Risk Factors

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In the proceedings, ASIC seeks:

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

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

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

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

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

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

Negative publicity may continue to adversely affect our business.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We have concentrated our finance and treasury activities in our Dutch finance subsidiary located in The Netherlands. In addition to providing financing to our various subsidiaries, the finance subsidiary owns and develops intellectual property that it licenses to our operating subsidiaries. Under The Netherlands International Group Finance Company rules, we have obtained a ruling from the Dutch Revenue authority that allows the finance subsidiary to set aside, in a Financial Risk Reserve (which we refer to as FRR), a portion of its taxable profits from financing and from licensing its intellectual property. The amounts set aside in the FRR are free of current Dutch income tax. Consequently, the finance subsidiary will generally incur a tax rate of approximately 13% to 15% on its qualifying financing and licensing income and a 25.5% statutory rate on all other income (25.5% is the Dutch statutory rate for calendar year 2007 and subsequent years), including any amounts involuntarily released from the FRR to cover any risks (including currency, bad debt and foreign branch losses) for which the FRR was established. The tax rate on qualifying income may be reduced to as low as approximately 5% to 7% depending on the extent to which amounts from the FRR pay for certain qualifying operating costs and expenditures and result in a tax exempt release from the FRR. However, the effective tax rate may also be higher than 13% to 15% if (1) the risks for which the FRR was formed materialize or (2) if there are insufficient opportunities to obtain tax exempt releases from the FRR. The Dutch revenue ruling became effective on July 1, 2001 and, when issued, was to apply for 10 years so long as we satisfy the requirements of The Netherlands International Group Finance Company provisions under Dutch tax law. As discussed below, the Dutch revenue ruling is set to expire on December 31, 2010.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The costs of complying with environmental and health and safety laws relating to our operations or the liabilities arising from past or future releases of, or exposure to, hazardous substances or product liability matters, or our failure to comply with air, water, waste, and other than existing environmental regulations may result in us making future expenditures that could have a material adverse effect on our financial position, liquidity, results of operations and cash flows. In addition, we cannot make any assurances that the laws currently in place will not change. Also, if applicable laws or judicial interpretations related to successor liability or “piercing the corporate veil” were to change, it could have a material adverse effect on our financial position, liquidity, results of operations and cash flows. See Item 4, “Information on the Company — Legal Proceedings.”

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

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

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

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

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

Cellulose fiber, silica, cement and water are the principal raw materials used in the production of fiber cement. Our fiber cement business periodically experiences fluctuations in the supply and costs of raw materials, and some of our supply markets are concentrated. For example, during both fiscal years 2008 and 2007 in the United States, pulp and cement prices rose. Market pulp prices rose by 11% and 16% in fiscal years 2008 and 2007, respectively, and the price we pay for cement increased by 3% and 7% in fiscal years 2008 and 2007, respectively. Pulp selling prices have increased primarily because of tight global supply and low inventory levels. As pulp is globally traded in U.S. dollars, the weakening of the U.S. dollar has also eroded profitability for producers outside of the United States. This has resulted in declining viability for less efficient softwood pulp producers, particularly in Canada, and this in turn has impacted global supply. Strengthening of currencies relative to the U.S. dollar (particularly in Asia and Europe) has also enabled pulp producers to push through higher U.S. pricing. In fiscal year 2008, strong increases in energy related costs including coal, diesel and electricity also adversely impacted materials which have a high energy cost component, including cement and quarrying products such as silica. Price fluctuations or material delays may occur in the future due to lack of raw materials or suppliers. The loss or deterioration of our relationship with a major supplier, an increase in demand by third parties for a particular supplier's products or materials or delays in obtaining materials could have a material adverse effect on our financial position, liquidity, results of operations and cash flows.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Our success depends, in part, on the proprietary nature of our technology, including non-patentable intellectual property such as our process technology. To the extent that a competitor is able to reproduce or otherwise capitalize on our technology, it may be difficult, expensive or impossible for us to obtain adequate legal or equitable relief. Also, the laws of some foreign countries may not protect our intellectual property to the same extent as do the laws of the United States. In addition to patent protection of intellectual property rights, we consider elements of our product designs and processes to be proprietary and confidential and/or trade secrets. To safeguard our confidential information, we rely on employee, consultant and vendor non-disclosure agreements and contractual provisions and a system of internal and technical safeguards to protect our proprietary information. However, any of our registered or unregistered intellectual property rights may be challenged or exploited by others in the industry, which could materially adversely affect our financial position, liquidity, results of operations, cash flows and competitive position.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Forward-Looking Statements

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

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