impact	529	746
Fair value of assets, December 31	\$ 8,740	\$ 7,014

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

<b>Reconciliation of Funded Status, December 31</b>		<b>2004</b>	<b>2003</b>
Projected benefit obligation		\$ (20,463)	\$ (17,102)
Fair value of plan assets		8,740	7,014
Projected benefit obligation in excess of fair value of plan assets		(11,723)	(10,088)
Unrecognized net actuarial loss		2,840	1,694
Net amount recognized at December 31		\$ (8,883)	\$ (8,394)
Prepaid cost		\$ 2,033	\$ 1,763
Accrued liability		(10,916)	(10,157)
Net amount recognized at December 31		\$ (8,883)	\$ (8,394)

<b>Components of Net Periodic Pension Cost, Year Ended December 31</b>		<b>2004</b>	<b>2003</b>	<b>2002</b>
Service cost		\$ 1,046	\$ 920	\$ 738
Interest cost		651	538	485
Return on plan assets		(432)	(339)	(356)
Net amortization:				
Transition amount		—	—	320
Net actuarial loss		13	16	—
Net periodic pension cost		\$ 1,278	\$ 1,135	\$ 1,187

<b>Reconciliation of Accrued Pension Cost</b>		<b>2004</b>	<b>2003</b>	<b>2002</b>
Accrued pension cost, January 1		\$ (8,394)	\$ (6,894)	\$ (5,503)
FAS 87 cost		(1,278)	(1,135)	(1,187)
Company contributions and direct payments to beneficiaries		1,257	829	474
Currency impact		(468)	(1,194)	(678)
Accrued pension cost, December 31		\$ (8,883)	\$ (8,394)	\$ (6,894)

The projected benefit obligation, accumulated benefit obligation, and fair value of plan assets for the non-U.S. retirement plans were approximately \$20.5 million, \$15.9 million and \$8.7 million, respectively, at December 31, 2004 and \$17.1 million, \$13.4 million and \$7.0 million, respectively, at December 31, 2003.

**20 Business Segment Information**

SFAS 131, "Disclosures about Segments of an Enterprise and Related Information," establishes standards for reporting information about operating segments in annual financial statements and requires selected information for those segments to be presented in interim financial reports of public business enterprises. It also establishes standards for related disclosures about products and service, geographic areas and major customers. The Company evaluated its business activities that are regularly reviewed by the chief decision-makers for which separate discrete financial information is available.

In the third quarter of fiscal year 2003, the Company completed the integration of the LC and MS worldwide sales, service and support organizations. Accordingly, the Micromass operating segment ("Micromass") has been integrated into the Waters operating segment.

Waters Division is in the business of manufacturing and distributing LC instruments, columns, other consumables and mass spectrometry instruments that can be integrated and used along with other analytical instruments. Additionally, and as a result of the acquisitions of Creon Lab Control AG in July 2003 and NuGenesis Technologies Corporation in February 2004, Waters Division entered the laboratory informatics market ("Laboratory Informatics"), which consists of laboratory-to-enterprise scale software systems for

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

managing and storing scientific information collected from a wide variety of instrument test methods. TA Division is in the business of manufacturing and distributing thermal analysis and rheometry instruments. The Company's two divisions are its operating segments, which have similar economic characteristics, product processes, products and services, types and classes of customers, methods of distribution, and regulatory environments. Because of these similarities, the two segments have been aggregated into one reporting segment for financial statement purposes. Please refer to the consolidated financial statements for financial information regarding the one reportable segment of the Company.

Geographic information is presented below (in thousands):

Year Ended December 31,	2004	2003	2002
Net Sales:			
United States	\$ 398,077	\$ 359,450	\$ 360,943
Europe	340,635	298,869	271,247
Japan	123,493	102,503	94,205
Asia	141,007	109,516	89,602
Other International	101,324	87,867	73,970
Total consolidated sales	\$ 1,104,536	\$ 958,205	\$ 889,967

The United States category includes Puerto Rico. The Other category includes Canada, South America, Australia, India, Eastern Europe and Central Europe. Net revenues are attributable to geographic areas based on the region of destination. None of the Company's individual customers account for more than 3% of annual Company sales.

Long-lived assets information is presented below (in thousands):

December 31,	2004	2003
Long-lived assets:		
United States	\$ 105,231	\$ 78,526
Europe	26,943	26,659
Japan	798	732
Asia	571	311
Other International	2,365	1,934
Total long-lived assets	\$ 135,908	\$ 108,162

The United States category includes Puerto Rico. The Other category includes Canada, South America, Australia, India, Eastern Europe and Central Europe. Long-lived assets exclude goodwill and other intangible assets.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**21 Unaudited Quarterly Results**

The Company's unaudited quarterly results are summarized below (in thousands, except per share data):

2004	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Total
Net sales	\$ 255,086	\$ 260,488	\$ 264,808	\$ 324,154	\$ 1,104,536
Cost of sales	107,474	106,180	111,009	130,144	454,807
Gross Profit	147,612	154,308	153,799	194,010	649,729
Selling and administrative expenses	71,427	75,840	71,967	80,916	300,150
Research and development expenses	16,071	15,694	17,001	16,475	65,241
Purchased intangibles amortization	1,354	996	1,228	1,236	4,814
Litigation settlement and provisions (Note 12)	7,847	(17,124)	—	—	(9,277)
Impairment of long-lived intangible asset (Note 9)	—	—	—	3,997	3,997
Restructuring and other charges, net (Note 14)	104	—	(158)	—	(54)
Operating Income	50,809	78,902	63,761	91,386	284,858
Other expense, net (Note 5)	—	—	—	(1,014)	(1,014)
Interest expense	(1,873)	(1,891)	(2,564)	(3,746)	(10,074)
Interest income	2,104	2,886	3,009	3,902	11,901
Income from operations before income taxes	51,040	79,897	64,206	90,528	285,671
Provision for income taxes	10,195	20,146	12,266	19,011	61,618
Net Income	\$ 40,845	\$ 59,751	\$ 51,940	\$ 71,517	\$ 224,053
Net income per basic common share	\$ 0.34	\$ 0.50	\$ 0.43	\$ 0.59	\$ 1.87
Weighted average number of basic common shares	120,180	118,691	119,519	120,266	119,640
Net income per diluted common share	\$ 0.33	\$ 0.49	\$ 0.42	\$ 0.58	\$ 1.82
Weighted average number of diluted common shares and equivalents	123,987	122,820	122,597	122,679	123,069

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

2003	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Total
Net sales	\$ 220,999	\$ 231,752	\$ 230,381	\$ 275,073	\$ 958,205
Cost of sales	<u>94,211</u>	<u>95,488</u>	<u>95,045</u>	<u>113,104</u>	<u>397,848</u>
Gross Profit	126,788	136,264	135,336	161,969	560,357
Selling and administrative expenses	61,611	68,679	66,743	67,219	264,252
Research and development expenses	13,560	13,790	15,106	16,786	59,242
Purchased intangibles amortization	1,028	1,027	1,179	1,008	4,242
Litigation provisions (Note 13)	1,500	—	—	—	1,500
Loss on disposal of business (Note 8)	5,031	—	—	—	5,031
Restructuring and other charges, net (Note 14)	1,214	—	(135)	(161)	918
Expensed in-process research and development (Note 7)	<u>—</u>	<u>—</u>	<u>5,160</u>	<u>840</u>	<u>6,000</u>
Operating Income	42,844	52,768	47,283	76,277	219,172
Other income (expense), net (Note 5)	—	—	—	(250)	(250)
Interest expense	(1,071)	255	(312)	(1,239)	(2,367)
Interest income	<u>1,896</u>	<u>1,649</u>	<u>1,862</u>	<u>1,724</u>	<u>7,131</u>
Income from operations before income taxes	43,669	54,672	48,833	76,512	223,686
Provision for income taxes	<u>9,692</u>	<u>12,574</u>	<u>12,419</u>	<u>18,110</u>	<u>52,795</u>
Net Income	<u>\$ 33,977</u>	<u>\$ 42,098</u>	<u>\$ 36,414</u>	<u>\$ 58,402</u>	<u>\$ 170,891</u>
Net income per basic common share	\$ 0.27	\$ 0.34	\$ 0.30	\$ 0.48	\$ 1.39
Weighted average number of basic common shares	<u>126,308</u>	<u>123,610</u>	<u>122,240</u>	<u>120,961</u>	<u>123,189</u>
Net income per diluted common share	\$ 0.26	\$ 0.33	\$ 0.29	\$ 0.47	\$ 1.34
Weighted average number of diluted common shares and equivalents	<u>130,785</u>	<u>128,252</u>	<u>126,709</u>	<u>124,784</u>	<u>127,579</u>

The Company experiences a seasonal increase in sales in the fourth quarter, as a result of purchasing habits on capital goods of customers that tend to exhaust their spending budgets by calendar year-end. Selling and administrative expenses were lower in the first quarters of 2004 and 2003 compared to other quarters in respective calendar years due to foreign currency translation, lower spending in marketing programs and lower costs such as sales commissions and incentive plans directly related to sales volume. In addition, expenses are traditionally higher in the second quarter of each year as this is the Company's annual payroll merit increase period. Selling and administrative expenses in the fourth quarter of 2004 were higher primarily due to increased spending for Sarbanes-Oxley compliance and employee incentive plans versus the fourth quarter of 2003.



**SELECTED FINANCIAL DATA**

	<u>2004</u>	<u>2003</u>	<u>2002*</u>	<u>2001</u>	<u>2000</u>
	In thousands, except per share and employees data				
<b>STATEMENT OF OPERATIONS DATA:</b>					
Net sales	\$ 1,104,536	\$ 958,205	\$ 889,967	\$ 859,208	\$ 795,071
Income from operations before income taxes	\$ 285,671	\$ 223,686	\$ 195,411	\$ 147,426	\$ 210,962
Income before cumulative effect of changes in accounting principles	\$ 224,053	\$ 170,891	\$ 152,218	\$ 114,543	\$ 156,113
Cumulative effect of changes in accounting principles	—	—	(4,506) (1)	—	(10,771) (2)
Net income	<u>\$ 224,053</u>	<u>\$ 170,891</u>	<u>\$ 147,712</u>	<u>\$ 114,543</u>	<u>\$ 145,342</u>
Income per basic common share					
Income before cumulative effect of changes in accounting principles per basic common share	\$ 1.87	\$ 1.39	\$ 1.17	\$ 0.88	\$ 1.22
Cumulative effect of changes in accounting principles	—	—	(0.03)	—	(0.08)
Net income per basic common share	\$ 1.87	\$ 1.39	\$ 1.13	\$ 0.88	\$ 1.14
Weighted average number of basic common shares					
	119,640	123,189	130,489	130,559	127,568
Income per diluted common share					
Income before cumulative effect of changes in accounting principles per diluted common share	\$ 1.82	\$ 1.34	\$ 1.12	\$ 0.83	\$ 1.14
Cumulative effect of changes in accounting principles	—	—	(0.03)	—	(0.08)
Net income per diluted common share	\$ 1.82	\$ 1.34	\$ 1.09	\$ 0.83	\$ 1.06
Weighted average number of diluted common shares and equivalents					
	123,069	127,579	135,762	137,509	136,743
<b>BALANCE SHEET AND OTHER DATA:</b>					
Cash and cash equivalents	\$ 539,077	\$ 356,781	\$ 263,312	\$ 226,798	\$ 75,509
Working capital	\$ 480,894	\$ 339,835	\$ 338,233	\$ 241,738	\$ 126,015
Total assets	\$ 1,460,426	\$ 1,130,861	\$ 1,015,240	\$ 886,911	\$ 692,345
Long-term debt, including current maturities	\$ 250,000	\$ 225,000	\$ —	\$ —	\$ —
Stockholders' equity	\$ 678,686	\$ 590,477	\$ 665,310	\$ 581,745	\$ 451,781
Employees	4,199	3,894	3,587	3,483	3,158

\* As a result of the adoption of Statement of Financial Accounting Standards 142, "Goodwill and Other Intangible Assets", goodwill is no longer amortized commencing January 1, 2002. Goodwill amortization expense was approximately \$3.6 million and \$3.4 million for the years ended December 31, 2001 and 2000, respectively.

- (1) In the second quarter of 2002, the Company changed its method of accounting for legal costs associated with litigating patents effective January 1, 2002. As a result, the Company recorded a cumulative effect of changes in accounting principles of \$4.5 million, net of tax.
- (2) Effective January 1, 2000, the Company changed its method of revenue recognition for certain products requiring installation in accordance with SAB 101, "Revenue Recognition in Financial Statements." As a result, the Company recorded a cumulative effect of changes in accounting principles of \$10.8 million, net of tax.

**Item 9: *Changes in and Disagreements with Accountants on Accounting and Financial Disclosure***

None.

**Item 9a: *Controls and Procedures***

**(a) *Evaluation of Disclosure Controls and Procedures***

The Company's management, with the participation of the Company's chief executive officer and chief financial officer, evaluated the effectiveness of the Company's disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this annual report on Form 10-K. Based on this evaluation, the Company's chief executive officer and chief financial officer concluded that the Company's disclosure controls and procedures were (1) designed to ensure that material information relating to the Company, including its consolidated subsidiaries, is made known to the Company's chief executive officer and chief financial officer by others within those entities, particularly during the period in which this report was being prepared and (2) effective, in that they provide reasonable assurance that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms.

**(b) *Management's Annual Report on Internal Control Over Financial Reporting***

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rule 13a-15(f). Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on our evaluation under the framework in *Internal Control — Integrated Framework*, our management concluded that our internal control over financial reporting was effective as of December 31, 2004.

Our management's assessment of the effectiveness of our internal control over financial reporting as of December 31, 2004 has been audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm, as stated in their report which is included herein.

**(c) *Changes in Internal Controls Over Financial Reporting***

No change in the Company's internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) occurred during the quarter ended December 31, 2004 that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

**Item 9b: *Other Information***

On February 18, 2005, the Compensation and Management Development Committee (the "Committee") of the Board of Directors of the Company voted to amend the section of the Company's Management Incentive Plan (the "Incentive Plan") entitled "Determination of Incentive Payment" by changing the maximum annual incentive payment to any one participant in the Incentive Plan from 300% of base salary to \$5,000,000. This amendment is effective for 2005 and all subsequent years unless further amended by the Committee.

**PART III**

**Item 10: *Directors and Executive Officers of the Registrant***

a. Information concerning the Registrant's directors (including with respect to the audit committee of the Company's Board of Directors) is set forth in the Proxy Statement under the headings "Election of

Directors,” “Directors Meetings and Compensation” and “Report of the Audit Committee of the Board of Directors.” Such information is incorporated herein by reference.

### **Executive Officers of the Registrant**

Officers of the Company are elected annually by the Board of Directors and hold office at the discretion of the Board of Directors. The following persons serve as executive officers of the Company:

Douglas A. Berthiaume, 56, has served as Chairman of the Board of Directors of the Company since February 1996 and has served as Chief Executive Officer and a Director of the Company since August 1994. Mr. Berthiaume also served as President of the Company from August 1994 to January 2002. In March 2003, Mr. Berthiaume once again became President of the Company. From 1990 to 1994, Mr. Berthiaume served as President of the Waters Chromatography Division of Millipore. Mr. Berthiaume is the Chairman of the Children’s Hospital Trust Board, and a Director of the Children’s Hospital Medical Center, Genzyme Corporation, and University of Massachusetts Amherst Foundation.

Arthur G. Caputo, 53, became an Executive Vice President in March 2003 and has served as President of the Waters Division since January 2002. Previously, he was the Senior Vice President, Worldwide Sales and Marketing of the Company since August 1994. He joined Millipore in October 1977 and held a number of positions in sales. Previous roles include Senior Vice President and General Manager of Millipore’s North American Business Operations responsible for establishing the Millipore North American Sales Subsidiary and General Manager of Waters’ North American field sales, support and marketing functions.

Brian K. Mazar, 47, Senior Vice President, Human Resources, has directed Human Resources since August 1994. He joined Millipore in 1991 as Director of Human Resources with responsibility for worldwide human resources functions. From 1986 to 1991, Mr. Mazar was Director of Human Resources of GeneTrak Systems. Prior thereto, Mr. Mazar worked at Exxon Corporation and Corning, Inc.

John Ornell, 47, became Vice President, Finance and Administration and Chief Financial Officer in June 2001. He joined Millipore in 1990 and previously served as Vice President, Operations. During his years at Waters, he has also been Vice President of Manufacturing and Engineering, had responsibility for Operations Finance and Distribution and had a senior role in the successful implementation of the Company’s worldwide business systems.

Mark T. Beaudouin, 50, became Vice President, General Counsel and Secretary of the Company in April, 2003. Prior to joining Waters, he served as Senior Vice President, General Counsel and Secretary of PAREXEL International Corporation, a bio/pharmaceutical services company from January 2000 to April 2003. Previously, from May 1985 to January 2000, Mr. Beaudouin served in several senior legal management positions including Vice President, General Counsel and Secretary of BC International, Inc., a development stage biotechnology company, First Senior Vice President, General Counsel and Secretary of J. Baker, Inc., a diversified retail company, and General Counsel and Secretary of GenRad, Inc., a high technology test equipment manufacturer.

b. Information required by Item 405 of Regulation S-K is set forth in the Proxy Statement under the heading “Section 16(A) Beneficial Ownership Reporting Compliance.” Such information is incorporated herein by reference.

c. The Company has adopted a Code of Business Conduct and Ethics (“the Code”) that applies to all of the Company’s employees (including its executive officers) and directors. The Code has been distributed to all employees of the Company as of December 15, 2003. In addition, the Code is available on the Company’s website, [www.waters.com](http://www.waters.com), under the caption About Waters > Corporate Information > Corporate Governance. The Company intends to satisfy the disclosure requirement regarding any waiver of a provision of the Code of Business Conduct and Ethics applicable to any executive officer or director by posting such information on such website. The Company shall provide to any person without charge, upon request, a copy of the Code. Any such request must be made in writing to the Secretary of the Company, c/o Waters Corporation, 34 Maple Street, Milford, MA 01757.

d. The Company’s corporate governance guidelines and the charters of the audit committee, compensation committee, and nominating and corporate governance committee of the Board of Directors are available on the Company’s website, [www.waters.com](http://www.waters.com), under the caption About Waters > Corporate Information > Corporate Governance. The Company shall provide to any person without charge, upon request, a copy of any of the foregoing materials. Any such request must be made in writing to the Secretary of the Company, c/o Waters Corporation, 34 Maple Street, Milford, MA 01757.

e. Our Chief Executive Officer has certified that he is not aware of any violation by the Company of the New York Stock Exchange corporate governance listing standards.

**Item 11: *Executive Compensation***

The information called for by this Item is incorporated by reference to the information under the caption “Security Ownership of Certain Beneficial Owners and Management” appearing in the Proxy Statement.

**Item 12: *Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters***

Except for the Equity Compensation Plan information set forth below, information concerning security ownership of certain beneficial owners and management is set forth in the Proxy Statement under the heading “Security Ownership of Certain Beneficial Owners.” Such information is incorporated herein by reference.

**Equity Compensation Plan Information**

The following table provides information as of December 31, 2004 about our common stock that may be issued upon the exercise of options, warrants, and rights under our existing equity compensation plans (in thousands):

	<u>A</u>	<u>B</u>	<u>C</u>
	Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights	Weighted-average Exercise Price of Outstanding Options, Warrants and Rights	Number of Securities Remaining Available for Future Issuance under Equity Compensation Plans (excluding securities reflected in column (A))
Equity compensation plans approved by security holders	11,322	\$ 34.07	2,680
Equity compensation plans not approved by security holders	—	not applicable	390
<b>Total</b>	<b>11,322</b>	<b>\$ 34.07</b>	<b>3,070</b>

**Item 13: *Certain Relationships and Related Transactions***

Information concerning certain relationships and related transactions is set forth in the Proxy Statement under the heading “Certain Relationships and Related Transactions.” Such information is incorporated herein by reference.

**Item 14: *Principal Accountant Fees and Services***

Information concerning certain relationships and related transactions is set forth in the Proxy Statement under the heading “Report of the Audit Committee of the Board of Directors.” Such information is incorporated herein by reference.

**PART IV**

**Item 15: Exhibits and Financial Statement Schedules**

(a) Documents filed as part of this report:

(1) Financial Statements:

The consolidated financial statements of the Company and its subsidiaries are filed as part of this Form 10-K and are set forth on pages 35 to 76. The report of PricewaterhouseCoopers LLP, independent registered public accounting firm, dated March 15, 2005, is set forth on page 33 of this Form 10-K.

(2) Financial Statement Schedule:

**WATERS CORPORATION AND SUBSIDIARIES**  
**Schedule II — Valuation and Qualifying Accounts**  
**For the Years Ended December 2004, 2003 and 2002**  
**(in thousands)**

	<u>Balance at Beginning of Period</u>	<u>Additions</u>	<u>Deductions</u>	<u>Balance at End of Period</u>
Allowance for Doubtful Accounts and Sales Returns:				
2004	\$ 5,638	\$ 1,503	\$ (41)	\$ 7,100
2003	\$ 5,826	\$ 847	\$ (1,035)	\$ 5,638
2002	\$ 5,077	\$ 1,454	\$ (705)	\$ 5,826

(3) Exhibits:

<u>Exhibit Number</u>	<u>Description of Document</u>
2.1	Agreement for the Sale and Purchase of Micromass Limited dated as of September 12, 1997, between Micromass Limited, Schroder UK Buy-Out Fund III Trust I and Others, Waters Corporation and Waters Technologies Corporation. (18)
3.1	Second Amended and Restated Certificate of Incorporation of Waters Corporation. (1)
3.11	Certificate of Amendment of Second Amended and Restated Certificate of Incorporation of Waters Corporation, as amended May 12, 1999. (3)
3.12	Certificate of Amendment of Second Amended and Restated Certificate of Incorporation of Waters Corporation, as amended July 27, 2000. (6)
3.13	Certificate of Amendment of Second Amended and Restated Certificate of Incorporation of Waters Corporation, as amended May 25, 2001. (8)
3.2	Amended and Restated Bylaws of Waters Corporation, as amended to date. (1)
10.3	Waters Corporation Second Amended and Restated 1996 Long-Term Performance Incentive Plan. (5)(*)
10.31	First Amendment to the Waters Corporation Second Amended and Restated 1996 Long-Term Performance Incentive Plan. (10)(*)
10.4	Waters Corporation 1996 Employee Stock Purchase Plan. (9)(*)
10.41	December 1999 Amendment to the Waters Corporation 1996 Employee Stock Purchase Plan. (4)(*)
10.42	March 2000 Amendment to the Waters Corporation 1996 Employee Stock Purchase Plan. (4)(*)
10.43	June 1999 Amendment to the Waters Corporation 1996 Employee Stock Purchase Plan. (7)(*)
10.44	July 2000 Amendment to the Waters Corporation 1996 Employee Stock Purchase Plan. (7)(*)
10.5	Waters Corporation 1996 Non-Employee Director Deferred Compensation Plan. (13)(*)

<u>Exhibit Number</u>	<u>Description of Document</u>
10.51	First Amendment to the Waters Corporation 1996 Non-Employee Director Deferred Compensation Plan. (5)(*)
10.6	Waters Corporation Amended and Restated 1996 Non-Employee Director Stock Option Plan. (5)(*)
10.7	Agreement and Plan of Merger among Waters Corporation, TA Merger Sub, Inc. and TA Instruments, Inc. dated as of March 28, 1996. (19)
10.8	Offer to Purchase and Consent Solicitation Statement, dated March 7, 1996, of Waters Technologies Corporation. (20)
10.9	WCD Investors, Inc. Amended and Restated 1994 Stock Option Plan (including Form of Amended and Restated Stock Option Agreement). (2)(*)
10.91	Amendment to the WCD Investors, Inc. Amended and Restated 1994 Stock Option Plan. (5)(*)
10.10	Waters Corporation Retirement Plan. (2)(*)
10.11	Registration Rights Agreement made as of August 18, 1994, by and among WCD Investors, Inc., AEA Investors, Inc., certain investment funds controlled by Bain Capital, Inc. and other stockholders of Waters Corporation. (2)
10.12	Form of Indemnification Agreement, dated as of August 18, 1994, between WCD Investors, Inc. and its directors and executive officers. (2)
10.13	Form of Management Subscription Agreement, dated as of August 18, 1994, between WCD Investors, Inc. and certain members of management. (2)
10.14	1999 Management Incentive Plan. (3)(*)
10.15	Rights Agreement, dated as of August 9, 2002 between Waters Corporation and EquiServe Trust Company, N.A. as Rights Agent. (11)
10.17	First Amendment to the Waters Corporation 2003 Equity Incentive Plan. (14)(*)
10.19	Change of Control/Severance Agreement, dated as of February 24, 2004 between Waters Corporation and Mark T. Beaudouin. (15)(*)
10.20	Change of Control/Severance Agreement, dated as of February 24, 2004 between Waters Corporation and Douglas A. Berthiaume. (15)(*)
10.21	Change of Control/Severance Agreement, dated as of February 24, 2004 between Waters Corporation and Arthur G. Caputo. (15)(*)
10.22	Change of Control/Severance Agreement, dated as of February 24, 2004 between Waters Corporation and William J. Curry. (15)(*)
10.23	Change of Control/Severance Agreement, dated as of February 24, 2004 between Waters Corporation and Brian K. Mazar. (15)(*)
10.25	Change of Control/Severance Agreement, dated as of February 24, 2004 between Waters Corporation and John Ornell. (15)(*)
10.26	Credit Agreement, dated as of May 28, 2004 among Waters Corporation and Citizens Bank of Massachusetts. (16)
10.27	Form of Director Stock Option Agreement under the Waters Corporation Amended 2003 Equity Incentive Plan. (17)(*)
10.28	Form of Director Restricted Stock Agreement under the Waters Corporation Amended 2003 Equity Incentive Plan. (17)(*)
10.29	Form of Executive Officer Stock Option Agreement under the Waters Corporation Amended 2003 Equity Incentive Plan. (17)(*)
10.30	Five Year Credit Agreement, dated as of December 15, 2004 among Waters Corporation, Waters Technologies Ireland Ltd., Waters Chromatography Ireland Ltd., JPMorgan Chase Bank, N.A. and other Lenders party thereto.

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<u>Exhibit Number</u>	<u>Description of Document</u>
10.32	Form of Amendment to Stock Option Agreement under the Waters Corporation Second Amended and Restated 1996 Long Term Performance Incentive Plan. (*)
10.33	Stock Option Agreement, dated as of December 8, 2004 between Waters Corporation and Brian K. Mazar. (*)
10.34	Waters Corporation 2003 Equity Incentive Plan. (12)(*)
10.35	Form of Executive Officer Stock Option Agreement under the Waters Corporation Second Amended and Restated 1996 Long-Term Performance Incentive Plan. (*)
10.36	2005 Waters Corporation Amended and Restated Management Incentive Plan. (*)
21.1	Subsidiaries of Waters Corporation.
23.1	Consent of PricewaterhouseCoopers LLP, independent registered public accounting firm.
31.1	Chief Executive Officer Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Chief Financial Officer Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Chief Executive Officer Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Chief Financial Officer Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

- (1) Incorporated by reference to the Registrant's Report on Form 10-K dated March 29, 1996.
  - (2) Incorporated by reference to the Registrant's Registration Statement on Form S-1 (File No. 333-3810).
  - (3) Incorporated by reference to the Registrant's Report on Form 10-Q dated August 11, 1999.
  - (4) Incorporated by reference to the Registrant's Report on Form 10-K dated March 30, 2000.
  - (5) Incorporated by reference to the Registrant's Report on Form 10-Q dated May 8, 2000.
  - (6) Incorporated by reference to the Registrant's Report on Form 10-Q dated August 8, 2000.
  - (7) Incorporated by reference to the Registrant's Report on Form 10-K dated March 27, 2001.
  - (8) Incorporated by reference to the Registrant's Report on Form 10-K dated March 28, 2002.
  - (9) Incorporated by reference to Exhibit B of the Registrant's 1996 Proxy Statement.
  - (10) Incorporated by reference to the Registrant's Report on Form 10-Q dated August 12, 2002.
  - (11) Incorporated by reference to the Registrant's Report on Form 8-A dated August 27, 2002.
  - (12) Incorporated by reference to the Registrant's Report on Form S-8 dated November 20, 2003.
  - (13) Incorporated by reference to Exhibit C of the Registrant's 1996 Proxy Statement.
  - (14) Incorporated by reference to the Registrant's Report on Form 10-K dated March 12, 2004.
  - (15) Incorporated by reference to the Registrant's Report on Form 10-Q dated May 10, 2004.
  - (16) Incorporated by reference to the Registrant's Report on Form 10-Q dated August 11, 2004.
  - (17) Incorporated by reference to the Registrant's Report on Form 10-Q dated November 10, 2004.
  - (18) Incorporated by reference to the Registrant's Report on Form 8-K, filed on October 8, 1997 and amended on December 5, 1997.
  - (19) Incorporated by reference to the Registrant's Report on Form 8-K dated March 29, 1996.
  - (20) Incorporated by reference to the Registrant's Report on Form 8-K dated March 11, 1996.
- (\*) Management contract or compensatory plan required to be filed as an Exhibit to this Form 10-K.
- (b) See Item 15 (a)(3) above.
- (c) Not Applicable.





EXECUTION COPY

FIVE YEAR CREDIT AGREEMENT

dated as of

December 15, 2004

among

WATERS CORPORATION  
as US Borrower

WATERS TECHNOLOGIES IRELAND LTD.  
as European Borrower

WATERS CHROMATOGRAPHY IRELAND LTD.  
as European Borrower

The Lenders Party Hereto

JPMORGAN CHASE BANK, N.A.  
as Administrative Agent

and

J.P. MORGAN EUROPE LIMITED  
as London Agent

ABM AMRO INCORPORATED  
as Co-Syndication Agent

BANK OF AMERICA, N.A.  
as Co-Syndication Agent

BARCLAYS BANK PLC  
as Co-Syndication Agent

CITIZENS BANK OF MASSACHUSETTS  
as Co-Syndication Agent

J.P. MORGAN SECURITIES INC. and ABN AMRO INCORPORATED  
as Joint Lead Arrangers  
and Joint Bookrunners

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- Schedule 2.01 -- Lenders and Commitments
- Schedule 2.05 -- Existing Letters of Credit
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EXHIBITS:

- Exhibit A -- Form of Assignment and Acceptance
- Exhibit B -- Form of Subsidiary Guarantee Agreement
- Exhibit C -- Form of Irish Certificate
- Exhibit D-1 -- Form of Opinion of Counsel for the Company
- Exhibit D-2 -- Form of Opinion of Irish Counsel for the European Borrowers

FIVE YEAR CREDIT AGREEMENT dated as of December 15, 2004 among WATERS CORPORATION, a Delaware corporation (the "Company"); WATERS TECHNOLOGIES IRELAND LTD. and WATERS CHROMATOGRAPHY IRELAND LTD., both companies organized under the laws of Ireland (the "European Borrowers"; the Company and the European Borrowers being collectively called the "Borrowers"); the LENDERS from time to time party hereto; JPMORGAN CHASE BANK, N.A., as Administrative Agent and J.P. MORGAN EUROPE LIMITED, as London Agent.

The Company has requested the Lenders (such term and each other capitalized term used and not otherwise defined herein having the meaning assigned to it in Article I) to extend credit in the form of (a) Term Loans to the Company in US Dollars in an aggregate principal amount of \$250,000,000 and (b) revolving commitments consisting of the following: (i) US Tranche Commitments under which the Company may obtain Loans in US Dollars in an aggregate principal amount at any time outstanding that will not result in aggregate US Tranche Revolving Exposures exceeding \$300,000,000 and (ii) European Tranche Commitments under which the European Borrowers may obtain Loans in US Dollars or Euros and the Company may obtain Loans in US Dollars in an aggregate principal amount at any time outstanding that will not result in aggregate European Tranche Revolving Exposures exceeding \$150,000,000. The proceeds of borrowings are to be used for general corporate purposes of the Company and its subsidiaries, including repayment of amounts outstanding under the Existing Credit Agreement, payment of indebtedness, financing of acquisitions, payment of fees and expenses in connection with the credit facilities established hereby, repurchases of equity securities of the Company and working capital.

The Lenders are willing to establish the credit facilities referred to in the preceding paragraph upon the terms and subject to the conditions set forth herein. Accordingly, the parties hereto agree as follows:

ARTICLE I

Definitions

Section 1.01. Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

"ABR", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

"Adjusted LIBO Rate" means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the

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next 1/16 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

"Administrative Agent" means JPMorgan Chase Bank, N.A., in its capacity as administrative agent for the Lenders hereunder.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

"Affiliate" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Agents" means, collectively, the Administrative Agent and the London Agent.

"Agreement Currency" has the meaning assigned to such term in Section 11.13(b).

"Alternate Base Rate" means, for any day, a rate per annum equal to the greater of (a) the Prime Rate in effect on such day and (b) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1%. Any change in the Alternate Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective from and including the effective date of such change in the Prime Rate or the Federal Funds Effective Rate, respectively.

"Applicable Agent" means (a) with respect to a Loan or Borrowing denominated in US Dollars, or any Letter of Credit, and with respect to any payment hereunder that does not relate to a particular Loan or Borrowing, the Administrative Agent and (b) with respect to a Loan or Borrowing denominated in Euros, the London Agent.

"Applicable Rate" means, with respect to any Loan of any Type or the facility fees payable hereunder, as the case may be:

(a) For any day during the period commencing on the Effective Date and ending on (and including) June 15, 2005, (i) with respect to a Eurocurrency Loan, 50.0 basis points per annum, (ii) with respect to an ABR Loan, 0.0 basis points per annum and (iii) with respect to facility fees, 12.5 basis points per annum.

(b) For any day after June 15, 2005, on which either or both of Moody's and S&P shall not have a Rating in effect, the applicable rate per annum set forth under the appropriate caption in the table below, based upon the Leverage Ratio as of the most recent determination date:

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CATEGORY	LEVERAGE RATIO	FACILITY FEE (BASIS POINTS PER ANNUM)	LIBOR SPREAD (BASIS POINTS PER ANNUM)	ABR SPREAD (BASIS POINTS PER ANNUM)
Category 1	< 1.00	8.0	29.5	0.0
Category 2	> 1.00 and < 1.50	10.0	40.0	0.0
Category 3	> 1.50 and < 2.00	12.5	50.0	0.0
Category 4	> 2.00 and < 2.50	15.0	60.0	0.0
Category 5	> 2.50	17.5	80.0	0.0

The Leverage Ratio used on any date to determine the Applicable Rate shall be that in effect at the end of the most recent fiscal quarter for which financial statements shall have been delivered pursuant to Section 5.06(a) or (b); provided that if any financial statements required to have been delivered under Section 5.06(a) or (b) shall not at any time have been delivered, the Applicable Rate shall, until such financial statements shall have been delivered, be determined by reference to Category 5 in the Table above.

(c) For any day after June 15, 2005, on which each of Moody's and S&P shall have a Rating in effect, the applicable rate per annum set forth under the appropriate caption in the table below, based upon the Ratings as of the most recent determination date:

CATEGORY	LEVERAGE RATIO	FACILITY FEE (BASIS POINTS PER ANNUM)	LIBOR SPREAD (BASIS POINTS PER ANNUM)	ABR SPREAD (BASIS POINTS PER ANNUM)
Category 1	A3/A- or higher	8.0	29.5	0.0
Category 2	Baa1/BBB+	10.0	40.0	0.0
Category 3	Baa2/BBB	12.5	50.0	0.0
Category 4	Baa3/BBB-	15.0	60.0	0.0
Category 5	Ba1/BB+ or lower	20.0	80.0	0.0

In the event of split Ratings, the Applicable Rate will be based on the higher Rating unless the Ratings differ by two or more categories, in which case the Applicable Rate will be based upon the category one level above the category corresponding to the lower Rating.

"Assignment and Acceptance" means an assignment and acceptance entered into by a Lender and an assignee (with the consent of any party whose consent is

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required by Section 11.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form approved by the Administrative Agent.

"Attributable Debt" means, in connection with any Sale and Leaseback Transaction, the present value (discounted in accordance with GAAP at the discount rate implied in the lease) of the obligations of the lessee for rental payments during the term of the lease.

"Board" means the Board of Governors of the Federal Reserve System of the United States of America.

"Borrower" means the Company or a European Borrower.

"Borrowing" means (a) Loans of the same Class, Type and currency, made, converted or continued on the same date and, in the case of Eurocurrency Loans, as to which a single Interest Period is in effect and (b) a Swingline Loan.

"Borrowing Minimum" means (a) in the case of a Borrowing denominated in US Dollars, \$5,000,000 and (b) in the case of a Borrowing denominated in Euros, (euro)5,000,000.

"Borrowing Multiple" means (a) in the case of a Borrowing denominated in US Dollars, \$1,000,000 and (b) in the case of a Borrowing denominated in Euros, (euro)1,000,000.

"Borrowing Request" means a request by a Borrower for a Borrowing in accordance with Section 2.03.

"Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided, that (a) when used in connection with a Eurocurrency Loan, the term "Business Day" shall also exclude any day on which banks are not open for dealings in deposits in the London interbank market, (b) when used in connection with a Letter of Credit denominated in a Designated Foreign Currency, the term "Business Day" shall also exclude any day on which banks are not open for dealings in deposits in the applicable Designated Foreign Currency in the principal financial center in the country of such Designated Foreign Currency and (c) when used in connection with a Loan denominated in Euros, the term "Business Day" shall also exclude any day on which the TARGET payment system is not open for the settlement of payments in Euros.

"Calculation Date" means the last Business Day of each calendar month.

"CAM" shall mean the mechanism for the allocation and exchange of interests in the Specified Obligations and collections thereunder established under Article IX.

"CAM Exchange" shall mean the exchange of the Lender's interests provided for in Article IX.

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"CAM Exchange Date" shall mean the date on which any event referred to in paragraph (g) of Article VII shall occur in respect of the Company.

"CAM Percentage" shall mean, as to each Lender, a fraction, expressed as a

decimal, of which (a) the numerator shall be the aggregate US Dollar Equivalent (determined on the basis of Exchange Rates prevailing on the CAM Exchange Date) of the Specified Obligations owed to such Lender immediately prior to the CAM Exchange Date and (b) the denominator shall be the aggregate US Dollar Equivalent (as so determined) of the Specified Obligations owed to all the Lenders.

"Change of Control" means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as in effect on the date hereof) of shares representing more than 30% of the aggregate ordinary voting power represented by the issued and outstanding capital stock of the Company; or (b) occupation of a majority of the seats (other than vacant seats) on the board of directors of the Company by Persons who were not (i) directors of the Company on the date hereof, (ii) nominated by the board of directors of the Company or (iii) appointed by directors so nominated.

"Change in Law" means (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender or the Issuing Bank or by any lending office of such Lender or by such Lender's or Issuing Bank's holding company with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement.

"Class", when used in reference to (a) any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Term Loans, US Tranche Revolving Loans or European Tranche Revolving Loans and (b) any Commitment, refers to whether such Commitment is a Term Loan Commitment, a US Tranche Commitment or a European Tranche Commitment.

"Commitment" means a Term Loan Commitment, a US Tranche Commitment or a European Tranche Commitment.

"Company" has the meaning assigned to such term in the heading of this Agreement.

"Confidential Information Memorandum" means the Confidential Information Memorandum dated November, 2004 distributed to the Lenders, together with the appendices thereto, as amended through the date hereof.

"Consolidated Debt" means all Debt of the Company and the Subsidiaries, determined on a consolidated basis.

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"Consolidated EBITDA" means, for any period, the consolidated net income (loss) of the Company and the Subsidiaries for such period plus, to the extent deducted in computing such consolidated net income for such period, the sum (without duplication) of (a) Consolidated Interest Expense, (b) consolidated income tax expense, (c) depreciation and amortization expense and (d) extraordinary or non-recurring non-cash expenses or losses, minus, to the extent added in computing such consolidated net income for such period, extraordinary gains, all determined on a consolidated basis.

"Consolidated Interest Expense" means, for any period, the interest expense of the Company and the consolidated Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, but excluding deferred financing fees.

"Consolidated Net Tangible Assets" means the total amount of assets that would be included on a consolidated balance sheet of the Company and the consolidated Subsidiaries (and which shall reflect the deduction of applicable reserves) after deducting therefrom all current liabilities of the Company and the consolidated Subsidiaries and all Intangible Assets.

"Consolidated Total Assets" means the total amount of assets that would be included on a consolidated balance sheet of the Company and the consolidated Subsidiaries.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Debt" means, with respect to any Person and without duplication, all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services, all accrued or contingent obligations in respect of letters of credit, all capitalized lease obligations, all indebtedness of others secured by assets of the Company or a Subsidiary, all guarantees of Debt of others (but excluding guarantees issued for customer advance payments) and all obligations under Hedging Agreements.

"Default" means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

"Designated Foreign Currency" means Euros, British Pounds Sterling, Japanese Yen or any other currency (other than US Dollars) approved in writing by the Issuing Bank and the Administrative Agent.

"Domestic Subsidiary" means any Subsidiary that is incorporated under the laws of the United States or its territories or possessions.

"Effective Date" means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 11.02).

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"EMU Legislation" means the legislative measures of the European Union for the introduction of, changeover to or operation of the Euro in one or more member states.

"Environmental Laws" means all federal, state, local and foreign laws, rules and regulations relating to the release, emission, disposal, storage and related handling of waste materials, pollutants and hazardous substances.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"Euro" or "(euro)" means the single currency of the European Union as constituted by the Treaty on European Union and as referred to in the EMU Legislation.

"Eurocurrency", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

"European Borrowers" means Waters Technologies Ireland Ltd. and Waters Chromatography Ireland Ltd., both companies organized under the laws of Ireland (each a "European Borrower").

"European Tranche Commitment" means, with respect to each European Tranche Lender, the commitment of such European Tranche Lender to make European Tranche Revolving Loans pursuant to Section 2.01(c), expressed as an amount representing the maximum aggregate amount of such European Tranche Lender's European Tranche Revolving Exposure hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.09, (b) increased pursuant to Section 2.10 and (c) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 11.04. The initial amount of each European Tranche Lender's European Tranche Commitment is set forth on Schedule 2.01 or in the Assignment and Acceptance pursuant to which such European Tranche Lender shall have assumed its European Tranche Commitment, as applicable. The aggregate amount of the European Tranche Commitments on the date hereof is \$150,000,000.

"European Tranche Lender" mean a Lender with a European Tranche Commitment or European Tranche Revolving Loans.

"European Tranche Percentage" means, with respect to any European Tranche Lender, the percentage of the total European Tranche Commitments represented by such Lender's European Tranche Commitment. If the European Tranche Commitments have terminated or expired, the European Tranche Percentages shall be determined based upon the European Tranche Commitments most recently in effect, giving effect to any assignments.

"European Tranche Revolving Borrowing" means a Borrowing comprised of European Tranche Revolving Loans.

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"European Tranche Revolving Exposure" means, with respect to any European Tranche Lender at any time, such Lender's European Tranche Percentage of the sum of the US Dollar Equivalents of the principal amounts of the outstanding European Tranche Revolving Loans.

"European Tranche Revolving Loan" means a Loan made by a European Tranche Lender pursuant to Section 2.01(c). Each European Tranche Revolving Loan made to the Company shall be denominated in US Dollars and shall be a Eurocurrency Loan or an ABR Loan, and each European Tranche Revolving Loan made to a European Borrower shall be denominated in US Dollars or Euros and shall be a Eurocurrency Loan.

"Event of Default" has the meaning assigned to such term in Article VII.

"Exchange Rate" means on any day, with respect to any Designated Foreign Currency, the rate at which such Designated Foreign Currency may be exchanged into US Dollars, as set forth at approximately 11:00 a.m., London time, on such day on the Reuters World Currency Page for such Designated Foreign Currency. In the event that such rate does not appear on any Reuters World Currency Page, the Exchange Rate shall be determined by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Administrative Agent and the Company or, in the absence of such agreement, such

Exchange Rate shall instead be the arithmetic average of the spot rates of exchange of the Administrative Agent in the market where its foreign currency exchange operations in respect of such Designated Foreign Currency are then being conducted, at or about 10:00 a.m., local time, on such date for the purchase of US Dollars for delivery two Business Days later; provided that if at the time of any such determination, for any reason, no such spot rate is being quoted, the Administrative Agent, after consultation with the Company, may use any reasonable method it deems appropriate to determine such rate, and such determination shall be presumed correct absent manifest error.

"Excluded Taxes" means, with respect to any Lender or the Issuing Bank, (a) income or franchise taxes imposed on (or measured by) its net income by the United States of America (or any political subdivision thereof), or by the jurisdiction under which such recipient is organized or in which its principal office or any lending office from which it makes Loans or issues Letters of Credit hereunder is located, (b) any branch profit taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction described in clause (a) above, (c) any withholding tax that is imposed by the United States of America (or any political subdivision thereof) on payments by the Company from an office within such jurisdiction to the extent such tax is in effect and would apply as of the date such Lender becomes a party to this Agreement or relates to payments received by a new lending office designated by such Lender and is in effect and would apply at the time such lending office is designated, (d) in the case of a European Tranche Lender (other than a Lender that becomes a European Tranche Lender by operation of the CAM), any withholding tax that is imposed by Ireland (or any political subdivision thereof) on payments by a European Borrower from an office within such jurisdiction to the extent such tax is in effect and would apply as of the date such European Tranche Lender becomes a party to this Agreement or

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relates to payments received by a new lending office designated by such European Tranche Lender and is in effect and would apply at the time such lending office is designated or (e) any withholding tax that is attributable to such Lender's failure to comply with Section 2.17(e), except, in the case of clause (c) or (d) above, to the extent that (i) such Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the applicable Borrower with respect to such withholding tax pursuant to Section 2.17(a) or (ii) such withholding tax shall have resulted from the making of any payment to a location other than the office designated by the Applicable Agent or such Lender for the receipt of payments of the applicable type from the applicable Borrower.

"Existing Credit Agreement" means the Credit Agreement dated as of February 12, 2002, and amended and restated as of December 17, 2003, among the Company, the lenders party thereto and Deutsche Bank Trust Company Americas.

"Existing Issuing Bank" means Deutsche Bank Trust Company Americas, in its capacity as issuing bank in respect of an Existing Letter of Credit.

"Existing Letters of Credit" means the outstanding letters of credit set forth on Schedule 2.05.

"Exposure" means, with respect to any Lender, such Lender's Term Loan Exposure, US Tranche Revolving Exposure and European Tranche Revolving Exposure.

"Federal Funds Effective Rate" means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

"Foreign Subsidiary" means any Subsidiary that is not incorporated under the laws of the United States or its territories or possessions.

"GAAP" means generally accepted accounting principles in the United States of America.

"Governmental Authority" means any nation or government, any federal, state, local or other political subdivision thereof and any entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions or of pertaining to government.

"Guarantee Requirement" means, at any time, that the Subsidiary Guarantee Agreement (or a supplement referred to in Section 16 thereof) shall have been executed by each Subsidiary (other than any Foreign Subsidiary or a subsidiary of a Foreign Subsidiary) existing at such time, shall have been delivered to the Administrative

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Agent and shall be in full force and effect; provided, however, that in the case of a Subsidiary that becomes subject to the Guarantee Requirement after the Effective Date, the Guarantee Requirement shall be satisfied with respect to such Subsidiary if a supplement to the Subsidiary Guarantee Agreement is executed by such Subsidiary, delivered to the Administrative Agent and is in full force and effect no later than (i) fifteen days after the date on which such Subsidiary becomes subject to the Guarantee Requirement or (ii) such other date as the Administrative Agent may reasonably determine, but in any case no later than thirty days after the date on which such Subsidiary becomes subject to the Guarantee Requirement.

"Hedging Agreement" means any interest rate protection agreement, foreign currency exchange agreement or other interest or currency exchange rate hedging arrangement. The "principal amount" of the obligations of any Person in respect of any Hedging Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that such Person would be required to pay if such Hedging Agreement were terminated at such time.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Initial Borrowing Date" means the date of the initial Borrowing hereunder.

"Intangible Assets" means all assets of the Company and the consolidated Subsidiaries that would be treated as intangibles in conformity with GAAP on a consolidated balance sheet of the Company and the consolidated Subsidiaries.

"Interest Coverage Ratio" means, for any period, the ratio of (a) Consolidated EBITDA for such period to (b) Consolidated Interest Expense for such period.

"Interest Election Request" means a request by the relevant Borrower to convert or continue a Borrowing in accordance with Section 2.08.

"Interest Payment Date" means (a) with respect to any ABR Loan, the last day of each March, June, September and December and (b) with respect to any Eurocurrency Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurocurrency Borrowing with an Interest Period of more than three months' duration, each day prior to the last day of such Interest Period that occurs at intervals of three months' duration after the first day of such Interest Period.

"Interest Period" means, with respect to any Eurocurrency Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six months thereafter (or, if available from each applicable Lender, nine or twelve months thereafter), as the relevant Borrower may elect; provided that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar

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month, in which case such Interest Period shall end on the next preceding Business Day and (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made, and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

"Issuing Bank" means JPMorgan Chase Bank, N.A., in its capacity as the issuer of Letters of Credit hereunder, and its successors in such capacity as provided in Section 2.05(i). The Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the Issuing Bank, in which case the term "Issuing Bank" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate. The term "Issuing Bank" shall also mean the Existing Issuing Bank solely with respect to the Existing Letters of Credit.

"JPMCB" means JPMorgan Chase Bank, N.A. and its successors.

"Judgment Currency" has the meaning assigned to such term in Section 11.13(b).

"LC Disbursement" means a payment made by the Issuing Bank in respect of a Letter of Credit.

"LC Exposure" means at any time the sum of (a) the sum of US Dollar Equivalents of undrawn amounts of all outstanding Letters of Credit at such time and (b) the sum of US Dollar Equivalents of the amounts of all LC Disbursements that have not yet been reimbursed by or on behalf of the Company or the applicable Subsidiary at such time. The LC Exposure of any US Tranche Lender at any time shall be such Lender's US Tranche Percentage of the aggregate LC Exposure.

"Lenders" means the Persons listed on Schedule 2.01 and any other Person

that shall have become a party hereto pursuant to an Assignment and Acceptance or as provided in Section 2.10, other than any such Person that shall have ceased to be a party hereto pursuant to an Assignment and Acceptance.

"Letter of Credit" means an Existing Letter of Credit and any letter of credit issued pursuant to this Agreement on behalf of Lenders holding US Tranche Commitments.

"Leverage Ratio" means, at any time, the ratio of (a) Consolidated Debt at such time to (b) Consolidated EBITDA for the most recent period of four consecutive fiscal quarters of the Company ended at or prior to such time; provided, that in the event any Material Acquisition shall have been completed during such period of four consecutive fiscal quarters, the Leverage Ratio shall be computed giving pro forma effect to such Material Acquisition as if it had been completed at the beginning of such period.

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"LIBO Rate" means, with respect to any Eurocurrency Borrowing for any Interest Period, the rate per annum determined by the Applicable Agent at approximately 11:00 a.m., London time, on the Quotation Day for such Interest Period by reference to the British Bankers' Association Interest Settlement Rates for deposits in the currency of such Borrowing (as reflected on the applicable Telerate screen), for a period equal to such Interest Period; provided that, to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, "LIBO Rate" shall mean the interest rate per annum determined by the Applicable Agent to be the average of the rates per annum at which deposits in the currency of such Borrowing are offered for such Interest Period to major banks in the London interbank market by JPMCB at approximately 11:00 a.m., London time, on the Quotation Day for such Interest Period.

"Lien" means, with respect to any asset, any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset.

"Loan Documents" means this Agreement, the Subsidiary Guarantee Agreement and each Letter of Credit and promissory note delivered pursuant to this Agreement.

"Loan Parties" means the Borrowers and the Subsidiary Guarantors.

"Loans" means the loans made by the Lenders to the Borrowers pursuant to this Agreement.

"Local Time" means (a) with respect to a Loan or Borrowing denominated in US Dollars or any Letter of Credit, New York City time and (b) with respect to a Eurocurrency Loan or Eurocurrency Borrowing denominated in Euros, London time.

"London Agent" means J.P. Morgan Europe Limited.

"Margin Stock" has the meaning ascribed to such term in Regulation U issued by the Board.

"Material Acquisition" means (i) the acquisition by the Company or a Subsidiary of assets of or an interest in another Person or (ii) the merger or consolidation of the Company with another corporation, in each case if the Consolidated Total Assets of the Company after giving effect to such acquisition, merger or consolidation are at least 5% greater than the Consolidated Total Assets of the Company immediately prior to such acquisition, merger or consolidation.

"Material Adverse Effect" means a (i) a material adverse effect on the business, assets, operations or financial condition of the Company and the Subsidiaries, taken as a whole or (ii) a material adverse effect on the validity or enforceability of any of the Loan Documents.

"Material Debt" means Consolidated Debt in an aggregate principal amount of \$20,000,000 or more.

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"Material Subsidiary" means each Subsidiary of the Company, other than Subsidiaries designated by the Company from time to time that in the aggregate do not account for more than 15% of the consolidated revenues of the Company and its Subsidiaries for the period of four fiscal quarters most recently ended or more than 15% of the consolidated assets of the Company and its Subsidiaries at the end of such period.

"Maturity Date" means December 15, 2009.

"Moody's" means Moody's Investors Service, Inc.

"Obligations" means (a) the due and punctual payment of (i) the principal of and premium, if any, and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on

the Loans made to any Borrower, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise, (ii) each payment required to be made by any Borrower under this Agreement in respect of any Letter of Credit, when and as due, including payments in respect of reimbursement of disbursements, interest thereon and obligations to provide cash collateral and (iii) all other monetary obligations, including fees, costs, expenses and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), of the Loan Parties under this Agreement and the other Loan Documents, and (b) the due and punctual payment and performance of all obligations of the Company or any Subsidiary, monetary or otherwise, under each interest rate hedging Agreement relating to Obligations referred to in the preceding clause (a) entered into with any counterparty that was a Lender (or an Affiliate thereof) at the time such hedging agreement was entered into.

"Other Taxes" means any and all present or future recording, stamp, documentary, excise, transfer, sales, property or similar taxes, charges or levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Prime Rate" means the rate of interest per annum publicly announced from time to time by JPMorgan Chase Bank as its prime rate in effect at its principal office in New York City; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.

"Quotation Day" means, with respect to any Eurocurrency Borrowing and any Interest Period, the day on which it is market practice in the relevant interbank market for prime banks to give quotations for deposits in the currency of such Borrowing for delivery on the first day of such Interest Period. If such quotations would normally be

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given by prime banks on more than one day, the Quotation Day will be the last of such days.

"Ratings" means published debt ratings issued by each of Moody's and S&P with respect to the Company's senior, unsecured, non-credit enhanced long-term indebtedness for borrowed money (each a "Rating").

"Register" has the meaning set forth in Section 11.04(c).

"Related Fund" means, with respect to any Lender that is a fund that invests in bank loans, any other fund that invests in bank loans and is managed by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"Related Parties" means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, trustees, agents and advisors of such Person and such Person's Affiliates.

"Required Lenders" means, at any time, Lenders having aggregate Term Loans, Revolving Credit Exposures and unused Commitments representing more than 50% of the sum of the total Term Loans, Revolving Credit Exposures and unused Commitments at such time.

"Reset Date" has the meaning set forth in Section 1.05(a).

"Revolving Availability Period" means the period from and including the Effective Date to but excluding the earlier of the Maturity Date and the date of termination of the Revolving Commitments.

"Revolving Borrowing" means a Borrowing comprised of US Tranche Revolving Loans or European Tranche Revolving Loans.

"Revolving Commitments" means the European Tranche Commitments and the US Tranche Commitments.

"Revolving Credit Exposure" means a US Tranche Revolving Exposure or a European Tranche Revolving Exposure.

"Revolving Loan" means any US Tranche Revolving Loan or European Tranche Revolving Loan.

"S&P" means Standard & Poor's Ratings Service.

"Sale and Leaseback Transaction" means any arrangement whereby the Company or a Subsidiary, directly or indirectly, shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property which it intends to use for substantially the same purpose or purposes as the property

"Specified Obligations" means Obligations consisting of the principal of and interest on outstanding Loans, reimbursement obligations in respect of LC Disbursements, and fees.

"Statutory Reserve Rate" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal to which the Applicable Agent is subject, for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board of Governors of the Federal Reserve System of the United States of America). Such reserve percentages include, but are not limited to, those imposed pursuant to such Regulation D. Eurocurrency Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"subsidiary" means, with respect to any Person, any entity with respect to which such Person alone owns, such Person or one or more of its subsidiaries together own, or such Person and any Person Controlling such Person together own, in each case directly or indirectly, capital stock or other equity interests having ordinary voting power to elect a majority of the members of the Board of Directors of such corporation or other entity or having a majority interest in the capital or profits of such corporation or other entity.

"Subsidiary" means any subsidiary of the Company.

"Subsidiary Guarantee Agreement" means a Subsidiary Guarantee Agreement substantially in the form of Exhibit B, and all supplements thereto made by the Subsidiary Guarantors in favor of the Administrative Agent for the benefit of the Lenders.

"Subsidiary Guarantors" means each Person listed on Schedule 1.01 and each other Person that becomes party to a Subsidiary Guarantee Agreement as a Subsidiary Guarantor, and the permitted successors and assigns of each such Person.

"Swingline Exposure" means, at any time, the aggregate principal amount of all Swingline Loans outstanding at such time. The Swingline Exposure of any Lender at any time shall be such Lender's US Tranche Percentage of the total Swingline Exposure at such time.

"Swingline Lender" means JPMCB in its capacity as a lender of Swingline Loans hereunder.

"Swingline Loan" means a Loan made pursuant to Section 2.04.

"Taxes" means any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority.

"Term Borrowing" means a Borrowing comprised of Term Loans.

"Term Commitment" means, with respect to each Term Lender, the commitment of such Term Lender to make Term Loans pursuant to Section 2.01(a), as such commitment may be (a) reduced from time to time pursuant to Section 2.09 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 11.04. The initial amount of each Term Lender's Term Commitment is set forth on Schedule 2.01, or in the Assignment and Acceptance pursuant to which such Term Lender shall have assumed its Term Commitment, as applicable. The aggregate amount of the Term Commitments on the date hereof is \$250,000,000.

"Term Lender" means a Lender with a Term Commitment.

"Term Loan" means a Loan made by a Term Lender pursuant to Section 2.01(a).

"Term Loan Exposure" means, with respect to any Term Lender at any time, the principal amount of such Lender's outstanding Term Loans.

"Transactions" means the execution, delivery and performance by the Loan Parties of the Loan Documents, the borrowing of Loans, the issuance of Letters of Credit hereunder and the use of the proceeds of such Loans and such Letters of Credit.

"Type", when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or the Alternate Base Rate.

"Unfunded Liabilities" means, in the case of a single employer pension benefit plan which is covered by Title IV of ERISA, the amount, if any, by which the present value of all vested benefits accrued to the date of determination under such plan exceeds the fair market value of all assets of such plan allocable to such benefits as of such date, and, in the case of a multiemployer pension plan, the withdrawal liability of the Company and the Subsidiaries.

"USA Patriot Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.

"US Corporation" means a corporation organized and existing under the laws of the United States, any state thereof or the District of Columbia.

"US Dollar Equivalent" means, on any date of determination, (a) with respect to any amount in US Dollars, such amount, and (b) with respect to any amount in any Designated Foreign Currency, the equivalent in US Dollars of such amount, determined by the Administrative Agent pursuant to Section 1.05 using the Exchange

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Rate with respect to such Designated Foreign Currency at the time in effect under the provisions of such Section.

"US Dollars" or "\$" means the lawful money of the United States of America.

"US Tranche Commitment" means, with respect to each US Tranche Lender, the commitment of such US Tranche Lender to make US Tranche Revolving Loans pursuant to Section 2.01(b) and acquire participations in Swingline Loans and Letters of Credit pursuant to Sections 2.04 and 2.05(e), respectively, expressed as an amount representing the maximum aggregate amount of such US Tranche Lender's US Tranche Revolving Exposure hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.09, (b) increased pursuant to Section 2.10 and (c) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 11.04. The initial amount of each US Tranche Lender's US Tranche Commitment is set forth on Schedule 2.01, or in the Assignment and Acceptance pursuant to which such US Tranche Lender shall have assumed its US Tranche Commitment, as applicable. The aggregate amount of the US Tranche Commitments on the date hereof is \$300,000,000.

"US Tranche Lender" mean a Lender with a US Tranche Commitment or US Tranche Revolving Loans.

"US Tranche Percentage" means, with respect to any US Tranche Lender, the percentage of the total US Tranche Commitments represented by such Lender's US Tranche Commitment. If the US Tranche Commitments have terminated or expired, the US Tranche Percentages shall be determined based upon the US Tranche Commitments most recently in effect, giving effect to any assignments.

"US Tranche Revolving Borrowing" means a Borrowing comprised of US Tranche Revolving Loans.

"US Tranche Revolving Exposure" means, with respect to any US Tranche Lender at any time, the sum at such time, without duplication, of (a) such Lender's US Tranche Percentage of the sum of the principal amounts of the outstanding US Tranche Revolving Loans, (b) the aggregate amount of such Lender's LC Exposure and (c) the aggregate amount of such Lender's Swingline Exposure.

"US Tranche Revolving Loan" means a Loan made by a US Tranche Lender pursuant to Section 2.01(b). Each US Tranche Revolving Loan shall be a Eurocurrency Loan or an ABR Loan.

Section 1.02. Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a "US Tranche Revolving Loan") or by Type (e.g., a "Eurocurrency Loan") or by Class and Type (e.g., a "Eurocurrency US Tranche Revolving Loan"). Borrowings also may be classified and referred to by Class (e.g., a "US Tranche Revolving Borrowing") or by

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Type (e.g., a "US Tranche Eurocurrency Borrowing") or by Class and Type (e.g., a "Eurocurrency US Tranche Revolving Borrowing").

Section 1.03. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document

herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein", "hereof" and "hereunder" and words of similar import shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

Section 1.04. Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP as in effect from time to time; provided that if the Company notifies the Administrative Agent that the Company requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Company that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

Section 1.05. Exchange Rates. (a) Not later than 10:00 a.m., New York City time, on each Calculation Date, the Administrative Agent shall (i) determine the Exchange Rate as of such Calculation Date with respect to each Designated Foreign Currency and (ii) give written notice thereof to the Lenders and the Company. The Exchange Rates so determined shall become effective on the first Business Day immediately following the relevant Calculation Date (a "Reset Date"), shall remain effective until the next succeeding Reset Date, and shall for all purposes of this Agreement (other than Section 2.05(e), Section 11.13 or any other provision expressly requiring the use of a current Exchange Rate) be the Exchange Rates employed in converting any amounts between US Dollars and Designated Foreign Currencies.

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(b) Not later than 5:00 p.m., New York City time, on each Reset Date and each date on which European Tranche Revolving Loans denominated in Euros are made or Letters of Credit denominated in any Designated Foreign Currency are issued, the Administrative Agent shall (i) determine (A) the aggregate amount of the US Dollar Equivalents of the principal amounts of the European Tranche Revolving Loans denominated in Euros (after giving effect to any European Tranche Revolving Loans made or repaid on such date) and (B) the aggregate amount of the US Dollar Equivalents of the stated amounts of the Letters of Credit and unreimbursed LC Disbursements denominated in Designated Foreign Currencies and (ii) notify the Lenders and the Company of the results of such determination.

## ARTICLE II

### The Credits

Section 2.01. Commitments. (a) Subject to the terms and conditions set forth herein, each Lender agrees to make a Term Loan to the Company on the Effective Date in a principal amount equal to its Term Commitment.

(b) Subject to the terms and conditions set forth herein, each US Tranche Lender agrees to make US Tranche Revolving Loans to the Company from time to time during the Revolving Availability Period in US Dollars in an aggregate principal amount at any time outstanding that will not result in (i) such Lender's US Tranche Revolving Exposure exceeding its US Tranche Commitment or (ii) the aggregate amount of the Lenders' US Tranche Revolving Exposures exceeding the aggregate amount of the US Tranche Commitments.

(c) Subject to the terms and conditions set forth herein, each European Tranche Lender agrees to make European Tranche Revolving Loans from time to time during the Revolving Availability Period to the European Borrowers in US Dollars or Euros and to the Company in US Dollars in an aggregate principal amount at any time outstanding that will not result in (i) such Lender's European Tranche Revolving Exposure exceeding its European Tranche Commitment or (ii) the aggregate amount of the Lenders' European Tranche Revolving Exposures exceeding the aggregate amount of the European Tranche Commitments.

Section 2.02. Loans and Borrowings. (a) Each Term Loan shall be made as part of a Borrowing consisting of Term Loans made by the Term Lenders ratably in accordance with their respective Term Commitments. Each US Tranche Revolving Loan shall be made as part of a Borrowing consisting of US Tranche Revolving Loans made by the US Tranche Lenders ratably in accordance with their respective US Tranche Commitments. Each European Tranche Revolving Loan shall be made as part of a Borrowing consisting of European Tranche Revolving

Loans made by the European Tranche Lenders ratably in accordance with their respective European Tranche Commitments. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations

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hereunder; provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required hereunder.

(b) Subject to Section 2.14, (i) each Term Borrowing shall be comprised entirely of Eurocurrency Loans or ABR Loans as the Company may request in accordance herewith; (ii) each US Tranche Revolving Borrowing shall be comprised entirely of Eurocurrency Loans or ABR Loans as the Company may request in accordance herewith; (iii) each European Tranche Revolving Borrowing shall be comprised entirely of (A) in the case of a Borrowing made by the Company, Eurocurrency Loans or ABR Loans as the Company may request in accordance herewith and, (B) in the case of a Borrowing made by a European Borrower, Eurocurrency Loans; and (iv) each Swingline Loan shall be comprised entirely of ABR Loans. Each Lender at its option may make any Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan (and in the case of an Affiliate, the provisions of Sections 2.14, 2.15, 2.16 and 2.17 shall apply to such Affiliate to the same extent as to such Lender); provided that any exercise of such option shall not affect the obligation of the applicable Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Borrowing (other than a Swingline Loan), such Borrowing shall be in an aggregate amount that is at least equal to the Borrowing Minimum and an integral multiple of the Borrowing Multiple; provided that (i) an ABR Revolving Borrowing may be made in an aggregate amount that is equal to the aggregate available US Tranche Commitments or European Tranche Commitments, as the case may be and (ii) a Revolving Borrowing made to refinance an existing Swingline Loan may be made in an aggregate principal amount that is equal to the aggregate principal amount of such existing Swingline Loan. Borrowings of more than one Type and Class may be outstanding at the same time; provided that there shall not at any time be more than a total of (i) eight US Tranche Eurocurrency Revolving Borrowings outstanding or (ii) four European Tranche Eurocurrency Revolving Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, no Borrower shall be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

Section 2.03. Notice of Borrowings. To request a Borrowing (other than a Swingline Loan), the applicable Borrower, or the Company on behalf of the applicable Borrower, shall notify the Applicable Agent of such request by telephone (a) in the case of a Eurocurrency Borrowing, not later than 12:00 noon, Local Time, three Business Days before the date of the proposed Borrowing and (b) in the case of an ABR Borrowing, not later than 12:00 noon, Local Time, one Business Day before the date of the proposed Borrowing; provided that any such notice of an ABR Revolving Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.05(e) may be given not later than 12:00 noon, Local Time, on the date of the proposed Borrowing. Each such telephonic Borrowing Request

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shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Applicable Agent of a written Borrowing Request in a form approved by the Applicable Agent and signed by the applicable Borrower, or by the Company on behalf of the applicable Borrower. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.02:

- (i) the Borrower requesting such Borrowing (or on whose behalf the Company is requesting such Borrowing);
- (ii) whether the requested Borrowing is to be a Term Borrowing, US Tranche Revolving Borrowing or a European Tranche Revolving Borrowing;
- (iii) the currency and aggregate principal amount of the requested Borrowing;
- (iv) the date of the requested Borrowing, which shall be a Business Day;
- (v) the Type of the requested Borrowing;
- (vi) in the case of a Eurocurrency Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and

(vii) the location and number of the relevant Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.06.

If no currency is specified with respect to any requested Eurocurrency Revolving Borrowing, then the relevant Borrower shall be deemed to have selected US Dollars. If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be (i) in the case of a Borrowing by the Company, an ABR Borrowing and (ii) in the case of a Borrowing by a European Borrower, a Eurocurrency Borrowing. If no Interest Period is specified with respect to any requested Eurocurrency Borrowing, then the relevant Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Applicable Agent shall advise each Lender that will make a Loan as part of the requested Borrowing of the details thereof and of the amount of the Loan to be made by such Lender as part of the requested Borrowing.

Section 2.04. Swingline Loans. (a) Subject to the terms and conditions set forth herein, the Swingline Lender agrees to make Swingline Loans to the Company from time to time during the Revolving Availability Period in an aggregate principal amount at any time outstanding that will not exceed the lesser of (i) \$25,000,000 and (ii) the difference between (A) total US Tranche Commitments and (B) the sum of (x) the aggregate principal amount of US Tranche Revolving Loans outstanding at such time and (y) the LC Exposure at such time; provided that no Swingline Loan shall be made to refinance an outstanding Swingline Loan. Within the

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foregoing limits and subject to the terms and conditions set forth herein, the Company may borrow, prepay and reborrow Swingline Loans.

(b) To request a Swingline Loan, the Company shall notify the Administrative Agent of such request by telephone (confirmed by telecopy), not later than 1:00 p.m., New York City time, on the day of a proposed Swingline Loan. Each such notice shall be irrevocable and shall specify the requested date (which shall be a Business Day) and amount (which shall be no less than \$1,000,000) of the requested Swingline Loan and the location and number of the Company's account to which funds are to be disbursed, which account shall comply with the requirements of Section 2.06. The Administrative Agent will promptly advise the Swingline Lender of any such notice received from the Company. The Swingline Lender shall make each Swingline Loan available to the Company by means of a credit or wire transfer to the account specified in writing by the Company in such notice (or, in the case of a Swingline Loan made to finance the reimbursement of an LC Disbursement as provided in Section 2.05(e), by remittance to the Issuing Bank) by 3:00 p.m., New York City time, on the requested date of such Swingline Loan.

(c) The Swingline Lender may by written notice given to the Administrative Agent not later than 12:00 noon, New York City time, on any Business Day require the US Tranche Lenders to acquire participations on such Business Day in all or a portion of the outstanding Swingline Loans. Such notice shall specify the aggregate amount of Swingline Loans in which US Tranche Lenders will participate. Promptly upon receipt of such notice, the Administrative Agent will give notice thereof to each US Tranche Lender, specifying in such notice such Lender's US Tranche Percentage of such Swingline Loan or Swingline Loans. Each US Tranche Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of the Swingline Lender, such Lender's US Tranche Percentage of such Swingline Loan or Swingline Loans. Each US Tranche Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or reduction or termination of the US Tranche Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each US Tranche Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.06 with respect to Loans made by such Lender (and Section 2.06 shall apply, mutatis mutandis, to the payment obligations of the US Tranche Lenders), and the Administrative Agent shall promptly pay to the Swingline Lender the amounts so received by it from the US Tranche Lenders. The Administrative Agent shall promptly notify the Company in writing of any participations in any Swingline Loan acquired pursuant to this paragraph, and thereafter payments in respect of such Swingline Loan shall be made to the Administrative Agent, for the account of the US Tranche Lenders, and not to the Swingline Lender. Any amounts received by the Swingline Lender from the Company (or other party on behalf of the Company) in respect of a Swingline Loan after receipt by the Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Administrative Agent; any such amounts received by the Administrative Agent shall be

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promptly remitted by the Administrative Agent to the US Tranche Lenders that shall have made their payments pursuant to this paragraph and to the Swingline



Lender, as their interests may appear. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve the Company of any default in the payment thereof provided, that a US Tranche Lender shall not be required to purchase a participation in a Swingline Loan pursuant to this Section 2.04(c) if (x) a Default shall have occurred and was continuing at the time such Swingline Loan was made and (y) such US Tranche Lender shall have notified the Swingline Lender in writing, not less than one Business Day before such Swingline Loan was made, that such Default has occurred and that such US Tranche Lender will not refund or participate in any Swingline Loans made while such Default exists.

Section 2.05. Letters of Credit. (a) General. Subject to the terms and conditions set forth herein, the Company may request the issuance (or the amendment, renewal or extension) of Letters of Credit denominated in US Dollars or any Designated Foreign Currency, in any case in a form reasonably acceptable to the Administrative Agent and the Issuing Bank, at any time and from time to time during the Revolving Availability Period. In the event of any inconsistency between this Agreement and any form of letter of credit application or other agreement submitted by the Company or any other Borrower to, or entered into by the Company or any other Borrower with, the Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control. The Existing Letters of Credit will, for all purposes of this Agreement, be deemed to have been issued hereunder on the Effective Date and will, for all purposes of this Agreement, constitute Letters of Credit. On the Effective Date, (i) any fronting fees provided for in the agreements under which the Existing Letters of Credit were issued shall cease to accrue and shall be replaced by the fronting fee provided for in Section 2.12(b) (it being understood that any other fees referred to in Section 2.12(b) that shall have been agreed upon by the Company and the Existing Issuing Bank shall continue to apply, but that no new issuance fee will be charged in connection with the deemed issuance of any Existing Letter of Credit on the Effective Date).

(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Company shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the Issuing Bank) to the Issuing Bank and the Administrative Agent (reasonably in advance of the requested date of issuance, amendment, renewal or extension) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the currency and amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to enable the Issuing Bank to prepare, amend, renew or extend such Letter of Credit. If requested by the Issuing Bank, the Company also shall submit a letter of credit application on the Issuing Bank's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued,

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amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the Company shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension, (i) the LC Exposure will not exceed \$50,000,000 and (ii) the aggregate US Tranche Revolving Exposures will not exceed the aggregate US Tranche Commitments. Notwithstanding anything to the contrary contained herein, no Existing Letter of Credit may be amended, renewed or extended.

(c) Expiration Date. Each Letter of Credit shall expire at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (ii) the date that is five Business Days prior to the Maturity Date provided, that any Letter of Credit with a one-year tenor may provide for renewal thereof under procedures satisfactory to the Issuing Bank for additional one-year periods (which shall in no event extend beyond the date referred to in clause (ii) above).

(d) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Bank or the US Tranche Lenders, the Issuing Bank hereby grants to each US Tranche Lender, and each US Tranche Lender hereby acquires from the Issuing Bank, a participation in such Letter of Credit equal to such US Tranche Lender's US Tranche Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each US Tranche Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Bank, in US Dollars such Lender's US Tranche Percentage of each LC Disbursement made by the Issuing Bank and not reimbursed by the Company on the date due as provided in paragraph (e) of this Section or of any reimbursement payment required to be refunded to the Company for any reason. Each US Tranche Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the

occurrence and continuance of a Default or reduction or termination of the US Tranche Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) Reimbursement. If the Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Company shall reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement, not later than 1:00 p.m., New York City time, on the date that such LC Disbursement is made, if the Company shall have received notice of such LC Disbursement prior to 11:00 a.m., New York City time, on such date, or, if such notice has not been received by the Company prior to such time on such date, then not later than 1:00 p.m., New York City time, on (A) the Business Day that the Company receives such notice, if such notice is received prior to 11:00 a.m., New York City time, on the day of receipt, or (B) the Business Day immediately following the day that the Company receives such notice, if such notice is not received prior to such time on the day of receipt. If the Company fails to make such payment when due then, upon notice from the applicable Issuing Bank to

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the Company and the Administrative Agent, (i) if the applicable Letter of Credit is denominated in a Designated Foreign Currency, the Company's obligation to reimburse such LC Disbursement shall be converted into an obligation in US Dollars in such amount as the Administrative Agent shall determine would be required, based on current exchange rates, to enable it to purchase an amount of such Designated Foreign Currency equal to the amount of such LC Disbursement, and (ii) the Administrative Agent shall notify each US Tranche Lender of the applicable LC Disbursement, the payment then due from the Company in respect thereof and such Lender's US Tranche Percentage, thereof. Promptly following receipt of such notice, each US Tranche Lender shall pay to the Administrative Agent in US Dollars its US Tranche Percentage of the payment then due from the Company in the same manner as provided in Section 2.06 with respect to Loans made by such US Tranche Lender (and Section 2.06 shall apply, mutatis mutandis, to the payment obligations of the US Tranche Lenders), and the Administrative Agent shall promptly pay to the applicable Issuing Bank the amounts so received by it from the US Tranche Lenders. Promptly following receipt by the Administrative Agent of any payment from the Company pursuant to this paragraph, the Administrative Agent shall distribute such payment to the Issuing Bank or, to the extent that US Tranche Lenders have made payments pursuant to this paragraph to reimburse the Issuing Bank, then to such US Tranche Lenders and the Issuing Bank as their interests may appear. Any payment made by a US Tranche Lender pursuant to this paragraph to reimburse the Issuing Bank for any LC Disbursement shall not constitute a Loan and shall not relieve the Company of its obligation to reimburse such LC Disbursement.

(f) Obligations Absolute. The Company's obligations to reimburse LC Disbursements as provided in paragraph (e) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement or any other Loan Document, or any term or provision herein or therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of set-off against, the Company's obligations hereunder. None of the Administrative Agent, the US Tranche Lenders or the Issuing Bank, or any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuing Bank; provided that the foregoing shall not be construed to excuse the Issuing Bank from liability to the Company to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the

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Company to the extent permitted by applicable law) suffered by the Company that are caused by the Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Issuing Bank (as finally determined by a court of competent jurisdiction), the Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in

substantial compliance with the terms of a Letter of Credit, the Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) Disbursement Procedures. The Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuing Bank shall promptly notify the Administrative Agent and the Company by telephone (confirmed by telecopy) of such demand for payment and whether the Issuing Bank has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Company of its obligation to reimburse the Issuing Bank and the US Tranche Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If the Issuing Bank shall make any LC Disbursement, then, unless the Company shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Company reimburses such LC Disbursement, at the rate per annum then applicable to ABR Revolving Loans; provided that, at all times after the Company fails to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section, Section 2.13(d) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the Issuing Bank, except that interest accrued on and after the date of payment by any US Tranche Lender pursuant to paragraph (e) of this Section to reimburse the Issuing Bank shall be for the account of such US Tranche Lender to the extent of such payment.

(i) Replacement of the Issuing Bank. The Issuing Bank may be replaced at any time by written agreement among the Company, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Lenders of any such replacement of the Issuing Bank. At the time any such replacement shall become effective, the Company shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.12(b). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the

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replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of the Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(j) Cash Collateralization. If the US Tranche Commitments shall be terminated, then on the Business Day that the Company receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, US Tranche Lenders with LC Exposures representing greater than 50% of the total LC Exposure) demanding the deposit of cash collateral pursuant to this paragraph, the Company shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the US Tranche Lenders, an amount in cash equal to the LC Exposure as of such date plus any accrued and unpaid interest thereon; provided that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand presentment, protest or other notice of any kind, all of which are expressly waived by the Borrowers, upon the occurrence of any Event of Default with respect to the Company described in clause (g) of Article VII. Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Company under this Agreement. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Company's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Company for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of US Tranche Lenders with LC Exposures representing greater than 50% of the total LC Exposure) be applied to satisfy other obligations of the Company under this Agreement. If the Company is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to it within three Business Days after all Events of Default have been cured or waived.

Section 2.06. Funding of Borrowings. (a) Each Lender shall make each Loan

(other than a Swingline Loan) to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds in the applicable currency by 11:00 a.m., Local Time, to the account of the Applicable Agent most recently designated by it for such purpose for Loans of such Class and currency by notice to the applicable Lenders. The Applicable Agent will make such Loans available to the relevant Borrower by promptly crediting the amounts so received, in like funds, to an account of such Borrower (i) in New York City or Boston, in the case of Loans denominated in US Dollars and (ii) in London, in the case of Loans denominated in Euros; provided that US Tranche Revolving Loans made to finance the reimbursement

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of an LC Disbursement shall be remitted by the Administrative Agent to the Issuing Bank.

(b) Unless the Applicable Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Applicable Agent such Lender's share of such Borrowing, the Applicable Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the relevant Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Applicable Agent, then the applicable Lender and such Borrower severally agree to pay to the Applicable Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to such Borrower to but excluding the date of payment to the Applicable Agent, at (i) in the case of such Lender, the rate reasonably determined by the Applicable Agent to be the cost to it of funding such amount or (ii) in the case of such Borrower, the interest rate applicable to the subject Loan. If such Lender pays such amount to the Applicable Agent, then such amount shall constitute such Lender's Loan included in such Borrowing and the Applicable Agent shall return to such Borrower any amount (including interest) paid by such Borrower to the Applicable Agent pursuant to this paragraph.

Section 2.07. Repayment of Borrowings; Evidence of Debt. (a) Each Borrower hereby unconditionally promises to pay to the Applicable Agent for the accounts of the applicable Lenders (i) the then unpaid principal amount of each Revolving Borrowing and Term Loan of such Borrower on the Maturity Date and (ii) the then unpaid amount of each Swingline Loan on the earlier of the Maturity Date and the twenty-first Business Day after such Swingline Loan is made.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of each Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class, Type and currency thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from each Borrower to each Lender hereunder and (iii) the amount of any sum received by any Agent hereunder for the accounts of the Lenders and each Lender's share thereof. The London Agent shall furnish to the Administrative Agent, promptly after the making of any Loan or Borrowing with respect to which it is the Applicable Agent or the receipt of any payment of principal or interest with respect to any such Loan or Borrowing, information with respect thereto that will enable the Administrative Agent to maintain the accounts referred to in the preceding sentence. The Administrative Agent shall notify the London Agent promptly after the making of any Loan or Borrowing with respect to which it is the Applicable Agent or the receipt of payment of any principal with respect to any such Loan or Borrowing.

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(d) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of any Borrower to repay the Loans in accordance with the terms of this Agreement.

(e) Any Lender may request that Loans of any Class made by it to any Borrower be evidenced by a promissory note. In such event, each applicable Borrower shall prepare, execute and deliver to such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by each such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 11.04) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

Section 2.08. Interest Elections. (a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurocurrency Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the relevant Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurocurrency Borrowing, may elect Interest Periods therefor, all as provided in this Section and on terms consistent with the other provisions of this Agreement. A Borrower may elect different options with respect to different portions of an affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Revolving Borrowing. This Section shall not apply to Swingline Loans, which may not be converted or continued pursuant to this Section 2.08.

(b) To make an election pursuant to this Section, a Borrower, or the Company on its behalf, shall notify the Applicable Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.03 if such Borrower were requesting a Revolving Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or teletype to the Applicable Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by the relevant Borrower, or by the Company on its behalf. Notwithstanding any contrary provision herein, this Section shall not be construed to permit any Borrower to (i) change the currency of any Borrowing, (ii) elect an Interest Period for Eurocurrency Loans that does not comply with Section 2.02(d) or (iii) convert any Borrowing to a Borrowing of a Type not available under the Class of Commitments pursuant to which such Borrowing was made.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.02:

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(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) the Type of the resulting Borrowing; and

(iv) if the resulting Borrowing is to be a Eurocurrency Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurocurrency Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Applicable Agent shall advise each Lender holding a Loan to which such request relates of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the relevant Borrower fails to deliver a timely Interest Election Request with respect to a Eurocurrency Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period, such Borrowing shall (i) in the case of a Borrowing denominated in US Dollars, be converted to an ABR Borrowing and (ii) in the case of any other Eurocurrency Borrowing, become due and payable on the last day of such Interest Period.

Section 2.09. Termination and Reduction of Commitments. (a) The Term Loan Commitment shall terminate upon the earlier of the borrowing of the Term Loans and 5:00 p.m., New York City time, on the Effective Date. Unless previously terminated, the US Tranche Commitments and European Tranche Commitments shall terminate on the Maturity Date; provided that all Commitments shall terminate at 5:00 p.m., New York City time, on December 30, 2004, if the Effective Date shall not have occurred prior to such time.

(b) The Company may at any time terminate, or from time to time reduce, without premium or penalty, the Commitments of any Class; provided that (i) each reduction of the Commitments of any Class shall be in an amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum, (ii) the Company shall not terminate or reduce the US Tranche Commitments if, after giving effect to any concurrent prepayment of the US Tranche Revolving Loans in accordance with Section 2.11, the aggregate US Tranche Revolving Exposures would exceed the aggregate US Tranche Commitments

and (iii) the Company shall not terminate or reduce the European Tranche Commitments if, after giving effect to any concurrent prepayment of the European Tranche Revolving Loans in accordance with Section 2.11, the aggregate

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European Tranche Revolving Exposures would exceed the aggregate European Tranche Commitments.

(c) The Company shall notify the Administrative Agent of any election to terminate or reduce the Commitments of any Class under paragraph (b) of this Section at least three Business Days prior to the effective date of such termination or reduction, specifying the effective date of such election. Promptly following receipt of any such notice, the Administrative Agent shall advise the European Agent and the applicable Lenders of the contents thereof. Each notice delivered by the Company pursuant to this Section shall be irrevocable; provided that a notice of termination of the Commitments delivered by the Company may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Company (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitments of any Class shall be permanent. Each reduction of the Commitments of any Class shall be made ratably among the applicable Lenders in accordance with their respective Commitments of such Class.

Section 2.10. Increase in Commitments. (a) The Company may on a single occasion, by written notice to the Administrative Agent (which shall promptly deliver a copy to each of the Lenders), request that the total US Tranche Commitments or European Tranche Commitments be increased by an amount not less than \$25,000,000 (with simultaneous increases in the US Tranche Commitments and the European Tranche Commitments being deemed to be a single increase); provided that the aggregate amount of the increases in the US Tranche Commitments and the European Tranche Commitments shall not exceed \$100,000,000. Such notice shall set forth the amount of the requested increase in the total US Tranche Commitments or European Tranche Commitments, as the case may be, and the date on which such increase is requested to become effective (which shall be not less than 30 days or more than 60 days after the date of such notice), and shall offer each Lender the opportunity to increase its Commitment by its US Tranche Percentage or European Tranche Percentage, as the case may be, of the proposed increased amount. Each applicable Lender shall, by notice to the Company and the Administrative Agent given not more than 10 Business Days after the date of the Company's notice, either agree to increase its applicable Commitment by all or a portion of the offered amount (each Lender so agreeing being an "Increasing Lender") or decline to increase its applicable Commitment (and any Lender that does not deliver such a notice within such period of 10 Business Days shall be deemed to have declined to increase its Commitment) (each Lender so declining or deemed to have declined being a "Non-Increasing Lender"). In the event that, on the 10th Business Day after the Company shall have delivered a notice pursuant to the first sentence of this paragraph, the Lenders shall have agreed pursuant to the preceding sentence to increase their Commitments by an aggregate amount less than the increase in the total Commitments requested by the Company, the Company may arrange for one or more banks or other financial institutions (any such bank or other financial institution being called an "Augmenting Lender"), which may include any Lender, to extend US Tranche Commitments or European Tranche Commitments, as the case may be, or increase their existing US Tranche Commitments

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or European Tranche Commitments, as the case may be, in an aggregate amount equal to the unsubscribed amount; provided that each Augmenting Lender, if not already a Lender hereunder, shall be subject to the approval of the Administrative Agent, the Issuing Bank and the Swingline Lender (which approval shall not be unreasonably withheld) and the Borrowers and each Augmenting Lender shall execute all such documentation as the Administrative Agent shall reasonably specify to evidence the Commitment of such Augmenting Lender and/or its status as a Lender hereunder. Any increase in the total US Tranche Commitments or European Tranche Commitments, as the case may be, may be made in an amount which is less than the increase requested by the Company if the Company is unable to arrange for, or chooses not to arrange for, Augmenting Lenders.

(b) On the effective date (the "Increase Effective Date") of any increase in the total US Tranche Commitments or European Tranche Commitments pursuant to this Section (the "Commitment Increase"), (i) the aggregate principal amount of the US Tranche Revolving Loans or European Tranche Revolving Loans, as the case may be, outstanding (the "Initial Loans") immediately prior to giving effect to the Commitment Increase on the Increase Effective Date shall be deemed to be paid, (ii) each Increasing Lender and each Augmenting Lender that shall have been a US Tranche Lender or European Tranche Lender, as the case may be, prior to the Commitment Increase shall pay to the Administrative Agent or, if designated by the Administrative Agent for such purpose, the European Agent in same day funds an amount equal to the difference between (A) the product of (1) such Lender's US Tranche Percentage or European Tranche Percentage, as the case

may be (calculated after giving effect to the Commitment Increase), multiplied by (2) the amount of the Subsequent Borrowings (as hereinafter defined) and (B) the product of (1) such Lender's US Tranche Percentage or European Tranche Percentage, as the case may be (calculated without giving effect to the Commitment Increase), multiplied by (2) the amount of the Initial Loans, (iii) each Augmenting Lender that shall not have been a Lender prior to the Commitment Increase shall pay to the Administrative Agent or, if designated by the Administrative Agent for such purpose, the European Agent in same day funds an amount equal to the product of (1) such Augmenting Lender's US Tranche Percentage or European Tranche Percentage (calculated after giving effect to the Commitment Increase) multiplied by (2) the amount of the Subsequent Borrowings, and (iv) after the Administrative Agent or European Agent receives the funds specified in clauses (ii) and (iii) above, the Administrative Agent or European Agent shall pay to each Non-Increasing Lender the portion of such funds that is equal to the excess of (A) the product of (1) such Non-Increasing Lender's US Tranche Percentage or European Tranche Percentage (calculated without giving effect to the Commitment Increase) multiplied by (2) the amount of the Initial Loans, over (B) the product of (1) such Non-Increasing Lender's US Tranche Percentage or European Tranche Percentage (calculated after giving effect to the Commitment Increase) multiplied by (2) the amount of the Subsequent Borrowings, (v) after the effectiveness of the Commitment Increase, the applicable Borrowers shall be deemed to have made new Borrowings (the "Subsequent Borrowings") in an aggregate principal amount equal to the aggregate principal amount of the Initial Loans and of the types and for the Interest Periods specified in a Borrowing Request delivered to the Administrative Agent in accordance with Section 2.03, (vi) each Non-Increasing Lender, each Increasing Lender

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and each Augmenting Lender shall be deemed to hold its US Tranche Percentage or European Tranche Percentage, as the case may be, of each Subsequent Borrowing (each calculated after giving effect to the Commitment Increase) and (vii) the applicable Borrowers shall pay each Increasing Lender and each Non-Increasing Lender any and all accrued but unpaid interest on the Initial Loans. The deemed payments made pursuant to clause (i) above in respect of each Eurocurrency Loan shall be subject to indemnification by the Borrowers pursuant to the provisions of Section 2.16 if the Increase Effective Date occurs other than on the last day of the Interest Period relating thereto and breakage costs result. In the case of an increase in the European Tranche Commitments at a time when Loans denominated in both Euro and US Dollars shall be outstanding, the amounts payable by the Increasing Lenders and any Requesting Lenders pursuant to this paragraph shall be paid in Euro and US Dollars in proportion to the principal amounts of the Euro and US Dollar denominated European Tranche Revolving Loans outstanding on the Increase Effective Date.

(c) Increases and new Commitments pursuant to this Section shall become effective on the date specified in the notice delivered by the Company pursuant to the first sentence of paragraph (a) above.

(d) Notwithstanding the foregoing, no increase in the Commitments of any Class (or in any Commitment of any Lender) or addition of an Augmenting Lender shall become effective under this Section unless, (i) on the date of such increase, the conditions set forth in paragraphs (a) and (b) of Section 4.02 shall be satisfied and the Administrative Agent shall have received a certificate to that effect dated such date and executed by the chief financial officer of the Company, and (ii) the Administrative Agent shall have received (with sufficient copies for each of the Lenders) documents consistent with those delivered on the Effective Date under clauses (b) and (c) of Section 4.01 as to the corporate power and authority of the applicable Borrowers to borrow hereunder after giving effect to such increase.

Section 2.11. Prepayment of Loans. (a) Any Borrower shall have the right at any time and from time to time to prepay any Borrowing of such Borrower in whole or in part, subject to prior notice in accordance with paragraph (d) of this Section.

(b) If the aggregate Exposures of any Class shall exceed the aggregate Commitments of such Class, then (i) on the last day of any Interest Period for any Eurocurrency Revolving Borrowing and (ii) on any other date in the event ABR Revolving Borrowings of such Class shall be outstanding, the applicable Borrowers shall prepay Revolving Loans of such Class in an amount equal to the lesser of (A) the amount necessary to eliminate such excess (after giving effect to any other prepayment of Loans on such day) and (B) the amount of the applicable Borrowings referred to in clause (i) or (ii), as applicable. If, on any Reset Date, the aggregate amount of the Exposures of any Class shall exceed 105% of the aggregate Commitments of such Class, then the applicable Borrowers shall, not later than the next Business Day, prepay one or more Borrowings of such Class in an aggregate principal amount sufficient to eliminate such excess.

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(c) Prior to any prepayment of Borrowings hereunder, the applicable Borrower shall select the Borrowing or Borrowings to be prepaid and shall specify such selection in the notice of such prepayment pursuant to paragraph (d) of this Section.

(d) The applicable Borrower, or the Company on behalf of the applicable Borrower, shall notify the Applicable Agent by telephone (confirmed by telecopy) of any prepayment of a Borrowing hereunder not later than 11:00 a.m., Local Time, three Business Days before the date of such prepayment (to the extent practicable, in the case of a prepayment under paragraph (b) above). Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Commitments as contemplated by Section 2.09(c), then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.09(c). Promptly following receipt of any such notice, the Applicable Agent shall advise the applicable Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.02. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by (i) accrued interest to the extent required by Section 2.13 and (ii) break funding payments pursuant to Section 2.16.

Section 2.12. Fees. (a) The Company agrees to pay to the Administrative Agent for the account of each Lender a facility fee, which shall accrue (i) with respect to US Tranche Lenders and European Tranche Lenders, at the Applicable Rate with respect to the facility fee (A) on the daily amount of the US Tranche Commitment and the European Tranche Commitment of such Lender (whether used or unused) during the period from and including the date hereof to but excluding the date on which the last of such Commitments terminates and (B) after the Commitment of each Class terminates, on the daily amount of such Lender's Exposure of such Class to but excluding the date on which such Lender ceases to have any such Exposure and (ii) with respect to Term Lenders, at the Applicable Rate with respect to the facility fee on the daily amount of such Lender's Term Loan Exposure to but excluding the date on which such Lender ceases to have any Term Loan Exposure. Accrued facility fees shall be payable in arrears on the last day of March, June, September and December of each year, commencing on the first such date to occur after the date hereof, and on the date on which all the Commitments shall have terminated and the Lenders shall have no further Exposures. All facility fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) The Company agrees to pay (i) to the Administrative Agent for the account of each US Tranche Lender a participation fee with respect to its participations in Letters of Credit, which shall accrue at the Applicable Rate used to determine the interest rate applicable to US Tranche Eurocurrency Revolving Loans on the daily amount of such US Tranche Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the date hereof to

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but excluding the later of the date on which such US Tranche Lender's US Tranche Commitment terminates and the date on which such Lender ceases to have any LC Exposure, and (ii) to the Issuing Bank a fronting fee, which shall accrue at the rate of 0.25% per annum on the average daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the date hereof to but excluding the later of the date of termination of the US Tranche Commitments and the date on which there ceases to be any LC Exposure, as well as the Issuing Bank's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and fronting fees accrued under this paragraph through and including the last day of March, June, September and December of each year shall be payable on such last day, commencing on the first such date to occur after the date hereof; provided that all such fees shall be payable on the date on which the US Tranche Commitments terminate and any such fees accruing after the date on which the US Tranche Commitments terminate shall be payable on demand. Any other fees payable to the Issuing Bank pursuant to this paragraph shall be payable within 10 days after demand. All participation fees and fronting fees payable under this paragraph shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(c) The Company agrees to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Company and the Administrative Agent.

(d) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent (or to the Issuing Bank, in the case of fees payable to it) for distribution, in the case of facility fees, to the Lenders. Fees paid hereunder shall not be refundable.

Section 2.13. Interest. (a) The Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Loans comprising each Eurocurrency Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.



(c) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee payable by any Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2% per annum plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount, 2% plus the rate applicable to ABR Revolving Loans as provided in paragraph (a) above.

(d) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan; provided that (i) interest accrued pursuant to

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paragraph (c) above shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Revolving Loan prior to the end of the Revolving Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurocurrency Revolving Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate or Adjusted LIBO Rate shall be determined by the Applicable Agent, and such determination shall be conclusive absent manifest error.

Section 2.14. Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurocurrency Borrowing denominated in any currency:

(a) the Applicable Agent determines (which determination shall be conclusive absent manifest error) that adequate means do not exist for ascertaining the Adjusted LIBO Rate for such Interest Period; or

(b) the Applicable Agent is advised by a majority in interest of the Lenders that would participate in such Borrowing that the Adjusted LIBO Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period;

then the Applicable Agent shall give notice thereof to the applicable Borrower and the applicable Lenders by telephone or telecopy as promptly as practicable thereafter and, until the Applicable Agent notifies the applicable Borrower and the applicable Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Revolving Borrowing denominated in such currency to, or continuation of any Revolving Borrowing denominated in such currency as, a Eurocurrency Borrowing shall be ineffective, and any Eurocurrency Borrowing denominated in such currency that is requested to be continued shall be repaid on the last day of the then current Interest Period applicable thereto, and (ii) any Borrowing Request for a Eurocurrency Revolving Borrowing denominated in such currency shall be ineffective.

Section 2.15. Increased Costs. (a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender or the Issuing Bank; or

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(ii) impose on any Lender or the Issuing Bank or the London interbank market any other condition affecting this Agreement or Eurocurrency Loans made by such Lender or any Letter of Credit or participations therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurocurrency Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or the Issuing Bank of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or the Issuing Bank hereunder (whether of principal, interest or otherwise), then the Company will pay or cause the other Borrowers to pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank for such additional costs incurred or reduction suffered.

(b) If any Lender or the Issuing Bank reasonably determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or Issuing Bank's capital or on the

capital of such Lender's or Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding company with respect to capital adequacy), then from time to time the Company will pay or cause the European Borrowers to pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or the Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company, as the case may be, as specified in paragraph (a) or (b) of this Section, and setting forth in reasonable detail the calculations used by such Lender or the Issuing Bank to determine such amount, shall be delivered to the Company and shall be conclusive absent manifest error. The Company shall pay or cause the other Borrowers to pay to such Lender or the Issuing Bank, as the case may be, the amount shown as due on any such certificate within 15 Business Days after receipt thereof. Any additional interest owed pursuant to paragraph (b) above shall be determined by the relevant Lender, which determination shall be conclusive absent manifest error, and notified to the relevant Borrower (with copies to the Administrative Agent and the London Agent) at least five Business Days before each date on which interest is payable for the relevant Loan, and such additional interest so notified to the relevant Borrower by such Lender shall be payable to the London Agent for the account of such Lender on each date on which interest is payable for such Loan.

(d) Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such

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Lender's or the Issuing Bank's right to demand such compensation; provided that the Company shall not be required to compensate a Lender or the Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than 180 days prior to the date that such Lender or the Issuing Bank, as the case may be, notifies the applicable Borrower of the Change in Law giving rise to such increased costs or reductions; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 2.16. Break Funding Payments. In the event of (a) the payment (or deemed payment pursuant to Section 2.10) of any principal of any Eurocurrency Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurocurrency Loan to a Loan of a different Type or Interest Period other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.11(d) and is revoked in accordance therewith), or (d) the assignment or deemed assignment of any Eurocurrency Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Company pursuant to Section 2.19 or the CAM Exchange, then, in any such event, the applicable Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Eurocurrency Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest that would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest that would accrue on such principal amount for such period at the interest rate such Lender would bid were it to bid, at the commencement of such period, for deposits in the applicable currency of a comparable amount and period from other banks in the London interbank market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section, and setting forth in reasonable detail the calculations used by such Lender to determine such amount or amounts, shall be delivered to the applicable Borrower and shall be conclusive absent manifest error. The applicable Borrower shall pay such Lender the amount shown as due on any such certificate within 15 Business Days after receipt thereof.

Section 2.17. Taxes. (a) Any and all payments by or on account of any Borrower hereunder or under any other Loan Document shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; provided that if any Borrower shall be required to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent, the London

Agent, the applicable Lender or the Issuing Bank, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) such Borrower shall make such

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deductions and (iii) such Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) In addition, the Loan Parties shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Each Borrower shall indemnify the Administrative Agent, the London Agent, each Lender and the Issuing Bank, within 15 Business Days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by such Agent or Lender or the Issuing Bank, as the case may be, on or with respect to any payment by or on account of any obligation of such Borrower hereunder or under any other Loan Document (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability setting forth in reasonable detail the circumstances giving rise thereto and the calculations used by such Lender to determine the amount thereof delivered to the Company by a Lender or the Issuing Bank, or by an Agent, on its own behalf or on behalf of a Lender or the Issuing Bank, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by any Borrower to a Governmental Authority, such Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Any Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which a Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to the Company (with a copy to the Administrative Agent), at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law or reasonably requested by the Company as will permit such payments to be made without withholding or at a reduced rate (including, in the case of a European Tranche Lender, the certificate attached hereto as Exhibit C); provided that such Lender has received written notice from the Company advising it of the availability of such exemption or reduction and containing all applicable documentation. Each Lender shall promptly notify the Company at any time it determines that it is no longer in a position to provide any such previously delivered documentation to the Company.

#### Section 2.18. Payments Generally; Pro Rata Treatment; Sharing of Setoffs.

(a) Each Borrower shall make each payment required to be made by it hereunder or under any other Loan Document (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.15, 2.16 or 2.17, or otherwise) prior to 12:00 noon, Local Time, on the date when due, in

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immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Applicable Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Applicable Agent to the applicable account specified in Schedule 2.18 or, in any such case, to such other account as the Applicable Agent shall from time to time specify in a notice delivered to the Company; provided that payments to be made directly to the Issuing Bank as expressly provided herein and payments pursuant to Sections 2.15, 2.16, 2.17 and 11.03 shall be made directly to the Persons entitled thereto and payments pursuant to other Loan Documents shall be made to the Persons specified therein (it being agreed that the Borrowers will be deemed to have satisfied their obligations with respect to payments referred to in this proviso if they shall make such payments to the persons entitled thereto in accordance with instructions provided by the Administrative Agent; the Administrative Agent agrees to provide such instructions upon request, and no Borrower will be deemed to have failed to make such a payment if it shall transfer such payment to an improper account or address as a result of the failure of the Administrative Agent to provide proper instructions). The Applicable Agent shall distribute any such payments received by it for the account of any Lender or other Person promptly following receipt thereof at the appropriate lending office or other address specified by such Lender or other Person. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for

the period of such extension. All payments hereunder of principal or interest in respect of any Loan or LC Disbursement shall, except or otherwise expressly provided herein, be made in the currency of such Loan or LC Disbursement; all other payments hereunder and under each other Loan Document shall be made in US Dollars. Any payment required to be made by an Agent hereunder shall be deemed to have been made by the time required if such Agent shall, at or before such time, have taken the necessary steps to make such payment in accordance with the regulations or operating procedures of the clearing or settlement system used by such Agent to make such payment.

(b) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on its Loans or participations in LC Disbursements resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and participations in LC Disbursements and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans and participations in LC Disbursements of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of their respective Loans and participations in LC Disbursements and accrued interest thereon; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by any Borrower pursuant to and in accordance with the express terms of this Agreement or any payment

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obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to the Company or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). Each Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(c) Unless the Applicable Agent shall have received notice from the relevant Borrower prior to the date on which any payment is due for the account of all or certain of the Lenders or the Issuing Bank hereunder that such Borrower will not make such payment, the Applicable Agent may assume that such Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the applicable Lenders or the Issuing Bank, as the case may be, the amount due. In such event, if such Borrower has not in fact made such payment, then each of the applicable Lenders or the Issuing Bank, as the case may be, severally agrees to repay to the Applicable Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Applicable Agent, at a rate determined by the Applicable Agent in accordance with banking industry practices on interbank compensation.

(d) If any Lender shall fail to make any payment required to be made by it to any Agent pursuant to this Agreement, then the Agents may, in their discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by them for the account of such Lender to satisfy such Lender's obligations to the Agents until all such unsatisfied obligations are fully paid.

Section 2.19. Mitigation Obligations; Replacement of Lenders. (a) If any Lender requests compensation under Section 2.15, or if any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Company hereby agrees to pay all reasonable, direct, out-of-pocket costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requests compensation under Section 2.15, or if any Loan Party is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, or if any Lender

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defaults in its obligation to fund Loans hereunder, then the Company may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 11.04), all its interests, rights and obligations under the Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Company shall have received the prior written consent of the Administrative Agent (and if a US Tranche Revolving Commitment is being assigned, the Issuing Bank and the Swingline Lender), which consent shall not be unreasonably withheld and (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Disbursements, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee or the Company. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Company to require such assignment and delegation cease to apply.

### ARTICLE III

#### Representations and Warranties

The Company and each other Borrower represents and warrants as follows:

Section 3.01. Corporate Existence and Standing. The Company and each Subsidiary is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, except for failures which, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect or a material adverse effect on the rights or interests of the Lenders hereunder, and has all requisite authority to conduct its business in each jurisdiction in which the failure so to qualify could reasonably be expected to result in a Material Adverse Effect. Each European Borrower is a wholly owned direct or indirect subsidiary of the Company.

Section 3.02. Authorization; No Violation. The Transactions are within each Loan Party's corporate or partnership powers, have been duly authorized by all necessary corporate or partnership action and do not contravene (i) any Loan Party's charter, by-laws or other constitutive documents or (ii) any law or contractual restriction binding on or affecting any Loan Party, except for contraventions of contractual restrictions which individually or in the aggregate could not reasonably be expected to result in a Material Adverse Effect or a material adverse effect on the rights or interests of the Lender hereunder.

Section 3.03. Governmental Consents. No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or regulatory body is required for the due execution, delivery and performance by the Loan Parties of this Agreement or the other Loan Documents.

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Section 3.04. Validity. This Agreement is, and the other Loan Documents when executed and delivered will be, the legal, valid and binding obligations of the Loan Parties party thereto, enforceable against such Loan Parties in accordance with their respective terms, subject to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally and to the effect of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

Section 3.05. Use of Proceeds. The Borrowers will use the proceeds of the Loans and the Letters of Credit only for the purposes specified in the preamble to this Agreement.

Section 3.06. Litigation. As of the date hereof, there is no pending or, to the best of the knowledge of the Borrowers, threatened action or proceeding affecting the Company or any of its Subsidiaries before any court, Governmental Authority or arbitrator, which could reasonably be expected to result in a Material Adverse Effect, or which purports to affect the legality, validity or enforceability of this Agreement or any other Loan Document.

Section 3.07. Financial Statements; No Material Adverse Change. (a) The consolidated balance sheet of the Company and the Subsidiaries and the related consolidated statements of income, shareholders' equity and cash flows of the Company and the Subsidiaries (i) as at December 31, 2003, and for the year then ended, which financial statements are accompanied by the report of PricewaterhouseCoopers LLC, and (ii) as at April 3, July 3 and October 2, 2004, and for the fiscal quarters and the portions of the fiscal year then ended, certified by the Company's chief financial officer, as heretofore furnished to the Lenders, fairly present in all material respects the consolidated financial condition of the Company and the Subsidiaries as at such dates and their consolidated results of operations, shareholders' equity and cash flows for the periods then ended in conformity with GAAP, subject to year-end adjustments and the absence of footnotes in the case of the statements referred to in clause (ii) above.

(b) There has been, since December 31, 2003, no Material Adverse Effect.

Section 3.08. Investment Company Act. The Company is not (a) an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended or (b) a "holding company" as defined in, or subject to regulation under, the Public Utility Holding Company Act of 1935, as amended.

Section 3.09. Taxes. The Company and each Subsidiary has timely filed or caused to be filed all Tax returns and reports required to have been filed by it and has paid or caused to be paid all Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which the Company or such Subsidiary, as applicable, has set aside on its books

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adequate reserves or (b) to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

Section 3.10. ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. The present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plan by an amount that could reasonably be expected to result in a Material Adverse Effect, and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of all such underfunded Plans by an amount that could reasonably be expected to result in a Material Adverse Effect.

Section 3.11. Regulation U. Neither the Company nor any of the Subsidiaries is engaged in the business of purchasing or carrying Margin Stock. The value of the Margin Stock owned directly or indirectly by the Company and the Subsidiaries which is subject to any arrangement hereunder described in the definition of "indirectly secured" in Section 221.2 of Regulation U issued by the Board represents less than 25% of the value of all assets of the Company and the Subsidiaries subject to such arrangement. For the purpose of making the calculation pursuant to the preceding sentence, to the extent consistent with Regulation U, Treasury Stock shall be deemed not to be an asset of the Company and its Subsidiaries.

Section 3.12. Environmental Matters. The operations of the Company and each Subsidiary comply in all material respects with all Environmental Laws, the noncompliance with which could reasonably be expected to result in a Material Adverse Effect.

Section 3.13. Disclosure. None of the Confidential Information Memorandum or any other information prepared and furnished by or on behalf of the Loan Parties to any Agent or Lender in connection with the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished) contains or will contain as of the date thereof (or, in the case of any such information that is not dated, the earliest date on which such information is furnished to the Administrative Agent or any Lender) any material misstatement of fact or omits or will omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Company represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

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Section 3.14. Subsidiary Guarantors. The Subsidiary Guarantors include each Domestic Subsidiary of the Company, other than any Subsidiary that is owned, directly or indirectly, by a Foreign Subsidiary (other than newly-acquired or created Domestic Subsidiaries that have not yet become Subsidiary Guarantors pursuant to the Guarantee Requirement).

#### ARTICLE IV

##### Conditions

Section 4.01. Effective Date. The obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions has been satisfied (or waived in accordance with Section 11.02):

(a) The Administrative Agent (or its counsel) shall have received from

each party hereto either (i) a counterpart of this Agreement signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which may include telecopy transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement.

(b) The Administrative Agent shall have received favorable written opinions (addressed to the Administrative Agent and the Lenders and dated the Effective Date) of (i) Bingham McCutchen LLP, counsel for the Company, substantially in the form of Exhibit D-1 and (ii) Matheson Ormsby Prentice, Irish counsel for the European Borrowers, substantially in the form of Exhibit D-2. Each Loan Party hereby requests such counsel to deliver such opinions.

(c) The Administrative Agent shall have received such documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the formation, existence and good standing of the Loan Parties and the authorization of the Transactions, all in form and substance reasonably satisfactory to the Administrative Agent and its counsel.

(d) The Administrative Agent shall have received (i) a certificate, dated the Effective Date and signed by the chief financial officer of the Company, confirming that the conditions set forth in paragraphs (a) and (b) of Section 4.02 and in paragraphs (f), (g) and (h) of this Section have been satisfied.

(e) The Administrative Agent shall have received all fees and other amounts due and payable on or prior to the Effective Date, including, to the extent an invoice with respect thereto shall have been received by the Company, reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by the Company hereunder or under any other Loan Document.

(f) The Guarantee Requirement shall be satisfied.

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(g) The Existing Credit Agreement shall have been terminated and all amounts outstanding or accrued thereunder shall have been paid, and all letters of credit issued thereunder (other than the Existing Letters of Credit) shall have been terminated or expired.

(h) The \$50,000,000 Advised Line of Credit entered into between the Company and JPMCB on October 26, 2004 shall have been terminated and all amounts outstanding or accrued thereunder shall have been paid.

The Administrative Agent shall notify the Company and the Lenders of the Effective Date, and such notice shall be conclusive and binding. Notwithstanding the foregoing, the obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit hereunder shall not become effective unless each of the foregoing conditions shall be satisfied (or waived pursuant to Section 11.02) on or prior to December 30, 2004.

Section 4.02. Each Credit Event. The obligation of each Lender to make a Loan on the occasion of each Borrowing, and of the Issuing Bank to issue, amend, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) The representations and warranties of the Loan Parties set forth in the Loan Documents shall be true and correct in all material respects on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable, other than representations which are given as of a particular date, in which case such representations shall be true and correct as of that date.

(b) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, and the application of the proceeds thereof, no Default shall have occurred and be continuing.

Each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Company on the date thereof as to the matters specified in paragraphs (a) and (b) of this Section.

#### ARTICLE V

##### Affirmative Covenants

Until the Commitments have expired or terminated and the principal of and interest on each Loan and all fees payable hereunder have been paid in full and all Letters of Credit have expired or terminated and all LC Disbursements have been reimbursed, the Company and each other Borrower covenants and agrees with the Lenders that it will:

Section 5.01. Payment of Taxes, Etc. Pay and discharge, and cause each Subsidiary to pay and discharge, before the same shall become delinquent, (i) all material taxes, assessments and governmental charges or levies imposed upon it or upon its income, profit or property, and (ii) all material lawful claims which, if unpaid, might by law become a lien upon its property; provided, however, that neither the Company nor any Subsidiary shall be required to pay or discharge any such tax, assessment, charge or claim which is being contested in good faith and by proper proceedings and with respect to which the Company shall have established appropriate reserves in accordance with GAAP.

Section 5.02. Preservation of Existence, Etc. Preserve and maintain, and cause each Subsidiary to preserve and maintain, its legal existence and the rights, licenses, permits, privileges and franchises material to the conduct of its business, except to the extent that failures to keep in effect such rights, licenses, permits, privileges, franchises and, in the case of Subsidiaries only, legal existence could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect; provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution not prohibited under Section 6.04.

Section 5.03. Compliance with Laws, Etc. Comply, and cause each Subsidiary to comply, with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority (including, without limitation, all Environmental Laws), noncompliance with which could reasonably be expected to result in a Material Adverse Effect.

Section 5.04. Keeping of Books. Keep, and cause each Subsidiary to keep, proper books of record and account, in which full and correct entries shall be made of all financial transactions and the assets and business of the Company and each Subsidiary in accordance with GAAP consistently applied.

Section 5.05. Inspection. Permit, and cause each Subsidiary to permit, the Administrative Agent, and its representatives and agents, to inspect any of the properties, corporate books and financial records of the Company and its Subsidiaries, to examine and make copies of the books of account and other financial records of the Company and its Subsidiaries, and to discuss the affairs, finances and accounts of the Company and its Subsidiaries with, and to be advised as to the same by, their respective officers or directors, at such reasonable times during normal business hours and intervals as the Administrative Agent may reasonably designate.

Section 5.06. Reporting Requirements. Furnish to the Administrative Agent for distribution to each Lender:

(a) As soon as available and in any event within 55 days after the end of each of the first three quarters of each fiscal year of the Company, a consolidated balance sheet of the Company and the consolidated Subsidiaries as of the end of such quarter and a consolidated statement of income and changes in financial position (or consolidated statement of cash flow, as the case may be) of the

Company and the consolidated Subsidiaries for the period commencing at the end of the previous fiscal year and ending with the end of such quarter, certified by the chief financial officer of the Company;

(b) As soon as available and in any event within 100 days after the end of each fiscal year of the Company, a consolidated balance sheet of the Company and the consolidated Subsidiaries as of the end of such year and a consolidated statement of income and stockholder's equity and changes in financial position of the Company and the consolidated Subsidiaries for such fiscal year and accompanied by a report of PricewaterhouseCoopers LLC, independent public accountants of the Company, or other independent public accountants of nationally recognized standing, on the results of their examination of such consolidated annual financial statements of the Company and the consolidated Subsidiaries, which report shall be reported on without a "going concern" or like qualification or exception, or qualification arising out of the scope of the audit, or shall be otherwise reasonably acceptable to the Required Lenders;

(c) Promptly after the sending or filing thereof, copies of all financial information, reports and proxy materials the Company files with the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended, including, without limitation, all such reports that disclose material litigation pending against the Company or any Subsidiary or any material noncompliance with any Environmental Law on the part of the Company or any Subsidiary;

(d) Together with each financial statement delivered pursuant to clauses (a) and (b) above, a certificate signed by the chief financial officer of the Company (A) stating that no Default exists or, if any does exist, stating the nature and status thereof and describing the action the Company proposes to



take with respect thereto and (B) demonstrating, in reasonable detail, the calculations used by such officer to determine compliance with the financial covenants contained in Sections 6.07 and 6.08;

(e) With respect to each fiscal year for which the Company shall have an aggregate Unfunded Liability of \$15,000,000 or more for all of its single employer pension benefit plans covered by Title IV of ERISA and all multiemployer pension benefit plans covered by Title IV of ERISA to which the Company has an obligation to contribute, as soon as available, and in any event within ten months after the end of such fiscal year, a statement of Unfunded Liabilities of each such plan, certified as correct by an actuary enrolled in accordance with regulations under ERISA and a statement of estimated withdrawal liability as of the most recent plan year end as customarily prepared by the trustees under the multiemployer plans to which the Company has an obligation to contribute;

(f) As soon as possible, and in any event within 30 days after the occurrence of each event the Company knows is or may be a reportable event (as

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defined in Section 4043 of ERISA, but excluding any reportable event with respect to which the 30 day reporting requirement has been waived) with respect to any plan with an Unfunded Liability in excess of \$15,000,000, a statement signed by the chief financial officer of the Company describing such reportable event and the action which the Company proposes to take with respect thereto;

(g) As soon as possible, and in any event within five Business Days after the Company shall become aware of the occurrence of each Default, which Default is continuing on the date of such statement, a statement of the chief financial officer of the Company setting forth details of such Default or event and the action which the Company proposes to take with respect thereto;

(h) From time to time, such other information as to the business and financial condition of the Company and the Subsidiaries and their compliance with the Loan Documents as any Agent, or any Lender through the Administrative Agent, may reasonably request; and

(i) Promptly following a request therefor, all documentation and other information that a Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act.

Information required to be delivered to the Administrative Agent pursuant to this Section 5.01 shall be deemed to have been distributed to the Lenders if such information, or one or more annual or quarterly reports containing such information, shall have been posted by the Administrative Agent on an IntraLinks or similar site to which the Lenders have been granted access or shall be available on the website of the Securities and Exchange Commission at <http://www.sec.gov> (and a confirming electronic correspondence shall have been delivered or caused to be delivered to the Lenders providing notice of such posting or availability). Information required to be delivered pursuant to this Section 5.01 may also be delivered by electronic communications pursuant to procedures approved by the Administrative Agent.

Section 5.07. Use of Proceeds and Letters of Credit. Use the proceeds of Borrowings hereunder and the Letters of Credit for the purposes referred to in the recitals to this Agreement, and not for any purpose that would entail a violation of any applicable law or regulation (including, without limitation, Regulations U and X of the Board).

Section 5.08. Guarantee Requirement. Cause the Guarantee Requirement to be satisfied at all times.

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## ARTICLE VI

### Negative Covenants

Until the Commitments have expired or terminated and the principal of and interest on each Loan and all fees payable hereunder have been paid in full and all Letters of Credit have expired or terminated and all IC Disbursements have been reimbursed, the Company and each other Borrower covenants and agrees with the Lenders that it will not:

Section 6.01. Subsidiary Debt. Permit any Subsidiary that is not a Subsidiary Guarantor to create, incur, assume or permit to exist any Debt, except:

(a) Debt created hereunder;

(b) Debt existing on the date hereof and set forth in Schedule 6.01 and extensions, renewals and replacements of any such Debt that do not increase the outstanding principal amount thereof;

(c) Debt to the Company or any other Subsidiary; and

(d) other Debt; provided that the sum of (without duplication) (i) the principal amount of all Debt permitted by this clause (d), (ii) the principal amount of all Debt secured by Liens permitted by Section 6.02 and (iii) all Attributable Debt in respect of Sale and Leaseback Transactions (other than Sale and Leaseback Transactions entered into at the time the property subject thereto is acquired or within 90 days thereafter) permitted by Section 6.03 does not at any time exceed the greater of \$150,000,000 or 15% of Consolidated Net Tangible Assets.

Section 6.02. Liens Securing Debt. Create, incur, assume or permit to exist, or permit any Subsidiary to create, incur, assume or permit to exist, any Lien on any property or asset now owned or hereafter acquired by it securing Debt unless, after giving effect thereto, the sum of (without duplication) (i) all Debt secured by all such Liens, (ii) the principal amount of all Debt of Subsidiaries that are not Subsidiary Guarantors permitted by Section 6.01(d) and (iii) all Attributable Debt in respect of Sale and Leaseback Transactions (other than Sale and Leaseback Transactions entered into at the time the property subject thereto is acquired or within 90 days thereafter) permitted by Section 6.03 does not at any time exceed the greater of \$150,000,000 or 15% of Consolidated Net Tangible Assets. For the purpose of this Section 6.02, Treasury Stock to the extent constituting Margin Stock shall be deemed not to be an asset of the Company and its Subsidiaries.

Section 6.03. Sale and Leaseback Transactions. Enter into or be party to, or permit any Subsidiary to enter into or be party to, any Sale and Leaseback Transaction (other than any Sale and Leaseback Transaction entered into at the time the property subject thereto is acquired or within 90 days thereafter) unless after giving effect thereto the sum of (without duplication) (i) all Attributable Debt permitted by

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this Section, (ii) the principal amount of all Debt of Subsidiaries that are not Subsidiary Guarantors permitted by Section 6.01(d) and (iii) the principal amount of all Debt secured by Liens permitted by Section 6.02(i) does not exceed the greater of \$150,000,000 or 15% of Consolidated Net Tangible Assets.

Section 6.04. Merger, Consolidation, Etc. (a) In the case of the Company, merge or consolidate with or into, or transfer or permit the transfer of all or substantially all its consolidated assets to, any Person (including by means of one or more mergers or consolidations of or transfers of assets by Subsidiaries), except that the Company may merge or consolidate with any US Corporation if (i) the Company shall be the surviving corporation in such merger or consolidation, (ii) immediately after giving effect thereto no Default shall have occurred and be continuing and (iii) the Company shall be in compliance with the covenants set forth in Sections 6.07 and 6.08 as of and for the most recently ended period of four fiscal quarters for which financial statements shall have been delivered pursuant to Section 5.06, giving pro forma effect to such merger or consolidation and any related incurrence of Debt as if they had occurred at the beginning of such period, and the Administrative Agent shall have received a certificate of the chief financial officer of the Company setting forth computations demonstrating such compliance.

(b) In the case of any Material Subsidiary, merge or consolidate with or into, or transfer all or substantially all its assets to, any Person, except that (i) any Material Subsidiary may merge into or transfer all or substantially all its assets to the Company, (ii) any Material Subsidiary may merge or consolidate with or transfer all or substantially all its assets to any Subsidiary; provided that if either constituent corporation in such merger or consolidation, or the transferor of such assets, shall be a Subsidiary Guarantor, then the surviving or resulting corporation or the transferee of such assets, as the case may be, must be or at the time of such transaction become a Subsidiary Guarantor and (iii) so long as, immediately after giving effect to such transaction, no Default shall have occurred and be continuing, any Material Subsidiary may merge or consolidate with or transfer all or substantially all its assets to any Person other than the Company or a Subsidiary so long as such transaction would not be prohibited by paragraph (a) above. Notwithstanding the foregoing, nothing in this paragraph shall (a) so long as, at the time of and immediately after giving effect to such transaction, no Event of Default shall have occurred and be continuing, prohibit the Company or any Subsidiary from (i) transferring any assets of such Person to acquire Foreign Subsidiaries, (ii) making capital or working capital contributions to Foreign Subsidiaries in the ordinary course of business, or (iii) selling or otherwise disposing of assets to a Foreign Subsidiary on arm's-length terms (as determined in good faith by the Company or the applicable Subsidiary) or (b) require any Foreign Subsidiary to become a Subsidiary Guarantor hereunder.

(c) In the case of the Company, permit any Domestic Subsidiary to become a subsidiary of a Foreign Subsidiary; provided that nothing in this paragraph shall prevent the Company from acquiring, directly or indirectly, any Person that at the time of and immediately after giving effect to such acquisition would constitute a Foreign

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Subsidiary and would own any Domestic Subsidiary not acquired by it in contemplation of such acquisition.

For purposes of this Section 6.04, Treasury Stock to the extent constituting Margin Stock shall be deemed not to be an asset of the Company.

Section 6.05. Change in Business. Engage or permit any Subsidiary to engage to any material extent in any business other than the business conducted by the Company and the Subsidiaries on the date hereof and other businesses reasonably related thereto.

Section 6.06. Certain Restrictive Agreements. Enter into, or permit any Subsidiary to enter into, any contract or other agreement that would limit the ability of any Subsidiary to pay dividends or make loans or advances to, or to repay loans or advances from, the Company or any other Subsidiary, other than (i) customary non-assignment provisions in any lease or sale agreement relating to the assets that are the subject of such lease or sale agreement, (ii) any restriction binding on a Person acquired by the Company at the time of such acquisition, which restriction is applicable solely to the Person so acquired and its subsidiaries and was not entered into in contemplation of such acquisition and (iii) in connection with any secured Debt permitted under Section 6.02, customary restrictions on the transfer of the collateral securing such Debt.

Section 6.07. Leverage Ratio. Permit the Leverage Ratio at any time to exceed 3.00:1.00.

Section 6.08. Interest Coverage Ratio. Permit the Interest Coverage Ratio for any period of four consecutive fiscal quarters to be less than 3.50:1.00.

#### ARTICLE VII

##### Events of Default

If any of the following events ("Events of Default") shall occur and be continuing:

(a) Any Borrower shall fail to pay (i) any amount of principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when due hereunder or (ii) any interest, fee or other amount due hereunder and such default shall continue for five days; or

(b) Any representation or warranty made or deemed made by the Company or any other Loan Party (or any of their respective officers) in connection with this Agreement or any other Loan Document shall prove to have been incorrect in any material respect when made or deemed made; provided, however, that no Event of Default shall be deemed to exist by reason of the incorrectness of any representation or

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warranty after such incorrectness shall have been cured (other than by disclosure, which shall not be deemed to cure any breach of a representation or warranty); or

(c) The Company or any Subsidiary shall fail to maintain its corporate, limited liability company or partnership existence as required by Section 5.02, or the Company or any Subsidiary shall fail to perform or observe any term, covenant or agreement contained in Section 5.06(g), Section 5.07 or Article VI of this Agreement on its part to be performed or observed; or

(d) The Company or any Subsidiary shall (i) fail to perform or observe any other term, covenant or agreement contained in this Agreement or any other Loan Document on its part to be performed or observed (other than those failures or breaches referred to in paragraphs (a), (b) and (c) above) and any such failure shall remain unremedied for 30 days after written notice thereof has been given to the Company by the Administrative Agent or the Required Lenders; or

(e) The Company or any Subsidiary shall fail to pay any amount of principal of, interest on or premium with respect to, Material Debt (other than the Loans) when due (whether at scheduled maturity or by required prepayment, acceleration, demand or otherwise) and such failure shall continue beyond the applicable grace period, if any, specified in the agreement or instrument governing such Debt, or any other event shall occur or condition shall exist with respect to Material Debt (other than the Loans) of the Company or such Subsidiary if the effect of such other event or condition is to cause, or to permit the holder or holders of such debt (or any trustee or agent on their

behalf) to cause, such Material Debt to become due, or to require such Material Debt to be prepaid or repurchased, prior to the stated maturity thereof; or

(f) The Company or any Subsidiary shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally; or

(g) The Company or any Subsidiary shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against the Company or such Subsidiary seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debt under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee or other similar official for it or for any substantial part of its property; or the Company or any such Subsidiary shall take corporate action to authorize any of the actions set forth above in this paragraph (f); provided that, in the case of any such proceeding filed or commenced against the Company or any Subsidiary, such event shall not constitute an "Event of Default" hereunder unless either (i) the same shall have remained undismissed or unstayed for a period of 60 days, (ii) an order for relief shall have been entered against the Company or such Subsidiary under the federal bankruptcy laws as now or hereafter in effect or (iii) the Company or such Subsidiary shall have taken corporate action consenting to, approving or acquiescing in the commencement or maintenance of such proceeding; or

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(h) Any judgment or judgments for the payment of money in excess of \$20,000,000 in the aggregate for all such judgments shall be rendered against the Company or one or more Subsidiaries and (i) enforcement proceedings shall have been commenced by any creditor upon such judgments or (ii) there shall be any period of 10 consecutive days during which stays of enforcement of such judgments, by reason of pending appeals or otherwise, shall not be in effect;

(i) Either (i) the Pension Benefit Guaranty Corporation shall terminate any single-employer plan (as defined in Section 4001(b)(2) of ERISA) that provides benefits for employees of the Company or any Subsidiary and such plan shall have an Unfunded Liability in an amount in excess of \$5,000,000 at such time or (ii) withdrawal liability shall be assessed against the Company or any Subsidiary in connection with any multiemployer plan (whether under Section 4203 or Section 4205 of ERISA) and such withdrawal liability shall be an amount in excess of \$5,000,000 or

(j) the guarantee of any Subsidiary Guarantor under the Subsidiary Guarantee Agreement or the Company's guarantee under Article X shall not be (or shall be asserted by the Company or any Subsidiary Guarantor not to be) valid or in full force and effect; or

(k) a Change of Control shall have occurred.

then, and in any such event, the Administrative Agent shall at the request, or may with the consent, of the Required Lenders, by notice to the Company, (i) declare the obligation of each Lender to make Loans and of the Issuing Bank to issue Letters of Credit hereunder to be terminated, whereupon the same shall forthwith terminate and/or (ii) declare the Loans, all interest accrued and unpaid thereon and all other amounts outstanding or accrued under this Agreement to be forthwith due and payable, whereupon the Loans, all such accrued interest and all such amounts shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrowers. In the event of the occurrence of an Event of Default under clause (g) of this Article VII, (A) the obligation of each Lender to make Loans and of the Issuing Bank to issue Letters of Credit hereunder shall automatically be terminated and (B) the Loans, all interest accrued and unpaid thereon and all other amounts outstanding or accrued under this Agreement shall automatically become and be due and payable, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by each Borrower.

#### ARTICLE VIII

##### The Agents

In order to expedite the transactions contemplated by this Agreement, the Persons named in the heading of this Agreement are hereby appointed to act as Administrative Agent and London Agent on behalf of the Lenders and the Issuing Bank. Each of the Lenders, each assignee of any Lender and the Issuing Bank hereby

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irrevocably authorizes the Agents to take such actions on their behalf and to exercise such powers as are delegated to the Agents by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto. The Agents are hereby expressly authorized by the Lenders and the

Issuing Bank, without hereby limiting any implied authority, (a) to receive on behalf of the Lenders and the Issuing Bank all payments of principal of and interest on the Loans and all other amounts due to the Lenders or the Issuing Bank hereunder, and promptly to distribute to each Lender or the Issuing Bank its proper share of each payment so received; (b) to give notice on behalf of each of the Lenders to the Company of any Event of Default of which the Administrative Agent has actual knowledge acquired in connection with its agency hereunder; and (c) to distribute to each Lender copies of all notices, financial statements and other materials delivered by the Company or any other Loan Party pursuant to this Agreement or the other Loan Documents as received by the Administrative Agent.

With respect to the Loans made by it hereunder, each Agent in its individual capacity and not as Agent shall have the same rights and powers as any other Lender and may exercise the same as though it were not an Agent, and the Agents and their Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Company or any Subsidiary or other Affiliate thereof as if it were not an Agent.

The Agents shall not have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) no Agent shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) no Agent shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that such Agent is required to exercise upon receipt of notice in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 11.02), and (c) except as expressly set forth in the Loan Documents, no Agent shall have any duty to disclose, and no Agent shall be liable for the failure to disclose, any information relating to the Company or any of its Subsidiaries that is communicated to or obtained by the institution serving as Agent or any of its Affiliates in any capacity. No Agent shall be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 11.02) or in the absence of its own gross negligence or wilful misconduct. No Agent shall be deemed to have knowledge of any Default unless and until written notice thereof is given to such Agent by a Borrower, and no Agent shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan

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Document, other than to confirm receipt of items expressly required to be delivered to such Agent.

Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. Each Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. Each Agent may consult with legal counsel (who may be counsel for any Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Each Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by such Agent. Each Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of each Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Agent.

Subject to the appointment and acceptance of a successor Agent as provided in this paragraph, any Agent may resign at any time by notifying the Lenders, the Issuing Bank and the Company. Upon any such resignation, the Required Lenders shall have the right, in consultation with the Company, to appoint a successor. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation, then the retiring Agent may, on behalf of the Lenders and the Issuing Bank, appoint a successor Agent which shall be a bank with an office in New York, New York, or an Affiliate of any such bank. Upon the acceptance of its appointment as Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations hereunder. After the Agent's resignation hereunder, the provisions of this Article and Section 11.03 shall continue in effect for

the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Agent.

Each Lender acknowledges that it has, independently and without reliance upon the Agents or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Agents or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other

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Loan Document or related agreement or any document furnished hereunder or thereunder.

Each Lender hereby acknowledges that each institution named on the cover page of this Agreement as Co-Syndication Agent has no duties or responsibilities hereunder other than, in the case of a Co-Syndication Agent that is a Lender, in its capacity as a Lender.

#### ARTICLE IX

##### Collection Allocation Mechanism

Section 9.01. CAM Exchange. (a) On the CAM Exchange Date, (i) the Commitments shall automatically and without further act be terminated as provided in Article VII and (ii) the Lenders shall automatically and without further act be deemed to have exchanged interests in the Specified Obligations such that, in lieu of the interests of each Lender in the particular Specified Obligations that it shall own as of such date and prior to the CAM Exchange, such Lender shall own an interest equal to such Lender's CAM Percentage in all the Specified Obligations. Each Lender, each person acquiring a participation from any Lender as contemplated by Section 11.02, the Company and each other Borrower hereby consents and agrees to the CAM Exchange. Each of the Company, the other Borrowers and the Lenders agrees from time to time to execute and deliver to the Agents all such promissory notes and other instruments and documents as the Administrative Agent shall reasonably request to evidence and confirm the respective interests and obligations of the Lenders after giving effect to the CAM Exchange, and each Lender agrees to surrender any promissory notes originally received by it hereunder to the Administrative Agent against delivery of any promissory notes so executed and delivered; provided that the failure of the Company or any other Borrower to execute or deliver or of any Lender to accept any such promissory note, instrument or document shall not affect the validity or effectiveness of the CAM Exchange.

(b) As a result of the CAM Exchange, on and after the CAM Exchange Date, (i) each payment received by an Agent pursuant to any Loan Document in respect of the Specified Obligations shall be distributed to the Lenders pro rata in accordance with their respective CAM Percentages (to be redetermined as of each such date of payment or distribution to the extent required by paragraph (c) below) and (ii) Section 2.17(e) shall not apply with respect to any Taxes required to be withheld or deducted by a Borrower from or in respect of payments hereunder to any Lender or Administrative Agent that exceed the Taxes such Borrower would have been required to withhold or deduct from or in respect of payments to such Lender or Agent had such CAM Exchange not occurred.

(c) In the event that, on or after the CAM Exchange Date, the aggregate amount of the Specified Obligations shall change as a result of the making of an LC Disbursement by the Issuing Bank that is not reimbursed by a Borrower, then (i) each US

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Tranche Lender (determined without giving effect to the CAM Exchange) shall, in accordance with Section 2.05(d), promptly purchase from the applicable Issuing Bank a participation in such LC Disbursement in the amount of such US Tranche Lender's applicable US Tranche Percentage of such LC Disbursement (without giving effect to the CAM Exchange), (ii) the Administrative Agent shall redetermine the CAM Percentages after giving effect to such LC Disbursement and the purchase of participations therein by the applicable US Tranche Lenders, and (iii) in the event distributions shall have been made in accordance with clause (i) of paragraph (b) above, the Lenders shall make such payments to one another as shall be necessary in order that the amounts received by them shall be equal to the amounts they would have received had each LC Disbursement been outstanding immediately prior to the CAM Exchange. Each such redetermination shall be binding on each of the Borrowers and Lenders and their successors and assigns and shall be conclusive absent manifest error.

#### ARTICLE X

##### Guarantee

In order to induce the Lenders to extend credit to the European Borrowers hereunder, the Company hereby irrevocably and unconditionally guarantees, as a primary obligor and not merely as a surety, the payment when and as due of the Obligations of such Borrowers. The Company further agrees that the due and punctual payment of such Obligations may be extended or renewed, in whole or in part, without notice to or further assent from it, and that it will remain bound upon its guarantee hereunder notwithstanding any such extension or renewal of any such Obligation.

The Company waives presentment to, demand of payment from and protest to any Borrower of any of the Obligations, and also waives notice of acceptance of its obligations and notice of protest for nonpayment. The obligations of the Company under this Article X shall not be affected by (a) the failure of any Agent or Lender to assert any claim or demand or to enforce any right or remedy against any Loan Party under the provisions of this Agreement, any other Loan Document or otherwise; (b) any extension or renewal of any of the Obligations; (c) any rescission, waiver, amendment or modification of, or release from, any of the terms or provisions of this Agreement, or any other Loan Document or agreement; (d) any default, failure or delay, wilful or otherwise, in the performance of any of the Obligations; or (e) any other act, circumstance, omission or delay to do any other act which may or might in any manner or to any extent vary the risk of the Company or otherwise operate as a discharge of or defense available to a guarantor as a matter of law or equity or which would impair or eliminate any right of the Company to subrogation.

The Company further agrees that its agreement under this Article X constitutes a guarantee of payment when due (whether or not any bankruptcy or similar proceeding shall have stayed the accrual or collection of any of the Obligations or operated as a discharge thereof) and not merely of collection, and waives any right to require that any resort be had by any Agent or Lender to any balance of any deposit

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account or credit on the books of any Agent or Lender in favor of any Borrower or any other Person.

The obligations of the Company under this Article X shall not be subject to any reduction, limitation, impairment or termination for any reason, and shall not be subject to any defense or set-off, counterclaim, recoupment or termination whatsoever, by reason of the invalidity, illegality or unenforceability of any of the Obligations, any impossibility in the performance of any of the Obligations or otherwise.

The Company further agrees that its obligations under this Article X shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Obligation is rescinded or must otherwise be restored by any Agent or Lender upon the bankruptcy or reorganization of any Borrower or otherwise.

In furtherance of the foregoing and not in limitation of any other right which any Agent or Lender may have at law or in equity against the Company by virtue hereof, upon the failure of any European Borrower to pay any Obligation when and as the same shall become due, whether at maturity, by acceleration, after notice of prepayment or otherwise, the Company hereby promises to and will, upon receipt of written demand by any Agent or Lender, forthwith pay, or cause to be paid, to the applicable Agent or Lender in cash an amount equal to the unpaid principal amount of such Obligation then due, together with accrued and unpaid interest thereon. The Company further agrees that if payment in respect of any Obligation shall be due in a currency other than US Dollars and/or at a place of payment other than New York and if, by reason of any Change in Law, disruption of currency or foreign exchange markets, war or civil disturbance or other event, payment of such Obligation in such currency or at such place of payment shall be impossible or, in the reasonable judgment of any Agent or Lender, not consistent with the protection of its rights or interests, then, at the election of the Administrative Agent, the Company shall make payment of such Obligation in US Dollars (based upon the applicable Exchange Rate in effect on the date of payment) and/or in New York, and shall indemnify each Agent and Lender against any losses or reasonable out-of-pocket expenses that it shall sustain as a result of such alternative payment.

Upon payment by the Company of any sums as provided above, all rights of the Company against any Borrower arising as a result thereof by way of right of subrogation or otherwise shall in all respects be subordinated and junior in right of payment to the prior indefeasible payment in full in cash of all the Obligations owed by such Borrower to the Agents and the Lenders.

Nothing shall discharge or satisfy the liability of the Company hereunder except the full performance and indefeasible payment in full in cash of the Obligations.

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#### ARTICLE XI

Miscellaneous

Section 11.01. Notices. Except in the case of notices and other communications expressly permitted to be given by telephone, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by teletcopy, as follows:

(a) if to any Borrower, to 34 Maples Street, Milford, Massachusetts, 01757, Attention of John Lynch (Telecopy No. (508) 482-2249);

(b) if to the Administrative Agent, to JPMorgan Chase Bank, N.A., 131 South Dearborn, 6th floor, Mailcode: IL1-0010, Chicago, IL 60670-0010, Attention of Medy Hernandez (Telecopy No. (312) 385-7096, Telephone No. (312) 385-7037);

(c) if to the London Agent, to it at J.P. Morgan Europe Limited, 125 London Wall, Floor 9, London EC2Y5AJ, Attention of James Beard (Telecopy No. 44-207-7772360, Telephone No. 44-207-7772355); with a copy to the Administrative Agent as provided in paragraph (b) above;

(d) if to the Issuing Bank, to it at the JPMorgan Chase Bank, N.A., 300 South Riverside Plaza, Mailcode: IL1-0236, Chicago, IL 60606, Attention of Catherine Deal (Telecopy No. (312) 954-6207, Telephone No. (312) 954-1944); and

(e) if to any Lender, to it at its address (or teletcopy number) set forth in its Administrative Questionnaire.

Any party hereto may change its address or teletcopy number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

Section 11.02. Waivers; Amendments. (a) No failure or delay by any Agent, the Issuing Bank or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Agents, the Issuing Bank and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without

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limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether any Agent, any Lender or the Issuing Bank may have had notice or knowledge of such Default at the time.

(b) None of this Agreement, or any other Loan Document or any provision hereof or thereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Company and the Required Lenders or by the Company and the Administrative Agent with the consent of the Required Lenders or, in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties that are parties thereto, in each case with the consent of the Required Lenders; provided that no such agreement shall (i) increase any Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender adversely affected thereby, (iii) postpone the date of any scheduled payment of the principal amount of any Loan or LC Disbursement, or any interest thereon, or any fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender affected thereby, (iv) change Section 2.18(b) or (c) in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender, or alter the manner in which payments or prepayments of principal, interest or other amounts hereunder shall be applied as among Lenders or Types of Loans without the written consent of each Lender, (v) change any of the provisions of this Section or the definition of "Required Lenders" or any other provision of any Loan Document specifying the number or percentage of Lenders (or Lenders of any Class) required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender (or each Lender of such Class, as the case may be), (vi) release the Company or all or substantially all the Subsidiary Guarantors from, or limit or condition, its or their obligations under Article X or the Subsidiary Guarantee Agreement, or change the definition of Guarantee Requirement without the written consent of each Lender, (vii) change any provisions of Article IX or any provision of this Agreement that



requires action by each Lender without the written consent of each Lender, or (viii) change any provisions of any Loan Document in a manner that by its terms adversely affects the rights in respect of payments due to Lenders holding Loans of any Class differently than those of Lenders holding Loans of any other Class without the written consent of Lenders holding a majority in interest of the outstanding Loans and unused Commitments of each adversely affected Class; provided further that (A) no such agreement shall amend, modify or otherwise affect the rights or duties of any Agent or the Issuing Bank hereunder or under any other Loan Document without the prior written consent of such Agent or the Issuing Bank, as the case may be, and (B) any waiver, amendment or modification of this Agreement that by its terms affects the rights or duties under this Agreement of the Lenders of one Class (but not the Lenders of any other Class) may be effected by an agreement or agreements in writing entered into by the Company and requisite percentage in interest of the affected Class of Lenders.

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Section 11.03. Expenses; Indemnity; Damage Waiver. (a) The Company shall pay (i) all reasonable out-of-pocket expenses incurred by the Agents and their Affiliates, including the reasonable fees, charges and disbursements of counsel for the Agents, in connection with the syndication of the credit facilities provided for herein, the preparation and administration of this Agreement or the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable out-of-pocket expenses (including reasonable fees, charges and disbursements of any counsel) incurred by any Agent, and, following and during the continuance of an Event of Default, the Issuing Bank or any Lender, in connection with the enforcement or protection of its rights in connection with any Loan Document, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

The Company shall indemnify each Agent, the Issuing Bank and each Lender and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, liabilities and reasonable out-of-pocket costs or expenses, including the reasonable fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) any transaction or proposed transaction (whether or not consummated) in which any proceeds of any borrowing hereunder are applied or proposed to be applied, directly or indirectly, by the Company or any Subsidiary, (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by the Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), or (iii) the execution, delivery or performance by the Company and the Subsidiaries of the Loan Documents, or any actions or omissions of the Company or any Subsidiary in connection therewith (and, in the case of any such loss, liability, cost or expense arising out of any litigation, investigation or other proceeding, regardless of whether such proceeding shall have been commenced by the Company, any Subsidiary of the Company or any other Person or whether any Indemnitee shall be a party thereto); provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, liabilities, costs or expenses are determined by a court of competent jurisdiction by final and unappealable judgment to have resulted from the gross negligence or wilful misconduct of such Indemnitee or from the breach of such Indemnitee of its agreements hereunder.

(b) To the extent that the Company fails to pay any amount required to be paid by it to any Agent or the Issuing Bank or any of their Related Parties under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to such Agent or the Issuing Bank, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed loss, liability, cost or expense, as the case

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may be, was incurred by or asserted against such Agent or the Issuing Bank (or such Related Party) in its capacity as such. For purposes hereof, a Lender's "pro rata share" shall be determined based upon its share of the sum (without duplication) of the total Exposures and unused Commitments at the time.

(c) To the extent permitted by applicable law, no Borrower shall assert, and each Borrower hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Agreement or any agreement or instrument contemplated hereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof.

(d) All amounts due under this Section shall be payable within 15 Business Days after receipt by the Company of a reasonably detailed invoice therefor.

Section 11.04. Successors and Assigns. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), except that no Borrower may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by any Borrower without such consent shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the Related Parties of each of the Agents, the Issuing Bank and the Lenders (including any Affiliate of the Issuing Bank that issues any Letter of Credit)) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Lender may assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans or other amounts at the time owing to it); provided that (i) except in the case of an assignment to a Lender the Administrative Agent (and in the case of an assignment of all or a portion of a US Tranche Commitment or any Lender's obligations in respect of its LC Exposure, the Issuing Bank) and, except (A) in the case of an assignment to a Lender, an Affiliate of a Lender or a Related Fund of any Lender or (B) if an Event of Default shall have occurred and be continuing, the Company must give their prior written consent to such assignment (which consent shall not be unreasonably withheld), (ii) unless an event of default has occurred and is continuing, except in the case of an assignment to a Lender, an Affiliate of a Lender or a Related Fund of any Lender or an assignment of the entire remaining amount of the assigning Lender's Commitments and outstanding Loans, the amount of the Commitments and outstanding Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$10,000,000 unless each of the Company and the Administrative Agent otherwise consent, (iii) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together

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with a processing and recordation fee of \$3,500, and (iv) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire. Subject to acceptance and recording thereof pursuant to paragraph (d) of this Section, from and after the effective date specified in each Assignment and Acceptance the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 11.03). At the time of any assignment, the assignee shall provide to the Company the documentation described in Section 2.17(e). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (e) of this Section.

(c) The Administrative Agent, acting for this purpose as an agent of each Borrower, shall maintain at one of its offices in The City of New York a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrowers, the Administrative Agent, the Issuing Bank and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Company, the Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(e) Any Lender may, without the consent of any Borrower or the Administrative Agent or the Issuing Bank, sell participations to one or more banks or other entities (a "Participant") in all or a portion of such Lender's

rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrowers, the Administrative Agent,

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the Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in clause (i), (ii), (iii) or (vi) of the first proviso to Section 11.02(b) that affects such Participant. Subject to paragraph (f) of this Section, each Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 11.08 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section.

(f) A Participant shall not be entitled to receive any greater payment under Section 2.15 or 2.17 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Company's prior written consent. A Participant shall not be entitled to the benefits of Section 2.17 unless the Company is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrowers, to comply with Section 2.17(e) as though it were a Lender.

(g) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or, in the case of a Lender that is an investment fund, to the trustee under the indenture to which such fund is a party, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

Section 11.05. Survival. All covenants, agreements, representations and warranties made by the Loan Parties herein or in any other Loan Document or in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto or thereto and shall survive the execution and delivery of this Agreement and any other Loan Document and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that any Agent, the Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement or any other Loan Document is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.15, 2.16, 2.17, 11.03 and 11.12 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of

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Credit and the Commitments or the termination of this Agreement or any other Loan Document or any provision hereof or thereof. Provided, however, that the provisions of Section 11.12 shall expire two years after the later of (i) the repayment of the Loans and the expiration or termination of the Letters of Credit and the Commitments and (ii) the termination of this Agreement.

Section 11.06. Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy

shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 11.07. Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 11.08. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final and in whatever currency denominated) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of any Borrower against any of and all the obligations of such Borrower now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmatured. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

Section 11.09. Governing Law; Jurisdiction; Consent to Service of Process.  
(a) This Agreement shall be construed in accordance with and governed by the law of the State of New York.

(b) Each Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State

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of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Administrative Agent, the Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement against any Borrower or its properties in the courts of any jurisdiction.

(c) Each Borrower hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 11.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

Section 11.10. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 11.11. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

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Section 11.12. Confidentiality. Each Agent, the Issuing Bank and each Lender agrees to maintain the confidentiality of the Information (as defined

below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors, to Related Funds' directors and officers and to any direct or indirect contractual counterparty in swap agreements (it being understood that each Person to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) to the extent required or advisable in the judgment of counsel in connection with any suit, action or proceeding relating to the enforcement of rights of the Agents or the Lenders against any of the Borrowers under this Agreement or any other Loan Document, (f) subject to an agreement containing provisions substantially the same as those of this Section, to any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, (g) with the consent of the Company or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section of which such Agent or Lender is aware or (ii) becomes available to the Administrative Agent, the Issuing Bank or any Lender on a nonconfidential basis from a source other than the Company other than as a result of a breach of this Section of which such Agent or Lender is aware. For the purposes of this Section, "Information" means all information received from the Company relating to the Company or its business, other than any such information that is available to the Administrative Agent, the Issuing Bank or any Lender on a nonconfidential basis prior to disclosure by the Company other than as a result of a breach of this Section of which such Agent or Lender is aware. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Section 11.13. Conversion of Currencies. (a) If, for the purpose of obtaining judgment in any court, it is necessary to convert a sum owing hereunder in one currency into another currency, each party hereto agrees, to the fullest extent that it may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures in the relevant jurisdiction the first currency could be purchased with such other currency on the Business Day immediately preceding the day on which final judgment is given.

(b) The obligations of each Borrower in respect of any sum due to any party hereto or any holder of the obligations owing hereunder (the "Applicable Creditor") shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than the currency in which such sum is stated to be due hereunder (the "Agreement Currency"), be discharged only to the extent that, on the Business Day following receipt by the Applicable Creditor of any sum adjudged to be so due in the Judgment Currency, the Applicable Creditor may in accordance with normal banking procedures in the relevant jurisdiction purchase the Agreement Currency with the Judgment Currency; if

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the amount of the Agreement Currency so purchased is less than the sum originally due to the Applicable Creditor in the Agreement Currency, such Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Applicable Creditor against such loss. The obligations of the Borrowers contained in this Section 11.13 shall survive the termination of this Agreement and the payment of all other amounts owing hereunder.

Section 11.14. Release of Subsidiary Guarantors. Notwithstanding any contrary provision herein or in any other Loan Document, if the Company shall request the release under the Subsidiary Guarantee Agreement of any Subsidiary to be sold or otherwise disposed of (including through the sale or disposition of any Subsidiary owning any such Subsidiary) to a Person other than the Company or a Subsidiary in a transaction permitted under the terms of this Agreement and shall deliver to the Administrative Agent a certificate to the effect that such sale or other disposition will comply with the terms of this Agreement, the Administrative Agent, if satisfied that the applicable certificate is correct, shall, without the consent of any Lender, execute and deliver all such instruments, releases or other agreements, and take all such further actions, as shall be necessary to effectuate the release of such Subsidiary at the time of or at any time after the completion of such sale or other disposition.

Section 11.15. USA Patriot Act. Each Lender hereby notifies the Borrowers that pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify and record information that identifies the Borrowers, which information includes the name and address of each Borrower and other information that will allow such Lender to identify each Borrower in accordance with the USA Patriot Act.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

WATERS CORPORATION

by

/s/ John Ornell  
-----

Name: John Ornell  
Title: Vice President, Finance and  
Administration and Chief  
Financial Officer

Present when the common seal of WATERS  
TECHNOLOGIES IRELAND LTD. was  
affixed hereto:

/s/ John Ornell  
-----

Name: John Ornell  
Title: Vice President, Finance and  
Administration and Chief  
Financial Officer

/s/ Lawrence Walsh  
-----

Name: Lawrence Walsh  
Title: Manager, Finance and  
Administration

Present when the common seal of WATERS  
CHROMATOGRAPHY IRELAND LTD.  
was affixed hereto:

/s/ Paul N. Tardif, Jr.  
-----

Name: Paul N. Tardif, Jr.  
Title: Vice President, Mergers and  
Acquisitios

/s/ Lawrence Walsh  
-----

Name: Lawrence Walsh  
Title: Manager, Finance and  
Administration

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JPMORGAN CHASE BANK, NA.,  
individually and as Administrative Agent,  
Issuing Bank, and Swingline Lender,

by

/s/ John Francis  
-----

Name: John Francis  
Title: Vice President

J.P. MORGAN EUROPE LIMITED, as  
London Agent,

by

/s/ Stephen Gillies  
-----

Name: Stephen Gillies  
Title: Associate

/s/ Nichola Hall  
-----

Name: Nichola Hall  
Title: Associate

ABN AMRO BANK N.V.,

by

/s/ Alexander M. Blodi  
-----

Name: Alexander M. Blodi  
Title: Managing Director

by

/s/ Robert H. Steelman  
-----

Name: Robert H. Steelman  
Title: Director

BANK OF AMERICA NA,

by  
/s/ Richard C. Hardison  
-----  
Name: Richard C. Hardison  
Title: Vice President

CITIZENS BANK OF MASSACHUSETTS,

by  
/s/ Stephen F. Foley  
-----  
Name: Stephen F. Foley  
Title: Senior Vice President

BARCLAYS BANK PLC,

by  
/s/ Douglas Bernegger  
-----  
Name: Douglas Bernegger  
Title: Director

THE BANK OF NEW YORK,

by  
/s/ Kenneth P. Sneider  
-----  
Name: Kenneth P. Sneider  
Title: Vice President

DEUTSCHE BANK AG, NEW YORK  
BRANCH,

by  
/s/ Carin M. Keegan  
-----  
Name: Carin M. Keegan  
Title: Vice President

by  
/s/ Scottye Lindsey  
-----  
Name: Scottye Lindsey  
Title: Director

DEUTSCHE BANK TRUST COMPANY  
AMERICAS, as Existing Issuing Bank,

by  
/s/ Carin M. Keegan  
-----  
Name: Carin M. Keegan  
Title: Vice President

THE GOVERNOR AND COMPANY OF  
THE BANK OF IRELAND,

by  
/s/ Fran Collins  
-----  
Name: Fran Collins  
Title: Associate Director

by  
/s/ Fergus Woods  
-----  
Name: Fergus Woods  
Title: Deputy Manager

BANK OF TOKYO-MITSUBISHI TRUST  
COMPANY,

by  
/s/ Cynthia Rietscha  
-----  
Name: Cynthia Rietscha  
Title: Vice President

HSBC BANK USA, N.A.,

by  
/s/ Kenneth V. McGraime  
-----  
Name: Kenneth V. McGraime  
Title: Senior Vice President

KEYBANK NATIONAL ASSOCIATION,

by  
/s/ J. T. Taylor  
-----  
Name: J. T. Taylor  
Title: Senior Vice President

ALLIED IRISH BANKS, PLC,

by  
/s/ Ray Alcock  
-----  
Name: Ray Alcock  
Title: Manager

by  
/s/ Michael Doyle  
-----  
Name: Michael Doyle  
Title: Senior Vice President

MIZUHO CORPORATE BANK USA,

by  
/s/ Greg Botshon  
-----  
Name: Greg Botshon  
Title: Senior Vice President

SUNTRUST BANK,

by  
/s/ W. Brooks Hubbard  
-----  
Name: W. Brooks Hubbard  
Title: Director

THE NORINCHUKIN BANK, NEW  
YORK BRANCH,

by  
/s/ Toshifurni Tsukitani  
-----  
Name: Toshifurni Tsukitani  
Title: General Manager

PNC BANK, N.A.,

by  
/s/ Donald V. Davis  
-----  
Name: Donald V. Davis  
Title: Managing Director

UBS LOAN FINANCE LLC,

by



/s/ Wilfred V. Saint

-----  
Name: Wilfred V. Saint  
Title: Director Banking Products  
Services, US

by

/s/ Joselin Fernandes

-----  
Name: Joselin Fernandes  
Title: Associate Director Banking  
Products Services, US

KBC BANK N.V.,

by

/s/ Robert M. Surdam, Jr.

-----  
Name: Robert M. Surdam, Jr.  
Title: Vice President

by

/s/ Robert Snauffer

-----  
Name: Robert Snauffer  
Title: First Vice President

CHANG HWA COMMERCIAL BANK,  
LTD., NEW YORK BRANCH,

by

/s/ Kang Yang

-----  
Name: Kang Yang  
Title: AVP & AGM

EXHIBIT C

FORM OF IRISH CERTIFICATE

From: [Insert name and address of the lender or the assignee]

To: Waters Technologies Ireland Ltd. and/or

Waters Technologies Chromatography Ireland Ltd.

(each a "EUROPEAN BORROWER" and collectively the "EUROPEAN BORROWERS")

The above named lender (the "LENDER") hereby represents and warrants that it is a Qualifying Lender. A "QUALIFYING LENDER" is a company which, by virtue of the law of a Relevant Territory, is resident for the purposes of tax in a Relevant Territory, and which does not receive any interest in respect of the Five Year Credit Agreement dated 15 December 2004 (the "LOAN") from the European Borrowers in connection with a trade or business carried on in Ireland by such a company through a branch or agency. A "RELEVANT TERRITORY" means a member state of the European Communities other than Ireland, or not being such a member state, a territory with which Ireland has entered into a double tax treaty.

If the Lender ceases to be a Qualifying Lender, or if any circumstances exist which may cause or lead to its not being a Qualifying Lender on the next date on which interest is due to be paid on the Loan by the European Borrowers, it will inform the European Borrowers and Administrative Agent immediately in writing. Any reference in this Certificate to any statute or statutory provision shall be taken to mean such statutes or statutory provisions as may have been and may be amended from time to time. This Certificate shall be governed by and construed in accordance with Irish law.

Signed by  
[INSERT NAME OF LENDER]

-----  
By:  
Capacity:  
Date:

AMENDMENT TO STOCK OPTION AGREEMENT

This Amendment to Stock Option Agreement is dated as of December 31, 2004.

WHEREAS, [name of Optionee] (the "Optionee") and Waters Corporation, a Delaware corporation (the "Corporation"), are parties to that certain Stock Option Agreement (the "Agreement"), dated as of December 7, 2000, pursuant to which the Corporation granted to the Optionee an option (the "Option") to purchase [insert number of shares] of the Corporation's common stock, par value \$0.01 per share, on the terms and conditions contained therein and in the Waters Corporation Second Amended and Restated 1996 Long-Term Performance Incentive Plan (the "Plan");

WHEREAS, pursuant to Section 10 of the Plan, the Compensation Committee (the "Committee") of the Corporation's Board of Directors may amend the terms of the Agreement in its discretion in any manner it deems appropriate (including, but not limited to, acceleration of the date of exercise of the Option), subject to the terms and conditions contained therein; and

WHEREAS, the Corporation, acting through the Committee, has authorized the amendment of the Agreement, in accordance with Section 10 of the Plan, on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises and for good and valuable consideration, receipt of which is hereby acknowledged, the Agreement is hereby amended as follows:

1. Section 2.1 of the Agreement is hereby deleted in its entirety and replaced with the following:

"The Option granted hereunder will become 100% vested and fully exercisable on December 31, 2004."

2. Except as expressly provided in this Amendment, all of the terms and provisions of the Agreement shall remain in full force and effect.

This Amendment shall be governed by and construed in accordance with the internal laws of the State of New York, without giving effect to principles of conflicts of laws or choice of law of the State of New York or any other jurisdiction which would result in the application of the law of any jurisdiction other than the State of New York.

IN WITNESS WHEREOF, the Corporation has executed and delivered this Amendment under seal, effective as of the date first above written.

WATERS CORPORATION

By: /s/ Douglas Berthiaume  
Chairman, President and Chief Executive  
Officer

WATERS CORPORATION  
2003 EQUITY INCENTIVE PLAN

STOCK OPTION AGREEMENT

THIS AGREEMENT dated as of December 8, 2004 between Waters Corporation, a corporation organized under the laws of the State of Delaware (the "Company"), and Brian K. Mazar (the "Optionee"), an employee of Waters Corporation.

1. GRANT OF OPTION. Pursuant and subject to the Company's 2003 Equity Incentive Plan (as the same may be amended from time to time, the "Plan"), the Company grants to you, the Optionee, an option (the "Option") to purchase from the Company all or any part of a total of 15,000 shares (the "Optioned Shares") of the common stock, par value \$.01 per share, in the Company (the "Stock"), at a price of \$47.12 per share. The Grant Date of this Option is as of December 8, 2004.

2. CHARACTER OF OPTION. This Option is not intended to be treated as an "incentive stock option" within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended.

3. DURATION OF OPTION. Subject to the following sentence, this Option shall expire at 5:00 p.m. ET on the 10th anniversary of the Grant Date. However, if your employment or other association with the Company and its Affiliates ends before that date, this Option shall expire at 5:00 p.m. ET on the date specified in the preceding sentence or, if earlier, the date specified in whichever of the following applies :

(a) If the termination of your employment or other association is on account of your retirement, death or disability, the first anniversary of the date your employment or other association ends.

(b) If the termination of your employment or other association is due to any other reason, thirty days after your employment or other association ends.

4. EXERCISE OF OPTION.

No portion of the Option is vested as of the date hereof. Except as set forth in the Change of Control/Severance Agreement dated as of February 24, 2004 between the Company and the Optionee (the "Change of Control/Severance Agreement"), on the first anniversary of the date hereof, 100% of the Option granted hereunder will vest and such vested portion of the Option will be exercisable. However, during any period that this Option remains outstanding after your employment or other association with the Company and its Affiliates ends, you may exercise it only to the extent it was exercisable immediately prior to the end of your employment or other association.

(b) The procedure for exercising this Option is described in Section 7.1(g) of the Plan. You may pay the exercise price due on exercise by (i) cash or check payable to the order of the Company in an amount equal to the exercise price of the shares to be purchased

or, (ii) to the extent permitted by applicable law, through and under the terms and conditions of any formal cashless exercise program authorized by the Company.

5. TRANSFER OF OPTION. The Option granted hereunder may be transferred or assigned by the Optionee to such Optionee's family member in accordance with the provisions of Section 7.1 (f). of the Plan.

6. INCORPORATION OF PLAN TERMS. This Option is granted subject to all of the applicable terms and provisions of the Plan, including but not limited to the provision for acceleration of vesting of this Option set forth in Section 8 (Adjustment Provisions) and the limitations on the Company's obligation to deliver Optioned Shares upon exercise set forth in Section 9 (Settlement of Awards).

7. MISCELLANEOUS. This Agreement shall be construed and enforced in accordance with the laws of the State of Delaware, without regard to the conflict of laws principles thereof and shall be binding upon and inure to the benefit of any successor or assign of the Company and any executor, administrator, trustee, guardian, or other legal representative of you. Capitalized terms used but not defined herein shall have the meaning assigned under the Plan. This Agreement may be executed in one or more counterparts all of which together shall constitute but one instrument.

8. TAX CONSEQUENCES. The Company makes no representation or warranty as to the tax treatment to you of your receipt or exercise of this Option or upon

your sale or other disposition of the Optioned Shares. You should rely on your own tax advisors for such advice.

IN WITNESS WHEREOF, the parties have executed this Agreement as a sealed instrument as of the date first above written.

WATERS CORPORATION

By: Douglas A. Berthiaume  
Title: Chairman, President and Chief Executive Officer

EMPLOYEE

/s/ Brian K. Mazar  
-----  
Brian K. Mazar

Name:

WATERS CORPORATION  
STOCK OPTION AGREEMENT

This STOCK OPTION AGREEMENT is made this 7th day of December, 2000 by and between Waters Corporation, a Delaware corporation (the "Company") and {NAME} (the "Optionee"), an employee of Waters Corporation.

The Committee (as defined in Section 2 of the Plan) has determined that the Optionee is a key employee of the Company, and that the objectives of the Waters Corporation Second Amended and Restated 1996 Long-Term Performance Incentive Plan as amended and restated as of May 7, 1996 (the "Plan"), will be furthered by the grant of the Option (defined below) pursuant to this Agreement. Capitalized terms defined in the Plan and not otherwise defined herein shall have the meaning given such terms in the Plan.

In consideration of the foregoing and of the mutual undertakings set forth in this Stock Option Agreement, the Company and the Optionee agree as follows:

SECTION 1. Grant of Option.

1.1 The Company hereby affirms the grant to the Optionee of an option (the "Option") to purchase <SHARES> shares of Common Stock, par value \$.01 per share ("Common Stock") of the Company, at a purchase price of \$72.0625 per share.

1.2 The Option granted hereunder shall be a "nonqualified" stock option, and is not an "incentive stock option" within the meaning of Section 422 of the Code, subject to Section 83 of the Code.

SECTION 2. Exercisability; Vesting.

2.1 No portion of the Option is vested as of the date hereof. For the next five years, on each anniversary of the date hereof, 20% of the Option granted hereunder will vest and such vested portion of the Option will be exercisable.

2.2 The Option will terminate on December 7, 2010, in accordance with the provisions of Section 2.4 of the Plan.

2.3 If the Optionee terminates his or her employment with the Company (a) by reason of death or disability (as defined in Paragraph 11 of the Plan), the Optionee or the beneficiaries thereof, as the case may be, shall have one year from the date of the Optionee's death or termination by disability, as the case may be, to exercise any options that were vested and unexercised as of the date of death or termination (b) by reason of early, normal or deferred retirement, under an approved retirement program of the Company, the Optionee shall have 30 days from the date of termination due to such retirement to exercise any options that were vested

and unexercised as of the date of termination, (c) due to reasons other than those specified in clauses (a) through (b) of this Section 2.3, the Optionee shall have 30 days from the date of termination to exercise any options that were vested and unexercised as of the date of termination.

SECTION 3. Method of Exercise.

3.1 The Option or any part thereof may be exercised only by giving written notice to the Company in the form of Exhibit A-1 or Exhibit A-2 hereto (as appropriate), which notice shall state the election to exercise the Option and the number of whole shares of Common Stock with respect to which the Option is being exercised. Subject to Section 3.2 below, such notice must be accompanied by payment of the full purchase price for the number of shares purchased.

3.2 Payment of the purchase price shall be made (i) by certified or official bank check payable to the Company or (ii) by reduction in the number of shares of Common Stock to be delivered to Optionee pursuant to the Option by the number of shares of common stock, the value of which is equal to the exercise price that would otherwise be payable by the Optionee to the Company (cash-less Exercise). As soon as it is practicable after it receives payment of the purchase price, or direction that the Optionee has elected cashless Exercise, the Company shall deliver to the Optionee a certificate or certificates for the shares of Common Stock acquired pursuant to the Option.

SECTION 4. Transferrability.

4.1 Except as set forth in Section 4.2 below, no right granted to the

Optionee under the Plan or this Agreement shall be assignable or transferrable (whether by operation of law or otherwise and whether voluntary or involuntarily), other than by will or by the laws of descent and distribution. Except as set forth in Section 4.2 below, all rights granted to the Optionee under the plan or this Agreement shall be exercisable only by the Optionee or his estate, heirs or personal representatives.

4.2 The option granted hereunder may be transferred or assigned by the Optionee at any time to such Optionee's spouse and/or descendants (whether natural or adopted) and any trust solely for the benefit of such Optionee and/or Optionee's spouse, or their respective descendants. Such transfer shall be effective upon delivery of notice in the form Exhibit B hereto to the Company in accordance with the notice provisions hereof.

SECTION 5. Right of Discharge Reserved.

Nothing in the Plan or in this Agreement shall confer upon the Optionee any right to continue in the employ or service of the Company or affect any right which the Company may have to terminate the employment or services of the Optionee.

SECTION 6. Plan Provisions to Prevail.

This Agreement shall be subject to all of the terms and provisions of the Plan, which are incorporated hereby and made a part hereof. In the event there is any inconsistency between the provisions of this Agreement and the Plan, the provisions of the Plan shall govern.

SECTION 7. Optionee's Agreements and Acknowledgements.

By entering into this Agreement the Optionee agrees and acknowledges that (a) he has received and read a copy of the Plan and accepts this Option subject to the terms and provisions of the Plan, and (b) that no member of the Committee shall be liable for any action or determination made in good faith with respect to the Plan or any award thereunder. As a condition to the issuance of shares of Common Stock under this Option, the Optionee authorizes the Company to withhold in accordance with applicable law from any regular cash compensation payable to him any taxes required to be withheld by the Company under federal, state, or local law as a result of his exercise of this Option.

SECTION 8. Section Headings.

This Section headings contained herein are for the purpose of convenience only and are not intended to define or limit the contents of said Sections.

SECTION 9. Notices.

Any notice to be given to the Company hereunder shall be in writing and shall be addressed to the Secretary of the Company at 34 Maple Street, Milford Massachusetts, 01757 or at such other address as the Company may hereinafter designate to the Optionee by notice as provided herein. Any notice to be given to Optionee shall be given at the address set forth on the first page hereof, or at such other address as Optionee may hereinafter designate to the Company by notice as provided herein. Notices hereunder shall be deemed to have been duly given when personally delivered or mailed by registered or certified mail to the party entitled to receive them.

SECTION 10. Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors and assigns of the Company and, to the extent set forth in Section 4.1 and 4.2 the permitted transferees, heirs, personal representatives, conservator and committee of the Optionee.

SECTION 11. Restrictions on shares

The Company's obligation to issue or deliver any certificate or certificates for shares of Common Stock under this option, and the transferability of shares acquired by the exercise of this option, shall be subject to all of the following conditions:

- (a) Any registration or other qualification of such shares under any state or federal law or regulation, or the maintaining in effect of any such registration or other qualification which the Company shall, in its absolute discretion upon the advice of counsel, deem necessary or advisable; and
- (b) The obtaining of any other consent, approval, or permit from any state or federal governmental agency which the Company shall, in its absolute discretion upon the advice of counsel, determine to be necessary or advisable.

SECTION 12. GOVERNING LAW.

The corporate law of the State of Delaware shall govern all issues concerning the relative rights of the Company and its stockholders. All other provisions of this agreement shall be governed by and construed in accordance with the internal laws of the State of New York, without giving effect to

principles of conflicts of laws or choice of law of the State of New York or any other jurisdiction which would result in the application of the law of any jurisdiction other than the State of New York.

SECTION 13. Entire Agreement.

This Agreement hereby supersedes all prior agreements, either written or oral, between Optionee and the Company or the Company with respect to the Optionee and any grant of the Options by the Company to the Optionee.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

WATERS CORPORATION

By:

Name: Douglas Berthiaume  
Title: Chief Executive Officer

OPTIONEE:

By:

Name:  
Title:

WATERS CORPORATION  
AMENDED AND RESTATED MANAGEMENT INCENTIVE PLAN  
2005

Section 162(m) of the Internal Revenue Code ("Section 162(m)") generally limits the tax deduction available to public companies for annual compensation paid to senior executives in excess of \$1 million unless the compensation qualifies as "performance-based compensation." In order for compensation to qualify as "performance-based compensation", it must meet the following criteria: (i) such compensation must be payable solely on account of the attainment of one or more pre-established, objective performance goals; (ii) the performance goal under which such compensation is paid must be established by a compensation committee composed solely of two or more "outside directors"; (iii) the material terms of the performance goal under which such compensation is paid must be disclosed to and approved by the stockholders before payment; and (iv) the compensation committee must certify that the performance goals have been satisfied before payment. The Company's Management Incentive Plan (the "Plan") satisfies by its terms the requirement set forth in clause (i) above, and the Compensation Committee intends to satisfy the requirements set forth in clauses (ii) and (iv) above. Accordingly, in order to ensure compliance with Section 162(m), the Company's stockholders are asked to approve the material terms of the Plan described below as such terms apply to the senior executives of the Company. Failure of the stockholders to approve the material terms of the Plan will not prevent the Company from making incentive payments under the Plan in the event that the Company achieves the Performance Objectives. However, the tax deduction for such incentive payments will not be available to the Company to the extent that the annual compensation paid to each senior executive exceeds \$1 million.

**Purpose.** The purpose of the Plan is to promote the interests of the Company and its stockholders by providing certain key employees of the Company with an incentive to (i) join and/or remain in the service of the Company, (ii) maintain and enhance the long-term performance and profitability of the Company and (iii) acquire a proprietary interest in the success of the Company.

**Administration.** With respect to the Company's senior executives, the Plan is administered by the Compensation Committee. The stockholders are being asked to approve the material terms of the Plan only as such terms pertain to such senior executives (each, a "Participant"). Within the first ninety days of each fiscal year (each a "Plan Year"), the Compensation Committee establishes the performance objective on which each Participant's incentive payment is based (the "Performance Objective"). At the conclusion of each Plan Year, the Compensation Committee reviews the audited results of the Company's performance against each Participant's Performance Objective and determines the incentive payment earned by each Participant.

**Duration.** The Plan may be modified or terminated at any time at the discretion of the Board of Directors. To qualify under Section 162(m) of the Internal Revenue Code, any material modifications of the Plan require stockholder approval.

**Determination of Incentive Payment.** Within the first ninety days of each Plan Year, the Compensation Committee establishes a schedule of potential incentive payments for each Participant which are tied to the Company's achievement of certain Performance Objectives. Each Participant becomes eligible to receive an incentive payment if the Company achieves 90% of such Participant's Performance Objective. The amount of the incentive payment increases as the Company achieves a greater percentage of such Participant's Performance Objective. The maximum incentive payment under the Plan may not exceed \$5,000,000.

**Business Criteria on which the Performance Objectives are Based.** The business criteria on which each Participant's Performance Objective is based are determined by the Compensation Committee each Plan Year. Such business criteria may in the future include, but are not limited to, objectively verifiable growth in the Company's financial performance, or objectively verifiable improvement in the Company's

income statement or balance sheet position determined based on the Company's audited financial statements and its financial records at the end of each Plan Year.

**Summary of Tax Consequences.** The following is a brief and general discussion of the federal income tax rules applicable to the receipt of an incentive payment under the Plan. In the tax year during which each Participant receives an incentive payment under the Plan, such Participant recognizes ordinary income in the amount of such incentive payment. The Company generally will have a deduction in the same amount as the ordinary income recognized by each Participant in the Company's tax year in which such incentive payment is accrued by the Company. For purposes of the foregoing summary, it is assumed that no incentive payment will constitute in any part "deferred compensation" as that term is defined in Section 409A or, if any incentive payment were to constitute deferred compensation, its terms would comply with the requirements of Section 409A (in general, by limiting any flexibility in the time of



payment). If an incentive payment includes deferred compensation, and its terms do not comply with the requirements of Section 409A, then the incentive payment will be taxable when it is earned and vested (even if not then payable) and the recipient will be subject to an additional 20% tax.

Required Vote; Recommendation of the Board of Directors. The proposal to approve the Management Incentive Plan will require approval by a majority of the votes cast by the holders of the shares of Common Stock voting in person or by proxy at the meeting. Withholding authority to vote for approval of the Plan will be treated as shares present and entitled to vote and, for purposes of determining the outcome of the vote, will not be treated as votes cast for approval of the Plan. Broker "non-votes" will not be treated as shares present and entitled to vote on approval of the Plan and will have no effect on the outcome of the vote. Broker "non-votes" will be counted as present for the purpose of determining whether a quorum is present.

## WATERS CORPORATION AND SUBSIDIARIES

## Waters Corporation (Delaware)

- Waters Technologies Corporation (Delaware)
  - Waters Australia PTY LTD. (Australia)
  - Waters A/S (Denmark)
  - Waters AG (Switzerland)
  - Waters NV (Belgium)
  - Waters Cromatografia SA (Spain)
  - Waters SA de CV (Mexico)
  - Waters Comercial Ltda (Brazil)
  - Waters OY (Finland)
  - Waters Ges.MBH (Austria)
    - Waters Kft (Hungary)
    - Waters Sp.Zo.o (Poland)
  - Waters SA (France)
    - Micromass SA (France)
  - Waters GmbH (Germany)
    - Creon Lab Control Srl (Romania)
  - Waters SpA (Italy)
  - Waters Sverige AB (Sweden)
  - Waters Limited (Canada)
  - TA Instruments-Waters LLC (Delaware)
  - TA Instruments, Inc. (Delaware)
  - NuGenesis Technologies Corporation (Delaware)
    - NuGenesis Technologies Limited (UK)
  - Waters France Holding Corp. (Delaware)
  - Waters Investments Limited (Delaware)
    - Waters India Pvt. Ltd.(India)
      - Esbee Wire Pvt. Ltd. (India)
    - Waters Asia Limited (Delaware)
      - Waters Korea (Korea)
      - Waters China Ltd. (Hong Kong)
      - Waters Int'l Trading Limited (China)
    - Nihon Waters Limited (Delaware)
      - Nihon Waters K.K. (Japan)
      - TA Instruments Japan, Inc. (Japan)
    - Microsep Proprietary Ltd (So. Africa) (24.5%)

## Waters Investments Ltd. (Delaware) (continued)

- Waters European Holdings LLP
  - Milford International Limited
  - Manchester International Limited
  - MM European Holdings LLP
    - Waters Finance III LLC
    - Waters Luxembourg SARL
    - Waters Tech. Holdings Ltd (Ireland)
- Subsidiaries of Waters Luxembourg SARL
  - Micromass Holdings Ltd.
    - Waters Chromatography BV (Netherlands)
    - Waters Chromatography Europe BV (Netherlands)
    - Micromass Ltd. (UK)
      - Waters Ltd. (UK)
        - Phase Sep Ltd. (UK)
          - Phase Sep Eurl (France)
        - Longpure (UK)
      - Micromass UK Ltd. (UK)
        - Micromass Investments Ltd. (UK)
          - Mass Analyser Prod Ltd. (UK)
        - Micromass International Ltd. (UK)
          - Micromass B.V. (Netherlands)
      - TA Instruments Ltd. (UK)
    - Sandygrow Ltd. (Ireland)
      - Rodolfo Holding Ltd. (Ireland)
        - Milford Finance BV (Netherlands)
      - Waters Chromatography Ireland Ltd. (Ireland)
        - Waters Tech. Ireland Ltd. (Ireland)

\* All subsidiaries are 100% owned unless otherwise indicated.

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-8 (Nos. 333-110613, 333-92332, 333-60054, 333-81723, 333-18371) of Waters Corporation of our report dated March 15, 2005 relating to the financial statements, financial statement schedule, management's assessment of the effectiveness of internal control over financial reporting and the effectiveness of internal control over financial reporting, which appears in this Form 10-K.

PricewaterhouseCoopers LLP

Boston, Massachusetts  
March 15, 2005

CHIEF EXECUTIVE OFFICER CERTIFICATION PURSUANT TO 18 U.S.C.  
SECTION 1350, AS ADOPTED PURSUANT TO SECTION 302  
OF THE SARBANES-OXLEY ACT OF 2002

I, Douglas A. Berthiaume, the Chief Executive Officer of Waters Corporation, certify that:

1. I have reviewed this annual report on Form 10-K of Waters Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15e and 15d-15e) and internal control over financial reporting (as defined in Exchange Act Rules 3a-15(f) and 15d-15(f)) for the registrant and have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 15, 2005

/s/ Douglas A. Berthiaume

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Douglas A. Berthiaume  
Chief Executive Officer

CHIEF FINANCIAL OFFICER CERTIFICATION PURSUANT TO 18 U.S.C.  
SECTION 1350, AS ADOPTED PURSUANT TO SECTION 302  
OF THE SARBANES-OXLEY ACT OF 2002

I, John Ornell, the Chief Financial Officer of Waters Corporation, certify that:

1. I have reviewed this annual report on Form 10-K of Waters Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15e and 15d-15e) and internal control over financial reporting (as defined in Exchange Act Rules 3a-15(f) and 15d-15(f)) for the registrant and have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 15, 2005

/s/ John Ornell

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John Ornell  
Chief Financial Officer

CHIEF EXECUTIVE OFFICER CERTIFICATION PURSUANT TO 18 U.S.C.  
SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906  
OF THE SARBANES-OXLEY ACT OF 2002

The certification set forth below is hereby made solely for the purpose of satisfying the requirements of Section 906 of the Sarbanes-Oxley Act of 2002 and may not be relied upon or used for any other purposes.

In connection with the Annual Report of Waters Corporation (the "Company") on Form 10-K for the year ended December 31, 2004, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Douglas A. Berthiaume, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge: (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

A signed original of this written statement required by Section 906 or other document authenticating, acknowledging or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

Date: March 15, 2005

By: /s/ Douglas A. Berthiaume

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Douglas A. Berthiaume  
Chief Executive Officer

CHIEF FINANCIAL OFFICER CERTIFICATION PURSUANT TO 18 U.S.C.  
SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906  
OF THE SARBANES-OXLEY ACT OF 2002

The certification set forth below is hereby made solely for the purpose of satisfying the requirements of Section 906 of the Sarbanes-Oxley Act of 2002 and may not be relied upon or used for any other purposes.

In connection with the Annual Report of Waters Corporation (the "Company") on Form 10-K for the year ended December 31, 2004, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, John Ornell, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge: (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

A signed original of this written statement required by Section 906 or other document authenticating, acknowledging or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

Date: March 15, 2005

By: /s/ John Ornell

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John Ornell  
Chief Financial Officer

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