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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-Q**

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

For the Quarterly Period Ended June 28, 2009

Commission File Number 1-4949

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**CUMMINS INC.**

(Exact name of registrant as specified in its charter)

**Indiana**  
(State of Incorporation)

**35-0257090**  
(IRS Employer Identification No.)

**500 Jackson Street  
Box 3005  
Columbus, Indiana 47202-3005**  
(Address of principal executive offices)

**Telephone (812) 377-5000**  
(Registrant's telephone number, including area code)

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that registrant was required to submit and post such files).  
Yes  No

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

Large accelerated filer       Accelerated filer       Non-accelerated filer       Smaller reporting company

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

Yes  No

As of June 28, 2009, there were 201,805,312 shares of common stock outstanding with a par value of \$2.50 per share.

**Website Access to Company's Reports**

Cummins maintains an internet website at [www.cummins.com](http://www.cummins.com). Investors can obtain copies of our filings from this website free of charge as soon as reasonably practicable after they are electronically filed with, or furnished to the Securities and Exchange Commission.

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**PART I. FINANCIAL INFORMATION**

**ITEM 1. Condensed Financial Statements**

**CUMMINS INC. AND SUBSIDIARIES  
CONDENSED CONSOLIDATED STATEMENTS OF INCOME  
(Unaudited)**

In millions (except per share amounts)	Three months ended		Six months ended	
	June 28, 2009	June 29, 2008	June 28, 2009	June 29, 2008
<b>NET SALES (a)</b>	\$ 2,431	\$ 3,887	\$ 4,870	\$ 7,361
Cost of sales	1,983	3,008	3,977	5,775
<b>GROSS MARGIN</b>	<b>448</b>	879	<b>893</b>	1,586
<b>OPERATING EXPENSES AND INCOME</b>				
Selling, general and administrative expenses	287	370	587	721
Research, development and engineering expenses	79	104	164	207
Equity, royalty and interest income from investees (Note 5)	57	69	90	136
Restructuring charges (Note 6)	7	—	73	—
Other operating (expense) income, net	(11)	(6)	(9)	(7)
<b>OPERATING INCOME</b>	<b>121</b>	468	<b>150</b>	787
Interest income	1	4	3	10
Interest expense	10	12	17	23
Other (expense) income, net	(13)	(3)	(16)	(13)
<b>INCOME BEFORE INCOME TAXES</b>	<b>99</b>	457	<b>120</b>	761
Income tax expense	29	147	36	249
<b>NET INCOME</b>	<b>70</b>	310	<b>84</b>	512
Less: net income attributable to noncontrolling interests	14	17	21	29
<b>NET INCOME ATTRIBUTABLE TO CUMMINS INC.</b>	<b>\$ 56</b>	293	<b>\$ 63</b>	\$ 483
<b>EARNINGS PER COMMON SHARE ATTRIBUTABLE TO CUMMINS INC.</b>				
Basic	\$ 0.28	\$ 1.50	\$ 0.32	\$ 2.47
Diluted	\$ 0.28	\$ 1.49	\$ 0.32	\$ 2.46
<b>WEIGHTED AVERAGE SHARES OUTSTANDING</b>				
Basic	197.1	195.2	197.0	195.1
Dilutive effect of stock compensation awards	0.3	1.4	0.2	1.4
Diluted	<u>197.4</u>	<u>196.6</u>	<u>197.2</u>	<u>196.5</u>
<b>CASH DIVIDENDS DECLARED PER COMMON SHARE</b>	<b>\$ 0.175</b>	\$ 0.125	<b>\$ 0.35</b>	\$ 0.25

(a) Includes sales to nonconsolidated equity investees of \$422 million and \$851 million and \$570 million and \$1,082 million for the three and six months ended June 28, 2009 and June 29, 2008, respectively.

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

In millions (except par value)	June 28, 2009	December 31, 2008
<b>ASSETS</b>		
Current assets		
Cash and cash equivalents	\$ 534	\$ 426
Marketable securities	17	77
Accounts and notes receivable, net		
Trade and other	1,533	1,551
Nonconsolidated equity investees	192	231
Inventories (Note 7)	1,535	1,783
Deferred income taxes	364	347
Prepaid expenses and other current assets	198	298
Total current assets	<u>4,373</u>	<u>4,713</u>
Long-term assets		
Property, plant and equipment	4,681	4,539
Accumulated depreciation	(2,821)	(2,698)
Property, plant and equipment, net	<u>1,860</u>	<u>1,841</u>
Investments and advances related to equity method investees	527	588
Goodwill	362	362
Other intangible assets, net	241	223
Deferred income taxes	499	491
Other assets	259	301
Total assets	<u>\$ 8,121</u>	<u>\$ 8,519</u>
<b>LIABILITIES</b>		
Current liabilities		
Current portion of long-term debt and loans payable	\$ 63	\$ 69
Accounts payable (principally trade)	773	1,009
Current portion of accrued product warranty (Note 8)	373	434
Accrued compensation, benefits and retirement costs	283	364
Other accrued expenses	622	763
Total current liabilities	<u>2,114</u>	<u>2,639</u>
Long-term liabilities		
Long-term debt	617	629
Pensions	561	574
Postretirement benefits other than pensions	442	452
Other liabilities and deferred revenue	792	745
Total liabilities	<u>4,526</u>	<u>5,039</u>
Commitments and contingencies (Note 9)	—	—
<b>EQUITY</b>		
Cummins Inc. shareholders' equity		
Common stock, \$2.50 par value, 500 shares authorized, 222.1 and 221.7 shares issued	1,796	1,793
Retained earnings	3,280	3,288
Treasury stock, at cost, 20.3 and 20.4 shares	(714)	(715)
Common stock held by employee benefits trust, at cost, 4.8 and 5.1 shares	(58)	(61)
Unearned compensation	(1)	(5)
Accumulated other comprehensive loss		
Defined benefit postretirement plans	(794)	(798)
Other	(137)	(268)
Total accumulated other comprehensive loss	<u>(931)</u>	<u>(1,066)</u>
Total Cummins Inc. shareholders' equity	<u>3,372</u>	<u>3,234</u>
Noncontrolling interests	223	246
Total equity	<u>3,595</u>	<u>3,480</u>
Total liabilities and equity	<u>\$ 8,121</u>	<u>\$ 8,519</u>

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

**CUMMINS INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(Unaudited)

In millions	Six months ended	
	June 28, 2009	June 29, 2008
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Net income	\$ 84	\$ 512
Adjustments to reconcile net income to net cash provided by operating activities:		
Restructuring charges, net of cash payments (Note 6)	20	—
Depreciation and amortization	154	158
Deferred income taxes	20	14
Equity in income of investees, net of dividends	60	(62)
Pension expense, net of pension contributions (Note 4)	(15)	(3)
Other post-retirement benefits expense, net of cash payments (Note 4)	(16)	(5)
Stock-based compensation expense	12	17
Excess tax deficiencies (benefits) on stock-based awards	2	(12)
Translation and hedging activities	51	8
Changes in current assets and liabilities, net of acquisitions and dispositions:		



Unrealized gain on derivatives			44		44	—	44			
Foreign currency translation adjustments			87		87	6	93			
Change in pensions and other postretirement defined benefit plans			4		4	—	4			
Total comprehensive income					198	27	225			
Issuance of shares	1	2			3	—	3			
Cash dividends on common stock			(71)		(71)	—	(71)			
Distribution to noncontrolling interests					—	(15)	(15)			
Stock option exercises		(1)		1	—	—	—			
Conversion to capital lease (Note 12)					—	(35)	(35)			
Other shareholder transactions		1		3	4	8	8			
<b>BALANCE AT JUNE 28, 2009</b>	<b>\$ 555</b>	<b>\$ 1,241</b>	<b>\$ 3,280</b>	<b>\$ (931)(1)</b>	<b>\$ (714)</b>	<b>\$ (58)</b>	<b>\$ (1)</b>	<b>\$ 3,372</b>	<b>\$ 223</b>	<b>\$ 3,595</b>

(1) Comprised of defined benefit postretirement plans of \$(794) million, foreign currency translation adjustments of \$(116) million, unrealized gain on marketable securities of \$2 million and unrealized loss on derivatives of \$(23) million.

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

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**CUMMINS INC. AND SUBSIDIARIES**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
**(Unaudited)**

**NOTE 1. NATURE OF OPERATIONS**

Cummins Inc. ("Cummins," "the Company," "the registrant," "we," "our," or "us") is a leading global power provider that designs, manufactures, distributes and services diesel and natural gas engines, electric power generation systems and engine-related component products, including filtration and emissions solutions, turbochargers, fuel systems, controls and air handling systems. We were founded in 1919 as one of the first manufacturers of diesel engines and are headquartered in Columbus, Indiana. We sell our products to Original Equipment Manufacturers (OEMs), distributors and other customers worldwide. We serve our customers through a network of more than 500 company-owned and independent distributor locations and approximately 5,200 dealer locations in more than 190 countries and territories.

**NOTE 2. BASIS OF PRESENTATION**

The unaudited *Condensed Consolidated Financial Statements* reflect all adjustments which, in the opinion of management, are necessary for a fair statement of the results of operations, financial position and cash flows. All such adjustments are of a normal recurring nature. The *Condensed Consolidated Financial Statements* have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission (SEC) and in accordance with accounting principles generally accepted in the United States of America (GAAP) for interim financial information. Certain information and footnote disclosures normally included in annual financial statements prepared in accordance with GAAP have been condensed or omitted as permitted by such rules and regulations. Certain reclassifications have been made to prior period amounts to conform to the presentation of the current period condensed financial statements.

Our reporting period ends on the Sunday closest to the last day of the quarterly calendar period. The second quarters of 2009 and 2008 ended on June 28, and June 29, respectively. The interim periods for both 2009 and 2008 contain 13 weeks. Our fiscal year ends on December 31, regardless of the day of the week on which December 31 falls.

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect reported amounts in the *Condensed Consolidated Financial Statements*. Significant estimates and assumptions in these *Condensed Consolidated Financial Statements* require the exercise of judgment and are used for, but not limited to, allowance for doubtful accounts, estimates of future cash flows and other assumptions associated with goodwill and long-lived asset impairment tests, useful lives for depreciation and amortization, warranty programs, determination of discount and other rate assumptions for pension and other postretirement benefit expenses, income taxes and deferred tax valuation allowances and contingencies. Due to the inherent uncertainty involved in making estimates, actual results reported in future periods may be different from these estimates.

The weighted-average diluted common shares outstanding exclude the anti-dilutive effect of certain stock options since such options had an exercise price in excess of the monthly average market value of our common stock. The options excluded from diluted earnings per share for the three and six month periods ended June 28, 2009, and June 29, 2008, were as follows:

	Three months ended		Six months ended	
	June 28, 2009	June 29, 2008	June 28, 2009	June 29, 2008
Options excluded	99,167	4,317	75,671	7,286

Comprehensive income is comprised of net income, as well as adjustments for foreign currency translation, marketable securities, derivative instruments designated as cash flow hedges and pension and other postretirement defined benefits. Total comprehensive income attributable to Cummins Inc. for the three and six month periods ended June 28, 2009, was \$177 million and \$198 million, respectively. Total comprehensive income attributable to Cummins Inc. for the three and six month periods ended June 29, 2008, was \$269 million and \$505 million, respectively.

Total comprehensive income attributable to the noncontrolling interests for the three and six month periods ended June 28, 2009, was \$25 million and \$27 million, respectively. Total comprehensive income attributable to the noncontrolling interests for the three and six month periods ended June 29, 2008, was \$7 million and \$16 million, respectively.

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Consolidated comprehensive income for the three and six month periods ended June 28, 2009, was \$202 million and \$225 million, respectively. Consolidated comprehensive income for the three and six month periods ended June 29, 2008, was \$276 million and \$521 million, respectively.

You should read these interim condensed financial statements in conjunction with the *Consolidated Financial Statements* included in our Annual Report on Form 10-K for the

year ended December 31, 2008. Our interim period financial results for the three and six month interim periods presented are not necessarily indicative of results to be expected for any other interim period or for the entire year. The year-end *Condensed Consolidated Balance Sheet* data was derived from audited financial statements, but does not include all disclosures required by GAAP.

### NOTE 3. RECENTLY ADOPTED AND RECENTLY ISSUED ACCOUNTING PRONOUNCEMENTS

#### Accounting Pronouncements Recently Adopted

In December 2007, the FASB issued SFAS No. 160, “Noncontrolling Interests in Consolidated Financial Statements” (SFAS 160), which is effective for interim and annual fiscal periods beginning after December 15, 2008. This standard amends Accounting Research Bulletin No. 51, “Consolidated Financial Statements” (ARB 51) and establishes accounting and reporting standards for the noncontrolling interest in a subsidiary and for the accounting for future ownership changes with respect to those subsidiaries. This standard defines a noncontrolling interest, previously called a minority interest, as the portion of equity in a subsidiary not attributable, directly or indirectly, to a parent. This standard requires, among other items, that a noncontrolling interest be included in the consolidated balance sheet within equity separate from the parent’s equity; consolidated net income to be reported at amounts inclusive of both the parent’s and noncontrolling interest’s shares and, separately, the amounts of consolidated net income attributable to the parent and noncontrolling interest all on the consolidated statements of income; and if a subsidiary is deconsolidated, any retained noncontrolling equity investment in the former subsidiary be measured at fair value and a gain or loss be recognized in net income based on such fair value. We adopted this standard effective January 1, 2009, and applied it retrospectively. As a result, we reclassified noncontrolling interests of \$246 million from the mezzanine section to equity in the December 31, 2008, balance sheet. Certain reclassifications have been made to prior period amounts to conform to the presentation of the current period under this standard.

In March 2008, the FASB issued SFAS No. 161, “Disclosures about Derivative Instruments and Hedging Activities” (SFAS 161), which is effective for interim and annual fiscal periods beginning after November 15, 2008. This standard amends SFAS No. 133, “Accounting for Derivative Instruments and Hedging Activities” (SFAS 133) and requires enhanced disclosures about a company’s derivative and hedging activities. We adopted this standard effective January 1, 2009, and applied it prospectively. The new disclosures required by this standard are included in Note 11.

In April 2009, the FASB issued three new FASB Staff Positions (FSPs) all of which impact the accounting and disclosure related to certain financial instruments. FSP FAS 157-4, “Determining Fair Value When the Volume and Level of Activity for the Asset or Liability Have Significantly Decreased and Identifying Transactions That Are Not Orderly” (FSP FAS 157-4) provides additional guidance for estimating fair value in accordance with SFAS 157 when the volume and level of activity for the asset or liability have significantly decreased. It also includes guidance on identifying circumstances that indicate a transaction is not orderly. FSP FAS 115-2 and FAS 124-2, “Recognition of Other-Than-Temporary Impairment” (FSP FAS 115-2 and FAS 124-2) amends the other-than-temporary impairment guidance for debt securities to make the guidance more operational and to improve the presentation and disclosure of other-than-temporary impairments on debt and equity securities in the financial statements. FSP FAS 107-1 and APB 28-1 “Interim Disclosures about Fair Value of Financial Instruments” (FSP FAS 107-1 and APB 28-1) amends FASB Statement No. 107 to require disclosures about the fair value of financial instruments on an interim basis in addition to the annual disclosure requirements. The new disclosures required by this FSP are included in Note 11. These FSPs were required to be adopted for interim periods ending after June 15, 2009. These staff positions did not have a material impact on our *Condensed Consolidated Financial Statements*.

In June 2009, the FASB issued SFAS No. 165, “Subsequent Events” (SFAS 165), which is effective for interim and annual fiscal periods ending after June 15, 2009. This standard establishes general standards of accounting for and disclosure of events that occur after the balance sheet date but before financial statements are issued or are available to be issued. This standard sets forth the period after the balance sheet date during which we should evaluate events or transactions that may occur for potential recognition or disclosure in the financial statements, the circumstances under which we should recognize events or transactions occurring after the balance sheet date in our financial

statements and the disclosures that we should make about events or transactions that occurred after the balance sheet date. In preparing our *Condensed Consolidated Financial Statements*, we evaluated subsequent events through July 30, 2009, which is the date our quarterly report was filed with the Securities and Exchange Commission.

#### Accounting Pronouncements Issued But Not Yet Effective

In June 2009, the FASB issued SFAS No. 166, “Accounting for Transfers of Financial Assets an amendment of FASB Statement No. 140” (SFAS 166), which is effective for interim and annual fiscal periods beginning after November 15, 2009. This standard removes the concept of a qualifying special-purpose entity from FASB Statement No. 140 and removes the exception from applying FASB Interpretation No. 46(R) (revised December 2003) *Consolidation of Variable Interest Entities* to variable interest entities that are qualifying special-purpose entities (FIN 46(R)). This standard modifies the financial-components approach used in SFAS 140 and limits the circumstances in which a financial asset, or portion of a financial asset, should be derecognized. This standard also requires enhanced disclosure regarding transfers of financial interests and a transferor’s continuing involvement with transferred assets. We are currently evaluating the impact of this standard on our *Condensed Consolidated Financial Statements*.

In June 2009, the FASB issued SFAS No. 167, “Amendments to FASB Interpretation No. 46(R)” (SFAS 167), which is effective for interim and annual fiscal periods beginning after November 15, 2009. This standard requires entities to analyze whether their variable interests give it a controlling financial interest of a variable interest entity (VIE) and outlines what defines a primary beneficiary. This statement amends FIN 46(R) by: (a) changing certain guidance for determining whether an entity is a VIE; (b) eliminating the quantitative approach previously required for determining the primary beneficiary; and (c) requiring entities to continuously analyze whether they are the primary beneficiary of a VIE among other amendments. This statement also requires enhanced disclosures regarding an entity’s involvement in a VIE. It is possible that application of this revised guidance will change our assessment of which entities in which we are involved are VIEs or whether or not we are the primary beneficiary. We are currently evaluating the impact of this standard on our *Condensed Consolidated Financial Statements*.

In July 2009, the FASB issued SFAS No. 168, “The FASB Accounting Standards Codification™ and the Hierarchy of Generally Accepted Accounting Principles—a replacement of FASB Statement No. 162” (SFAS 168), which is effective for interim and annual fiscal periods ending after September 15, 2009. This standard replaces SFAS 162, and the codification from this standard will supersede all then-existing non-SEC accounting and reporting standards to become the sole source of authoritative U.S. GAAP. The adoption of this standard will have no impact on our *Condensed Consolidated Financial Statements*.

### NOTE 4. PENSION AND OTHER POSTRETIREMENT BENEFITS

We sponsor funded and unfunded domestic and foreign defined benefit pension and other postretirement plans. Cash contributions to these plans were as follows:

In millions	Three months ended		Six months ended	
	June 28, 2009	June 29, 2008	June 28, 2009	June 29, 2008
Defined benefit pension and postretirement plans:				
Voluntary	\$ 45	\$ 12	\$ 45	\$ 24
Mandatory	20	14	41	30
Total defined benefit plans	\$ 65	\$ 26	\$ 86	\$ 54
Defined contribution pension plans	\$ 7	\$ 8	\$ 23	\$ 18

We presently anticipate contributing \$125 million to \$135 million to our defined benefit pension plans in 2009 and paying approximately \$53 million in claims and premiums for other postretirement benefits. The \$125 million to \$135 million of contributions for the full year include voluntary contributions of \$100 million to \$105 million. These contributions and payments include payments from Company funds either to increase pension assets or to make direct payments to plan participants.

The components of net periodic pension and other postretirement benefit cost under our plans consisted of the following:

In millions	Pension				Other Postretirement Benefits	
	U.S. Plans		Non-U.S. Plans		June 28, 2009	June 29, 2008
	Three months ended					
	June 28, 2009	June 29, 2008	June 28, 2009	June 29, 2008		
Service cost	\$ 12	\$ 12	\$ 4	\$ 7	\$ —	\$ —
Interest cost	28	29	14	16	8	8
Expected return on plan assets	(35)	(38)	(14)	(19)	—	—
Amortization of prior service (credit) cost	(1)	—	1	1	(2)	(2)
Recognized net actuarial loss (gain)	7	5	5	5	—	(1)
Other	1	—	—	—	—	—
Net periodic benefit cost	\$ 12	\$ 8	\$ 10	\$ 10	\$ 6	\$ 5

In millions	Pension				Other Postretirement Benefits	
	U.S. Plans		Non-U.S. Plans		June 28, 2009	June 29, 2008
	Six months ended					
	June 28, 2009	June 29, 2008	June 28, 2009	June 29, 2008		
Service cost	\$ 23	\$ 24	\$ 8	\$ 14	\$ —	\$ —
Interest cost	57	58	27	32	15	16
Expected return on plan assets	(70)	(76)	(28)	(38)	—	—
Amortization of prior service (credit) cost	(1)	—	2	2	(4)	(5)
Recognized net actuarial loss (gain)	15	10	10	10	—	(1)
Other	1	—	—	—	—	—
Net periodic benefit cost	\$ 25	\$ 16	\$ 19	\$ 20	\$ 11	\$ 10

**NOTE 5. EQUITY, ROYALTY AND INTEREST INCOME FROM INVESTEEES**

Equity, royalty and interest income from investees included in our *Condensed Consolidated Statements of Income* for the interim reporting periods was as follows:

In millions	Three months ended		Six months ended	
	June 28, 2009	June 29, 2008	June 28, 2009	June 29, 2008
<b>Distribution Entities</b>				
North American distributors	\$ 23	\$ 24	\$ 49	\$ 46
All other distributors	4	3	7	4
<b>Manufacturing Entities</b>				
Chongqing Cummins Engine Company, Ltd	12	7	20	14
Dongfeng Cummins Engine Company, Ltd	7	20	7	34
Shanghai Fleetguard Filter Co. Ltd.	2	2	3	5
Tata Cummins Ltd.	2	2	—	7
Cummins MerCruiser Diesel Marine LLC.	(2)	2	(3)	6
All other manufacturers	5	3	—	9
Cummins share of net income	53	63	83	125
Royalty and interest income	4	6	7	11
Equity, royalty and interest income from investees	\$ 57	\$ 69	\$ 90	\$ 136

**NOTE 6. RESTRUCTURING CHARGES**

**2009 Restructuring Actions**

In 2009, we executed restructuring actions in response to a reduction in orders in most of our U.S. and foreign markets due to the continuing deterioration in the global economy. We reduced our global workforce by

approximately 850 professional employees. In addition, we took numerous employee actions at many of our manufacturing locations, including approximately 2,600 hourly employees, significant downsizing at numerous facilities and complete closure of several facilities and branch distributor locations. Employee termination and severance costs were recorded based on approved plans developed by the businesses and corporate management which specified positions to be eliminated, benefits to be paid under existing severance plans, union contracts or statutory requirements and the expected timetable for completion of the plan. Estimates of restructuring were made based on information available at the time charges were recorded. Due to the inherent uncertainty involved, actual amounts paid for such activities may differ from amounts initially recorded and we may need to revise previous estimates. Total workforce reductions as of June 28, 2009, were substantially completed.

In response to closures and downsizing noted above, we incurred \$2 million of restructuring expenses for lease terminations and \$4 million of restructuring expenses for asset impairments. During 2009 we recorded a total pre-tax restructuring charge of \$73 million, net of the \$1 million favorable change in estimate related to 2008 actions, in "Restructuring charges" in the *Condensed Consolidated Statements of Income* related to the 2009 actions. These restructuring actions included:

In millions	2009	Estimated Completion Date
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Workforce reductions	\$	68	September 2009
Exit activities		6	September 2009

The following table summarizes the balance of accrued restructuring charges by expense type and the changes in the accrued amounts for the applicable periods. The restructuring related accruals were recorded in "Other accrued expenses" in the *Condensed Consolidated Balance Sheets*.

In millions	Severance Costs	Exit Activities	Total
2009 Restructuring charges	\$ 68	\$ 6	\$ 74
Cash payments for 2009 actions	(51)	(1)	(52)
Noncash items	—	(4)	(4)
Balance at June 28, 2009	\$ 17	\$ 1	\$ 18

We do not include restructuring charges in our operating segment results. The pretax impact of allocating restructuring charges to the segment results would have been as follows:

In millions	2009 Charges
Engine	\$ 33
Power Generation	6
Components	26
Distribution	4
Non-segment	4
Total restructuring charges	\$ 73

### 2008 Restructuring Actions

In 2008 we executed restructuring actions in response to the continued deterioration in our U.S. businesses and most key markets around the world in the second half of 2008, as well as a reduction in orders in most U.S. and foreign markets for 2009. In 2008 we announced reductions of our global workforce by approximately 650 professional employees. In addition, we took numerous employee actions at many of our manufacturing locations, including approximately 800 hourly employees. Total workforce reductions as of June 28, 2009, were substantially completed.

The charges recorded during the year ended December 31, 2008, included severance costs related to both voluntary and involuntary terminations. During 2008, we incurred a pretax charge related to the professional and hourly

restructuring initiatives of \$37 million. The following table summarizes the balance of accrued restructuring charges and the changes in the accrued amounts for the applicable periods. The restructuring related accruals were recorded in "Other accrued expenses" in the *Condensed Consolidated Balance Sheets*.

In millions	Severance Costs
Balance at December 31, 2008	\$ 34
Cash payments for 2008 actions	(26)
Change in estimate	(1)
Balance at June 28, 2009	\$ 7

### NOTE 7. INVENTORIES

Inventories included the following:

In millions	June 28, 2009	December 31, 2008
Finished products	\$ 858	\$ 860
Work-in-process and raw materials	774	1,021
Inventories at FIFO cost	1,632	1,881
Excess of FIFO over LIFO	(97)	(98)
Total inventories	\$ 1,535	\$ 1,783

### NOTE 8. PRODUCT WARRANTY LIABILITY

We charge the estimated costs of warranty programs, other than product recalls, to income at the time products are shipped to customers. We use historical claims experience to develop the estimated liability. We review product recall programs on a quarterly basis and, if necessary, record a liability when we commit to an action. We also sell extended warranty coverage on several engines. The following is a tabular reconciliation of the product warranty liability, including the deferred revenue related to our extended warranty coverage:

In millions	Six months ended	
	June 28, 2009	June 29, 2008
Balance, beginning of period	\$ 962	\$ 749
Provision for warranties issued	157	218
Deferred revenue on extended warranty contracts sold	53	43
Payments	(242)	(175)
Amortization of deferred revenue on extended warranty contracts	(36)	(31)
Changes in estimates for pre-existing warranties	53	50
Foreign currency translation	11	—
Balance, end of period	\$ 958	\$ 854

The amount of deferred revenue related to extended coverage programs as of June 28, 2009, was \$243 million. As of June 28, 2009, we had \$12 million of receivables related to estimated supplier recoveries of which \$6 million was included in "Trade and other" receivables and \$6 million was included in "Other assets" in our *Condensed Consolidated Balance Sheets*.

During 2008 and 2009, actual cost trends for certain midrange engine products, including product launched in 2007 and for which warranty periods can extend to five years,



indicated higher per claim repair cost than the product on which the initial accrual rate was developed. These products include more electronic parts than historical models, contributing to the higher cost per claim. In addition, certain products introduced in 2003 and sold prior to 2007 for which the warranty period extended five years also demonstrated higher cost per claim than that of predecessor products. We increased our liability in 2008 as these experience trends became evident.

## NOTE 9. COMMITMENTS AND CONTINGENCIES

We are subject to numerous lawsuits and claims arising out of the ordinary course of our business, including actions related to product liability; personal injury; the use and performance of our products; warranty matters; patent, trademark or other intellectual property infringement; contractual liability; the conduct of our business; tax reporting in foreign jurisdictions; distributor termination; workplace safety; and environmental matters. We also have been identified as a potentially responsible party at multiple waste disposal sites under federal and related state environmental statutes and regulations and may have joint and several liability for any investigation and remediation costs incurred with respect to such sites. Some of these lawsuits, claims and proceedings involve substantial amounts. We have denied liability with respect to many of these lawsuits, claims and proceedings and are vigorously defending such lawsuits, claims and proceedings. We carry various forms of commercial, property and

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casualty, product liability and other forms of insurance; however, such insurance may not be applicable or adequate to cover the costs associated with a judgment against us with respect to these lawsuits, claims and proceedings. We do not believe that these lawsuits are material individually or in the aggregate. While we believe we have also established adequate accruals for our expected future liability with respect to pending lawsuits, claims and proceedings, where the nature and extent of any such liability can be reasonably estimated based upon then presently available information, there can be no assurance that the final resolution of any existing or future lawsuits, claims or proceedings will not have a material adverse effect on our business, results of operation, financial condition or cash flows.

In June 2008, four Cummins sites in Southern Indiana, including our Technical Center, experienced extensive damage caused by flood water from an unusually high amount of rainfall. We have been in ongoing discussions with our insurance carriers regarding our claim. In May 2009, our insurance carriers filed a law suit seeking a declaratory judgment that a lower policy sublimit applies to the Technical Center based upon an allegation that the site is located in a flood plain. In addition, they allege that certain other damages and losses claimed by Cummins are not covered by insurance. Cummins has also filed suit seeking a declaratory judgment that all losses suffered by Cummins are covered under the insurance policies, as well as a claim that the insurance companies have acted in bad faith. We have finalized the documentation of Cummins' \$199 million claim (\$116 million expense and \$83 million capital), which does not include an additional claim amount related to business interruption. We remain confident that we will recover a majority of the amounts due to us under the insurance policies. We have incurred approximately \$88 million in expense and \$42 million in capital of our \$199 million claim through June 28, 2009. We recorded flood damage expenses of \$9 million and \$3 million for the three and six months ended June 28, 2009. These expenses were included in "Other operating (expense) income" in the *Condensed Consolidated Statements of Income*.

### U.S. Distributor Commitments

We had an operating agreement with a financial institution that provided financing to certain independent Cummins and Onan distributors in the U.S., and to certain distributors in which we own an equity interest. Under this agreement, if any distributor defaulted under its financing arrangement with the financial institution, and the maturity of amounts owed under the agreement were accelerated, then we were required to purchase from the financial institution, at amounts approximating fair market value, certain property, inventory and rental generator sets manufactured by Cummins that are secured by the distributor's financing agreement.

The distributor agreement with the financial institution was refinanced and Cummins did not make any new commitments, thereby relieving Cummins of responsibility to purchase any assets from the financial institution in event of default by the distributors.

Our licensing agreements with independent and partially owned distributors generally have a three-year term and are restricted to specified territories. Our distributors develop and maintain a network of dealers with which we have no direct relationship. The distributors are permitted to sell other, noncompetitive products only with our consent. We license all of our distributors to use our name and logo in connection with the sale and service of our products, with no right to assign or sublicense the marks, except to authorized dealers, without our consent. Products are sold to the distributors at standard domestic or international distributor net prices, as applicable. Net prices are wholesale prices we establish to permit our distributors an adequate margin on their sales. Subject to local laws, we can refuse to renew these agreements at will and we may terminate them upon 90-day notice for inadequate sales, change in principal ownership and certain other reasons. Distributors also have the right to terminate the agreements upon 60-day notice without cause, or 30-day notice for cause. Upon termination or failure to renew, we are required to purchase the distributor's current inventory, signage and special tools, and may, at our option purchase other assets of the distributor, but are under no obligation to do so.

### Residual Value Guarantees

We have various residual value guarantees on equipment leased under operating leases. The total amount of these residual value guarantees at June 28, 2009, was \$8 million.

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### Other Guarantees and Commitments

In addition to the guarantees discussed above, from time to time we enter into other guarantee arrangements, including guarantees of non-U.S. distributor financing and other miscellaneous guarantees of third-party obligations. As of June 28, 2009, the maximum potential loss related to these other guarantees is \$64 million (\$62 million of which relates to the Beijing Foton discussion below).

We have arrangements with certain suppliers that require us to purchase minimum volumes or be subject to monetary penalties. The penalty amounts are less than our purchase commitments and essentially allow the supplier to recover their tooling costs in most instances. As of June 28, 2009, if we were to stop purchasing from each of these suppliers, the amount of the penalty would be approximately \$87 million, of which \$73 million relates to a contract with an engine parts supplier that extends to 2013. This arrangement enables us to secure critical components. We do not anticipate paying any penalties under these contracts.

In July 2008, Beijing Foton Cummins Engine Company, a 50 percent owned entity accounted for under the equity method, entered into a line of credit agreement with a borrowing capacity of up to \$176 million (at current exchange rates). The line will be used primarily to fund equipment purchases for a new manufacturing plant. As a part of this transaction, we guaranteed 50 percent of any outstanding borrowings up to a maximum guarantee of \$88 million (at current exchange rates). As of June 28, 2009, outstanding borrowings under this agreement were \$124 million and our guarantee was \$62 million (at current exchange rates). We recorded a liability for the fair value of this guarantee in accordance with FASB Interpretation No. 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others—an interpretation of FASB Statements No. 5, 57, and 107 and rescission of FASB Interpretation No. 34." The amount of the liability was less than \$1 million. The offset to this liability was an increase in our investment in the joint venture.

We have a standby commitment with Irwin Financial Corporation (Irwin) to purchase up to \$25 million of its common shares in connection with a potential rights offering being planned by Irwin. Our commitment is subject to the satisfaction of several conditions. William I. Miller, Chairman and Chief Executive Officer of Irwin, is currently a member of the board of directors of Cummins and has agreed to resign from that position if the Company makes any investment in Irwin. The decision by us to enter into our commitment or to make any investment in Irwin has been and will continue to be made by our Board of Directors without the participation of Mr. Miller.

## Indemnifications

Periodically, we enter into various contractual arrangements where we agree to indemnify a third-party against certain types of losses. Common types of indemnifications include:

- product liability and license, patent or trademark indemnifications,
- asset sale agreements where we agree to indemnify the purchaser against future environmental exposures related to the asset sold and
- any contractual agreement where we agree to indemnify the counter-party for losses suffered as a result of a misrepresentation in the contract.

We regularly evaluate the probability of having to incur costs associated with these indemnifications and accrue for expected losses that are probable. Because the indemnifications are not related to specified known liabilities and due to their uncertain nature, we are unable to estimate the maximum amount of the potential loss associated with these indemnifications.

## Joint Venture Commitments

As of June 28, 2009, we have committed to invest \$12 million into existing joint ventures and joint ventures that will be formed in 2009. It is expected that \$10 million will be funded in 2009.

## NOTE 10. FAIR VALUE OF FINANCIAL INSTRUMENTS

The majority of the assets and liabilities we carry at fair value are available-for-sale (AFS) securities and derivatives. AFS securities are derived from level 1 or level 2 inputs. The predominance of market inputs are actively quoted and can be validated through external sources, including brokers, market transactions and third-party pricing services.

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The fair value measurement of derivatives results primarily from level 2 inputs. Many of our derivative contracts are valued utilizing publicly available pricing data of contracts with similar terms. In other cases, the contracts are valued using current spot market data adjusted for the appropriate current forward curves provided by external financial institutions. We participate in commodity swap contracts, currency forward contracts, and interest rate swaps. When material, we adjust the values of our derivative contracts for counter-party or our credit risk.

The following table summarizes our financial instruments recorded at fair value in our *Condensed Consolidated Balance Sheets* at June 28, 2009:

In millions	Fair Value Measurements Using			Total
	Quoted prices in active markets for identical assets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)	
Available-for-sale securities	\$ 11	\$ 6	\$ —	\$ 17
Derivative assets	—	49	—	49
Derivative liabilities	—	(32)	—	(32)
Total	\$ 11	\$ 23	\$ —	\$ 34

## Fair Value of Other Financial Instruments

Based on borrowing rates currently available to us for bank loans with similar terms and average maturities, considering our risk premium, the fair value of total debt, including current maturities, at June 28, 2009, was approximately \$550 million. The carrying value at that date was \$680 million. At December 31, 2008, the fair and carrying values of total debt, including current maturities, were \$567 million and \$698 million, respectively. The carrying values of all other receivables and liabilities approximated fair values.

## NOTE 11. DERIVATIVES

We are exposed to financial risk resulting from volatility in foreign exchange rates, commodity prices and interest rates. This risk is closely monitored and managed through the use of financial derivative instruments including foreign currency forward contracts, commodity forward contracts and interest rate swaps. As stated in our internal policies and procedures, financial derivatives are used expressly for hedging purposes, and under no circumstances are they used for speculative purposes. When material, we adjust the value of our derivative contracts for counter-party or our credit risk. The results and status of our hedging transactions are reported to senior management on a monthly and quarterly basis.

## Foreign Currency Exchange Rate Risk

As a result of our international business presence, we are exposed to foreign currency exchange risks. We transact business in foreign currencies and, as a result, our income experiences some volatility related to movements in foreign currency exchange rates. To help manage our exposure to exchange rate volatility, we use foreign exchange forward contracts on a regular basis to hedge forecasted intercompany and third-party sales and purchases denominated in non-functional currencies. Our internal policy allows for managing anticipated foreign currency cash flows for up to one year. These foreign currency forward contracts are designated and qualify as foreign currency cash flow hedges under SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities" (SFAS 133). The effective portion of the unrealized gain or loss on the forward contract is deferred and reported as a component of "Accumulated other comprehensive loss" (AOCL). When the hedged forecasted transaction (sale or purchase) occurs, the unrealized gain or loss is reclassified into income in the same line item associated with the hedged transaction in the same period or periods during which the hedged transaction affects income. The ineffective portion of the hedge, unrealized gain or loss, if any, is recognized in current income during the period of change. As of June 28, 2009, we expect to reclassify an unrealized net gain of \$5 million from AOCL to income over the next year. For the six month periods ended June 28, 2009, and June 29, 2008, there were no circumstances that would have resulted in the discontinuance of a foreign currency cash flow hedge.

To minimize the income volatility resulting from the remeasurement of net monetary assets and payables denominated in a currency other than the functional currency, we enter into foreign currency forward contracts, which are considered economic hedges. The objective is to offset the gain or loss from remeasurement with the gain or loss from the fair market valuation of the forward contract. These derivative instruments are not designated as hedges under SFAS 133.

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The table below summarizes our outstanding foreign currency forward contracts. The currencies in this table represent 88% of the notional amounts of contracts outstanding as of June 28, 2009.

In millions Currency	Currency Denomination
	June 28, 2009
United States Dollar (USD)	57
British Pound Sterling (GBP)	106
Euro (EUR)	22
Singapore Dollar (SGD)	22
Indian Rupee (INR)	1,407
Romanian Leu (RON)	41
Chinese Renminbi (CNY)	57

### Commodity Price Risk

We are exposed to fluctuations in commodity prices due to contractual agreements with component suppliers. In order to protect ourselves against future price volatility and, consequently, fluctuations in gross margins, we periodically enter into commodity forward contracts with designated banks to fix the cost of certain raw material purchases with the objective of minimizing changes in inventory cost due to market price fluctuations. The forward contracts are derivative contracts that are designated as cash flow hedges under SFAS 133. The effective portion of the unrealized gain or loss is deferred and reported as a component of AOCL. When the hedged forecasted transaction (purchase) occurs, the unrealized gain or loss is reclassified into income in the same line item associated with the hedged transaction in the same period or periods during which the hedged transaction affects income. The ineffective portion of the hedge, if any, is recognized in current income in the period in which the ineffectiveness occurs. As of June 28, 2009, we expect to reclassify an unrealized net loss of \$17 million from AOCL to income over the next year. For the six month period ended June 28, 2009, we discontinued hedge accounting on certain contracts where the forecasted transactions were no longer probable. The amount reclassified to income as a result of this action was a loss of \$2 million.

Our internal policy allows for managing these cash flow hedges for up to three years. The following table summarizes our outstanding commodity forward contracts that were entered into to hedge the cost of certain raw material purchases:

Dollars in millions Commodity	June 28, 2009	
	Notional Amount	Quantity
Copper	\$ 130	19,133 metric tons (1)
Platinum	26	27,194 troy ounces (2)
Palladium	1	4,958 troy ounces (2)

- (1) A metric ton is a measurement of mass equal to 1,000 kilograms.  
(2) A troy ounce is a measurement of mass equal to approximately 31 grams.

### Interest Rate Risk

We are exposed to market risk from fluctuations in interest rates. We manage our exposure to interest rate fluctuations through the use of interest rate swaps. The objective of the swaps is to more effectively balance our borrowing costs and interest rate risk.

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In November 2005, we entered into an interest rate swap to effectively convert our \$250 million debt, due in 2028, from a fixed rate of 7.125% to a floating rate based on a LIBOR spread. The terms of the swap mirror those of the debt, with interest paid semi-annually. This swap qualifies as a fair value hedge under SFAS 133. The gain or loss on this derivative instrument as well as the offsetting gain or loss on the hedged item attributable to the hedged risk are recognized in current income as "Interest expense." These gains and losses for the three and six month periods ended June 28, 2009, were as follows:

In millions Income Statement Classification	June 28, 2009			
	Three months ended		Six months ended	
	Gain/(Loss) on Swaps	Gain/(Loss) on Borrowings	Gain/(Loss) on Swaps	Gain/(Loss) on Borrowings
Interest expense	\$ (17)	\$ 17	\$ (46)	\$ 46

### Location and Fair Value Amount of Derivative Instruments

The following tables summarize the location and fair value of derivative instruments on our *Condensed Consolidated Balance Sheets*:

In millions	Asset Derivatives	
	Fair Value	Balance Sheet Location
	June 28, 2009	
<b>Derivatives designated as hedging instruments under SFAS 133</b>		
Foreign currency forward contracts	\$ 8	Prepaid expenses and other current assets
Commodity forward contracts	4	Prepaid expenses and other current assets
		Other assets
Commodity forward contracts	3	
Interest rate contract	33	Other assets
<b>Total derivatives designated as hedging instruments under SFAS 133</b>	<b>\$ 48</b>	
<b>Derivatives not designated as hedging instruments under SFAS 133</b>		
Foreign currency forward contracts	\$ 1	Prepaid expenses and other current assets
<b>Total derivatives not designated as hedging instruments under SFAS 133</b>	<b>\$ 1</b>	
<b>Total asset derivatives</b>	<b>\$ 49</b>	
In millions	Liability Derivatives	
	Fair Value	Balance Sheet Location
	June 28, 2009	

Derivatives designated as hedging instruments under SFAS 133		
Commodity forward contracts	\$	23
Commodity forward contracts		9
<b>Total derivatives designated as hedging instruments under SFAS 133</b>	<b>\$</b>	<b>32</b>
<b>Total liability derivatives</b>	<b>\$</b>	<b>32</b>

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### Cash Flow Hedging

The tables below summarize the effect on our *Condensed Consolidated Statements of Income* for derivative instruments classified as cash flow hedges for the three and six month interim reporting periods presented below. The tables do not include amounts related to ineffectiveness as it was not material for the periods presented.

In millions	Three months ended June 28, 2009		Location of Gain/(Loss) Reclassified into Income (Effective Portion)
	Amount of Gain/(Loss) Recognized in AOCL on Derivative (Effective Portion)	Amount of Gain/(Loss) Reclassified from AOCL into Income (Effective Portion)	
<b>Derivatives in SFAS 133 Cash Flow Hedging Relationships</b>			
Foreign currency forward contracts	\$ 10	\$ 2	Sales
Commodity forward contracts	(2)	(10)	Cost of sales
<b>Total</b>	<b>\$ 8</b>	<b>\$ (8)</b>	

In millions	Six months ended June 28, 2009		Location of Gain/(Loss) Reclassified into Income (Effective Portion)
	Amount of Gain/(Loss) Recognized in AOCL on Derivative (Effective Portion)	Amount of Gain/(Loss) Reclassified from AOCL into Income (Effective Portion)	
<b>Derivatives in SFAS 133 Cash Flow Hedging Relationships</b>			
Foreign currency forward contracts	\$ 9	\$ (8)	Sales
Commodity forward contracts	29	(17)	Cost of sales
<b>Total</b>	<b>\$ 38</b>	<b>\$ (25)</b>	

### Derivatives Not Designated as Hedging Instruments

The following table summarizes the effect on our *Condensed Consolidated Statements of Income* for derivative instruments that are not classified as hedges for the three and six month interim reporting periods ended June 28, 2009.

In millions	Derivatives Not Designated as Hedging Instruments under SFAS 133	Location of Gain/(Loss) Recognized in Income on Derivatives	Amount of Gain/(Loss) Recognized in Income on Derivatives	
			June 28, 2009	
			Three months ended	Six months ended
		Other (expense) income, net	\$ 19	\$ 18

### NOTE 12. LEASE AMENDMENT AND EXTENSION

During 2001, we entered into a sale-leaseback transaction with a financial institution with regard to certain heavy-duty engine manufacturing equipment. The lease was classified as an operating lease with a lease term of 11.5 years, expiring June 28, 2013. The financial institution created a grantor trust to act as the lessor in the arrangement. The financial institution owns all of the equity in the trust. The grantor trust has no assets other than the equipment and its rights to the lease agreement with us. On the initial sale, we received \$125 million from the financial institution which was financed with \$99 million of non-recourse debt and \$26 million of equity. Our obligations to the grantor trust consisted of the payments due under the lease and a \$9 million guarantee of the residual value of the equipment. In addition, we had a fixed price purchase option that was exercisable on January 14, 2009, for approximately \$35 million; however, we decided not to exercise this option.

In December 2003, the grantor trust which acts as the lessor in the sale and leaseback transaction described above was consolidated as a result of the adoption of FIN 46(R), due primarily to the existence of the residual value guarantee. As a result of the consolidation, the manufacturing equipment and the trust's obligations under its non-recourse debt arrangement was included in our *Condensed Consolidated Balance Sheets* as property, plant and equipment and long-term debt, respectively. The equity in the trust held by the financial institution was reported as noncontrolling interest. The non-recourse debt arrangement is more fully discussed in Note 10 to our annual *Consolidated Financial Statements* included in our 2008 Form 10-K. In addition, our *Condensed Consolidated Statements of Income* included interest expense on the lessor's debt obligations and depreciation expense on the manufacturing equipment rather than rent expense under the lease agreement. In April 2008, the trust made the final payment on the non-recourse debt.

In February 2009, we amended the lease agreement to extend the lease for an additional two years to June 2015, and we removed the residual value guarantee. As a result of removing the residual value guarantee, we are no longer

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required to consolidate the grantor trust and we deconsolidated the trust in the first quarter of 2009. With the deconsolidation, we are now required to account for the leasing arrangement with the trust which qualifies as a capital lease. The deconsolidation of the trust had minimal impact on our *Condensed Consolidated Financial Statements* as the present value of the minimum lease payments (including the extension) approximated the amount that was reported as noncontrolling interest as of the date of the amendment. The reduction in noncontrolling interests and increase in our capital lease liabilities was \$35 million.

The future lease payments required under the amended lease are as follows:

In millions	Due date	Payment amount
	2009	\$ 3
	2010	—
	2011	—
	2012	12
	2013	10

The lease agreement includes certain default provisions requiring us to make timely rent payments, maintain, service, repair and insure the equipment and maintain minimum debt ratings for our long-term senior unsecured debt obligations.

### NOTE 13. OPERATING SEGMENTS

Our reportable operating segments consist of the following: Engine, Power Generation, Components and Distribution. This reporting structure is organized according to the products and markets each segment serves. We use segment EBIT (defined as earnings or loss before interest expense, income taxes and noncontrolling interests) as the primary basis for the chief operating decision-maker to evaluate the performance of each operating segment.

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A summary of operating results by segment for the three and six month periods is shown below:

In millions	Engine	Power Generation	Components	Distribution	Non-segment items(1)	Total
<b>Three months ended June 28, 2009</b>						
External sales	\$ 1,133	\$ 481	\$ 355	\$ 462	\$ —	\$ 2,431
Intersegment sales	173	129	147	1	(450)	—
Total sales	1,306	610	502	463	(450)	2,431
Depreciation and amortization(2)	45	11	17	4	—	77
Research, development and engineering expense	51	8	20	—	—	79
Equity, royalty and interest income from investees	17	6	4	30	—	57
Restructuring charges	—	—	—	—	7	7
Interest income	—	—	—	1	—	1
Segment EBIT	(4)	41	(10)	55	27	109
<b>Three months ended June 29, 2008</b>						
External sales	\$ 2,030	\$ 692	\$ 584	\$ 581	\$ —	\$ 3,887
Intersegment sales	356	246	271	—	(873)	—
Total sales	2,386	938	855	581	(873)	3,887
Depreciation and amortization(2)	46	11	18	7	—	82
Research, development and engineering expense	70	10	24	—	—	104
Equity, royalty and interest income from investees	32	6	3	28	—	69
Interest income	2	1	1	—	—	4
Segment EBIT	221	115	77	68	(12)	469
<b>Six months ended June 28, 2009</b>						
External sales	\$ 2,338	\$ 958	\$ 701	\$ 873	\$ —	\$ 4,870
Intersegment sales	460	309	331	3	(1,103)	—
Total sales	2,798	1,267	1,032	876	(1,103)	4,870
Depreciation and amortization(2)	86	22	35	9	—	152
Research, development and engineering expense	109	16	39	—	—	164
Equity, royalty and interest income from investees	14	11	5	60	—	90
Restructuring charges	—	—	—	—	73	73
Interest income	1	1	—	1	—	3
Segment EBIT	(20)	110	(9)	113	(57)	137
<b>Six months ended June 29, 2008</b>						
External sales	\$ 3,915	\$ 1,273	\$ 1,151	\$ 1,022	\$ —	\$ 7,361
Intersegment sales	680	452	524	4	(1,660)	—
Total sales	4,595	1,725	1,675	1,026	(1,660)	7,361
Depreciation and amortization(2)	90	22	33	11	—	156
Research, development and engineering expense	140	20	47	—	—	207
Equity, royalty and interest income from investees	65	11	7	53	—	136
Interest income	5	2	2	1	—	10
Segment EBIT	415	193	114	117	(55)	784

- (1) Includes intersegment sales and profit in inventory eliminations and unallocated corporate expenses. For the three and six months ended June 28, 2009, unallocated corporate expenses include \$7 million and \$73 million of restructuring charges and a \$9 million and \$3 million loss related to flood damage expenses, respectively. For both the three and six months ended June 29, 2008, unallocated corporate expenses included losses of \$6 million related to flood damages.
- (2) Depreciation and amortization as shown on a segment basis excludes the amortization of debt discount that is included in the *Condensed Consolidated Statements of Income* as "Interest expense."

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A reconciliation of our segment information to the corresponding amounts in the *Condensed Consolidated Statements of Income* is shown in the table below:

In millions	Three months ended		Six months ended	
	June 28, 2009	June 29, 2008	June 28, 2009	June 29, 2008
Segment EBIT	\$ 109	\$ 469	\$ 137	\$ 784
Less:				
Interest expense	10	12	17	23
Income before income taxes	\$ 99	\$ 457	\$ 120	\$ 761

## ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Cummins Inc. and its consolidated subsidiaries are hereinafter sometimes referred to as "Cummins," "the Company," "the registrant," "we," "our," or "us."

### CAUTIONARY STATEMENTS REGARDING FORWARD-LOOKING INFORMATION

Certain parts of this quarterly report contain forward-looking statements that are based on current expectations, estimates and projections about the industries in which we operate and management's beliefs and assumptions. Forward-looking statements are generally accompanied by words, such as "anticipates," "expects," "forecasts," "intends," "plans," "believes," "seeks," "estimates" or similar expressions. These statements are not guarantees of future performance and involve certain risks, uncertainties and assumptions, which we refer to as "future factors," which are difficult to predict. Therefore, actual outcomes and results may differ materially from what is expressed or forecasted in such forward-looking statements. Future factors that could cause our results to differ materially from the results discussed in such forward-looking statements are discussed below. We undertake no obligation to update publicly any forward-looking statements, whether as a result of new information, future events or otherwise. Future factors that could affect the outcome of forward-looking statements include the following:

- price and product competition by foreign and domestic competitors, including new entrants;
- rapid technological developments of diesel engines;
- the ability to continue to introduce competitive new products in a timely, cost-effective manner;
- the sales mix of products;
- the continued achievement of lower costs and expenses;
- domestic and foreign governmental and public policy changes, including environmental regulations;
- protection and validity of patent and other intellectual property rights;
- reliance on large customers;
- technological, implementation and cost/financial risks in increasing use of large, multi-year contracts;
- the cyclical nature of some of our markets;
- the outcome of pending and future litigation and governmental proceedings;
- continued availability of financing, financial instruments and financial resources in the amounts, at the times and on the terms required to support our future business;
- the overall stability of global economic markets and conditions; and
- other risk factors described in Part II of this report under the caption "Risk Factors Relating to Our Business."

In addition, such statements could be affected by general industry and market conditions and growth rates, general domestic and international economic conditions, including the price of crude oil (diesel fuel), interest rate and currency exchange rate fluctuations, commodity prices and other future factors.

### ORGANIZATION OF INFORMATION

The following Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") was prepared to provide the reader with a view and perspective of our business through the eyes of management and should be read in conjunction with our *Consolidated Financial Statements* and related *Notes to Consolidated Financial Statements* in the "Financial Statements" section of our 2008 Form 10-K. Our MD&A is presented in the following sections:

- Executive Summary and Financial Highlights
- Results of Operations
- Restructuring Charges
- Outlook
- Operating Segment Results
- Liquidity and Capital Resources
- Off Balance Sheet Financing
- Application of Critical Accounting Estimates
- Recently Adopted and Recently Issued Accounting Pronouncements

We are a leading global power provider that designs, manufactures, distributes and services diesel and natural gas engines, electric power generation systems and engine-related component products, including filtration and exhaust aftertreatment, turbochargers, fuel systems, controls and air handling systems. We sell our products to Original Equipment Manufacturers (OEMs), distributors and other customers worldwide. We have long-standing relationships with many of the leading manufacturers in the markets we serve, including PACCAR Inc., International Truck and Engine Corporation (Navistar International Corporation), Chrysler Group, LLC (Chrysler), Volvo AB, Daimler Trucks North America (formerly Freightliner), Ford Motor Company, Case New Holland, Komatsu, and Volkswagen. We serve our customers through a network of more than 500 company-owned and independent distributor locations and approximately 5,200 dealer locations in more than 190 countries and territories.

Our reportable operating segments consist of the following: Engine, Power Generation, Components and Distribution. This reporting structure is organized according to the products and markets each segment serves. This type of reporting structure allows management to focus its efforts on providing enhanced service to a wide range of customers. The Engine segment produces engines and parts for sale to customers in on-highway and various industrial markets. The engines are used in trucks of all sizes, buses and recreational vehicles, as well as various industrial applications including construction, mining, agriculture, marine, oil and gas, rail and military. The Power Generation segment is an integrated provider of power systems which sells engines, generator sets and alternators. The Components segment includes sales of filtration products, exhaust aftertreatment systems, turbochargers and fuel systems. The Distribution segment includes wholly-owned and partially-owned distributorships engaged in wholesaling engines, generator sets, and service parts, as well as performing service and repair activities on our products and maintaining relationships with various OEMs throughout the world.

Our financial performance depends, in large part, on varying conditions in the markets we serve, particularly the on-highway, construction and general industrial markets. Demand in these markets tends to fluctuate in response to overall economic conditions and is particularly sensitive to changes in interest rate levels and our customers' access to credit. Our sales may also be impacted by OEM inventory levels and production schedules and stoppages. Economic downturns in markets we serve generally result in reductions in sales and could impact pricing of our products. As a worldwide business, our operations are also affected by political, economic and regulatory matters, including environmental and emissions standards, in the countries we serve. At the same time, our geographic diversity and broad product and service offerings have helped limit the impact of any one industry or customer and the economy of any single country on our consolidated results.

However, as was the case in the first quarter of 2009, the widespread nature of the current global economic recession continues to create immediate challenges for most of our businesses and the markets in which they operate. Demand continued to fall in nearly every market and geographic region around the world, despite some modest improvement in China and India. We expect demand to remain weak in most of our markets through 2009. As a result, we took restructuring actions in the first half of 2009, including global workforce reductions and closing or slowing certain local manufacturing operations to align our businesses with reduced customer demand. These restructuring actions, in conjunction with the significantly reduced demand negatively impacted our operating results for the three and six months ended June 28, 2009. Should our future performance for the remainder of the year differ adversely from our projections, we could be required to take additional actions as local conditions require.

While we expect global demand for our products to be weak for the remainder of the year, certain emerging markets are expected to improve in the second half of the year. The actions that were initiated in the fourth quarter of 2008 and the first half of 2009 have and will continue to enable us to navigate through the downturn and position us to emerge a stronger company. Our short term priorities remain:

- to align costs and capacity with the real demand for our products, so that we maintain a solid profit through the downturn;
- to manage the business in such a way that generates positive cash flow; and
- to continue to invest in critical technologies and products for 2010 and beyond.

Net income attributable to Cummins was \$56 million, or \$0.28 per diluted share, on sales of \$2.4 billion for the three month interim reporting period ended June 28, 2009, versus the comparable prior year period with net income attributable to Cummins of \$293 million, or \$1.49 per diluted share, on sales of \$3.9 billion. The decrease in income

was driven by a 37 percent decrease in net sales and a 49 percent decrease in gross margin primarily due to significantly lower demand and volumes across most of our businesses.

Net income attributable to Cummins was \$63 million, or \$0.32 per diluted share, on sales of \$4.9 billion for the six month interim reporting period ended June 28, 2009, versus the comparable prior year period with net income attributable to Cummins of \$483 million, or \$2.46 per diluted share, on sales of \$7.4 billion. The decrease in income was driven by a 34 percent decrease in net sales and a 44 percent decrease in gross margin, as we were impacted by lower demand across most of our businesses. Focused cost reduction efforts helped mitigate the impact of lower volumes. Restructuring actions in the first half of 2009 were \$73 million (\$48 million after-tax, or \$0.24 per diluted share). For a detailed discussion of restructuring see "Restructuring Charges" and Note 6 to the *Condensed Consolidated Financial Statements*.

We continued to strengthen our balance sheet in a challenging environment. Cash, cash equivalents and marketable securities increased \$48 million from year end as we reduced inventories by 14 percent in the same period. We also reduced total debt by \$18 million compared to December 31, 2008.

## RESULTS OF OPERATIONS

In millions (except per share amounts)	Three months ended		Favorable/ (Unfavorable)		Six months ended		Favorable/ (Unfavorable)	
	June 28,	June 29,	Amount	Percent	June 28,	June 29,	Amount	Percent
	2009	2008			2009	2008		
<b>Net sales</b>	\$ 2,431	\$ 3,887	\$ (1,456)	(37)%	\$ 4,870	\$ 7,361	\$ (2,491)	(34)%
Cost of sales	1,983	3,008	1,025	34%	3,977	5,775	1,798	31%
<b>Gross margin</b>	<b>448</b>	<b>879</b>	<b>(431)</b>	<b>(49)%</b>	<b>893</b>	<b>1,586</b>	<b>(693)</b>	<b>(44)%</b>
Operating expenses and income								
Selling, general and administrative expenses	287	370	83	22%	587	721	134	19%
Research, development and engineering expenses	79	104	25	24%	164	207	43	21%
Equity, royalty and interest income from investees	57	69	(12)	(17)%	90	136	(46)	(34)%
Restructuring charges	7	—	(7)	NM	73	—	(73)	NM
Other operating (expense) income, net	(11)	(6)	(5)	(83)%	(9)	(7)	(2)	(29)%
<b>Operating income</b>	<b>121</b>	<b>468</b>	<b>(347)</b>	<b>(74)%</b>	<b>150</b>	<b>787</b>	<b>(637)</b>	<b>(81)%</b>
Interest income	1	4	(3)	(75)%	3	10	(7)	(70)%
Interest expense	10	12	2	17%	17	23	6	26%
Other (expense) income, net	(13)	(3)	(10)	NM	(16)	(13)	(3)	(23)%
<b>Income before income taxes</b>	<b>99</b>	<b>457</b>	<b>(358)</b>	<b>(78)%</b>	<b>120</b>	<b>761</b>	<b>(641)</b>	<b>(84)%</b>
Income tax expense	29	147	118	80%	36	249	213	86%
<b>Net income</b>	<b>70</b>	<b>310</b>	<b>(240)</b>	<b>(77)%</b>	<b>84</b>	<b>512</b>	<b>(428)</b>	<b>(84)%</b>
Less: net income attributable to noncontrolling interests	14	17	3	18%	21	29	8	28%
<b>Net income attributable to Cummins Inc.</b>	<b>\$ 56</b>	<b>\$ 293</b>	<b>\$ (237)</b>	<b>(81)%</b>	<b>\$ 63</b>	<b>\$ 483</b>	<b>\$ (420)</b>	<b>(87)%</b>

<b>Diluted earnings per common share attributable to Cummins Inc.</b>	<b>\$ 0.28</b>	<b>\$ 1.49</b>	<b>\$ (1.21)</b>	<b>(81)%</b>	<b>\$ 0.32</b>	<b>\$ 2.46</b>	<b>\$ (2.14)</b>	<b>(87)%</b>
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### Net Sales

Net sales for the three and six month periods ended June 28, 2009, decreased in all segments versus the comparable periods in 2008, primarily due to decreased demand in all of our segments due to the global economic downturn.

A more detailed discussion of sales by segment is presented in the OPERATING SEGMENT RESULTS section.

Sales to international markets based on location of customers for the three and six month periods ended June 28, 2009, were 56 percent and 54 percent of total net sales, compared with 61 percent and 59 percent of total net sales for the comparable periods in 2008.

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A summary of net sales (dollar amount and percentage of total) by geographic territory follows:

In millions	Three months ended				Six months ended			
	June 28, 2009		June 29, 2008		June 28, 2009		June 29, 2008	
United States	\$ 1,075	44%	\$ 1,532	39%	\$ 2,253	46%	\$ 3,024	41%
Asia/Australia	554	23%	824	21%	1,016	21%	1,540	21%
Europe/CIS(1)	355	15%	745	19%	748	16%	1,391	19%
Mexico/Latin America	207	8%	420	11%	384	8%	755	10%
Africa/Middle East	162	7%	223	6%	303	6%	391	5%
Canada	78	3%	143	4%	166	3%	260	4%
Total international	1,356	56%	2,355	61%	2,617	54%	4,337	59%
Total consolidated net sales	\$ 2,431	100%	\$ 3,887	100%	\$ 4,870	100%	\$ 7,361	100%

(1) The Commonwealth of Independent States (CIS) refers to a regional organization of former Soviet Republics.

### Gross Margin

Significant drivers of the change in gross margins for the three and six month periods ended June 28, 2009, versus the comparable periods ended June 29, 2008, were as follows:

In millions	Increase (Decrease) 2009 vs. 2008	
	Three months ended	Six months ended
Volume/Mix	\$ (451)	\$ (735)
Warranty expense	(35)	(36)
Material costs	(30)	(78)
Currency	(9)	(17)
Production costs	43	30
Price	57	142
Other	(6)	1
Total	\$ (431)	\$ (693)

Gross margin decreased by \$431 million and \$693 million for the three and six month periods ended June 28, 2009, versus the comparable periods in 2008, and decreased as a percentage of sales by 4.2 percentage points and 3.2 percentage points, respectively. The decrease was led by lower volumes, increased warranty expense and increased materials costs. These decreases in margin were partially offset by improved pricing and decreased production costs. The decrease in volumes was due to lower sales resulting from the global economic downturn. The increased materials costs were largely due to losses on hedged commodities which were partially offset by decreasing commodity costs. The provision for warranties issued as a percent of sales for the three and six month periods was 3.3 percent and 3.2 percent in 2009 compared to 2.9 percent and 3.0 percent in 2008.

A more detailed discussion of margin by segment is presented in the OPERATING SEGMENTS RESULTS section.

### Selling, General and Administrative Expenses

Selling, general and administrative expenses for the three and six month periods ended June 28, 2009, decreased versus the comparable periods in 2008, primarily due to decreases of \$25 million and \$51 million in discretionary spending, in order to conserve cash, and decreases of \$33 million and \$52 million in compensation and related expenses, respectively. Compensation and related expenses include salaries, fringe benefits and variable compensation. Variable compensation was reduced due to lower sales and income compared to the prior year period. Selling, general and administrative expenses also decreased due to cost savings from restructuring actions. Overall selling, general and administrative expenses as a percentage of sales increased to 11.8 percent and 12.1 percent in 2009 compared to 9.5 percent and 9.8 percent in 2008 for the three and six month periods ended, respectively.

### Research, Development and Engineering Expenses

Research, development and engineering expenses for the three and six month periods ended June 28, 2009, decreased versus the comparable periods in 2008, primarily due to decreased discretionary spending to conserve cash, increased reimbursements for engineering projects and implemented severance programs. Overall, research, development and engineering expenses as a percentage of sales increased to 3.2 percent and 3.4 percent in 2009

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from 2.7 percent and 2.8 percent in 2008 for the three and six month periods ended, respectively. Research activities continue to focus on development of new products to meet future environmental standards around the world and improvements to fuel economy performance.

### Equity, Royalty and Interest Income From Investees



Equity, royalty and interest income from investees for the three and six month periods ended June 28, 2009, decreased significantly versus the comparable periods in 2008, primarily due to the following:

In millions	Increase/(Decrease)	
	June 28, 2009 vs. June 29, 2008	
	Three months ended	Six months ended
Dongfeng Cummins Engine Company, Ltd. (DCEC)	\$ (13)	\$ (27)
Cummins MerCruiser Diesel LLC (MerCruiser)	(4)	(9)
Tata Cummins Ltd. (TCL)	—	(7)
Chongqing Cummins Engine Company, Ltd.	5	6

These decreases were due to lower demand as a result of the global economic conditions and were partially offset by the increase in income from Chongqing Cummins Engine Company, Ltd. due to a one-time tax benefit recorded in the second quarter of 2009.

#### Other Operating (Expense) Income, net

In millions	Three months ended		Six months ended	
	June 28, 2009	June 29, 2008	June 28, 2009	June 29, 2008
Other operating (expense) income:				
Flood loss	\$ (9)	\$ (6)	\$ (3)	\$ (6)
Other (expense), net	(2)	—	(6)	(1)
Total other (expense) income, net	<u>\$ (11)</u>	<u>\$ (6)</u>	<u>\$ (9)</u>	<u>\$ (7)</u>

#### Interest Income

Interest income for the three and six month periods ended June 28, 2009, decreased versus the comparable periods in 2008, primarily due to lower interest rates in 2009 compared to 2008.

#### Interest Expense

Interest expense for the three and six month periods ended June 28, 2009, decreased versus the comparable periods in 2008, primarily due to declining short-term interest rates and lower debt.

#### Other (Expense) Income, Net

In millions	Three months ended		Six months ended	
	June 28, 2009	June 29, 2008	June 28, 2009	June 29, 2008
Other (expense) income:				
Foreign currency (losses), net	\$ (10)	\$ (3)	\$ (18)	\$ (13)
Other, net	(3)	—	2	—
Total other (expense) income, net	<u>\$ (13)</u>	<u>\$ (3)</u>	<u>\$ (16)</u>	<u>\$ (13)</u>

#### Income Tax Expense

Our effective tax rate for the year is expected to approximate 30 percent, absent any additional discrete period activity. Our tax rate is generally less than the 35 percent U.S. income tax rate primarily due to lower tax rates on foreign income and research tax credits. The tax rates for the three and six month periods ended June 28, 2009, were 29 percent and 30 percent, respectively. Our effective tax rates for the comparable prior year periods were 32 percent and 33 percent, respectively.

#### Noncontrolling Interests

Noncontrolling interests eliminate the income or loss attributable to non-Cummins ownership interests in our consolidated entities. Noncontrolling interests in income of consolidated subsidiaries for the three and six month periods ended June 28, 2009, decreased versus the comparable periods in 2008, primarily due to lower income at Cummins India Ltd. and Wuxi Holset Engineering Co. Ltd. reflecting the decline in demand as a result of the global economic downturn.

#### Net income and diluted earnings per share attributable to Cummins Inc.

Net income and diluted earnings per share attributable to Cummins Inc. for the three and six month periods ended June 28, 2009, decreased versus the comparable periods in 2008, primarily due to significantly lower volumes, restructuring charges and lower equity income. These decreases were partially offset by decreased selling, general and administrative expenses, lower research, development and engineering expenses and lower income tax expense.

## RESTRUCTURING CHARGES

#### 2009 Restructuring Actions

In 2009, we executed restructuring actions in response to a reduction in orders in most of our U.S. and foreign markets due to the continuing deterioration in the global economy. We reduced our global workforce by approximately 850 professional employees. In addition, we took numerous employee actions at many of our manufacturing locations, including approximately 2,600 hourly employees, significant downsizing at numerous facilities and complete closure of several facilities and branch distributor locations. Employee termination and severance costs were recorded based on approved plans developed by the businesses and corporate management which specified positions to be eliminated, benefits to be paid under existing severance plans, union contracts or statutory requirements and the expected timetable for completion of the plan. Estimates of restructuring were made based on information available at the time charges were recorded. Due to the inherent uncertainty involved, actual amounts paid for such activities may differ from amounts initially recorded and we may need to revise previous estimates. Total workforce reductions as of June 28, 2009, were substantially completed.

In response to closures and downsizing noted above, we incurred \$2 million of restructuring expenses for lease terminations and \$4 million of restructuring expenses for asset impairments. During 2009 we recorded a total pre-tax restructuring charge of \$73 million, net of the \$1 million favorable change in estimate related to 2008 actions, in "Restructuring charges" in the *Condensed Consolidated Statements of Income* related to the 2009 actions. These restructuring actions included:

In millions	2009	Estimated Completion Date
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Workforce reductions	\$ 68	September 2009
Exit activities	6	September 2009

The following table summarizes the balance of accrued restructuring charges by expense type and the changes in the accrued amounts for the applicable periods. The restructuring related accruals were recorded in "Other accrued expenses" in the *Condensed Consolidated Balance Sheets*.

<u>In millions</u>	<u>Severance Costs</u>	<u>Exit Activities</u>	<u>Total</u>
2009 Restructuring charges	\$ 68	\$ 6	\$ 74
Cash payments for 2009 actions	(51)	(1)	(52)
Noncash items	—	(4)	(4)
Balance at June 28, 2009	<u>\$ 17</u>	<u>\$ 1</u>	<u>\$ 18</u>

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We do not include restructuring charges in our operating segment results. The pretax impact of allocating restructuring charges to the segment results would have been as follows:

<u>In millions</u>	<u>2009 Charges</u>
Engine	\$ 33
Power Generation	6
Components	26
Distribution	4
Non-segment	4
Total restructuring charges	<u>\$ 73</u>

If the restructuring actions are successfully implemented, we expect the annualized savings from the professional actions to be approximately \$50 million. Our charge related to the professional actions was approximately \$30 million. Approximately 40 percent of the savings from the restructuring actions will be realized in cost of sales, 45 percent in selling, general and administrative expenses, and 15 percent in research, development and engineering expenses. We expect all of the pretax charge, except for asset impairment amounts, to be paid in cash which will be funded with cash generated from operations.

#### **2008 Restructuring Actions**

In 2008 we executed restructuring actions in response to the continued deterioration in our U.S. businesses and most key markets around the world in the second half of 2008, as well as a reduction in orders in most U.S. and foreign markets for 2009. In 2008 we announced reductions of our global workforce by approximately 650 professional employees. In addition, we took numerous employee actions at many of our manufacturing locations, including approximately 800 hourly employees. Total workforce reductions as of June 28, 2009, were substantially completed.

The charges recorded during the year ended December 31, 2008, included severance costs related to both voluntary and involuntary terminations. During 2008, we incurred a pretax charge related to the professional and hourly restructuring initiatives of \$37 million. The following table summarizes the balance of accrued restructuring charges and the changes in the accrued amounts for the applicable periods. The restructuring related accruals were recorded in "Other accrued expenses" in the *Condensed Consolidated Balance Sheets*.

<u>In millions</u>	<u>Severance Costs</u>
Balance at December 31, 2008	\$ 34
Cash payments for 2008 actions	(26)
Change in estimate	(1)
Balance at June 28, 2009	<u>\$ 7</u>

There were no material changes to the estimated savings, or periods under which we expect to recognize the savings, for the 2008 actions.

#### **OUTLOOK**

##### *Near-Term:*

While we expect global demand for our products to be weak for the remainder of the year, certain emerging markets are expected to improve in the second half of the year. Many of the markets we serve have slowed significantly as a result of the credit crisis and softening global economic environment and we expect 2009 sales will be down significantly from 2008 levels. Forecasting for 2009 is a significant challenge with these uncertain market conditions. Our operating results in 2009 will depend on how the current global economic recession impacts the markets we serve. In response to anticipated market conditions we initiated voluntary and involuntary separation actions in December of 2008 and the first six months of 2009. We also initiated certain exit activities during the first six months of 2009. We expect to continue to focus on cost reductions and scaling production to meet current demand. If uncertainties in the credit and capital markets continue, the overall impact on our customers as well as end user demand for our products could have a significant adverse impact on our near-term results. In light of current economic conditions, if demand continues to worsen in 2009, it is reasonably possible that we may be required to take additional restructuring actions and incur additional costs as we decrease production. These costs

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could have a material impact on our results of operations and financial position. At this time we cannot estimate these potential charges.

##### *Long-Term:*

While there is uncertainty in the near-term market as a result of the current economic conditions, we continue to be confident that opportunities for long-term growth and profitability will continue in the future.

#### **OPERATING SEGMENT RESULTS**

Our operating segments consist of the following: Engine, Power Generation, Components and Distribution. This reporting structure is organized according to the products and markets each segment serves. We use segment EBIT (defined as earnings or loss before interest expense, income taxes and noncontrolling interests) as the primary basis for the chief operating decision-maker to evaluate the performance of each operating segment.

Following is a discussion of operating results for each of our business segments.

## Engine Segment Results

Financial data for the Engine segment was as follows:

In millions	Three months ended		Favorable/ (Unfavorable)		Six months ended		Favorable/ (Unfavorable)	
	June 28, 2009	June 29, 2008	Amount	Percent	June 28, 2009	June 29, 2008	Amount	Percent
	External sales	\$ 1,133	\$ 2,030	\$ (897)	(44)%	\$ 2,338	\$ 3,915	\$ (1,577)
Intersegment sales	173	356	(183)	(51)%	460	680	(220)	(32)%
Total sales	<u>1,306</u>	<u>2,386</u>	<u>(1,080)</u>	<u>(45)%</u>	<u>2,798</u>	<u>4,595</u>	<u>(1,797)</u>	<u>(39)%</u>
Depreciation and amortization	45	46	1	2%	86	90	4	4%
Research, development and engineering expenses	51	70	19	27%	109	140	31	22%
Equity, royalty and interest income from investees	17	32	(15)	(47)%	14	65	(51)	(78)%
Interest income	—	2	(2)	(100)%	1	5	(4)	(80)%
Segment EBIT	(4)	221	(225)	NM	(20)	415	(435)	NM
Segment EBIT as a percentage of total sales	(0.3)%	9.3%	(9.6) percentage points		(0.7)%	9.0%	(9.7) percentage points	

A summary and discussion of Engine segment net sales by market follows:

In millions	Three months ended		Favorable/ (Unfavorable)		Six months ended		Favorable/ (Unfavorable)	
	June 28, 2009	June 29, 2008	Amount	Percent	June 28, 2009	June 29, 2008	Amount	Percent
	Heavy-duty truck	\$ 395	\$ 672	\$ (277)	(41)%	\$ 789	\$ 1,208	\$ (419)
Medium-duty truck and bus	240	422	(182)	(43)%	469	819	(350)	(43)%
Light-duty automotive and RV	94	205	(111)	(54)%	250	479	(229)	(48)%
Total on-highway	<u>729</u>	<u>1,299</u>	<u>(570)</u>	<u>(44)%</u>	<u>1,508</u>	<u>2,506</u>	<u>(998)</u>	<u>(40)%</u>
Industrial	440	804	(364)	(45)%	907	1,537	(630)	(41)%
Stationary power	137	283	(146)	(52)%	383	552	(169)	(31)%
Total sales	<u>\$ 1,306</u>	<u>\$ 2,386</u>	<u>\$ (1,080)</u>	<u>(45)%</u>	<u>\$ 2,798</u>	<u>\$ 4,595</u>	<u>\$ (1,797)</u>	<u>(39)%</u>

A summary of unit shipments by engine classification (including unit shipments to Power Generation) follows:

	Three months ended		Favorable/ (Unfavorable)		Six months ended		Favorable/ (Unfavorable)	
	June 28, 2009	June 29, 2008	Amount	Percent	June 28, 2009	June 29, 2008	Amount	Percent
	Midrange	49,200	114,800	(65,600)	(57)%	109,800	229,000	(119,200)
Heavy-duty	16,400	31,700	(15,300)	(48)%	33,000	56,400	(23,400)	(41)%
High-horsepower	3,200	5,500	(2,300)	(42)%	7,100	10,100	(3,000)	(30)%
Total unit shipments	<u>68,800</u>	<u>152,000</u>	<u>(83,200)</u>	<u>(55)%</u>	<u>149,900</u>	<u>295,500</u>	<u>(145,600)</u>	<u>(49)%</u>

## Sales

Engine segment sales for the three month period ended June 28, 2009, experienced significant deterioration across all major markets, versus the comparable period in 2008, as a result of the global economic downturn. The following are the primary drivers by market.

- Industrial market sales decreased due to deterioration in units sold in the construction, marine and mining markets by 76 percent, 27 percent and 56 percent, respectively.

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- Heavy-duty truck sales declined sharply as international units sold were down 87 percent and North American (includes the U.S and Canada and excludes Mexico) unit sales declined 34 percent. The decrease in heavy-duty sales was due to global truck fleets continuing to experience financial challenges due to a lack of freight and limited access to credit. In addition, we experienced a decline in Mexican heavy-duty sales due to an increase in heavy-duty truck sales for the quarter ended June 29, 2008 resulting from the pre-buy activity ahead of Mexico's July 1, 2008, new emissions requirements, appreciation of the U.S. dollar and an influx of used trucks into the market from the U.S. and Canada permitted under a new law.
- Medium-duty truck sales decreased significantly due to a 45 percent decline in global truck units sold as a result of the global economic downturn.
- Light-duty automotive sales decreased significantly due to an 82 percent decline in units sold to Chrysler. The decrease in units sold to Chrysler was due to Chrysler's shutdown as part of its reorganization efforts.

Engine segment sales for the six month period ended June 28, 2009, experienced significant deterioration across all major markets, versus the comparable period in 2008, as a result of the global economic downturn. The following are the primary drivers by market.

- Industrial market sales decreased due to deterioration in units sold in the construction, marine and mining markets by 73 percent, 17 percent and 42 percent, respectively.
- Heavy-duty truck sales declined sharply as international units sold were down 84 percent and North American unit sales declined 26 percent. The decrease in heavy-duty sales was due to global truck fleets continuing to experience financial challenges due to a lack of freight and limited access to credit. In addition, we experienced a decline in Mexican heavy-duty sales due to an increase in heavy-duty truck sales in the first six months of 2008 resulting from the pre-buy activity ahead of Mexico's July 1, 2008, new emissions requirements, appreciation of the U.S. dollar and an influx of used trucks into the market from the U.S. and Canada permitted under a new law.
- Medium-duty truck sales decreased significantly due to a 44 percent decline in global truck units sold as a result of the global economic downturn.
- Light-duty automotive sales decreased significantly due to a 59 percent decline in units sold to Chrysler. The decrease in units sold to Chrysler was due to Chrysler's shutdown as part of its reorganization efforts.

Total on-highway-related sales for the three and six month periods ended June 28, 2009, were 56 percent and 54 percent of total engine segment sales, compared to 54 percent and 55 percent for the comparable periods in 2008, respectively.

## Segment EBIT

Engine segment EBIT for the three and six month periods ended June 28, 2009, decreased to a loss versus the comparable periods in 2008, primarily due to lower gross margin and equity, royalty and interest income from investees which were partially offset by decreased selling, general and administrative expenses and decreased research, development and engineering expenses. Changes in Engine segment EBIT and percentage of sales were as follows:

In millions	Three months ended June 28, 2009 vs. June 29, 2008 Favorable/(Unfavorable) Change				Six months ended June 28, 2009 vs. June 29, 2008 Favorable/(Unfavorable) Change			
	Amount	Percent	Percentage point change as a percent of sales		Amount	Percent	Percentage point change as a percent of sales	
			Amount	Percent			Amount	Percent
Gross margin	\$ (246)	(59)%	(4.5)%	(4.5)%	\$ (445)	(56)%	(4.7)%	(4.7)%
Selling, general and administrative	29	19%	(3.1)%	(3.1)%	43	14%	(2.7)%	(2.7)%
Research, development and engineering	19	27%	(1.0)%	(1.0)%	31	22%	(0.9)%	(0.9)%
Equity, royalty and interest (loss) income from investees	(15)	(47)%	—%	—%	(51)	(78)%	(0.9)%	(0.9)%

The decrease in gross margin for the three month period ended June 28, 2009, was primarily due to lower engine volumes in all markets as a result of the global economic downturn and higher materials costs, partially offset by

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decreased production costs and price improvements. Equity, royalty and interest income from investees decreased due to significant decreases in demand experienced at DCEC and MerCruiser. The decrease in selling, general and administrative expenses and research, development and engineering expenses was primarily due to lower discretionary spending, decreased variable compensation, implementation of severance programs and higher recovery of engineering expenses.

The decrease in gross margin for the six month period ended June 28, 2009, was primarily due to lower engine volumes in all markets as a result of the global economic downturn and higher materials costs, partially offset by price improvements and decreased production costs. Equity, royalty and interest income from investees decreased due to significant decreases in demand experienced at DCEC, MerCruiser and TCL. The decrease in selling, general and administrative expenses and research, development and engineering expenses was primarily due to lower discretionary spending, decreased variable compensation, implementation of severance programs and higher recovery of engineering expenses.

## Power Generation Segment Results

Financial data for the Power Generation segment was as follows:

In millions	Three months ended				Six months ended			
	June 28, 2009		June 29, 2008		June 28, 2009		June 29, 2008	
	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent
External sales	\$ 481	\$ 692	\$ (211)	(30)%	\$ 958	\$ 1,273	\$ (315)	(25)%
Intersegment sales	129	246	(117)	(48)%	309	452	(143)	(32)%
Total sales	610	938	(328)	(35)%	1,267	1,725	(458)	(27)%
Depreciation and amortization	11	11	—	—%	22	22	—	—%
Research, development and engineering expenses	8	10	2	20%	16	20	4	20%
Equity, royalty and interest income from investees	6	6	—	—%	11	11	—	—%
Interest income	—	1	(1)	(100)%	1	2	(1)	(50)%
Segment EBIT	41	115	(74)	(64)%	110	193	(83)	(43)%
Segment EBIT as a percentage of total sales	6.7%	12.3%	(5.6) percentage points		8.7%	11.2%	(2.5) percentage points	

In 2009, the Power Generation segment reorganized its reporting structure to include the following businesses: Commercial Products, Alternators, Commercial Projects, Power Electronics and Consumer. Sales for our Power Generation segment by business were as follows:

In millions	Three months ended				Six months ended			
	June 28, 2009		June 29, 2008		June 28, 2009		June 29, 2008	
	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent
Commercial Products	\$ 363	\$ 555	\$ (192)	(35)%	\$ 782	\$ 999	\$ (217)	(22)%
Alternator	135	178	(43)	(24)%	270	334	(64)	(19)%
Commercial Projects	46	111	(65)	(59)%	88	197	(109)	(55)%
Power Electronics	33	31	2	6%	64	58	6	10%
Consumer	33	63	(30)	(48)%	63	137	(74)	(54)%
Total sales	\$ 610	\$ 938	\$ (328)	(35)%	\$ 1,267	\$ 1,725	\$ (458)	(27)%

A summary of unit shipments used in power generation equipment by engine classification follows:

	Three months ended				Six months ended			
	June 28, 2009		June 29, 2008		June 28, 2009		June 29, 2008	
	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent
Midrange	4,500	8,500	(4,000)	(47)%	9,700	16,200	(6,500)	(40)%
Heavy-duty	1,000	2,200	(1,200)	(55)%	2,200	4,000	(1,800)	(45)%
High-horsepower	1,900	3,100	(1,200)	(39)%	4,200	5,800	(1,600)	(28)%
Total unit shipments	7,400	13,800	(6,400)	(46)%	16,100	26,000	(9,900)	(38)%

## Sales

Power Generation segment sales for the three month period ended June 28, 2009, decreased in most businesses, versus the comparable period in 2008, as the result of the global economic downturn. The following are the primary drivers by business.

- Commercial Products business sales decreased due to lower demand across most regions, especially in the Middle East, the U.K., Latin America, India, North America and Russia.

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- Commercial Projects business sales decreased due to decreased sales in most regions, especially in North America, Western Europe and Russia.
- Alternator business sales decreased due to lower demand in the commercial power markets noted above.
- Consumer business sales decreased primarily due to lower demand in the recreational vehicle and marine markets.

Power Generation segment sales for the six month period ended June 28, 2009, decreased in most businesses, versus the comparable period in 2008, as the result of the global economic downturn. The following are the primary drivers by business.

- Commercial Products business sales decreased due to lower demand across most regions, especially in India, Latin America, the U.K., Russia and North America.
- Commercial Projects business sales decreased due to lower demand in most regions, especially in North America, Western Europe and Australia.
- Consumer business sales decreased primarily due to lower demand in the recreational vehicle and marine markets.
- Alternator business sales decreased due to lower demand in the commercial power markets noted above.

### Segment EBIT

Power Generation segment EBIT for the three and six month periods ended June 28, 2009, decreased versus the comparable periods in 2008, primarily due to decreased gross margin partially offset by lower selling, general and administrative expenses. Changes in Power Generation segment EBIT and percentage of sales were as follows:

In millions	Three month period June 28, 2009 vs. June 29, 2008 Favorable/(Unfavorable) Change			Six month period June 28, 2009 vs. June 29, 2008 Favorable/(Unfavorable) Change		
	Amount	Percent	Percentage point change as a percent of sales	Amount	Percent	Percentage point change as a percent of sales
Gross margin	\$ (83)	(46)%	(3.2)%	\$ (112)	(34)%	(1.9)%
Selling, general and administrative	15	22%	(1.5)%	35	25%	(0.2)%
Research, development and engineering	2	20%	(0.2)%	4	20%	(0.1)%

The decrease in gross margin for the three month period ended June 28, 2009, was primarily due to lower volumes, unfavorable sales mix and increased material and commodity costs, which was partially offset by improved pricing and favorable foreign currency translation. The decrease in selling, general and administrative expenses was primarily due to favorable foreign currency translation, lower variable compensation costs, implementation of severance programs and decreased discretionary spending.

The decrease in gross margin for the six month period ended June 28, 2009, was primarily due to lower volumes, increased material costs, increased commodity costs and unfavorable sales mix, which was partially offset by improved pricing and favorable foreign currency translation. The decrease in selling, general and administrative expenses was primarily due to favorable foreign currency translation, lower variable compensation costs, implementation of severance programs and decreased discretionary spending.

### Components Segment Results

Financial data for the Components segment was as follows:

In millions	Three months ended		Favorable/ (Unfavorable)		Six months ended		Favorable/ (Unfavorable)	
	June 28, 2009	June 29, 2008	Amount	Percent	June 28, 2009	June 29, 2008	Amount	Percent
External sales	\$ 355	\$ 584	\$ (229)	(39)%	\$ 701	\$ 1,151	\$ (450)	(39)%
Intersegment sales	147	271	(124)	(46)%	331	524	(193)	(37)%
Total sales	502	855	(353)	(41)%	1,032	1,675	(643)	(38)%
Depreciation and amortization	17	18	1	6%	35	33	(2)	(6)%
Research, development and engineering expenses	20	24	4	17%	39	47	8	17%
Equity, royalty and interest income from investees	4	3	1	33%	5	7	(2)	(29)%
Interest income	—	1	(1)	(100)%	—	2	(2)	(100)%
Segment EBIT	(10)	77	(87)	NM	(9)	114	(123)	NM
Segment EBIT as a percentage of total sales	(2.0)%	9.0%	(11.0) percentage points		(0.9)%	6.8%	(7.7) percentage points	

Our Components segment includes the following businesses: Filtration, Turbochargers, Emission Solutions and Fuel Systems. Sales for our Components segment by business were as follows:

In millions	Three months ended		Favorable/ (Unfavorable)		Six months ended		Favorable/ (Unfavorable)	
	June 28, 2009	June 29, 2008	Amount	Percent	June 28, 2009	June 29, 2008	Amount	Percent
Filtration(1)	\$ 198	\$ 315	\$ (117)	(37)%	\$ 399	\$ 617	\$ (218)	(35)%
Turbochargers	134	270	(136)	(50)%	290	540	(250)	(46)%
Emission Solutions(1)	111	143	(32)	(22)%	216	282	(66)	(23)%
Fuel Systems	59	127	(68)	(54)%	127	236	(109)	(46)%
Total sales	\$ 502	\$ 855	\$ (353)	(41)%	\$ 1,032	\$ 1,675	\$ (643)	(38)%

- (1) Beginning January 1, 2009, we reorganized the reporting structure of two businesses and moved a portion of our Filtration business into the Emission Solutions business. For the three and six month periods ended June 28, 2009, the sales for the portion of the business included in Emission Solutions were \$25 million and \$47 million, respectively. Sales for the portion of the business included in Filtration for the three and six month periods ended June 29, 2008, were \$37 million and \$74 million, respectively. The 2008 balances were not reclassified.

Components segment sales for the three month period ended June 28, 2009, decreased significantly in most businesses versus the comparable period in 2008 as the result of the global economic downturn. The following are the primary drivers by business.

- Turbocharger business sales decreased significantly due to falling OEM demand in Europe and North America.
- Filtration business sales decreased significantly due to falling global demand, the transfer of a portion of the business to emissions solutions in 2009, and unfavorable foreign currency translation.
- Fuel systems business sales decreased primarily due to falling OEM demand in North America and Europe.
- Emissions solutions business sales decreased due to falling OEM demand across Europe and North America. These decreases were partially offset by the transfer of a portion of the filtration business into emissions solutions in 2009.

Components segment sales for the six month period ended June 28, 2009, decreased significantly in most businesses versus the comparable periods in 2008 as the result of the global economic downturn. The following are the primary drivers by business.

- Turbocharger business sales decreased significantly due to falling OEM demand in Europe, North America, and China.
- Filtration business sales decreased significantly due to falling global demand, the transfer of a portion of the business to emissions solutions in 2009, and unfavorable foreign currency translation.
- Fuel systems business sales decreased primarily due to falling OEM demand in North America and Europe.

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- Emissions solutions business sales decreased due to falling OEM demand across Europe and North America. These decreases were partially offset by the transfer of a portion of the filtration business into emissions solutions in 2009.

### Segment EBIT

Components segment EBIT for the three and six month periods ended June 28, 2009, decreased versus the comparable periods in 2008, primarily due to a lower gross margin which was partially offset by decreased selling, general and administrative and research, development and engineering expenses. Changes in Components segment EBIT and percentage of sales were as follows:

In millions	Three months ended June 28, 2009 vs. June 29, 2008 Favorable/(Unfavorable) Change			Six months ended June 28, 2009 vs. June 29, 2008 Favorable/(Unfavorable) Change		
	Amount	Percent	Percentage point change as a percent of sales	Amount	Percent	Percentage point change as a percent of sales
	Gross margin	\$ (112)	(70)%	(9.2)%	\$ (167)	(60)%
Selling, general and administrative	16	27%	(1.7)%	27	23%	(1.7)%
Research, development and engineering	4	17%	(1.2)%	8	17%	(1.0)%
Equity, royalty and interest income from investees	1	33%	0.4%	(2)	(29)%	0.1%

The decrease in gross margin for the three month period ended June 28, 2009, was due to lower volumes for most markets. The decrease in selling, general and administrative expenses was primarily due to lower variable compensation expense, decreased discretionary spending and implementation of severance programs.

The decrease in gross margin for the six month period ended June 28, 2009, was due to lower volumes for most markets. The decrease in selling, general and administrative expenses was primarily due to lower variable compensation expense, decreased discretionary spending and implementation of severance programs.

### Distribution Segment Results

Financial data for the Distribution segment was as follows:

In millions	Three months ended		Favorable/ (Unfavorable)		Six months ended		Favorable/ (Unfavorable)	
	June 28, 2009	June 29, 2008	Amount	Percent	June 28, 2009	June 29, 2008	Amount	Percent
	External sales	\$ 462	\$ 581	\$ (119)	(20)%	\$ 873	\$ 1,022	\$ (149)
Intersegment sales	1	—	1	NM	3	4	(1)	(25)%
Total sales	463	581	(118)	(20)%	876	1,026	(150)	(15)%
Depreciation and amortization	4	7	3	43%	9	11	2	18%
Equity, royalty and interest income from investees	30	28	2	7%	60	53	7	13%
Interest income	1	—	1	NM	1	1	—	—%
Segment EBIT	55	68	(13)	(19)%	113	117	(4)	(3)%
Segment EBIT as a percentage of total sales	11.9%	11.7%	0.2 percentage points		12.9%	11.4%	1.5 percentage points	

### Sales

Distribution segment sales for the three month period ended June 28, 2009, decreased versus the comparable period in 2008, primarily as the result of the global economic downturn and significant unfavorable foreign currency translation. Excluding the unfavorable currency impact and \$3 million benefit from the acquisition of one distributor in 2008 and one distributor in 2009, sales were down \$72 million, or 12 percent. Decreases in revenue from engines, power generation, parts and filtration were partially offset by modest increases in service sales.

Distribution segment sales for the six month period ended June 28, 2009, decreased versus the comparable period in 2008, primarily due to significant unfavorable foreign currency translation and the result of the global economic downturn. Excluding the unfavorable currency impact and \$35 million benefit from the acquisition of a majority interest in one distributor in 2008, the acquisition of one distributor in 2008 and the acquisition of one distributor in 2009, sales were down \$85 million, or eight percent. Decreases in revenue from engines, power generation and parts were partially offset by modest increases in service sales.

### Segment EBIT

Distribution segment EBIT for the three and six month periods ended June 28, 2009, decreased versus the comparable periods in 2008, primarily due to lower gross margins partially offset by decreased selling, general and administrative expenses and higher equity, royalty and interest income from investees. Changes in Distribution segment EBIT and percentage of sales were as follows:

In millions	Three months ended June 28, 2009 vs. June 29, 2008 Favorable/(Unfavorable) Change			Six months ended June 28, 2009 vs. June 29, 2008 Favorable/(Unfavorable) Change		
	Amount	Percent	Percentage point change	Amount	Percent	Percentage point change
			as a percent of sales			as a percent of sales
Gross margin	\$ (39)	(30)%	(2.7)%	\$ (39)	(17)%	(0.7)%
Gross margin, excluding acquisitions(1)	(40)	(31)%	(3.0)%	(46)	(21)%	(1.5)%
Selling, general and administrative	23	26%	1.0%	29	18%	0.6%
Equity, royalty and interest income from investees	2	7%	1.7%	7	13%	1.6%

(1) The acquisitions represent the purchase of one distributor for the three months ended and a majority interest in one distributor for the six months ended in 2008 and the acquisition of one distributor in 2009.

The decrease in gross margin for the three month period ended June 28, 2009, was primarily due to lower sales volumes as a result of the global economic downturn and unfavorable foreign currency translation. Selling, general and administrative expenses decreased primarily due to lower discretionary spending and favorable foreign currency translation.

The decrease in gross margin for the six month period ended June 28, 2009, was primarily due to lower sales volumes as a result of the global economic downturn and unfavorable foreign currency translation. Selling, general and administrative expenses decreased primarily due to favorable foreign currency translation and lower discretionary spending.

### Reconciliation of Segment EBIT to Income Before Income Taxes

The table below reconciles the segment information to the corresponding amounts in the *Condensed Consolidated Statements of Income*:

In millions	Three months ended		Six months ended	
	June 28, 2009	June 29, 2008	June 28, 2009	June 29, 2008
Total segment EBIT	\$ 82	\$ 481	\$ 194	\$ 839
Non-segment EBIT (1)	27	(12)	(57)	(55)
Total EBIT	\$ 109	\$ 469	\$ 137	\$ 784
Less:				
Interest expense	10	12	17	23
Income before income taxes	\$ 99	\$ 457	\$ 120	\$ 761

(1) Includes intersegment profit in inventory eliminations and unallocated corporate expenses. For the three and six month periods ended June 28, 2009, unallocated corporate expenses included \$7 million and \$73 million of restructuring charges and a \$9 million and \$3 million loss related to flood damages, respectively. For both the three and six months ended June 29, 2008, unallocated corporate expenses included losses of \$6 million related to flood damages.

## LIQUIDITY AND CAPITAL RESOURCES

### Management's Assessment of Liquidity

We believe our financial condition and liquidity remain strong despite the downturn in the global economy. Our strong balance sheet and credit ratings enable us to continue to have access to credit.

We assess our liquidity in terms of our ability to generate adequate cash to fund our operating, investing and financing activities. Cash provided by operations is our principal source of liquidity. As of June 28, 2009, other sources of liquidity include:

- \$551 million of cash, cash equivalents and marketable securities,
- \$1.06 billion available under our revolving credit facility,
- \$175 million available under international credit facilities and
- \$66 million, based on eligible receivables, available under our accounts receivable sales program.

While we cannot predict the impact or duration of the global economic recession, we believe our liquidity will provide us with the financial flexibility needed to fund working capital, capital expenditures, projected pension obligations, dividend payments and debt service obligations.

We have considered the impact of recent market instability and credit availability in assessing the adequacy of our liquidity and capital resources. We expect that general market conditions could impact the rate at which we realize our receivables in the future and could impact eligible receivables under our accounts receivable program, however, we expect to generate positive cash flow from operations in 2009. We will continue to diligently monitor our receivables for potential slowing in collections that could occur as a result of softening economic conditions and our customer's access to credit. The overall decline in market valuations has impacted the current value of our pension trusts as discussed in more detail below.

We believe our access to liquidity sources has not been materially impacted by the current credit environment and we do not expect that it will be materially impacted in the near future. There can be no assurance, however, that the cost or availability of future borrowings, if any, in the debt markets or our credit facilities will not be materially impacted by the ongoing capital market disruptions.

A significant portion of our cash flows is generated outside the U.S. More than half of our cash and cash equivalents and most of our marketable securities at June 28, 2009, are denominated in foreign currencies. We manage our worldwide cash requirements considering available funds among the many subsidiaries through which we conduct our business and the cost effectiveness with which those funds can be accessed. The repatriation of cash balances from certain subsidiaries could have adverse tax consequences; however, those balances are generally available without legal restrictions to fund ordinary business operations at the local level. We have and will continue to transfer cash from these subsidiaries to us and to other international subsidiaries when it is cost effective to do so.

### Working Capital Summary

We fund our working capital with cash from operations and short-term borrowings when necessary. Various assets and liabilities, including short-term debt, can fluctuate significantly from month to month depending on short-term liquidity needs. As a result, working capital is a prime focus of management attention.

In millions	June 28, 2009	December 31, 2008	June 29, 2008
Current assets	\$ 4,373	\$ 4,713	\$ 5,412
Current liabilities	2,114	2,639	2,936
Working capital	<u>\$ 2,259</u>	<u>\$ 2,074</u>	<u>\$ 2,476</u>
Current ratio	2.07	1.79	1.84
Days' sales in receivables	66	48	54
Inventory turnover	4.5	6.2	6.1

As of June 28, 2009, current assets decreased \$340 million compared to December 31, 2008, primarily due to a \$248 million decrease in inventory, a \$100 million decrease in prepaid expenses and other current assets, a \$60 million decrease in marketable securities and a \$57 million decrease in receivables, partially offset by an increase in cash of \$108 million (see Cash Flows below).

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As of June 28, 2009, current liabilities decreased \$525 million compared to December 31, 2008, primarily due to a decrease in accounts payable of \$236 million due to reduced purchases, a decrease in other accrued expenses of \$141 million, a decrease in accrued compensation, benefits and retirement benefits of \$81 million, and a decrease in accrued warranty of \$61 million.

### Cash Flows

The following table summarizes the key elements of our cash flows for the six month periods:

In millions	June 28, 2009	June 29, 2008
Net cash provided by operating activities	\$ 321	\$ 406
Net cash used in investing activities	(109)	(356)
Net cash used in financing activities	(119)	(111)
Effect of exchange rate changes on cash	15	6
Net increase (decrease) in cash and cash equivalents	<u>\$ 108</u>	<u>\$ (55)</u>

### Operating Activities

Cash flows from operating activities can fluctuate from period to period, as pension funding decisions, tax timing differences, restructuring charges and other items can significantly impact cash flows. Net cash provided by operating activities decreased \$85 million for the six month period ended June 28, 2009, versus the comparable period in 2008. The decrease in cash generated from operations was primarily due to the \$428 million decline in net income from the lower volumes, partially offset by a \$155 million decrease in working capital, a \$122 million increase in equity income from investees, net of dividends driven by an \$84 million increase in dividends and lower equity earnings, a \$43 million increase in translation and hedging, primarily unrealized foreign exchange, and a \$26 million positive change in long-term liabilities. The major components of the change in working capital were as follows: a \$484 million decrease in inventories, mostly due to our response to reduced customer demand for most businesses, a \$425 million decrease in accounts payable, trade, principally the result of lower purchasing needs and declining commodity prices, a \$402 million decrease in receivables, primarily as a result of lower sales across all businesses, and a \$344 million decrease in accrued expenses due to lower compensation and benefits, restructuring payments, timing differences and generally lower volume.

### Pensions

The funded status of our pension plans is dependent upon a variety of variables and assumptions including return on invested assets, market interest rates and levels of voluntary contributions to the plans. As a result of the ongoing credit crisis and the related market recession, our pension assets experienced significant deterioration in 2008. Through the six month period ended June 28, 2009, the return for our U.S. plan was slightly positive while our U.K. plan return was near zero. If this trend continues for the remainder of the year, absent any major changes in our other assumptions such as discount rate, this will likely increase our \$1.2 billion pre-tax actuarial loss resulting in increased pension expense in 2010. Approximately 96 percent of our pension plan assets are invested in highly liquid investments such as equity and fixed income securities. The remaining four percent of our plan assets are invested in less liquid but market valued investments, including real estate and private equity. We made \$59 million of pension contributions in the six month period ended June 28, 2009 and we anticipate making contributions of \$125 million to \$135 million to our pension plans in 2009. Expected contributions to our defined pension plans in 2009 will meet or exceed the current funding requirements. Claims and premiums for other postretirement benefits are expected to approximate \$53 million in 2009.

### Investing Activities

Net cash used in investing activities decreased \$247 million for the six month period ended June 28, 2009, versus the comparable period in 2008. The decrease was primarily due to lower investments in the acquisition of businesses of \$74 million, a \$62 million decrease in capital expenditures, increased cash received from investments in marketable securities of \$63 million as our portfolio moves to more liquid short term investments and decreased investments in and advances to equity investees of \$42 million. These decreases occurred as a result of management's decision to conserve cash and maintain liquidity during the recession.

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Capital expenditures for the six month period ended June 28, 2009, decreased 31 percent versus the comparable period in 2008, to \$139 million. The investments made were to support development of our new products. We continue to invest capital in low-cost regions of the world to further leverage our opportunities for cost reduction and future growth opportunities. In preparation for the challenging economic climate expected in 2009, we have tightened capital expenditures to preserve cash during the recession, and as a result, expect to spend approximately \$300 million to \$350 million in 2009 including approximately \$50 million of capital expenditures related to the 2008 flood. See Note 9, "Commitments and Contingencies" of the Notes to *Condensed Consolidated Financial Statements* for additional information regarding 2008 flood expenditures.



## Financing Activities

Net cash used in financing activities increased \$8 million in the first six months of 2009, versus the comparable period in 2008. The majority of the increase in cash outflows was due to a decrease of \$67 million in proceeds from borrowings, increased dividend payments on common stock of \$20 million and decreased tax benefits from stock-based awards of \$14 million. These fluctuations were partially offset by a \$57 million decrease in the payments on borrowings and capital lease obligations and a \$45 million decrease in the repurchase of common stock. We announced in February 2009 that we have temporarily suspended our stock repurchase program to conserve cash. During 2009, we will continue to review the suspension and may from time to time repurchase stock.

Our total debt was \$680 million as of June 28, 2009, compared with \$698 million at December 31, 2008, and \$657 million at June 29, 2008. Total debt as a percent of our total capital, including total long-term debt, was 15.9 percent at June 28, 2009, compared to 16.7 percent at December 31, 2008, and 13.7 percent at June 29, 2008.

## Credit Ratings

In the second quarter of 2009 Moody's Investor Service, Inc. and Fitch reaffirmed our credit ratings. Our current ratings and outlook from each of the credit rating agencies are shown in the table below.

Credit Rating Agency	Senior L-T Debt Rating	S-T Debt Rating	Outlook
Moody's Investors Service, Inc.	Baa3	Non-Prime	Stable
Standard & Poor's	BBB	NR	Stable
Fitch	BBB+	BBB+	Stable

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## OFF BALANCE SHEET FINANCING

A discussion of our off balance sheet financing arrangements may be found in Item 7 of our 2008 Form 10-K. There have been no material changes in this information since the filing of our 2008 Form 10-K.

## APPLICATION OF CRITICAL ACCOUNTING ESTIMATES

A summary of our significant accounting policies is included in Note 1 to the *Consolidated Financial Statements* of our 2008 Form 10-K which discusses accounting policies that we have selected from acceptable alternatives.

Our *Condensed Consolidated Financial Statements* are prepared in accordance with generally accepted accounting principles that often require management to make judgments, estimates and assumptions regarding uncertainties that affect the reported amounts presented and disclosed in the financial statements. Management reviews these estimates and assumptions based on historical experience, changes in business conditions and other relevant factors they believe to be reasonable under the circumstances. In any given reporting period, our actual results may differ from the estimates and assumptions used in preparing our *Condensed Consolidated Financial Statements*.

Critical accounting estimates are defined as follows: the estimate requires management to make assumptions about matters that were highly uncertain at the time the estimate was made; different estimates reasonably could have been used; or if changes in the estimate are reasonably likely to occur from period to period and the change would have a material impact on our financial condition or results of operations. Our senior management has discussed the development and selection of our accounting policies, related accounting estimates and the disclosures set forth below with the Audit Committee of our Board of Directors. We believe our critical accounting estimates include those addressing the estimation of liabilities for warranty programs, accounting for income taxes, pension benefits and annual assessment of recoverability of goodwill.

A discussion of all other critical accounting estimates may be found in the "Management's Discussion and Analysis" section of our 2008 Form 10-K under the caption "APPLICATION OF CRITICAL ACCOUNTING ESTIMATES." Within the context of these critical accounting estimates, we are not currently aware of any reasonably likely events or circumstances that would result in different policies or estimates being reported in the first six months of 2009.

## RECENTLY ADOPTED AND RECENTLY ISSUED ACCOUNTING PRONOUNCEMENTS

See Note 3 "RECENTLY ADOPTED AND RECENTLY ISSUED ACCOUNTING PRONOUNCEMENTS" in the *Notes to Condensed Consolidated Financial Statements*.

## ITEM 3. Quantitative and Qualitative Disclosures About Market Risk

A discussion of quantitative and qualitative disclosures about market risk may be found in Item 7A of our 2008 Form 10-K. There have been no material changes in this information since the filing of our 2008 Form 10-K. Further information regarding financial instruments and risk management is discussed in Note 11 to the *Condensed Consolidated Financial Statements*.

## ITEM 4. Controls and Procedures

### Evaluation of Disclosure Controls and Procedures

As of the end of the period covered by this Quarterly Report on Form 10-Q, the Company carried out an evaluation under the supervision and with the participation of the Company's management, including the Chief Executive Officer and Chief Financial Officer of the effectiveness of the design and operation of the Company's disclosure controls and procedures as defined in Exchange Act Rules 13a-15(e) and 15d-15(e). Based upon that evaluation, the Chief Executive Officer and the Chief Financial Officer concluded that the Company's disclosure controls and procedures were effective to ensure that the information required to be disclosed by the Company in the reports that it files or submits under the Securities Exchange Act of 1934 is (1) recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and (2) accumulated and communicated to management, including the Chief Executive Officer and Chief Financial Officer, to allow timely decisions regarding required disclosure.

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## Changes in Internal Control over Financial Reporting

There has been no change in the Company's internal control over financial reporting during the quarter ended June 28, 2009, that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

## ITEM 1. Legal Proceedings

We are subject to numerous lawsuits and claims arising out of the ordinary course of our business, including actions related to product liability; personal injury; the use and performance of our products; warranty matters; patent, trademark or other intellectual property infringement; contractual liability; the conduct of our business; tax reporting in foreign jurisdictions; distributor termination; workplace safety; and environmental matters. We also have been identified as a potentially responsible party at multiple waste disposal sites under U.S. federal and related state environmental statutes and regulations and may have joint and several liability for any investigation and remediation costs incurred with respect to such sites, as more fully described in Item 1 of our 2008 Form 10-K under "Environmental Compliance-Other Environmental Statutes and Regulations." We have denied liability with respect to many of these lawsuits, claims and proceedings and are vigorously defending such lawsuits, claims and proceedings. We carry various forms of commercial, property and casualty, product liability and other forms of insurance; however, such insurance may not be applicable or adequate to cover the costs associated with a judgment against us with respect to these lawsuits, claims and proceedings. We do not believe that these lawsuits are material individually or in the aggregate. While we believe we have also established adequate accruals for our expected future liability with respect to pending lawsuits, claims and proceedings, where the nature and extent of any such liability can be reasonably estimated based upon then presently available information, there can be no assurance that the final resolution of any existing or future lawsuits, claims or proceedings will not have a material adverse effect on our business, results of operation, financial condition or cash flows.

In June 2008, four Cummins sites in Southern Indiana, including our Technical Center, experienced extensive damage caused by flood water from an unusually high amount of rainfall. We have been in ongoing discussions with our insurance carriers regarding our claim. In May 2009, our insurance carriers filed a law suit seeking a declaratory judgment that a lower policy sublimit applies to the Technical Center based upon an allegation that the site is located in a flood plain. In addition, they allege that certain other damages and losses claimed by Cummins are not covered by insurance. Cummins has also filed suit seeking a declaratory judgment that all losses suffered by Cummins are covered under the insurance policies, as well as a claim that the insurance companies have acted in bad faith. We have finalized the documentation of Cummins' \$199 million claim (\$116 million expense and \$83 million capital), which does not include an additional claim amount related to business interruption. We remain confident that we will recover a majority of the amounts due to us under the insurance policies. We have incurred approximately \$88 million in expense and \$42 million in capital of our \$199 million claim through June 28, 2009. We recorded flood damage expenses of \$9 million and \$3 million for the three and six months ended June 28, 2009. These expenses were included in "Other operating (expense) income" in the *Condensed Consolidated Statements of Income*.

The information in Item 1 "Other Environmental Statutes and Regulations" referred to above should be read in conjunction with this disclosure. See also Note 13, "Commitments and Contingencies" of the Notes to *Consolidated Financial Statements* included in our 2008 Form 10-K. There has been no material change in this information since the filing of our 2008 Form 10-K.

## ITEM 1A. Risk Factors Relating to Our Business

Set forth below and elsewhere in this Quarterly Report on Form 10-Q are some of the principal risks and uncertainties that could cause our actual business results to differ materially from any forward-looking statements contained in this Report. In addition, future results could be materially affected by general industry and market conditions, changes in laws or accounting rules, general United States (U.S.) and non-U.S. economic and political conditions, including a global economic slow-down, fluctuation of interest rates or currency exchange rates, terrorism, political unrest or international conflicts, political instability, major health concerns, natural disasters, commodity prices or other disruptions of expected economic and business conditions. These risk factors should be considered in addition to our cautionary comments concerning forward-looking statements in this Report, including statements related to markets for our products and trends in our business that involve a number of risks and

uncertainties. Our separate section above, "CAUTIONARY STATEMENTS REGARDING FORWARD-LOOKING INFORMATION," should be considered in addition to the following statements.

### ***Our consolidated operating results and financial condition may be adversely impacted by worldwide economic conditions and credit tightening.***

The recent global economic crisis has caused a general tightening in the credit markets, lower levels of liquidity, increases in the rates of default and bankruptcy, and extreme volatility in credit, equity and fixed income markets. These conditions may make it difficult or impossible for our customers and suppliers to accurately forecast and plan future business activities, which may cause them to slow or suspend spending on products and services. As our customers face this challenging economic time, they may find it difficult to gain sufficient credit in a timely manner, which could result in an impairment of their ability to place orders with us or to make timely payments to us for previous purchases. If this occurs, our revenue may be reduced, thereby having a negative impact on our results of operations. In addition, we may be forced to increase our allowance for doubtful accounts and our days sales outstanding may increase, which would have a negative impact on our cash position, liquidity and financial condition. As a result of these conditions and depending on the length and impact these conditions have on our individual businesses, we could experience impairments to assets of certain businesses. We cannot predict the timing or the duration of this or any other economic downturn in the economy.

### ***The North American and European automotive industries are in distress and with further deterioration could adversely impact our business.***

A number of companies in the global automotive industry are facing severe financial difficulties. In North America, General Motors Corporation (GM), Ford Motor Company and Chrysler Group, LLC (Chrysler) have experienced declining markets; furthermore, GM and Chrysler have filed and exited bankruptcy under Chapter 11 of the U.S. bankruptcy code. Automakers across Europe and Japan are also experiencing difficulties from a weakened economy and tightening credit markets. Automotive industry conditions have adversely affected our supply base. Lower production levels for some of our key suppliers, increases in certain raw material, commodity and energy costs and the global credit market crisis has resulted in severe financial distress among many companies within the automotive supply base. The continuation of financial distress within the automotive industry and the supply base and/or the bankruptcy of one or more of the automakers may lead to supplier bankruptcies, commercial disputes, supply chain interruptions, supplier requests for company sponsored capital support or a collapse of the supply chain.

We have a long-standing relationship with Chrysler for the production of diesel engines for their heavy-duty pick-up truck series. Chrysler demand for this product decreased in the last twelve months, and accounted for two percent of our consolidated sales for the six month period ended June 28, 2009, and three percent of our consolidated sales in 2008. On April 30, 2009, Chrysler filed for Chapter 11 under the United States Bankruptcy Code. As part of the reorganization, Cummins was designated a critical supplier to Chrysler. The parties were able to reach agreement on pre-petition amounts owed to Cummins without any consequence to Cummins financial statements. The new Chrysler assumed the terms of the agreement pursuant to which Cummins will supply diesel engines for Chrysler's heavy-duty truck series.

### ***Deterioration in the automotive markets could impact the business plan for our light-duty engine products currently under development.***

In July 2006, we announced plans to develop and manufacture a light-duty diesel engine to be used in a variety of on- and off-highway applications. In July 2007, we entered into an agreement with Chrysler where it would purchase the engine exclusively for use in light-duty pickup trucks and sport utility vehicles. We have development agreements and commercial letters of intent with other automotive and marine customers. We proceeded with the technical development of these engine applications and have made significant investment in a manufacturing facility in Columbus, Indiana.

On April 30, 2009, Chrysler filed for Chapter 11 under the United States Bankruptcy Code. As part of the reorganization, the light-duty engine agreement was not assigned to the new company.

We remain committed to the development of this product line for other existing customers. We are also continuing to discuss the light duty diesel engine program with the new Chrysler as well as with other potential customers. If significant modifications occur in these programs and we are unable to find alternative customers or applications for

these products, we may need to impair some of our \$171 million assets and/or our commitments of \$41 million which could have an adverse effect on our results of operations and financial condition.

***The current deterioration of the credit and capital markets may adversely impact our ability to obtain financing on acceptable terms or obtain funding under our revolving credit facility.***

Global financial markets have been experiencing extreme volatility and disruption, and the credit markets have been exceedingly distressed. If credit markets continue to deteriorate, we may be unable to obtain adequate funding under our revolving credit facility because our lending counterparties may be unwilling or unable to meet their funding obligations.

If we are unable to access our revolving credit facility, the instability of financial markets could significantly increase the cost of obtaining additional or alternate funding from the credit markets as many lenders have increased interest rates, enacted tighter lending standards and refused to refinance existing debt. Even if lenders and institutional investors are willing and able to provide adequate funding, interest rates may rise in the future and therefore increase the cost of borrowing we incur on any of our floating rate debt.

Due to these factors, we cannot be certain that funding will be available if needed and to the extent required on acceptable terms. If funding is not available when needed, or is available only on unfavorable terms, it might adversely affect our ability to operate our business which could have a material adverse effect on our revenues and results of operations.

***Our manufacturing operations are dependent upon third-party suppliers, making us vulnerable to supply shortages.***

Cummins manufactures strategic components internally and through suppliers. For the year ended December 31, 2008 we single sourced approximately 80 to 85 percent of the total types of parts in our product designs. Any delay in our suppliers' deliveries may affect our operations at multiple manufacturing locations, forcing us to seek alternative supply sources to avoid serious disruptions. Delays are caused by factors affecting our suppliers including capacity constraints, labor disputes, economic downturns, availability of credit, the impaired financial condition of a particular supplier, suppliers' allocations to other purchasers, weather emergencies or acts of war or terrorism. Any delay in receiving supplies could impair our ability to deliver products to our customers and, accordingly, could have a material adverse effect on our business, results of operations and financial condition.

***Our products are subject to substantial government regulation.***

Our engines are subject to extensive statutory and regulatory requirements governing emissions and noise, including standards imposed by the EPA, the European Union, state regulatory agencies, such as the California Air Resources Board (CARB) and other regulatory agencies around the world. Developing engines to meet changing government regulatory requirements, with different implementation timelines and emissions requirements, makes developing engines efficiently for multiple markets complicated and could result in substantial additional costs that may be difficult to recover in some markets. In some cases, we may be required to develop new products to comply with new regulations, particularly those relating to air emissions. For example, we are required to develop new engines to comply with stringent emissions standards in the U.S. by January 1, 2010. While we were able to meet previous deadlines, our ability to comply with other existing and future regulatory standards will be essential for us to maintain our position in the engine markets we serve.

We have made and will be required to continue to make significant capital and research expenditures to comply with these regulatory standards. Further, the successful development and introduction of new and enhanced products are subject to risks, such as delays in product development, cost over-runs and unanticipated technical and manufacturing difficulties. In June 2008, four Cummins sites in Southern Indiana, including our Technical Center, experienced extensive damage caused by flood water resulting from an unusually high amount of rainfall. The Technical Center was closed for a period of time during a critical testing period for new engine development to meet 2010 emission standards.

As we stated earlier, we are involved in litigation with our insurance carriers, and it is possible that we will experience unrecoverable costs as a result of this loss of testing time. Any failure to comply with regulatory standards affecting our products could subject us to fines or penalties and could require us to cease production of any non-compliant engine or to recall any engines produced and sold in violation of the applicable standards. See

"Product Environmental Compliance" in "Item 1 Business" of our 2008 Form 10-K for a complete discussion of the environmental laws and regulations that affect our products.

***Variability in material and commodity costs could adversely affect our results of operations and financial condition.***

Our manufacturing processes are exposed to variability in material and commodity costs. Our businesses establish prices with our customers in accordance with contractual time frames; however, the timing of market price increases may prevent us from passing these additional costs on to our customers through timely pricing actions. Additionally, higher material and commodity costs around the world may offset our efforts to reduce our cost structure. While we customarily enter into financial transactions to address some of these risks, we cannot assure that commodity price fluctuations will not adversely affect our results of operations and financial condition. In addition, while the use of commodity price hedging instruments may provide us with protection from adverse fluctuations in commodity prices, by utilizing these instruments we potentially forego the benefits that might result from favorable fluctuations in price. As a result, higher material and commodity costs, as well as hedging these commodity costs during periods of decreasing prices, both could result in declining margins and could materially impact our results of operations and financial condition.

***We are subject to currency exchange rate and other related risks.***

We conduct operations in many areas of the world involving transactions denominated in a variety of currencies. We are subject to currency exchange rate risk to the extent that our costs are denominated in currencies other than those in which we earn revenues. In addition, since our financial statements are denominated in U.S. dollars, changes in currency exchange rates between the U.S. dollar and other currencies have had, and will continue to have, an impact on our income. While we customarily enter into financial transactions to address these risks, we cannot assure that currency exchange rate fluctuations will not adversely affect our results of operations and financial condition. In addition, while the use of currency hedging instruments may provide us with protection from adverse fluctuations in currency exchange rates, by utilizing these instruments we potentially forego the benefits that might result from favorable fluctuations in currency exchange rates.

We also face risks arising from the imposition of exchange controls and currency devaluations. Exchange controls may limit our ability to convert foreign currencies into U.S. dollars or to remit dividends and other payments by our foreign subsidiaries or businesses located in or conducted within a country imposing controls. Currency devaluations result in a diminished value of funds denominated in the currency of the country instituting the devaluation. Actions of this nature, if they occur or continue for significant periods of time, could have an adverse effect on our results of operations and financial condition in any given period.

***Deteriorating market conditions could diminish our pension plan asset performance which could adversely impact our equity and our cash flow.***

We sponsor both funded and unfunded domestic and foreign defined benefit pension and other retirement plans. Our pension expense and the required contributions to our pension plans are directly affected by the value of plan assets, the projected and actual rates of return on plan assets and the actuarial assumptions we use to measure our defined benefit pension plan obligations, including the discount rate at which future projected and accumulated pension obligations are discounted to a present value. We could experience increased pension expense due to a combination of factors, including the decreased investment performance of pension plan assets, decreases in the discount rate and changes in our assumptions relating to the expected return on plan assets.

The value of investments in our pension trusts have decreased during the recent market decline. As a result we experienced a material change to our *Condensed Consolidated Balance Sheet* which included an increase to "Other long-term liabilities" and a corresponding decrease in "Stockholders' equity" through "Other comprehensive income." If the market turmoil causes further declines in our pension plan assets, we could continue to experience increased pension expense in future years and changes to "Stockholders equity." We may be legally required to make contributions to our U.S pension plans in the future, and these contributions could be material. In addition, if local legal authorities increase the minimum funding requirements for our pension plans outside the U.S., we could be required to contribute more funds, which would negatively affect our cash flow.

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***We are exposed to political, economic and other risks that arise from operating a multinational business.***

Approximately 56 percent and 54 percent of our net sales for the three and six month periods ended June 28, 2009, respectively, were attributable to customers outside the U.S. Accordingly, our business is subject to the political, economic and other risks that are inherent in operating in numerous countries. These risks include:

- the difficulty of enforcing agreements and collecting receivables through foreign legal systems;
- trade protection measures and import or export licensing requirements;
- the imposition of withholding requirements on foreign income and tax rates in certain foreign countries that exceed those in the U.S.;
- the imposition of tariffs, exchange controls or other restrictions;
- difficulty in staffing and managing widespread operations and the application of foreign labor regulations;
- required compliance with a variety of foreign laws and regulations; and
- changes in general economic and political conditions in countries where we operate, particularly in emerging markets.

As we continue to expand our business globally, our success will depend, in part, on our ability to anticipate and effectively manage these and other risks. We cannot assure that these and other factors will not have a material adverse effect on our international operations or on our business as a whole.

***Our products are subject to recall for performance related issues.***

We are at risk for product recall costs. Product recall costs are incurred when we decide, either voluntarily or involuntarily, to recall a product through a formal campaign to solicit the return of specific products due to a known or suspected performance issue. Costs typically include the cost of the product, part or component being replaced, customer cost of the recall and labor to remove and replace the defective part or component. When a recall decision is made, we estimate the cost of the recall and record a charge to income in that period in accordance with FASB Statement of Financial Accounting Standards No. 5, "Accounting for Contingencies." In making this estimate, judgment is required as to the quantity or volume to be recalled, the total cost of the recall campaign, the ultimate negotiated sharing of the cost between us and the customer and, in some cases, the extent to which the supplier of the part or component will share in the recall cost. As a result, these estimates are subject to change.

***We cannot assure that our truck manufacturers and OEM customers will continue to outsource their engine supply needs.***

Several of our engine customers, including PACCAR Inc., International Truck and Engine Corporation (Navistar), Volvo AB and Chrysler, are truck manufacturers or OEMs that manufacture engines for some of their own products. Despite their engine manufacturing abilities, these customers have chosen to outsource certain types of engine production to us due to the quality of our engine products, our emissions capability, systems integration, their customers' preferences and in order to reduce costs, eliminate production risks and maintain company focus. However, we cannot assure that these customers will continue to outsource engine production in the future. Increased levels of OEM vertical integration could result from a number of factors, such as shifts in our customers' business strategies, acquisition by a customer of another engine manufacturer, the inability of third-party suppliers to meet product specifications and the emergence of low-cost production opportunities in foreign countries. Any significant reduction in the level of engine production outsourcing from our truck manufacturer or OEM customers could significantly impact our revenues and, accordingly, have a material adverse effect on our business, results of operations and financial condition.

***Our operations are subject to extensive environmental laws and regulations.***

Our plants and operations are subject to increasingly stringent environmental laws and regulations in all of the countries in which we operate, including laws and regulations governing emissions to air, discharges to water and the generation, handling, storage, transportation, treatment and disposal of waste materials. While we believe that we are in compliance in all material respects with these environmental laws and regulations, we cannot assure that we will not be adversely impacted by costs, liabilities or claims with respect to existing or subsequently acquired operations, under either present laws and regulations or those that may be adopted or imposed in the future. We are

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also subject to laws requiring the cleanup of contaminated property. If a release of hazardous substances occurs at or from any of our current or former properties or at a landfill or another location where we have disposed of hazardous materials, we may be held liable for the contamination and the amount of such liability could be material.

***We face risks through our equity method investments in companies that we do not control.***

Our net income attributable to Cummins Inc. includes significant equity income, technical fees and royalty income from unconsolidated subsidiaries. For the three and six month periods ended June 28, 2009, we recognized \$53 million and \$83 million of equity earnings and \$4 million and \$7 million of other income from our unconsolidated subsidiaries, respectively. The majority of our equity income comes from our North American distributors, Chongqing Cummins Engine Company, Ltd. (CCEC) and Dongfeng Cummins Engine Company, Ltd. (DCEC). We have equity interests in several of our North American distributors who distribute the full range of our products and services to customers and end-users. CCEC is located in Chongqing, China and manufactures several models of our heavy-duty and high-horsepower diesel engines, serving primarily the industrial and stationary power markets in China. DCEC is a joint venture with Dongfeng Automotive Corporation, a subsidiary of Dongfeng Motor Company

(Dongfeng), one of the largest medium-duty truck manufacturers in China. DCEC produces Cummins B, C and L Series four- to nine-liter mechanical engines, full-electronic diesel engines, with a power range from 100 to 370 horsepower, and natural gas engines. Our equity investments may not always perform at the levels we have seen in recent years.

***We face reputational and legal risk from affiliations with joint venture partners.***

Several of our joint venture partners are domiciled in areas of the world with laws, rules and business practices that differ from those in the U.S. We strive to select partners who share our values and understand the Cummins reporting and compliance needs as a U.S. domiciled company. We work to ensure that an appropriate business culture exists within the ventures to minimize and mitigate our risk.

***We may be adversely impacted by work stoppages and other labor matters.***

As of December 31, 2008, we employed approximately 39,800 persons worldwide. Approximately 14,300 of our employees worldwide are represented by various unions under collective bargaining agreements that expire between 2010 and 2014. While we have no reason to believe that we will be impacted by work stoppages and other labor matters, we cannot assure that future issues with our labor unions will be resolved favorably or that we will not encounter future strikes, work stoppages, or other types of conflicts with labor unions or our employees. Any of these factors may have an adverse effect on us or may limit our flexibility in dealing with our workforce. In addition, many of our customers have unionized work forces. Work stoppages or slow-downs experienced by our customers could result in slow-downs or closures at vehicle assembly plants where our engines are installed. If one or more of our customers experience a material work stoppage, it could have a material adverse effect on our business, results of operations and financial condition.

***Our business is exposed to risks of product liability claims.***

We face an inherent business risk of exposure to product liability claims in the event that our products' failure to perform to specification results, or is alleged to result, in property damage, bodily injury and/or death. We may experience material product liability losses in the future. While we maintain insurance coverage with respect to certain product liability claims, we may not be able to obtain such insurance on acceptable terms in the future, if at all, and any such insurance may not provide adequate coverage against product liability claims. In addition, product liability claims can be expensive to defend and can divert the attention of management and other personnel for significant periods of time, regardless of the ultimate outcome. An unsuccessful defense of a product liability claim could have a material adverse effect on our business, results of operations, financial condition and cash flows. In addition, even if we are successful in defending against a claim relating to our products, claims of this nature could cause our customers to lose confidence in our products and us.

***We face significant competition in the markets we serve.***

The markets in which we operate are highly competitive. We compete worldwide with a number of other manufacturers and distributors that produce and sell similar products. Our products primarily compete on the basis of price, performance, fuel economy, speed of delivery, quality and customer support. There can be no assurance

that our products will be able to compete successfully with the products of these other companies. Any failure by us to compete effectively in the markets we serve could have a material adverse effect on our business, results of operations and financial condition. For a more complete discussion of the competitive environment in which each of our segments operates, see "Operating Segments" in "Item 1 Business" of our 2008 Form 10-K.

***Our business is affected by the cyclical nature of the markets we serve.***

Our financial performance depends, in large part, on varying conditions in the markets and geographies that we serve. Demand in these markets and geographies fluctuates in response to overall economic conditions and is particularly sensitive to changes in interest rate levels. Our sales are also impacted by OEM inventory levels and production schedules and stoppages. Economic downturns in the markets we serve generally result in reductions in sales and pricing of our products, which could reduce future income and cash flow. Economic trends can impact our product lines in different ways. For example, our business with Chrysler pickup trucks is a consumer driven market while other product lines serve customers in markets where availability of credit could impact the timing of their purchasing decisions.

**ITEM 2. Unregistered Sales of Equity Securities and Use of Proceeds**

The following information is provided pursuant to Item 703 of Regulation S-K:

Period	Issuer Purchases of Equity Securities			
	(a) Total Number of Shares Purchased(1)	(b) Average Price Paid per Share	(c) Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	(d) Maximum Number of Shares that May Yet Be Purchased Under the Plans or Programs(2)
March 30 – May 3, 2009	—	\$ —	—	375,023
May 4 – May 31, 2009	5,641	32.62	5,641	379,914
June 1 – June 28, 2009	9,438	36.02	9,438	374,480
Total	15,079	\$ 34.75	15,079	

- (1) Shares purchased represent shares under the 2007 Board of Directors authorized repurchase program (for up to \$500 million of Cummins common shares) and the Key Employee Stock Investment Plan established in 1969 (there is no maximum repurchase limitation in this plan).
- (2) These values reflect the sum of shares held in loan status of our Key Employee Stock Investment Plan. The \$500 million repurchase program authorized by the Board of Directors in 2007 does not limit the number of shares that may be purchased and was excluded from this column.

In December 2007, the Board of Directors authorized us to acquire an additional \$500 million worth of Cummins common stock beginning 2008. We announced in February 2009 that we have temporarily suspended our stock repurchase program to conserve cash. During 2009, we will continue to review the suspension and may from time to time repurchase stock. As of June 28, 2009, we have \$372 million available for purchase under this authorization.

During the three month period ended June 28, 2009, we repurchased 15,079 shares from employees in connection with the Key Employee Stock Investment Plan which allows certain employees, other than officers, to purchase shares of common stock on an installment basis up to an established credit limit. Loans are issued for five-year terms at a fixed interest rate established at the date of purchase and may be refinanced after its initial five-year period for an additional five-year period. Participants must hold shares for a minimum of six months from date of purchase and after shares are sold must wait six months before another share purchase may be made. There is no maximum amount of shares that we may purchase under this plan.

During the three month period ended June 28, 2009, we issued 16,639 shares of common stock as compensation to our current and former non-employee directors, all of

whom are accredited investors. These shares were not registered under the Securities Act of 1933 (the "Securities Act") pursuant to the exemption from the registration provided by Section 4(2) of the Securities Act.

According to our bylaws, we are not subject to the provisions of the Indiana Control Share Act. However, we are governed by certain other laws of the State of Indiana applicable to transactions involving a potential change of control of the company.

**ITEM 4. Submission of Matters to a Vote of Security Holders**

The Company held its annual meeting of security holders on May 12, 2009. There were 201,787,451 shares of common stock entitled to vote at the meeting and a total of 179,708,077 shares, or 89 percent, were represented at the meeting. Security holders voted on the following proposals:

**Proposal 1:** Election of nine directors for the ensuing year.

Results of the voting in connection with the election of directors were as follows:

Director	For	Against	Withheld
Robert J. Bernhard	178,104,340	1,090,963	512,774
Robert J. Darnall	170,601,324	8,491,013	615,740
Robert K. Herdman	178,175,741	1,001,227	531,109
Alexis M. Herman	169,481,758	9,614,793	611,526
N. Thomas Linebarger	173,222,072	6,238,663	247,342
William I. Miller	170,313,000	8,962,607	432,470
Georgia R. Nelson	175,840,375	3,396,955	470,747
Theodore M. Solso	171,444,772	7,955,577	307,728
Carl Ware	178,055,346	1,150,808	501,923

**Proposal 2:** Proposal to ratify the appointment of PricewaterhouseCoopers LLP as auditors for the year 2009.

Results of the voting to ratify the appointment of PricewaterhouseCoopers LLP were as follows:

For	Against	Abstain	Broker Non-Votes
178,900,466	611,697	195,914	—

**Proposal 3:** Proposal to amend the 2003 Stock Incentive Plan.

Results of the voting to amend the 2003 Stock Incentive Plan were as follows:

For	Against	Abstain	Broker Non-Votes
143,262,599	17,299,108	579,908	18,566,462

**Proposal 4:** Proposal to reapprove incentive compensation plan performance measures.

Results of voting to reapprove incentive compensation plan performance measures were as follows:

For	Against	Abstain	Broker Non-Votes
151,199,239	9,511,501	430,875	18,566,462

**Proposal 5:** Proposal to adopt International Labor Organization standards, etc.

Results of the voting to adopt International Labor Organization standards were as follows:

For	Against	Abstain	Broker Non-Votes
17,454,240	97,560,904	46,126,471	18,566,462

**ITEM 6. Exhibits**

- 3(a) Amended Articles of Incorporation (filed herewith).
- 10(a) 2003 Stock Incentive Plan, as amended (filed herewith).
- 12 Calculation of Ratio of Earnings to Fixed Charges.
- 31(a) Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31(b) Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32 Certification Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 101. INS XBRL Instance Document.
- 101. SCH XBRL Taxonomy Extension Schema Document.
- 101. CAL XBRL Taxonomy Extension Calculation Linkbase Document.
- 101. DEF XBRL Taxonomy Extension Definition Linkbase Document.
- 101. LAB XBRL Taxonomy Extension Label Linkbase Document.
- 101. PRE XBRL Taxonomy Extension Presentation Linkbase Document.

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Cummins Inc.  
Date: July 30, 2009

By: \_\_\_\_\_  
*/s/ Patrick J. Ward*  
PATRICK J. WARD  
*Vice President and Chief Financial Officer*  
*(Principal Financial Officer)*

By: \_\_\_\_\_  
*/s/ Marsha L. Hunt*  
MARSHA L. HUNT  
*Vice President-Corporate Controller*  
*(Principal Accounting Officer)*

STATE OF INDIANA  
OFFICE OF THE SECRETARY OF STATE

To Whom These Presents Come, Greeting:

WHEREAS, there has been presented to me at this office, Restated Articles of Incorporation for

CUMMINS ENGINE COMPANY, INC.

and said Restated Articles have been prepared and signed in accordance with the provisions of the Indiana Business Corporation Law;

WHEREAS, upon due examination, I find that it satisfies the requirements of I.C. 23-1-18-1;

NOW, THEREFORE, I, EVAN BAYH, Secretary of State of Indiana, hereby certify that I have this day filed said Articles in this office.

Effective date the provisions will apply is April 14, 1987.

[SEAL]

In Witness Whereof, I have hereunto set my hand and affixed the seal of the State of Indiana. at the City of Indianapolis, this 14<sup>th</sup> day of APRIL, 1987

EVAN BAYH, Secretary of State,

By \_\_\_\_\_ Deputy

ARTICLES OF RESTATEMENT

OF

ARTICLES OF INCORPORATION

OF

CUMMINS ENGINE COMPANY, INC.

The undersigned officer of CUMMINS ENGINE COMPANY, INC. (hereinafter referred to as the "Corporation"), existing pursuant to the provisions of the Indiana Business Corporation Law (hereinafter referred to as the "Corporation Law"), and desiring to amend and restate the Amended Articles of Incorporation of the Corporation (hereinafter the "Articles of Incorporation"), certifies the following facts:

ARTICLE I

TEXT OF THE RESTATED ARTICLES OF INCORPORATION

The exact text of the Restated Articles of Incorporation of the Corporation (hereinafter referred to as the "Restated Articles") is set forth in Exhibit A attached hereto.

ARTICLE II

MANNER OF ADOPTION AND VOTE

Section 1. Action by Directors. The Board of Directors of the Corporation, at a meeting thereof, duly called, constituted and held on February 10, 1987, at which a quorum of such Board of Directors was present, duly adopted a resolution approving the Restated Articles and proposing to the Shareholders of the Corporation entitled to vote in respect thereof that the Restated Articles be approved by such Shareholders; and called a meeting of such Shareholders, to be held on April 7, 1987, to approve or reject the Restated Articles.

Section 2. Action by Shareholders.

(a) The Shareholders of the Corporation entitled to vote in respect of the Restated Articles, at a meeting thereof, duly called, constituted and held on April 7, 1987, at which the holders of 8,896,717 shares of Common Stock of the Corporation were present in person or by proxy, approved the Restated Articles.

(b) The holders of the following classes of shares were entitled to vote as a class in respect of the Restated Articles:

Common Stock, \$2.50 par value

(c) The number of shares of Common Stock outstanding, the number of shares entitled to vote in respect of the Restated Articles, the number of shares represented at the meeting, the number of shares voted in favor of the approval of the Restated Articles, and the number of shares voted against approval of the Restated Articles were as follows:



Shares outstanding:	10,594,448
Shares entitled to vote:	10,594,448
Shares represented at meeting:	8,896,717
Shares voted in favor:	6,872,972
Shares voted against:	1,904,327

Section 3. Compliance With Legal Requirements. The manner of the adoption of the Restated Articles and the vote by which the Restated Articles were adopted constitute full legal compliance with the provisions of the Corporation Law and with the Articles of Incorporation and By-Laws of the Corporation.

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ARTICLE III

STATEMENT OF CHANGES MADE WITH RESPECT TO  
THE NUMBER OF SHARES HERETOFOR AUTHORIZED

Aggregate number of shares previously authorized	52,000,0000
Increase	<u>-0-</u>
Aggregate number of shares to be authorized after effect of restatement	52,000,0000

IN WITNESS WHEREOF, the undersigned officer executed these Restated Articles of Incorporation of the Corporation this 8th day of April, 1987.

/s/ Peter B. Hamilton  
Peter B. Hamilton  
Secretary of Cummins  
Engine Company, Inc.

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STATE OF INDIANA                    )  
  )    SS:  
COUNTY OF BARTHOLOMEW        )

I, the undersigned, a Notary Public duly commissioned to take acknowledgements and administer oaths in the above captioned State, hereby certify that Peter B. Hamilton, Secretary of Cummins Engine Company, Inc., personally appeared before me; acknowledged his execution of the foregoing Articles of Restatement of Articles of Incorporation for and on behalf of Cummins Engine Company, Inc.; and swore or attested to the facts therein stated.

WITNESS my hand and Notarial Seal this 8th day of April, 1987.

/s/ Harriett L. Scheidt  
(Written Signature)

Harriett L. Scheidt  
(Printed Name)

My Commission Expires:  
5-14-87

I am a resident of Bartholomew  
County, Indiana.

Exhibit A

RESTATED ARTICLES OF INCORPORATION  
OF  
CUMMINS ENGINE COMPANY, INC.

Cummins Engine Company, Inc. (hereinafter referred to as the "Corporation"), having duly elected to be governed by IC 23-1-18 through IC 23-1-54 (except for IC 23-1-18-3, IC 23-1-21 and IC 23-1-53-3) effective July 10, 1986, and desiring to amend and restate its Articles of Incorporation effective on the date of filing hereof with the Office of the Indiana Secretary of State, pursuant to the provisions of the Indiana Business Corporation Law (hereinafter referred to as the "Corporation Law"), submits the following Restated Articles of Incorporation:

ARTICLE I

Name

The name of the Corporation is Cummins Engine Company, Inc.

## ARTICLE II

### Purposes and Powers

Section 2.1. Purposes of the Corporation. The purposes for which the Corporation is formed are: (a) to engage in the general business of designing, manufacturing and selling engines and power generation equipment, and such components, products and services as may be related thereto; (b) to engage in such activities of every kind or nature as may be allied or incidental to such general business; and (c) to engage in the transaction of any or all lawful business for which corporations may now or hereafter be incorporated under the Corporation Law.

Section 2.2. Powers of the Corporation. The Corporation shall have (a) all powers now or hereafter authorized by or vested in corporations pursuant to the provisions of the Corporation Law, (b) all powers now or hereafter vested in corporations by common law or any other statute or act, and (c) all powers authorized by or vested in the Corporation by the provisions of these Restated Articles of Incorporation or by the provisions of its By-Laws as from time to time in effect.

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## ARTICLE III

### Term of Existence

The period during which the Corporation shall continue is perpetual.

## ARTICLE IV

### Shares

Section 4.1. Authorized Classes and Number of Shares. The total number of shares which the Corporation has authority to issue shall be 52,000,000 shares, consisting of 50,000,000 shares of common stock ("Common Stock"), 1,000,000 shares of preference stock ("Preference Stock") and 1,000,000 shares of preferred stock ("Preferred Stock"). The shares of Common Stock have a par value of \$2.50 per share. The shares of Preference and Preferred Stock do not have any par or stated value, except that, solely for the purpose of any statute or regulation imposing any tax or fee based upon the capitalization of the Corporation, each of the Corporation's shares of Preference Stock and Preferred Stock shall be deemed to have a par value of \$1.00 per share.

Section 4.2. General Terms of All Shares.

(a) Subordination of Classes. The shares of the Common Stock are and shall be subject to the relative rights, preferences, qualifications, limitations or restrictions of any class or series of Preference Stock or Preferred Stock now or hereafter issued by the Corporation, and the shares of the Preference Stock are and shall be subject to the relative rights, preferences, qualifications, limitations or restrictions of any class or series of Preferred Stock now or hereafter issued by the Corporation.

(b) Dealing in the Corporation's Own Shares. Except as otherwise provided in Sections 4.4 and 4.5 of this Article and in Article VIII, the Corporation shall have the power to acquire (by purchase, redemption or otherwise), hold, own, pledge, sell, transfer, assign, reissue, cancel or otherwise dispose of the shares of the Corporation in the manner and to the extent now or hereafter permitted by the laws of the State of Indiana (but such power shall not imply an obligation on the part of the owner or holder of any share to sell or otherwise transfer such share to the Corporation), including the power to purchase, redeem or otherwise acquire the Corporation's own shares, directly or indirectly, and without pro rata treatment of the owners or holders of any class or series of shares, unless, after giving effect thereto, the Corporation would not be able to pay its debts as they become due in the usual course of business or the Corporation's total assets would be less than its total liabilities (and without regard to any amounts that would be needed, if the Corporation were to be dissolved at the time of the purchase, redemption or other acquisition, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those of the holders of the shares of the Corporation being purchased, redeemed or otherwise acquired, unless otherwise expressly provided with respect to a series of Preference Stock or Preferred Stock in the provisions of these Restated Articles of Incorporation describing the terms of such series). Shares of the Corporation purchased, redeemed or otherwise acquired by it shall constitute authorized but unissued shares, unless prior to any such purchase, redemption or other acquisition, or within thirty (30) days

thereafter, the Board of Directors adopts a resolution providing that such shares constitute authorized and issued but not outstanding shares.

(c) Issuance of Shares. The Board of Directors of the Corporation may dispose of, issue and sell shares in accordance with, and in such amounts as may be permitted by, the laws of the State of Indiana and the provisions of these Restated Articles of Incorporation and for such consideration, at such price or prices, either greater than, equal to or less than the par value thereof, and, at such time or times and upon such terms and conditions (including the privilege of selectively repurchasing the same) as the Board of Directors of the Corporation shall determine, without the authorization or approval by any shareholders of the Corporation. Shares may be disposed of, issued and sold to such persons, firms or corporations as the Board of Directors may determine, without any preemptive or other right on the part of the owners or holders of other shares of the Corporation of any class or kind to acquire such shares by reason of their ownership of such other shares.

(d) Fully Paid and Nonassessable Shares. When the Corporation receives the consideration for which the Board of Directors authorized the issuance of shares the shares issued therefor shall be fully paid and nonassessable.

(e) Dividends and Other Distributions. Except as otherwise provided in Sections 4.4 and 4.5 of this Article and in Article VIII, the Corporation shall have the power to declare and pay dividends or other distributions upon the issued and outstanding shares of the Corporation, subject to the limitation that a dividend or other distribution may not be made if, after giving it effect, the Corporation would not be able to pay its debts as they become due in the usual course of business or the Corporation's total assets would be less than its total liabilities (and without regard to any amounts that would be needed, if the Corporation were to be dissolved at the time of the dividend or other distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those of the holders of shares receiving the dividend or other distribution, unless otherwise expressly provided with respect to a series of Preference Stock or Preferred Stock in the provisions of these Restated Articles of Incorporation describing the terms of such series). The Corporation shall have the power to issue shares of one class or series as a share dividend or other distribution in respect of that class or series or one or more other classes or series.

Section 4.3. Common Stock.

(a) Voting Rights. Except as otherwise provided by the Corporation Law, the shares of Common Stock have unlimited voting rights and each outstanding share of Common Stock shall, when validly issued by the Corporation, entitle the record holder thereof to one vote at all shareholders' meetings on all matters submitted to a vote of the shareholders of the Corporation.

(b) Other Terms of Common Stock. The shares of Common Stock shall be equal in every other respect insofar as their relationship to the Corporation is concerned, but such equality of rights shall not imply equality of treatment as to redemption or other acquisition of shares by the Corporation. Subject to the rights of the holders of any outstanding shares of Preference Stock or Preferred Stock, the holders of shares of Common Stock shall be entitled to share ratably in such dividends or other distributions (other than purchases, redemptions or other

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acquisitions of shares by the Corporation), if any, as are declared and paid from time to time on shares of the Common Stock at the discretion of the Board of Directors. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, after payment shall have been made to the holders of the shares of Preference Stock and Preferred Stock of the full amount to which they shall be entitled under these Restated Articles of Incorporation, the holders of shares of Common Stock shall be entitled, to the exclusion of the holders of the shares of Preference Stock and Preferred Stock of any and all series, to share, ratably according to the number of shares of Common Stock held by them, in all remaining assets of the Corporation available for distribution to its shareholders

Section 4.4. Preference Stock.

(a) Creation of Series. The shares of the Preference Stock may be issued in one or more series. The designations, relative rights, preferences, qualifications, limitations and restrictions of the Preference Stock of each series shall be such as are stated and expressed in these Restated Articles of Incorporation. Subject to the requirements of the Corporation Law and subject to all other provisions of these Restated Articles of Incorporation, the Board of Directors of the Corporation may create one or more series of Preference Stock and may determine the preferences, limitations and relative rights of one or more series of Preference Stock before the issuance of any shares of that series by the adoption of an amendment to Article VIII of these Restated Articles of Incorporation, which shall be effective without shareholder approval or other action, that specifies the terms of the series of Preference Stock.

(b) Dividends. Each share of the Preference Stock shall rank on a parity with each other share of the Preference Stock, irrespective of series, with respect to cumulative preferential dividends at the respective rates determined and stated for such shares by the Board of Directors. No full dividend shall be declared or paid or set apart for payment on the Preference Stock of any series for any dividend period unless full cumulative dividends have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for such payment on all the outstanding shares of Preference Stock of all series for all dividend periods terminating on or prior to the end of such dividend period. When dividends are not paid in full as aforesaid on all shares of the Preference Stock of all series at the time outstanding, any dividend payments on the Preference Stock, including accruals, if any, shall be paid to the holders of the shares of the Preference Stock of all series ratably in proportion to the respective sums which such holders would receive if all dividends thereon accrued to the date of payment were declared and paid in full. Accruals of dividends shall not bear interest. So long as any shares of the Preference Stock shall be outstanding, in no event shall any dividends whatsoever, whether in cash or property, be paid or declared, nor shall any distribution be made, on any class of stock ranking subordinate to the Preference Stock nor shall any shares of stock ranking subordinate to the Preference Stock be purchased, redeemed or otherwise acquired for any consideration by the Corporation or any subsidiary of the Corporation, unless all dividends on the Preference Stock for all past quarterly dividend periods shall have been paid, or declared and a sum sufficient for the payment thereof set apart. The foregoing provisions shall not, however, apply to a dividend payable solely in shares of any stock ranking subordinate to the Preference Stock, or to the acquisition of shares of any stock ranking subordinate to the Preference Stock in exchange solely for shares of any other stock ranking subordinate to the Preference Stock.

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(c) Liquidation, Dissolution or Winding Up. Each share of the Preference Stock shall rank on a parity with each other share of the Preference Stock, irrespective of series, with respect to distributions or payments in the event of any liquidation, dissolution or winding up of the Corporation in the respective amounts determined and stated for such shares by the Board of Directors. Subject to the prior rights of the holders of the shares of the Preferred Stock of any series, in the event of any liquidation, dissolution or winding up of the Corporation, then, before any distribution or payment shall be made to the holders of the shares of any stock ranking subordinate to the Preference Stock, the holders of the shares of the Preference Stock of each series shall be entitled to be paid in full the respective amounts determined and stated for such series by the Board of Directors, plus in each case a sum equal to accrued and unpaid dividends thereon to the date of such distribution or payment (whether or not earned or declared); provided, that neither the merger, nor the sale, lease or conveyance of all or substantially all of the assets, of the Corporation shall be deemed a liquidation, dissolution or winding up of the Corporation for purposes of this sentence. In the event that the assets of the Corporation available for distribution to the holders of the shares of the Preference Stock shall not be sufficient to make the payment thereon required to be made in full, such assets shall be distributed to the holders of the respective shares of the Preference Stock ratably in proportion to the full amounts to which they would otherwise be respectively entitled. After payment shall have been made in full to the holders of the shares of the Preference Stock in accordance with this paragraph, the remaining assets and funds of the Corporation shall be distributed among the holders of all shares of stock ranking subordinate to the Preference Stock according to their respective rights.

(d) Definitions. The term "accrued and unpaid dividends" as used herein with respect to the Preference Stock shall mean all dividends on all outstanding shares of the Preference Stock at the rates determined and stated for the respective series thereof by the Board of Directors, from the respective dates from which such dividends shall accrue to the date as of which accrued and unpaid dividends are being determined, less the aggregate amount of dividends theretofore declared and paid or set apart for payment upon such outstanding Preference Stock. The term "stock ranking subordinate to the Preference Stock" shall mean the Common Stock and any class or series of capital stock of the Corporation hereafter authorized over which the Preference Stock has preference or priority in the payment of dividends or in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

(e) Voting.

(I) The holders of the shares of the Preference Stock shall have no voting rights except where voting rights are given to them specifically by the Corporation Law and except as provided herein. On any matters on which the holders of the Preference Stock or any series thereof shall be entitled to vote, they shall be entitled to one vote for each share held.

(II) If and whenever six quarterly dividends payable on the Preference Stock of any series, whether or not consecutive, shall be unpaid in whole or in part, the number of directors of the Corporation shall be increased by two, and the holders of the Preference Stock at the time outstanding, voting separately as a class without respect to series, shall be entitled to elect said two directors. The right to elect said two directors shall begin at the annual meeting of the shareholders for the election of directors next succeeding said arrearages in dividend payments and shall continue until said arrearages in dividends shall have been declared and paid or

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declared and a sum sufficient for the payment thereof set apart in trust for the holders entitled thereto, at which time the right of the holders of the shares of the Preference Stock to elect said two directors shall cease and the terms of said two directors then in office shall expire and terminate.

(III) The affirmative vote of the holders of at least two-thirds of the shares of the Preference Stock at the time outstanding, voting separately as a class without respect to series, shall be necessary to adopt any proposed amendment to these Restated Articles of Incorporation which increases the number of authorized shares of the Preferred Stock or authorizes, or increases the number of authorized shares of, any capital stock or any security or obligation convertible into any other capital stock ranking

prior to the Preference Stock in the distribution of assets on any liquidation, dissolution or winding up of the Corporation or in the payment of dividends and, in addition, if an affirmative vote of the holders of the shares of the Preference Stock of each series is required by law, the affirmative vote of the holders of at least a majority of the shares of the Preference Stock of each series at the time outstanding also shall be necessary to adopt any such proposed amendment.

(IV) The affirmative vote of the holders of at least two-thirds of the shares of the Preference Stock at the time outstanding, voting separately as a class without respect to series, shall be necessary to adopt any proposed amendment to these Restated Articles of Incorporation which affects adversely the relative rights, preferences, qualifications, limitations or restrictions of the outstanding Preference Stock or the holders thereof; provided, however, that if any such amendment affects adversely the relative rights, preferences, qualifications, limitations or restrictions of less than all series of the Preference Stock at the time outstanding, then only the affirmative vote of the holders of at least two-thirds of the shares of each series so affected shall be necessary for such adoption or authorization; and provided, further, that any amendment to these Restated Articles of Incorporation to authorize, or to increase the number of authorized shares of, any capital stock ranking on a parity with the Preference Stock in the distribution of assets on any liquidation, dissolution or winding up of the Corporation or in the payment of dividends shall not be deemed to affect adversely the relative rights, preferences, qualifications, limitations or restrictions of the Preference Stock or any series thereof.

(V) The affirmative vote of the holders of at least a majority of the shares of the Preference Stock at the time outstanding, voting separately as a class without respect to series, or, if an affirmative vote of the holders of the shares of the Preference Stock of each series is required by law, the affirmative vote of holders of at least a majority of the shares of the Preference Stock of each series at the time outstanding, shall be necessary to adopt any proposed amendment to these Restated Articles of Incorporation which increases the number of authorized shares of the Preference Stock or authorizes, or increases the number of authorized shares of, any capital stock or any security or obligation convertible into any capital stock ranking on a parity with the Preference Stock in the distribution of assets on any liquidation, dissolution or winding up of the Corporation or in the payment of dividends, or to authorize any sale, lease or conveyance of all or substantially all of the assets of the Corporation, or to adopt any agreement of merger of the Corporation with or into any other corporation or any agreement of merger of any other corporation with or into the Corporation; provided, however, that no such vote of the holders of the shares of the Preference Stock shall be required to adopt any such agreement of merger if none of the relative rights, preferences, qualifications, limitations or restrictions of the

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outstanding Preference Stock or any series thereof would be adversely affected thereby and if the corporation resulting therefrom will have thereafter no authorized stock ranking prior to or on a parity with the Preference Stock in the distribution of assets on any liquidation, dissolution or winding up of such resulting corporation or in the payment of dividends, except the same number of authorized shares of stock with the same relative rights, preferences, qualifications, limitations and restrictions thereof as the stock of the Corporation authorized immediately preceding such merger and if each holder of the shares of the Preference Stock immediately preceding such merger shall receive the same number of shares, with the same relative rights, preferences, qualifications, limitations and restrictions thereof, of stock of such resulting corporation.

(f) Redeemed and Converted Preference Stock. Any shares of the Preference Stock which shall at any time have been redeemed, or, in the case of Preference Stock which shall be convertible into shares of other capital stock of the Corporation, which shall have been converted, or which shall have otherwise been acquired by the Corporation and cancelled, shall, after such redemption, conversion or acquisition, have the status of authorized but unissued shares of Preference Stock, without designation as to series until such shares are once again designated by the Board of Directors as part of a particular series of the Preference Stock.

#### Section 4.5. Preferred Stock.

(a) Creation of Series. The shares of the Preferred Stock may be issued in one or more series. The designations, relative rights, preferences, qualifications, limitations and restrictions of the Preferred Stock of each series shall be such as are stated and expressed in these Restated Articles of Incorporation. Subject to the requirements of the Corporation Law and subject to all other provisions of these Restated Articles of Incorporation, the Board of Directors of the Corporation may create one or more series of Preferred Stock and may determine the preferences, limitations and relative rights of one or more series of Preferred Stock before the issuance of any shares of that series by the adoption of an amendment to Article VIII of these Restated Articles of Incorporation, which shall be effective without shareholder approval or other action, that specifies the terms of the series of Preferred Stock.

(b) Dividends. Each share of the Preferred Stock shall rank on a parity with each, other share of the Preferred Stock, irrespective of series, with respect to cumulative preferential dividends at the respective rates determined and stated for such shares by the Board of Directors. No full dividend shall be declared or paid or set apart for payment on the Preferred Stock of any series for any dividend period unless full cumulative dividends have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for such payment on all the outstanding shares of Preferred Stock of all series for all dividend periods terminating on or prior to the end of such dividend period. When dividends are not paid in full as aforesaid on all shares of the Preferred Stock of all series at the time outstanding, any dividend payments on the Preferred Stock, including accruals, if any, shall be paid to the holders of the shares of the Preferred Stock of all series ratably in proportion to the respective sums which such holders would receive if all dividends thereon accrued to the date of payment were declared and paid in full. Accruals of dividends shall not bear interest. So long as any shares of the Preferred Stock shall be outstanding, in no event shall any dividends whatsoever, whether in cash or property, be paid or declared, nor shall any distribution be made, on any class of stock ranking subordinate to the Preferred Stock nor shall any shares of stock ranking subordinate to the

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Preferred Stock be purchased, redeemed or otherwise acquired for any consideration by the Corporation or any subsidiary of the Corporation, unless all dividends on the Preferred Stock for all past quarterly dividend periods shall have been paid, or declared and a sum sufficient for the payment thereof set apart. The foregoing provisions shall not, however, apply to a dividend payable solely in shares of any stock ranking subordinate to the Preferred Stock, or to the acquisition of shares of any stock ranking subordinate to the Preferred Stock in exchange solely for shares or any other stock ranking subordinate to the Preferred Stock.

(c) Liquidation, Dissolution or Winding Up. Each share of the Preferred Stock shall rank on a parity with each other share of the Preferred Stock, irrespective of series, with respect to distributions or payments in the event of any liquidation, dissolution or winding up of the Corporation in the respective amounts determined and stated for such shares by the Board of Directors. In the event of any liquidation, dissolution or winding up of the Corporation, then, before any distribution or payment shall be made to the holders of the shares of any stock ranking subordinate to the Preferred Stock, the holders of the shares of the Preferred Stock of each series shall be entitled to be paid in full the respective amounts determined and stated for such series by the Board of Directors, plus in each case a sum equal to accrued and unpaid dividends thereon to the date of such distribution or payment (whether or not earned or declared); provided, that neither the merger, nor the sale, lease or conveyance of all or substantially all of the assets, of the Corporation shall be deemed a liquidation, dissolution or winding up of the Corporation for purposes of this sentence. In the event that the assets of the Corporation available for distribution to the holders of the shares of the Preferred Stock shall not be sufficient to make the payment thereon required to be made in full, such assets shall be distributed to the holders of the respective shares of the Preferred Stock ratably in proportion to the full amounts to which they would otherwise be respectively entitled. After payment shall have been made in full to the holders of the shares of the Preferred Stock in accordance with this paragraph, the remaining assets and funds of the Corporation shall be distributed among the holders of all shares of stock ranking subordinate to the Preferred Stock according to their respective rights.

(d) Definitions. The term "accrued and unpaid dividends" as used herein with respect to the Preferred Stock shall mean all dividends on all outstanding shares of the Preferred Stock at the rates determined and stated for the respective series thereof by the Board of Directors, from the respective dates from which such dividends shall accrue to the date as of which accrued and unpaid dividends are being determined, less the aggregate amount of dividends theretofore declared and paid or set apart for payment upon such outstanding Preferred Stock. The term "stock ranking subordinate to the Preferred Stock" shall mean the Preference Stock, the Common Stock and any class or series of capital stock of the Corporation hereafter authorized over which the Preferred Stock has preference or priority in the payment of dividends or in the

distribution of assets on any liquidation, dissolution or winding up of the Corporation.

(c) Voting.

(I) The holders of the shares of the Preferred Stock shall have no voting rights except where voting rights are given to them specifically by the Corporation Law and except as provided herein. On any matters on which the holders of the Preferred Stock or any series thereof shall be entitled to vote, they shall be entitled to one vote for each share held.

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(II) If and whenever six quarterly dividends payable on the Preferred Stock of any series, whether or not consecutive, shall be unpaid in whole or in part, the number of directors of the Corporation shall be increased by two, and the holders of the Preferred Stock at the time outstanding, voting separately as a class without respect to series, shall be entitled to elect said two directors. The right to elect said two directors shall begin at the annual meeting of the shareholders for the election of directors next succeeding said arrearages in dividend payments and shall continue until said arrearages in dividends shall have been declared and paid or declared and a sum sufficient for the payment thereof set apart in trust for the holders entitled thereto, at which time the right of the holders of the shares of the Preferred Stock to elect said two directors shall cease and the terms of said two directors then in office shall expire and terminate.

(III) The affirmative vote of the holders of at least two-thirds of the shares of the Preferred Stock at the time outstanding, voting separately as a class without respect to series, shall be necessary to adopt any proposed amendment to these Restated Articles of Incorporation which authorizes, or increases the number of authorized shares of, any capital stock or any security or obligation convertible into any other capital stock ranking prior to the Preferred Stock in the distribution of assets on any liquidation, dissolution or winding up of the Corporation or in the payment of dividends and, in addition, if an affirmative vote of the holders of the shares of the Preferred Stock of each series is required by law, the affirmative vote of the holders of at least a majority of the shares of the Preferred Stock of each series at the time outstanding also shall be necessary to adopt any such proposed amendment.

(IV) The affirmative vote of the holders of at least two-thirds of the shares of the Preferred Stock at the time outstanding, voting separately as a class without respect to series, shall be necessary to adopt any proposed amendment to these Restated Articles of Incorporation which affects adversely the relative rights, preferences, qualifications, limitations or restrictions of the outstanding Preferred Stock or the holders thereof; provided, however, that if any such amendment affects adversely the relative rights, preferences, qualifications, limitations or restrictions of less than all series of the Preferred Stock at the time outstanding, then only the affirmative vote of the holders of at least two-thirds of the shares of each series so affected shall be necessary for such adoption or authorization; and provided, further, that any amendment to these Restated Articles of Incorporation to authorize, or to increase the number of authorized shares of, any capital stock ranking on a parity with the Preferred Stock in the distribution of assets on any liquidation, dissolution or winding up of the Corporation or in the payment of dividends shall not be deemed to affect adversely the relative rights, preferences, qualifications, limitations or restrictions of the Preferred Stock or any series thereof.

(V) The affirmative vote of the holders of at least a majority of the shares of the Preferred Stock at the time outstanding, voting separately as a class without respect to series, or, if an affirmative vote of the holders of the shares of the Preferred Stock of each series is required by law, the affirmative vote of holders of at least a majority of the shares of the Preferred Stock of each series at the time outstanding, shall be necessary to adopt any proposed amendment to these Restated Articles of Incorporation which increases the number of authorized shares of the Preferred Stock or authorizes, or increases the number of authorized shares of, any capital stock or any security or obligation convertible into any capital stock ranking on a parity with the Preferred Stock in the distribution of assets on any liquidation, dissolution or winding up of the

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Corporation or in the payment of dividends, or to authorize any sale, lease or conveyance of all or substantially all of the assets of the Corporation, or to adopt any agreement of merger of the Corporation with or into any other corporation or any agreement of merger of any other corporation with or into the Corporation; provided, however, that no such vote of the holders of the shares of the Preferred Stock shall be required to adopt any such agreement of merger if none of the relative rights, preferences, qualifications, limitations or restrictions of the outstanding Preferred Stock or any series thereof would be adversely affected thereby and if the corporation resulting therefrom will have thereafter no authorized stock ranking prior to or on a parity with the Preferred Stock in the distribution of assets on any liquidation, dissolution or winding up of such resulting corporation or in the payment of dividends, except the same number of authorized shares of stock with the same relative rights, preferences, qualifications, limitations and restrictions thereof as the stock of the Corporation authorized immediately preceding such merger and if each holder of the shares of the Preferred Stock immediately preceding such merger shall receive the same number of shares, with the same relative rights, preferences, qualifications, limitations and restrictions thereof, of stock of such resulting corporation.

(f) Redeemed and Converted Preferred Stock. Any shares of the Preferred Stock which shall at any time have been redeemed, or, in the case of Preferred Stock which shall be convertible into shares of other capital stock of the Corporation, which shall have been converted, or which shall have otherwise been acquired by the Corporation and cancelled, shall, after such redemption, conversion or acquisition, have the status of authorized but unissued shares of Preferred Stock, without designation as to series until such shares are once again designated by the Board of Directors as part of a particular series of the Preferred Stock.

## ARTICLE V

### Directors

Section 5.1. Number. The number of Directors shall be fixed in accordance with procedures established by the By-Laws.

Section 5.2. Vacancies. Vacancies occurring in the Board of Directors shall be filled in the manner provided in the By-Laws or, if the By-Laws do not provide for the filling of vacancies, in the manner provided by the Corporation Law. The By-Laws may also provide that in certain circumstances specified therein, vacancies occurring in the Board of Directors may be filled by vote of the shareholders at a special meeting called for that purpose or at the next annual meeting of shareholders.

Section 5.3. Removal of Directors. Any or all of the members of the Board of Directors may be removed, with or without cause, only at a meeting of the shareholders called expressly for that purpose, by the affirmative vote of the holders of outstanding shares representing at least a majority of all the votes then entitled to be cast at an election of Directors.

Section 5.4. Election of Directors by Holders of Preference Stock or Preferred Stock. The holders of one (1) or more series of Preference Stock or Preferred Stock may be entitled to elect all or a specified number of Directors, but only to the extent and subject to limitations as set forth in Sections 4.4 and 4.5 of these Restated Articles of Incorporation.

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ARTICLE VI

By-Laws of the Corporation

Section 6.1. By-Laws. The Board of Directors shall have the exclusive power to make, alter, amend or repeal, or to waive provisions of, the By-Laws of the Corporation by the affirmative vote of a majority of the entire number of Directors at the time, except as expressly provided by the Corporation Law.

ARTICLE VII

Other Provisions

Section 7.1. Amendment or Repeal. Except as otherwise expressly provided for in these Restated Articles of Incorporation, the Corporation shall be deemed, for all purposes, to have reserved the right to amend, alter, change or repeal any provision contained in these Restated Articles of Incorporation to the extent and in the manner now or hereafter permitted or prescribed by statute, and all rights herein conferred upon shareholders are granted subject to such reservation.

Section 7.2. Captions. The captions of the Articles and Sections of these Restated Articles of Incorporation have been inserted for convenience of reference only and do not in any way define, limit, construe or describe the scope or intent of any Article or Section hereof.

Section 7.3. Nonliability of Shareholders. Shareholders of the Corporation are not personally liable for the acts or debts of the Corporation, nor is private property of shareholders subject to the payment of corporate debts.

ARTICLE VIII

Series of Preference Stock and Preferred Stock

Section 8.1. Convertible Exchangeable Preference Stock, Series A. The designation, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, of the shares of a series of the Preference Stock of the Corporation to be designated Convertible Exchangeable Preference Stock, Series A (in addition to those set forth in Section 4.4 of these Restated Articles of Incorporation which are applicable to all shares of the Preference Stock) are hereby fixed as follows:

(a) Designation. The Corporation is authorized to issue a series of Preference Stock, without par value, which is hereby designated Convertible Exchangeable Preference Stock, Series A (the "Series A Preference Stock"). The number of shares of Series A Preference Stock shall be limited to 230,000. The liquidation preference of the Series A Preference Stock shall be \$500 per share. The shares of Series A Preference Stock shall be issued as full shares and as fractional shares in fractions of one-tenth (1/10th) of a full share. Any reference herein to the Series A Preference Stock or any share thereof shall be deemed to include a reference to such fractional share interest unless the context otherwise requires.

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(b) Dividends. The shares of Series A Preference Stock shall be entitled to receive, when and as declared by the Board of Directors of the Corporation (the "Board") or a duly authorized committee thereof (an "Authorized Committee"), out of funds legally available for the payment of dividends, cumulative dividends at the annual rate of \$35.00 per full share, and no more, payable in cash on March 30, 1987 with respect to the period commencing on the date of original issue of the series and ending March 30, 1987, and thereafter quarterly on March 30, June 30, September 30 and December 30 of each year (the "Dividend Payment Dates") with respect to the quarterly period ending on each such Dividend Payment Date, to stockholders of record on the record date, not exceeding sixty days preceding such Dividend Payment Date, fixed for that purpose by the Board or an Authorized Committee in advance of each particular dividend. The amount of dividends payable on shares of Series A Preference Stock for each full quarterly dividend period shall be computed by dividing by four the annual rate per share set forth in this paragraph (b). The initial dividend, payable on March 30, 1987, will be computed (i) for the period from the date of original issue of the series through December 30, 1986, on the basis of the annual dividend multiplied by the actual number of days elapsed over 360 and (ii) for the period from December 30, 1986 through March 30, 1987, on the basis of the annual dividend divided by four. Dividends payable on the Series A Preference Stock for any period less than a full quarterly period shall be computed on the basis of a 360-day year of twelve 30-day months.

(c) Optional Redemption. The Corporation at any time and from time to time may at its option redeem all, or less than all, of the outstanding shares of Series A Preference Stock. Any redemption of shares of Series A Preference Stock shall be effected at the redemption prices per full share set forth below, if such redemption is during the periods indicated:

If redeemed prior to December 30, 1987, \$535.00;

If redeemed during the twelve-month period beginning December 30,

	<u>Redemption Price Per Full Share</u>	
1987	\$	531.50
1988		528.00
1989		524.50
1990		521.00
1991		517.50
1992		514.00
1993		510.50
1994		507.00
1995		503.50

and thereafter at \$500 per share, plus, in each case, an amount equal to all dividends (whether or not earned or declared) accrued and unpaid on such share of Series A Preference Stock to the date fixed for redemption. Notwithstanding the foregoing, the Series A Preference Stock may not be redeemed prior to January 8, 1990 unless the closing price of the Common Stock of the Corporation (the "Common Stock") equalled or exceeded 150% of the effective conversion price

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per share, based upon the liquidation preference and the conversion rate then in effect, for any 20 trading days within any 30 consecutive trading days ending within five days prior to the date upon which notice of redemption is first published. The closing price for each day shall be the reported last sale price regular way or, in case no such reported sale takes place on such day, the average of the reported closing bid and asked prices regular way, in either case as reported on the New York Stock Exchange Composite Tape, or, if at any time the Common Stock is not listed on the New York Stock Exchange Composite Tape, on the New York Stock Exchange, or, if at any time the Common

Stock is not listed or admitted to trading on such Exchange, on the principal national securities exchange on which the Common Stock is listed or admitted to trading, or if the Common Stock is not listed or admitted to trading on any national securities exchange on the National Association of Securities Dealers Automated Quotations National Market System, or, if the Common Stock is not listed or admitted to trading on any national securities exchange or quoted on such National Market System, the average of the closing bid and asked prices in the over-the-counter market as furnished by any New York Stock Exchange member firm selected from time to time by the Board or an Authorized Committee for such purposes. Notice of any proposed redemption of shares of Series A Preference Stock shall be given by the Corporation by mailing a copy of such notice not less than 30 nor more than 60 days prior to the date fixed for such redemption to holders of record of the shares of Series A Preference Stock to be redeemed at their respective addresses appearing on the books of the Corporation. Such notice shall specify the shares called for redemption, the redemption price and the place at which and the date on which the shares called for redemption will, upon presentation and surrender of the certificates evidencing such shares, be redeemed and the redemption price paid. In the case of the redemption of less than all the outstanding shares of Series A Preference Stock, such redemption shall be of fractional shares equal to one-tenth (1/10th) of a full share selected by lot among all then outstanding Series A Preference Stock in such manner as may be prescribed by the Board or an Authorized Committee. From and after the date fixed in any such notice as the date of redemption of shares of Series A Preference Stock, unless default shall be made by the Corporation in providing monies at the time and place specified for the payment of the redemption price pursuant to such notice, all dividends on the Series A Preference Stock thereby called for redemption shall cease to accrue and all rights of the holders thereof as stockholders of the Corporation, except the right to receive the redemption price, shall cease and terminate.

All shares of Series A Preference Stock which shall at any time have been redeemed shall, after such redemption, have the status of authorized but unissued shares of Preference Stock, without designation as to series until such shares are once more designated as part of a particular series by the Board or an Authorized Committee.

(d) Conversion Rights.

(I) Each share of Series A Preference Stock shall be convertible at the option of the holder thereof, at any time prior to the close of business on the fifth business day prior to the date fixed for redemption of such share as herein provided, into fully paid and nonassessable shares of Common Stock at the rate of 6.49350 shares of Common Stock for each full share of Series A Preference Stock.

(II) For the purpose of this paragraph (d)(V), the term "Common Stock" shall include any stock of any class of the Corporation which has no preference in respect of dividends or of

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amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation and which is not subject to redemption by the Corporation. However, shares issuable on conversion of shares of Series A Preference Stock shall include only shares of the class designated as Common Stock of the Corporation as of November 18, 1986, or shares of any class or classes resulting from any reclassification or reclassifications thereof and which have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation and which are not subject to redemption by the Corporation; provided that if at any time there shall be more than one such resulting class, the shares of each such class then so issuable shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

(III) Before any holder of a share of Series A Preference Stock shall be entitled to convert it into Common Stock, the holder shall exercise such holder's right to convert by surrendering the certificate or certificates for such Series A Preference Stock at the office of the transfer agent for the Series A Preference Stock, which certificate or certificates, if the Corporation shall so require, shall be duly endorsed to the Corporation or in blank, or accompanied by proper instruments of transfer to the Corporation or in blank, and shall give written notice to the Corporation at such office stating that the holder elects so to convert such Series A Preference Stock and setting forth the name or names in which such holder wishes the certificate or certificates for Common Stock to be issued. Each such notice of election to convert shall constitute a contract between the holder of such Series A Preference Stock and the Corporation, whereby the holder of such Series A Preference Stock shall be deemed to subscribe for the amount of Common Stock which such holder shall be entitled to receive upon such conversion and, in satisfaction of such subscription, to deposit the Series A Preference Stock to be converted and to release the Corporation from all liability thereunder (except to deliver the shares deliverable upon conversion thereof) and the Corporation shall be deemed to agree that the amount paid to it for such Series A Preference Stock, together with the surrender of the certificate or certificates therefor and the extinguishment of liability thereon (except as aforesaid), shall constitute full payment of such subscription for the Common Stock to be delivered upon such conversion. Shares of Series A Preference Stock surrendered for conversion during the period from the close of business on any record date for the payment of dividends next preceding any Dividend Payment Date to the opening of business on such Dividend Payment Date shall (except in the case of shares which have been called for redemption on a redemption date within such period) be accompanied by payment in New York Clearing House funds or other funds acceptable to the Corporation of an amount equal to the dividend payable on such Dividend Payment Date on the shares of Series A Preference Stock being surrendered for conversion.

(IV) The Corporation will, as soon as practicable after such deposit of certificates for Series A Preference Stock accompanied by the written notice and the payment of any required amount, deliver at such office of such transfer agent to the person for whose account such Series A Preference Stock was so surrendered, or to such person's nominee or nominees, certificates for the number of full shares of Common Stock to which such person shall be entitled as aforesaid, together with a cash adjustment of any fraction of a share as hereafter provided, if not evenly convertible. Subject to the following provisions of this paragraph, such conversion shall be deemed to have been made as of the date of such surrender of the Series A Preference Stock to

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be converted, and the person or persons entitled to receive the Common Stock deliverable upon conversion of such Series A Preference Stock shall be treated for all purposes as the record holder or holders of such Common Stock on such date. The Corporation shall not be required to convert any shares of Series A Preference Stock while the stock transfer books of the Corporation are closed for any purpose, but the surrender of Series A Preference Stock for conversion during any period while such books are so closed shall become effective for conversion immediately upon the reopening of such books as if the surrender had been made on the date of such reopening, and the conversion shall be at the conversion rate in effect on such date.

Except as provided in the last sentence of paragraph (d)(III), no adjustments in respect of dividends on shares surrendered for conversion or any dividend on the Common Stock issued upon conversion shall be made upon the conversion of any shares of Series A Preference Stock; provided, however, that if any shares shall be converted subsequent to the record date preceding a Dividend Payment Date but on or prior to such Dividend Payment Date (except shares called for redemption between such record date and Dividend Payment Date), the registered holder of such shares at the close of business on such record date shall be entitled to receive the dividend payable on such shares on such Dividend Payment Date notwithstanding the conversion thereof.

(V) The conversion rate shall be subject to adjustment as follows:

(1) In case the Corporation shall (i) pay a dividend on Common Stock in Common Stock, (ii) subdivide its outstanding shares of Common Stock, or (iii) combine its outstanding shares of Common Stock into a smaller number of shares, the conversion rate in effect immediately prior thereto shall be adjusted retroactively as provided below so that the holder of any Series A Preference Stock thereafter surrendered for conversion shall be entitled to receive the number of shares of Common Stock of the Corporation which such holder would have owned or have been entitled to receive after the happening of any of the events described above had such Series A Preference Stock been converted immediately prior to the happening of such event. An adjustment made pursuant to this paragraph (d)(V)(1) shall become effective immediately after the record date in the case of a dividend and shall become effective immediately

after the effective date in the case of a subdivision or combination.

(2) In case the Corporation shall issue rights or warrants to all holders of its Common Stock entitling them to subscribe for or purchase shares of Common Stock at a price per share less than the current market price per share (determined as provided in paragraph (5)) of the Common Stock on the date fixed for the determination of stockholders entitled to receive such rights or warrants, the conversion rate in effect at the opening of business on the day following the date fixed for such determination shall be increased by multiplying such conversion rate by a fraction of

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which the numerator shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination plus the number of shares of Common Stock so offered for subscription or purchase and the denominator shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination plus the number of shares of Common Stock which the aggregate of the offering price of the total number of shares of Common Stock so offered for subscription or purchase would purchase at such current market price, such increase to become effective immediately after the opening of business on the day following the date fixed for such determination; provided, however, in the event that all the shares of Common Stock offered for subscription or purchase are not delivered upon the exercise of such rights or warrants, upon the expiration of such rights or warrants the conversion rate shall be readjusted to the conversion rate which would have been in effect had the numerator and the denominator of the foregoing fraction and the resulting adjustment been made based upon the number of shares of Common Stock actually delivered upon the exercise of such rights or warrants rather than upon the number of shares of Common Stock offered for subscription or purchase. For the purposes of this paragraph (2), the number of shares of Common stock at any time outstanding shall not include shares held in the treasury of the Corporation.

(3) In case the Corporation shall, by dividend or otherwise, distribute to all holders of its Common Stock shares of its capital stock (other than Common Stock), evidences of its indebtedness or assets (excluding cash dividends paid out of the retained earnings of the Corporation) or rights or warrants to subscribe or purchase (excluding those referred to in paragraph (2) above), then in each such case the conversion rate shall be adjusted so that the same shall equal the rate determined by multiplying the conversion rate in effect immediately prior to the close of business on the date fixed for the determination of stockholders entitled to receive such distribution by a fraction of which the numerator shall be the current market price per share (determined as provided in paragraph (5)) of the Common Stock on the date fixed for such determination and the denominator shall be such current market price per share of the Common Stock less the then fair market value (as determined by the Board of Directors, whose determination shall be conclusive and described in a resolution of the Board of Directors) of the portion of the capital stock, assets, evidences of indebtedness, rights or warrants so distributed applicable to one share of Common Stock, such adjustment to become effective immediately prior to the opening of business on

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the day following the date fixed for the determination of stockholders entitled to receive such distribution.

(4) The reclassification (including any reclassification upon a merger in which the Corporation is the continuing corporation) of Common Stock into securities including other than Common Stock (other than any reclassification upon a consolidation or merger to which paragraph (d)(V)(9) applies) shall be deemed to involve (a) a distribution of such securities other than Common Stock to all holders of Common Stock (and the effective date of such reclassification shall be deemed to be "the date fixed for the determination of stockholders entitled to receive such distribution" and "the date fixed for such determination" within the meaning of paragraph (3)), and (b) a subdivision or combination, as the case may be, of the number of shares of Common Stock outstanding immediately prior to such reclassification into the number of shares of Common stock outstanding immediately thereafter.

(5) For the purpose of any computation under paragraphs (2) and (3), the current market price per share of Common Stock on any date shall be deemed to be the average of the daily closing prices for the thirty consecutive business days selected by the Corporation commencing with the forty-fifth business day before the day in question. The closing price for each day shall be the reported last sales price regular way or, in case no such reported sale takes place on such day, the average of the reported closing bid and asked prices regular way, in either case on the New York Stock Exchange or, if the Common Stock is not listed or admitted to trading on such Exchange, on the principal national securities exchange on which the Common Stock is listed or admitted to trading or, if not listed or admitted to trading on any national securities exchange, on the National Association of Securities Dealers Automated Quotations National Market System or, if the Common Stock is not listed or admitted to trading on any national securities exchange or quoted on such National Market System, the average of the closing bid and asked prices in the over-the-counter market as furnished by any New York Stock Exchange member firm selected from time to time by the Corporation for that purpose.

(6) No adjustment in the conversion rate shall be required unless such adjustment would require an increase or decrease of at least 1% in such rate; provided, however, that the Corporation may make any such adjustment at its election; and provided, further, that any adjustments which by reason of this paragraph (6) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this

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paragraph (d)(V) shall be made to the nearest cent or to the nearest one-hundredth of a share, as the case may be. Anything in this paragraph (d)(V) notwithstanding, the Corporation may make such reductions in the conversion rate, in addition to those required by this paragraph (d)(V), as it considers to be advisable in order that any event treated for Federal income tax purposes as a dividend of stock or stock rights shall not be taxable to the recipients.

(7) Whenever the conversion rate is adjusted as herein provided:

(a) the Corporation shall compute the adjusted conversion rate in accordance with paragraph (5) and shall prepare a certificate signed by the Treasurer of the Corporation setting forth the adjusted conversion rate and showing in reasonable detail the facts upon which such adjustment is based, and such certificate shall forthwith be filed at each office or agency maintained for the purpose of conversion of shares; and

(b) a notice stating that the conversion rate has been adjusted and setting forth the adjusted conversion rate shall forthwith be required, and as soon as practicable after it is required, such notice shall be mailed by the Corporation to all holders at their last addresses as they shall appear in the stock transfer books of the Corporation.

(8) No fractional interests in Common Stock shall be issued upon conversion of shares of Series A Preference Stock. If more than one certificate representing shares of Series A Preference Stock shall be surrendered for conversion at one time by the same holder, the number of full shares issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of the Series A Preference Stock so surrendered. Instead of any fractional share of Common Stock which would otherwise be issuable upon conversion of any share of Series A Preference Stock, the Corporation will pay a cash adjustment in respect of such fractional interest in an amount equal to the same fraction of the closing price per share of Common Stock (as determined by the Board of Directors or in any manner prescribed by the Board of Directors) at the close of business on the day of conversion.



(9) In case of any consolidation of the Corporation with, or merger of the Corporation into, any other person, any merger of another person into the Corporation (other than a merger which does not result in any reclassification, conversion, exchange or

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cancellation of outstanding shares of Common Stock of the Corporation) or any sale or transfer of all or substantially all of the assets of the Corporation, the person formed by such consolidation or resulting from such merger or which acquires such assets, as the case may be, shall make provisions in the articles or certificate of incorporation that the holder of each share of Series A Preference Stock then outstanding shall have the right thereafter, during the period such shares shall be convertible, to convert such share only into the kind and amount of securities, cash or other property receivable upon such consolidation, merger, sale or transfer by a holder of the number of shares of Common Stock of the Corporation into which such share might have been converted immediately prior to such consolidation, merger, sale or transfer assuming such holder of Common Stock of the Corporation (i) is not a person with which the Corporation consolidated or into which the Corporation merged or which merged into the Corporation or to which such sale or transfer was made, as the case may be ("constituent person"), or an affiliate of a constituent person and (ii) failed to exercise such holder's rights of election, if any, as to the kind or amount of securities, cash and other property receivable upon such consolidation, merger, sale or transfer (provided that if the kind or amount of securities, cash and other property receivable upon such consolidation, merger, sale or transfer is not the same for each share of Common Stock of the Corporation held immediately prior to such consolidation, merger, sale or transfer by others than a constituent person or any affiliate thereof and in respect of which such rights of election shall not have been exercised ("nonelecting share"), then for the purpose of this paragraph (d)(V) the kind and amount of securities, cash and other property receivable upon such consolidation, merger, sale or transfer by each nonelecting share shall be deemed to be the kind and amount so receivable per share by a plurality of the non-electing shares). Such articles or certificate of incorporation shall provide for adjustments which, for events subsequent to the effective date of such articles or certificate of incorporation, shall be as nearly equivalent as may be practicable to the adjustments provided for in these Amended Articles of Incorporation. The above provisions shall similarly apply to successive consolidations, mergers, sales or transfers.

(10) In the event that at any time, as a result of any adjustment made pursuant to this paragraph (d)(V), the holder of any share of Series A Preference Stock thereafter surrendered for conversion shall become entitled to receive any shares of the Corporation other than shares of Common Stock, the number of such other shares so receivable upon conversion of any share of Series A Preference Stock shall be subject to adjustment from time

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to time in a manner and on terms as nearly equivalent as practicable to the provisions contained in subdivisions (1) to (9) above with respect to the Common Stock.

(VI) All shares of Series A Preference Stock which shall at any time have been converted into Common Stock shall, after such conversion, have the status of authorized but unissued shares of Preference Stock, without designation as to series until such shares are once more designated as part of a particular series by the Board or an Authorized Committee. The Corporation shall at all times reserve and keep available, out of its authorized and unissued stock, solely for the purpose of effecting the conversion of the Series A Preference Stock, such number of shares of its Common Stock as shall from time to time be sufficient to effect the conversion of all shares of Series A Preference Stock from time to time outstanding. The Corporation shall from time to time, in accordance with the laws of the State of Indiana, increase the authorized number of shares of Common Stock if at any time the number of shares of Common Stock not outstanding shall not be sufficient to permit the conversion of all the then outstanding Series A Preference Stock.

(VII) The Corporation will pay any and all issue or other taxes that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of the Series A Preference Stock. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue or delivery of Common Stock in a name other than that in which the Series A Preference Stock so converted was registered, and no such issue or delivery shall be made unless and until the person requesting such issue has paid to the Corporation the amount of such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

(VIII) Before taking any action which would cause an adjustment in the conversion rate such that the effective conversion price (for all purposes of these Restated Articles of Incorporation, an amount equal to \$500 divided by the conversion rate applicable to one full share of Series A Preference Stock as in effect at such time) would be below the then par value of the Common Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at the conversion rate as so adjusted.

(c) Exchange.

(I) The shares of Series A Preference Stock are exchangeable in whole, but not in part, at the option of the Corporation on any Dividend Payment Date on or after December 30, 1988 to and including September 30, 2010 for the Corporation's 7% Convertible Subordinated Debentures due 2011 (the "Debentures"); provided that on or prior to the date of exchange the Corporation shall have paid to or set aside for payment to the holders of outstanding shares of Series A Preference Stock all accumulated and unpaid dividends to the date of exchange. Holders of outstanding shares of Series A Preference Stock will be entitled to receive \$500 principal amount of Debentures in exchange for each full share of Series A Preference Stock held by them at the time of exchange. The Corporation will mail to each holder of record of shares of Series A Preference Stock written notice of its intention to exchange no less than 30 nor more than 60 days prior to the date fixed for the exchange (the "Exchange Date"). Each such

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notice shall state (i) the Exchange Date, (ii) the place or places where certificates for the shares of Series A Preference Stock are to be surrendered for exchange for Debentures and (iii) that dividends on the shares of Series A Preference Stock to be exchanged will cease to accumulate on such Exchange Date.

(II) If notice has been mailed as aforesaid, after the Exchange Date (unless default shall be made by the Corporation in issuing Debentures in exchange for, or in making the final dividend payment on, the outstanding shares of Series A Preference Stock on the Exchange Date), dividends on the shares of Series A Preference Stock shall cease to accrue, and such shares shall no longer be deemed to be issued and outstanding, and all rights of the holders thereof as stockholders of the Corporation (except the right to receive from the Corporation the Debentures) shall cease and terminate. Upon surrender in accordance with notice of the certificates for any shares of Series A Preference Stock so exchanged (properly endorsed or assigned for transfer, if the Corporation shall so require and the notice shall so state), such shares shall be exchanged by the Corporation for Debentures as aforesaid.

(III) All shares of Series A Preference Stock which shall at any time have been exchanged for Debentures shall, after such exchange, have the status of authorized but unissued shares of Preference Stock, without designation as to series until such shares are once more designated as part of a particular series by the Board or an Authorized Committee.

(f) Repurchase of Series A Preference Stock by the Corporation Upon Change in Control.

(I) Right to Require Repurchase. In the event of any Change in Control, each holder of shares of Series A Preference Stock shall have the right, at such holder's option, to require the Corporation to purchase, and upon the exercise of such right the Corporation shall purchase, all or any part of such holder's Series A Preference Stock on the date (the "Repurchase Date") that is 100 calendar days after the date of such Change in Control at the optional redemption price in effect on the Repurchase Date plus accrued and unpaid dividends to the Repurchase Date.

(II) Notice: Method of Exercising Repurchase Right

(1) On or before the seventh calendar day after the termination of the Approval Period, the Corporation shall give notice of a Change in Control and of the repurchase right set forth herein arising as a result thereof by first-class mail, postage prepaid, to each holder of Series A Preference Stock at such holder's address appearing in the books of the Corporation. The Corporation shall also cause a copy of such notice of a repurchase right to be published in a newspaper of general circulation in the Borough of Manhattan, New York.

Each notice of a repurchase right shall state:

- (a) the Repurchase Date,
- (b) the Repurchase Price,

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- (c) the date by which the repurchase right must be exercised, and
- (d) a description of the procedure which a holder must follow to exercise a repurchase right.

No failure of the Corporation to give the foregoing notice shall limit any holder's right to exercise a repurchase right.

(2) To exercise a repurchase right, a holder shall deliver to the Corporation (or an agent designated by the Corporation for such purposes in the notice referred to in (1) above) on or before the 90th calendar day after the Change in Control (a) written notice of the holder's exercise of such right, which notice shall set forth the name of the holder, the number of shares of Series A Preference Stock to be repurchased, and a statement that the option to exercise the repurchase right is being made thereby, and (b) the certificates for the shares of Series A Preference Stock with respect to which the repurchase right is being exercised, duly endorsed for transfer to the Corporation. Such written notice shall be irrevocable.

(3) In the event a repurchase right shall be exercised in accordance with the terms hereof, the Corporation shall pay or cause to be paid the price payable with respect to the Series A Preference Stock as to which the repurchase right has been exercised in cash to the holder on the Repurchase Date. In the event that a repurchase right is exercised with respect to less than all shares represented by a surrendered certificate, the Corporation shall execute and deliver to the transfer agent and the transfer agent shall register a new certificate representing the shares of the Series A Preference Stock not repurchased.

(4) All shares of Series A Preference Stock which shall have been repurchased as provided herein shall, after such repurchase, have the status of authorized but unissued shares of Preference Stock, without designation as to series until such shares are once more designated as part of a particular series by the Board or an Authorized Committee.

(III) Certain Definitions. As used in this Article.

(1) The term "Acquiring Person" shall mean any Person who is or becomes the beneficial owner, directly or indirectly, of 10% or more of the outstanding Common Stock of the Corporation ("Common Stock");

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(2) The term "Approval Period" shall mean the period prior to and until 21 calendar days after the date on which a Change in Control shall have occurred.

(3) A "Change in Control" of the Corporation shall be deemed to have occurred on the date on which (A) any Person, or group of persons within the meaning of Section 13(d)(3) of the Securities Exchange Act of 1934, becomes the beneficial owner, directly or indirectly, of 30% or more of the outstanding Common Stock, or (B) individuals who constitute the Continuing Directors cease for any reason to constitute at least a majority of the Board of Directors (which, for the purpose of this paragraph, shall not be deemed to mean any committee of the Board of Directors of the Corporation); provided, however, that in the case of either (A) or (B) a Change in Control shall not be deemed to have occurred if the event set forth in such (A) or (B) shall have been approved, for the purpose of this paragraph, or otherwise, during the Approval Period by a majority of the Continuing Directors; and

(4) The term "Continuing Director" shall mean any member of the Board of Directors who is not affiliated with an Acquiring Person and who was a member of the Board of Directors immediately prior to the time that the Acquiring Person became an Acquiring Person and any successor to a Continuing Director who is not affiliated with the Acquiring Person and is recommended to succeed a Continuing Director by a majority of the Continuing Directors who are then members of the Board of Directors.

(g) Subject to the provisions of these Restated Articles of Incorporation relating to all shares of the Preference Stock, the preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, of any other series of Preference Stock hereafter created may be the same as or differ from the Series A Preference Stock to the extent set forth by the Board of Directors at the time any such other series of Preference Stock is authorized.

(h) The Board of Directors reserves the right by subsequent amendment of these Restated Articles of Incorporation from time to time to decrease the number of shares which constitute the Series A Preference Stock (but not below the number of shares then outstanding) and, subject to anything to the contrary set forth in these Restated Articles of Incorporation applicable to the Preference Stock, to subdivide the number of shares, the par value per share and the liquidation preference per share of the Series A Preference Stock, and in other respects to amend these Restated Articles of Incorporation, within the limitations provided by law and these Restated Articles of Incorporation of the Corporation.

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EVAN BAYH  
Secretary of State of Indiana  
155 State House  
Indianapolis, Indiana 46204  
(317) 232-6576

INSTRUCTIONS:

Corporations Only

This certificate must first be recorded in the office of the County Recorder of each county in which a place of business or office is located. A copy of the certificate, certified by the County Recorder, must be filed with the Secretary of State.

Fee for filing with the  
Secretary of State: \$20.00  
or  
\$26.00 (if a certificate issued by  
the Secretary of State is desired)

CERTIFICATE OF ASSUMED BUSINESS NAME

1. Name of the Corporation Cummins Engine Company, Inc.
2. Date of Incorporation/Admission February 3, 1919
3. Principal Office Address of the Corporation 500 Jackson Street, Columbus, Indiana
4. Assumed Business Name Contract Products Corporation
5. Address at which the Corporation will do business under the assume business name 500 Jackson Street

/s/ Paul B. Hamilton  
(Written Signature of Officer)

Secretary  
(Title of Officer)

P. B. Hamilton  
(Printed Name of Officer)

STATE OF Indiana )  
COUNTY OF Bartholomew )

SS:

Subscribed and sworn or attested to before me, this 20<sup>th</sup> day of October,

/s/ Kathleen Elmore  
Notary Public (Kathleen Elmore)

My Notarial Commission Expires: April 24, 1989

My County of Residence is: Bartholomew

I, Betty Jean Beshear, Recorder of Bartholomew County, State of Indiana, certify that the foregoing is a true copy of the Certificate of Assumed Business Name recorded in my office on the 20<sup>th</sup> day of October, 1987.

/s/ Betty Jean Beshear  
Recorder

This instrument was prepared by J.A. Rubino

STATE OF INDIANA  
OFFICE OF THE SECRETARY OF STATE

ARTICLES OF AMENDMENT

To Whom These Presents Come, Greeting:

WHEREAS, there has been presented to me at this office, Articles of Amendment for:

**CUMMINGS ENGINE COMPANY, INC.**

and said Articles of Amendment have been prepared and signed in accordance with the provisions of the  
Indiana Business Corporation Law,  
as amended.

NOW, THEREFORE, I, JOSEPH H. HOGSETT, Secretary of State of Indiana, hereby certify that I have this day filed said articles in this office.

The effective date of these Articles of Amendment is July 14, 1989.

[SEAL]

In Witness Whereof, I have hereunto set my hand and affixed the seal of the State of Indiana, at the City of Indianapolis, this Fourteenth day of July, 1989

\_\_\_\_\_  
JOSEPH H. HOGSETT, Secretary of State

By \_\_\_\_\_ Deputy

ARTICLES OF AMENDMENT  
OF THE  
RESTATED ARTICLES OF INCORPORATION  
CUMMINS ENGINE COMPANY, INC.

Cummins Engine Company, Inc. (hereinafter referred to as the "Corporation"), existing pursuant to the Indiana Business Corporation Law and desiring to give notice of corporate action effectuating amendment of certain provisions of its Restated Articles of Incorporation, sets forth the following facts:

Article I

Amendment

Section 1. The date of incorporation of the Corporation is February 3, 1919.

Section 2. The name of the Corporation following this amendment continues to be Cummins Engine Company, Inc.

Section 3. Upon effectiveness of these Articles of Amendment, Article VIII of the Corporation's Restated Articles of Incorporation shall be amended by adding a new Section 8.2 thereto, the exact text of which is attached as Exhibit A.

Section 4. The foregoing amendment was duly adopted by the Corporation's Board of Directors on July 14, 1989. The effective date of such amendment shall be the date of filing of these Articles of Amendment with the office of the Secretary of State of the State of Indiana.

Article II

Manner of Adoption and Vote

Section 1. The amendment was adopted by the Corporation's Board of Directors without shareholder action, and shareholder action was not required.

Section 2. The manner of adoption of the amendment by the Corporation's Board of Directors constitutes full legal compliance with the provisions of the Indiana Business Corporation Law and the Corporation's Restated Articles of Incorporation and By-Laws.

I hereby verify subject to the penalties of perjury that the statements contained herein are true.

\_\_\_\_\_  
/s/ Steven L. Zeller  
Signature

\_\_\_\_\_  
Steven L. Zeller  
Officer's Name Printed

\_\_\_\_\_  
Vice President – General Counsel  
Officer's Title

EXHIBIT A

Section 8.2. Convertible Preferred Stock, Series A. There is hereby created a series of Preferred Stock of the Corporation and the designation, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, of the shares of such series of the Preferred Stock of the Corporation to be designated Convertible Preferred Stock, Series A (in addition to those set forth in Section 4.5 of these Restated Articles of Incorporation which are applicable to all shares of the Preferred Stock) are hereby fixed as follows:

(a) Designation. The corporation is authorized to issue a series of Preferred Stock, without par value, which is hereby designated Convertible Preferred Stock, Series A (the "Series A Preferred Stock"). The number of shares of Series A Preferred Stock shall be limited to 105,000. The liquidation preference of the Series A Preferred Stock shall be \$1,000.00 per share.

(b) Dividends. The shares of Series A Preferred Stock shall be entitled to receive, when and as declared by the Board of Directors of the Corporation (the "Board") or a duly authorized committee thereof (an "Authorized Committee"), out of funds legally available for the payment of dividends, cumulative dividends at the annual rate of \$100.00 per full share, and no more. Dividends will be payable in cash commencing on the first October 15 after the original issue of the Series A Preferred and continuing thereafter quarter-annually on January 15, April 15, July 15 and October 15 of each year before redemption and on redemption (the "Dividend Payment Dates") with respect to the period ending on each such Dividend Payment Date, to shareholders of record on the record date, not exceeding sixty days preceding such Dividend Payment Date, fixed for that purpose by the Board or an Authorized Committee in advance of each particular dividend. The amount of dividends payable on shares of Series A Preferred Stock for each full quarter-annual dividend period shall be computed by dividing by four the annual rate per share set forth in this paragraph (b). The

initial dividend, if in respect of a period of less than a full quarter-annual period, will be computed for the period from July 11, 1989, through the first Dividend Payment Date on the basis of the annual dividend multiplied by the actual number of days elapsed over 360. Dividends payable on the Series A Preferred Stock for any other period less than a full quarter-annual period shall be computed on the basis of a 360-day year of twelve 30-day months.

(c) Redemption. 1. Optional Redemption. The Corporation at any time and from time to time may at its option redeem all or less than all of the outstanding shares of Series A Preferred Stock. Any redemption of shares of Series A Preferred Stock shall be effected at the redemption prices per full share set forth below, if such redemption is during the periods indicated:

If redeemed during the twelve-month period beginning July 15,

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	<u>Redemption Price Per</u> <u>Full Share</u>
1989	\$ 1,060.00
1990	1,060.00
1991	1,060.00
1992	1,040.00
1993	1,020.00

plus, in each case, an amount equal to all dividends (whether or not earned or declared) accrued and unpaid on such share of Series A Preferred Stock to the date fixed for redemption. Notice of any proposed redemption of shares of Series A Preferred Stock shall be given by the Corporation by mailing a copy of such notice not less than 30 nor more than 60 days prior to the date fixed for such redemption to holders of record of the shares of Series A Preferred Stock to be redeemed at their respective addresses appearing on the books of the Corporation. Such notice shall specify the shares called for redemption, the redemption price and the place at which and the date on which the shares called for redemption will, upon presentation and surrender of the certificates evidencing such shares, be redeemed and the redemption price paid. In the case of the redemption of less than all the outstanding shares of Series A Preferred Stock, such redemption shall be made pro rata amongst all holders according to the number of shares held by such holders. From and after the date fixed in any such notice as the date of redemption of shares of Series A Preferred Stock, unless default shall be made by the Corporation in providing monies at the time and place specified for the payment of the redemption price pursuant to such notice, all dividends on the Series A Preferred Stock thereby called for redemption shall cease to accrue and all rights of the holders thereof as shareholders of the Corporation, except the right to receive the redemption price, shall cease and terminate.

2. Mandatory Repurchase. A. Upon the death of the later of J. Irwin Miller and Xenia S. Miller, the estate of such later to die person shall have the right for a period of 9 months thereafter to require the Corporation (or, at the option of the Corporation, a person designated by the Corporation) to purchase up to that number of shares of Series A Preferred Stock held by such estate, the purchase price of which (together with the aggregate purchase price of any other securities of the Corporation in respect of which a purchase right similar to this repurchase right is being exercised by such estate and any proceeds received by the estate or the distributees of the estate from the sale of shares of Common Stock pursuant to the registration rights set forth in Exhibit C to the Agreement dated as of July 14, 1989, among J. Irwin Miller, Xenia S. Miller, Clementine M. Tangeman and the Company (the "Agreement")) does not exceed the lesser of (i) 150% of the total Federal and state estate tax liability and of such estate (ii) such total Federal and state estate tax liability plus the principal amount of debt outstanding and any accrued and unpaid interest thereon, which debt was incurred by J. Irwin Miller in connection with his purchase of New Shares (or in connection with any refinancing of such debt), at the Company's option (x) for cash, at a price per share equal to the liquidation preference plus an amount equal to all dividends (whether or not earned or declared) accrued and unpaid thereon to the date of redemption or (y) in an exchange for a number of shares of Common Stock per share determined by dividing (A) the liquidation preference plus an amount equal to all dividends (whether or not earned or declared) accrued and unpaid thereon to the date of redemption by (B) the average of the closing prices of the Common Stock on the New York Stock Exchange, Inc., on each of the

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30 trading days next preceding the repurchase date or, if the Common Stock is not listed or admitted to trading on such exchange, on the principal national securities exchange on which the Common Stock is listed or admitted to trading or, if not listed or admitted to trading on any national securities exchange, on the National Association of Securities Dealers Automated Quotations National Market System, or if the Common Stock is not listed or admitted to trading on any national securities exchange or quoted on such National Market System, the average of the closing bid and asked prices in the over-the-counter market as furnished by any New York Stock Exchange member firm selected by the Company, such Common Stock to be entitled to the registration rights set forth in Exhibit C to the Agreement.

B. In the event of the death of Clementine M. Tangeman, her estate shall have the right for a period of 9 months thereafter to require the Corporation (or, at the option of the Corporation, a person designated by the Corporation) to purchase up to that number of shares of Series A Preferred Stock held by such estate, the purchase price of which (together with the aggregate purchase price of any other securities of the Corporation in respect of which a repurchase right similar to this repurchase right is being exercised by such estate and any proceeds received by the estate or the distributing of the estate from the sale of shares of Common Stock pursuant to the registration rights set forth in Exhibit C of the Agreement) does not exceed the lesser of (i) 150% of the total Federal and state estate tax liability of such estate and (ii) such total Federal and state estate tax liability plus the principal amount of debt outstanding and any accrued and unpaid interest thereon, which debt was incurred by Clementine M. Tangeman in connection with her purchase of New Shares (or in connection with any refinancing of such debt), at the Company's option (x) for cash, at a price per share equal to the liquidation preference plus an amount equal to all dividends (whether or not earned or declared) accrued and unpaid thereon to the date of redemption or (y) in an exchange for a number of shares of Common Stock per share determined by dividing (A) the liquidation preference plus an amount equal to all dividends (whether or not earned or declared) accrued and unpaid thereon to the date of redemption by (B), the average of the closing prices of the Common Stock on the New York Stock Exchange, Inc., on each of the 30 trading days next preceding the repurchase date or, if the Common Stock is not listed or admitted to trading on such exchange, on the principal national securities exchange on which the Common Stock is listed or admitted to trading or, if not listed or admitted to trading on any national securities exchange, on the National Association of Securities Dealers Automated Quotations National Market System, or if the Common Stock is not listed or admitted to trading on national securities exchange or quoted on such National Market System, the average of the closing bid and asked prices in the over-the-counter market as furnished by any New York Stock Exchange member firm selected by the Company, such Common Stock to be entitled to the Registration Rights set forth in Exhibit C to the Agreement.

C. In order to exercise any mandatory repurchase right set forth in paragraph (c)2 A or (c)2 B, the estate wishing to exercise the right shall deliver to the Corporation (i) written notice of the exercise of such right, which notice shall set forth a repurchase date which shall be a business day during the 9 month period after the death of the decedent and which shall be at least 45 days after delivery of the notice, the name of the decedent, the number of shares of Series A Preferred Stock to be repurchased, and a statement that the option to exercise the repurchase right pursuant to paragraph (c)2 A or (c)2 B is being exercised thereby, (ii) tax returns and/or other documentation sufficient to establish the estate tax liability and the principal

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amount of outstanding debt, incurred by the decedent in connection with the purchase of New Shares and any accrued and unpaid interest thereon, all to the satisfaction of the

Corporation and (iii) the certificates for the shares of Series A Preferred Stock with respect to which the repurchase right is being exercised, duly endorsed for transfer to the Corporation. Such written notice shall be irrevocable. On the repurchase date specified in the notice, the Corporation shall pay or cause to be paid the price payable with respect to the Series A Preferred Stock as to which the repurchase right has been exercised in cash to the estate exercising the right. If a repurchase right is exercised with respect to fewer than all shares represented by a surrendered certificate, the Corporation shall execute and deliver to the transfer agent and the transfer agent shall register a new certificate representing the shares of the Series A Preferred Stock not repurchased.

3. Redemption in 1994. On July 15, 1994, the Corporation shall be required to redeem all outstanding shares of Series A Preferred Stock upon presentation and surrender of the certificates evidencing such shares, at a price per share equal to the liquidation preference per share plus an amount equal to all dividends (whether or not earned or declared) accrued and unpaid thereon to July 15, 1994.

4. Status After Redemption. All shares of Series A Preferred Stock which shall at any time have been redeemed pursuant to paragraph (c)1, (c)2 or (c)3 shall, after such redemption, have the status of authorized but unissued shares of Preferred Stock, without designation as to series until such shares are once more designated as part of a particular series by the Board or an Authorized Committee.

(d) Conversion Rights.

(I) Each share of Series A Preferred Stock shall be convertible at the option of the holder thereof, at any time prior to the close of business on the fifth business day prior to the date fixed for redemption of such share as herein provided, into fully paid and nonassessable shares of Common Stock, at the rate of 11.9261 shares of Common Stock for each full share of Series A Preferred Stock.

(II) For the purpose of this paragraph (d), the term "Common Stock" shall include any stock of any class of the corporation which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation and which is not subject to redemption by the Corporation. However, shares issuable on conversion of shares of Series A Preferred Stock shall include only shares of the class designated as Common Stock of the Corporation as of July 14, 1989, or shares of any class or classes resulting from any reclassification or reclassifications thereof and which have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation and which are not subject to redemption by the Corporation; provided that if at any time there shall be more than one such resulting class, the shares of each such class then so issuable shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

(III) Before any holder of a share of Series A Preferred Stock shall be entitled to convert it into Common Stock, the holder shall exercise such holder's right to convert by

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surrendering the certificate or certificates for such Series A Preferred Stock at the office of the transfer agent for the Series A Preferred Stock, which certificate or certificates, if the Corporation shall so require, shall be duly endorsed to the Corporation or in blank, or accompanied by proper instruments of transfer to the Corporation or in blank, and shall give written notice to the Corporation at such office stating that the holder elects so to convert such Series A Preferred Stock and setting forth the name or names in which such holder wishes the certificate or certificates for Common Stock to be issued. Each such notice of election to convert shall constitute a contract between the holder of such Series A Preferred Stock and the Corporation, whereby the holder of such Series A Preferred Stock shall be deemed to subscribe for the amount of Common Stock which such holder shall be entitled to receive upon such conversion and, in satisfaction of such subscription, to deposit the Series A Preferred Stock to be converted and to release the Corporation from all liability thereunder (except to deliver the shares deliverable upon conversion thereof) and the Corporation shall be deemed to agree that such Series A Preferred Stock, together with the surrender of the certificate or certificates therefor and the extinguishment of liability thereon (except as aforesaid), shall constitute full payment of such subscription for the Common Stock to be delivered upon such conversion. Shares of Series A Preferred Stock surrendered for conversion during the period from the close of business on any record date for the payment of dividends next preceding any Dividend Payment Date to the opening of business on such Dividend Payment Date shall (except in the case of shares which have been called for redemption on a redemption date within such period) be accompanied by payment in New York Clearing House funds or other funds acceptable to the Corporation of an amount equal to the dividend payable on such Dividend Payment Date on the shares of Series A Preferred Stock being surrendered for conversion.

(IV) The Corporation will, as soon as practicable after such deposit of certificates for Series A Preferred Stock accompanied by the written notice and the payment of any required amount, deliver at such office of such transfer agent to the person for whose account such Series A Preferred Stock was so surrendered, or to such person's nominee or nominees, certificates for the number of full shares of Common Stock to which such person shall be entitled as aforesaid, together with a cash adjustment of any fraction of a share as hereafter provided, if not evenly convertible. Subject to the following provisions of this paragraph, such conversion shall be deemed to have been made as of the date of such surrender of the Series A Preferred Stock to be converted, and the person or persons entitled to receive the Common Stock deliverable upon conversion of such Series A Preferred Stock shall be treated for all purposes as the record holder or holders of such Common Stock on such date. The Corporation shall not be required to convert any shares of Series A Preferred Stock while the stock transfer books of the Corporation are Closed for any purpose, but the surrender of Series A Preferred Stock for conversion during any period while such books are so closed shall become effective for conversion immediately upon the reopening of such books as if the surrender had been made on the date of such reopening, and the conversion shall be at the conversion rate in effect on such date.

Except as provided in the last sentence of paragraph (d)(III), no adjustments in respect of dividends on shares surrendered for conversion or any dividend on the Common Stock issued upon conversion shall be made upon the conversion of any shares of Series A Preferred stock; provided, however, that if any shares shall be converted subsequent to the record date preceding a Dividend Payment Date but on or prior to such Dividend Payment Date (except shares called for redemption between such record date and Dividend Payment Date), the registered holder of

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such shares at the close of business on such record date shall be entitled to receive the dividend payable on such shares on such Dividend Payment Date notwithstanding the conversion thereof.

(V) The conversion rate shall be subject to adjustment as follows:

(1) In case the Corporation shall (i) pay a dividend on Common Stock in Common Stock, (ii) subdivide its outstanding shares of Common stock, or (iii) combine its outstanding shares of Common Stock into a smaller number of shares, the conversion rate in effect immediately prior thereto shall be adjusted retroactively as provided below so that the holder of any Series A Preferred Stock thereafter surrendered for conversion shall be entitled to receive the number of shares of Common Stock of the Corporation which such holder would have owned or have been entitled to receive after the happening of any of the events described above had such Series A Preferred Stock been converted immediately prior to the happening of such event. An adjustment made pursuant to this paragraph (d)(V)(1) shall become effective immediately after the record date in the case of a dividend and shall become effective immediately after the effective date in the case of a subdivision or combination.

(2) In case the Corporation shall issue rights or warrants to all holders of its Common Stock entitling them to subscribe for or purchase shares of Common Stock at a price per share less than the current market price per share (determined as provided in paragraph (5)) of the Common stock on the date

fixed for the determination of shareholders entitled to receive such rights or warrants, the conversion rate in effect at the opening of business on the day following the date fixed for such determination shall be increased by multiplying such conversion rate by a fraction of which the numerator shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination plus the number of shares of Common Stock so offered for subscription or purchase and the denominator shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination plus the number of shares of Common Stock which the aggregate of the offering price of the total number of shares of Common Stock so offered for subscription or purchase would purchase at such current market price, such increase to become effective immediately after the opening of business on the day following the date fixed for such determination; provided, however, in the event that all the shares of Common Stock offered for subscription or purchase are not delivered upon the exercise of such rights or warrants, upon the expiration of such rights or warrants the conversion rate shall be readjusted to the conversion rate which would have been in effect

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had the numerator and the denominator of the foregoing fraction and the resulting adjustment been made based upon the number of shares of Common Stock actually delivered upon the exercise of such rights or warrants rather than upon the number of shares of Common Stock offered for subscription or purchase. For the purposes of this paragraph (2), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Corporation.

(3) In case the Corporation shall, by dividend or otherwise, distribute to all holders of its Common Stock shares of its capital stock (other than Common Stock), evidences of its indebtedness or assets (excluding cash dividends paid out of the retained earnings of the Corporation) or rights or warrants to subscribe or purchase (excluding those referred to in paragraph (2) above), then in each such case the conversion rate shall be adjusted so that the same shall equal the rate determined by multiplying the conversion rate in effect immediately prior to the close of business on the date fixed for the determination of shareholders entitled to receive such distribution by a fraction of which the numerator shall be the current market price per share (determined as provided in paragraph (5)) of the Common Stock on the date fixed for such determination and the denominator shall be such current market price per share of the Common Stock less the then fair market value (as determined by the Board of Directors, whose determination shall be conclusive and described in a resolution of the Board of Directors) of the portion of the capital stock, assets, evidences of indebtedness, rights or warrants so distributed applicable to one share of Common Stock, such adjustment to become effective immediately prior to the opening of business on the day following the date fixed for the determination of stockholders entitled to receive such distribution.

(4) The reclassification (including any reclassification upon a merger in which the Corporation is the continuing corporation) of Common Stock into securities including other than Common Stock (other than any reclassification upon a consolidation or merger to which paragraph (d)(V)(9) applies) shall be deemed to involve (a) a distribution of such securities other than Common Stock to all holders of Common Stock (and the effective date of such reclassification shall be deemed to be "the date fixed for the determination of shareholders entitled to receive such distribution" and "the date fixed for such determination" within the meaning of paragraph (3)), and (b) a subdivision or combination, as the case may be, of the number of shares of Common Stock outstanding immediately prior to such

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reclassification into the number of shares of Common stock outstanding immediately thereafter.

(5) For the purpose of any computation under paragraphs (2) and (3), the current market price per share of Common Stock on any date shall be deemed to be the average of the daily closing prices for the thirty consecutive business days selected by the Corporation commencing with the forty-fifth business day before the day in question. The closing price for each day shall be the reported last sales price regular way or, in case no such reported sale takes place on such day, the average of the reported closing bid and asked prices regular way, in either case on the New York Stock Exchange or, if the Common Stock is not listed or admitted to trading on such exchange, on the principal national securities exchange on which the Common Stock is listed or admitted to trading or, if not listed or admitted to trading on any national securities exchange, on the National Association of Securities Dealers Automated Quotations National Market System or, if the Common Stock is not listed or admitted to trading on any national securities exchange or quoted on such National Market System, the average of the closing bid and asked prices in the over-the-counter market as furnished by any New York Stock Exchange member firm selected from time to time by the Corporation for that purpose.

(6) No adjustment in the conversion rate shall be required unless such adjustment would require an increase or decrease of at least 1% in such rate; provided, however, that the Corporation may make any such adjustment at its election; and provided further, that any adjustments which by reason of this paragraph (6) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this paragraph (d)(V) shall be made to the nearest cent or to the nearest one-hundredth of a share, as the case may be. Anything in this paragraph (d)(V) notwithstanding, the Corporation may make such reductions in the conversion rate, in addition to those required by this paragraph (d)(V), as it considers to be advisable in order that any event treated for Federal income tax purposes as a dividend of stock or stock rights shall not be taxable to the recipients.

(7) Whenever the conversion rate is adjusted as herein provided:

(a) the Corporation shall compute the adjusted conversion rate in accordance with paragraph (5) and shall prepare a certificate signed by the Treasurer of the Corporation setting forth the adjusted conversion rate and

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showing in reasonable detail the facts upon which such adjustment is based, and such certificate shall forthwith be filed at each office or agency maintained for the purpose of conversion of shares; and

(b) a notice stating that the conversion rate has been adjusted and setting forth the adjusted conversion rate shall forthwith be required, and as soon as practicable after it is required, such notice shall be mailed by the Corporation to all holders at their last addresses as they shall appear in the stock transfer books of the Corporation.

(8) No fractional interests in Common Stock shall be issued upon conversion of shares of Series A Preferred Stock. If more than one certificate representing shares of Series A Preferred stock shall be surrendered for conversion at one time by the same holder, the number of full shares issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of the Series A Preferred Stock so surrendered. Instead of any fractional share of Common Stock which would otherwise be issuable upon conversion of any share of Series A Preferred Stock, the Corporation will pay a cash adjustment in respect of such fractional interest in an amount equal to the same fraction of the closing price per share of Common Stock (as determined by the Board of Directors or in any manner prescribed by the Board of Directors) at the close of business on the day of conversion.

(9) In case of any consolidation of the Corporation with, or merger of the corporation into, any other person, any merger of another person into the Corporation (other than a merger which does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of Common Stock of the Corporation) or any sale or transfer of all or substantially all of the assets of the Corporation, the person formed by such consolidation or resulting from such merger or which acquires such assets, as the case may be, shall make provisions in the articles or certificate of incorporation that the holder of each share of Series A Preferred Stock then outstanding shall have the right thereafter, during the period such shares shall be convertible, to convert such share only into the kind and amount of securities, cash or other property receivable upon such consolidation, merger, sale or transfer by a holder of the number of shares of Common Stock of the Corporation into which such share might have been converted immediately prior to such consolidation, merger, sale or transfer assuming such holder of Common Stock of the Corporation (i) is not a person with which the Corporation consolidated or into which the Corporation merged or which merged into the

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Corporation or to which such sale or transfer was made, as the case may be ("constituent person"), or an affiliate of a constituent person and (ii) failed to exercise such holder's rights of election, if any, as to the kind or amount of securities, cash and other property receivable upon such consolidation, merger, sale or transfer (provided that if the kind or amount of securities, cash and other property receivable upon such consolidation, merger, sale or transfer is not the same for each share of Common Stock of the Corporation held immediately prior to such consolidation, merger, sale or transfer by other than a constituent person or any affiliate thereof and in respect of which such rights of election shall not have been exercised ("non-electing share"), then for the purpose of this paragraph (d)(V) the kind and amount of securities, cash and other property receivable upon such consolidation, merger, sale or transfer by each non-electing share shall be deemed to be the kind and amount so receivable per share by a plurality of the non-electing shares). Such articles or certificate of incorporation shall provide for adjustments which, for events subsequent to the effective date of such articles or certificate of incorporation, shall be as nearly equivalent as may be practicable to the adjustments provided for in this Certificate of Designation. The above provisions shall similarly apply to successive consolidations, mergers, sales or transfers.

(10) In the event that at any time, as a result of any adjustment made pursuant to this paragraph (d)(V), the holder of any share of Series A Preferred Stock thereafter surrendered for conversion shall become entitled to receive any shares of the Corporation other than shares of Common Stock, the number of such other shares so receivable upon conversion of any share of Series A Preferred Stock shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions contained in subdivisions (1) to (9) above with respect to the Common Stock.

(VI) All shares of Series A Preferred Stock which shall at any time have been converted into Common Stock shall, after such conversion, have the status of authorized but unissued shares of Preferred Stock, without designation as to series until such shares are once more designated as part of a particular series by the Board or an Authorized Committee. The corporation shall at all times reserve and keep available, out of its authorized and unissued stock, solely for the purpose of effecting the conversion of the Series A Preferred Stock, such number of shares of its Common Stock as shall from time to time be sufficient to effect the conversion of all shares of Series A Preferred stock from time to time outstanding. The Corporation shall from time to time, in accordance with the laws of the State of Indiana, increase the authorized number of shares of Common Stock if at any time the number of shares of Common Stock not outstanding shall not be sufficient to permit the conversion of all the then outstanding Series A Preferred Stock.

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(VII) The Corporation will pay any and all issue or other taxes that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of the Series A Preferred Stock. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue or delivery of Common Stock in a name other than that in which the Series A Preferred Stock so converted was registered, and no such issue or delivery shall be made unless and until the person requesting such issue has paid to the Corporation the amount of such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

(VIII) Before taking any action which would cause an adjustment in the conversion rate such that the effective conversion price (for all purposes of this Section 8.2, an amount equal to \$1,000 divided by the conversion rate applicable to one full share of Series A Preferred Stock as in effect at such time) would be below the then par value of the Common Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at the conversion rate as so adjusted.

(c) Subject to the provisions of these Restated Articles of Incorporation relating to all shares of Preferred Stock, the preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, of any other series of Preferred Stock hereafter created may be the same as or differ from the Series A Preferred Stock to the extent set forth by the Board of Directors at the time any such other series of Preferred Stock is authorized.

(f) The Board of Directors reserves the right by subsequent amendment of these Restated Articles of Incorporation from time to time to decrease the number of shares which constitute the Series A Preferred stock (but not below the number of shares then outstanding) and, subject to anything to the contrary set forth in these Restated Articles of Incorporation applicable to the Preferred Stock, to subdivide the number of shares, the par value per share and the liquidation preference per share of the Series A Preferred Stock, and in other respects to amend these Restated Articles of Incorporation, within the limitations provided by law and the Articles of Incorporation of the Corporation.

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[LOGO] CERTIFICATE OF ASSUMED BUSINESS NAME State Form 30353  
(R4 / 3-87)  
Approved by State Board of Accounts 1987

Provided by: EVAN BAYH  
  
Secretary of State of Indiana  
155 State House  
Indianapolis, Indiana 46204  
(317) 232-6576

**INSTRUCTIONS: (CORPORATIONS ONLY)**

*This certificate must first be recorded in the office of County Recorder of each county in which a place of business or office is located. A copy of the certificate, certified by the County Recorder, must be filed with the Secretary of State. Indiana Code 23-15-1-1.*

**Fee for filing with the Secretary of State: \$30.00 or \$45.00, if a certificate issued by the Secretary of State is desired.**



**1. Name of Corporation**

CUMMINS ENGINE COMPANY, INC.

**2. Date of Incorporation / Admission**

FEBRUARY 3, 1990

**3. Principal Office Address of the Corporation (Street, City, State and ZIP Code)**

500 JACKSON STREET, COLUMBUS, INDIANA 47202-3005

**4. Assumed Business Name(s)**

ADVANCED INDUSTRIAL MAINTENANCE

**5. Address at which the Corporation will do business under assumed business name (Street, City, State and ZIP Code)**

635 South Mapleton Street, Columbus, IN 47201

**6. Signature**

SECRETARY /s/ Steven L. Zeller

**Name Printed**

STEVEN L. ZELLER

STATE OF INDIANA

SS:

COUNTY OF BARTHOLOMEW

Subscribed and sworn or attested to before me, this 20<sup>th</sup> day of FEBRUARY 1990

/s/ Irene M. Sorrells

Notary Public, Irene M. Sorrells

My Notarial Commission Expires:

March 24, 1992

My County of Residence is:

Bartholomew

I, Betty Jean Beshear, Recorder of Bartholomew County, State of Indiana, certify that the foregoing is a true copy of the Certificate of Assumed Business name (recorded in my office on the 6<sup>th</sup> day of March 1990)

/s/ Betty Jean Beshear / A.H.

Recorder Signature

This instrument was prepared by

Jean T. House

STATE OF INDIANA

OFFICE OF THE SECRETARY OF STATE

ARTICLES OF AMENDMENT

To Whom These Presents Come, Greeting:

WHEREAS, there has been presented to me at this office, Articles of Amendment for:

CUMMINS ENGINE COMPANY INC

and said Articles of Amendment have been prepared and signed in accordance with the provisions of the

Indiana Business Corporation Law,

as amended.

NOW, THEREFORE, I, JOSEPH H. HOGSETT, Secretary of State of Indiana, hereby certify that I have this day filed said articles in this office.

The effective date of these Articles of is July 14, 1990.

In Witness Whereof, I have hereunto set my and affixed the seal of the State of Indiana, at the City of Indianapolis, this Fourteenth day of July, 1990.

JOSEPH H. HOGSETT, Secretary of State

By

Deputy

**ARTICLES OF AMENDMENT  
OF THE RESTATED ARTICLES OF INCORPORATION OF  
CUMMINS ENGINE COMPANY, INC.**

Cummins Engine Company, Inc. (hereinafter referred to as the "Corporation"), existing pursuant to the Indiana Business Corporation Law and desiring to give notice of corporate action effectuating amendment of certain provisions of its Restated Articles of Incorporation, sets forth the following facts:

**ARTICLE I**

**Amendment**

SECTION 1. The date of incorporation of the Corporation is February 3, 1919.

SECTION 2. The name of the Corporation following this amendment continues to be Cummins Engine Company, Inc.

SECTION 3. Upon effectiveness of these Articles of Amendment, Article VIII of the Corporation's Restated Articles of Incorporation shall be amended by adding a new Section 8.3, 8.4 and 8.5 thereto, and the exact text of each such Section is attached as Annex I.

SECTION 4. The foregoing amendment was duly adopted by the Corporation's Board of Directors on July 13, 1990. The effective time of such amendment shall be the time of filing of these Articles of Amendment with the office of the Secretary of State of the State of Indiana.

**ARTICLE II**

**Manner of Adoption and Vote**

SECTION 1. The amendment was adopted by the Corporation's Board of Directors without shareholder action, and shareholder action was not required.

SECTION 2. The manner of adoption of the amendment by the Corporation's Board of Directors constitutes full legal compliance with the provisions of the Indiana Business Corporation Law and the Corporation's Restated Articles of Incorporation and By-Laws.

I hereby verify subject to the penalties of perjury that the statements contained herein are true this 13th day of July, 1990.

/s/ Steven L. Zeller

\_\_\_\_\_  
Signature

Steven L. Zeller

\_\_\_\_\_  
Officer's Name Printed

Secretary

\_\_\_\_\_  
Officer's Title

ANNEX I

Section 8.3. Convertible Preference Stock, Series F. There is hereby created a series of Preference Stock of the Corporation and the designation, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, of the shares of such series of Preference Stock of the Corporation (in addition to those set forth in Section 4.4 of these Restated Articles of Incorporation which are applicable to all shares of the Preference Stock) are hereby fixed as follows:

(a) Designation. The Corporation is authorized to issue a series of Preference Stock, without par value, which is hereby designated Convertible Preference Stock, Series F (the "Series F Preference Stock"). The number of shares of Series F Preference Stock shall be limited to one share. The liquidation preference of the Series F Preference Stock shall be \$100,000,000 per share.

(b) Dividends. The share of Series F Preference Stock shall be entitled to receive, when and as declared by the Board of Directors of the Corporation (the "Board") or a duly authorized committee thereof (an "Authorized Committee"), out of funds legally available for the payment of dividends, cumulative dividends at the annual rate of \$3,520,000 per full share, and no more. Dividends will be payable in cash commencing on September 1, 1990 with respect to the period commencing on the date of original issue of the series and ending on September 1, 1990, and thereafter quarterly on December 1, March 1, June 1 and September 1 (the "Dividend Payment Dates") with respect to the quarterly period ending on each such Dividend Payment Date, and finally on the date of conversion of the Series F Preference Stock into shares of Common Stock pursuant to Section 8.3 (c) hereof (the "Final Dividend Payment Date") with respect to the period from the next preceding Dividend Payment Date to the Final Dividend Payment Date, to shareholders of record on the record date, not exceeding sixty days preceding such Dividend Payment Date, fixed for that purpose by the Board or an Authorized Committee in advance of each particular dividend. The amount of dividends payable on the share of Series F Preference Stock for each full quarterly dividend period shall be computed by dividing by four the annual rate per share set forth in this paragraph (b). The initial dividend, payable on September 1, 1990, will be computed for the period from the date of original issue of the series through September 1, 1990 on the basis of the annual dividend multiplied by the actual number of days elapsed over 360. Dividends payable on the share of Series F Preference Stock for any other period less than a full quarter-annual period, including any period ending on a Final Dividend Payment Date which is not also a Dividend Payment Date, shall be computed on the basis of a 360-day year.

(c) Conversion. Upon (i) the expiration or earlier termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, in respect of the convertibility of the Series F Preference Stock into shares of Common Stock, and (ii) the listing subject to notice of issuance of the shares of Common Stock into which the Series F Preference Stock is convertible on the New York Stock Exchange or other national securities exchange or the quotation of prices for such shares of Common Stock in the over-the-counter market by the National Association of Security Dealers, Inc. Automated Quotation System or such other system then in use, the share of Series F Preference Stock shall automatically convert, without any action by the holder thereof, into 1,600,000 shares of fully paid and nonassessable shares of

Common Stock. Should the Corporation effect a recapitalization or reclassification, a stock split or reverse stock split, issue any extraordinary dividend, or take any similar action, then appropriate adjustments shall be made so that there shall be delivered, upon such conversion, the shares, securities or other assets that would have been received on the shares of Common Stock into which the share of Series F Preference Stock is convertible had such conversion taken place on the date of the issuance of such share of Series F Preference Stock.

(d) Repurchase. If the conversion of the Series F Preference Stock into Common Stock pursuant to paragraph (c) above shall not have occurred within one year from the date of issuance, the Series F Preference Stock shall be repurchased by the Company for an amount equal to the liquidation preference plus any accrued but unpaid dividends.

(e) Other Series. Subject to the provisions of these Restated Articles of Incorporation relating to all shares of Preference Stock, the preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, of any other series of Preference Stock hereafter created may be the same as or differ from the Series F Preference Stock to the extent set forth by the Board of Directors at the time any such other series of Preference Stock is authorized.

---

Section 8.4. Convertible Preference Stock, Series T. There is hereby created a series of Preference Stock of the Corporation and the designation, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, of the shares of such series of Preference Stock of the Corporation (in addition to those set forth in Section 4.4 of these Restated Articles of Incorporation which are applicable to all shares of the Preference Stock) are hereby fixed as follows:

(a) Designation. The Corporation is authorized to issue a series of Preference Stock, without par value, which is hereby designated Convertible Preference Stock, Series T (the "Series T Preference Stock"). The number of shares of Series T Preference Stock shall be limited to one. The liquidation preference of the Series T Preference Stock shall be \$100,000,000 per share.

(b) Dividends. The share of Series T Preference Stock shall be entitled to receive, when and as declared by the Board of Directors of the Corporation (the "Board") or a duly authorized committee thereof (an "Authorized Committee"), out of funds legally available for the payment of dividends, cumulative dividends at the annual rate of \$3,520,000 per full share, and no more. Dividends will be payable in cash commencing on September 1, 1990 with respect to the period commencing on the date of original issue of the series and ending on September 1, 1990, and thereafter quarterly on December 1, March 1, June 1 and September 1 (the "Dividend Payment Dates") with respect to the quarterly period ending on each such Dividend Payment Date, and finally on the date of conversion of the Series T Preference Stock into shares of Common Stock pursuant to Section 8.4(c) hereof (the "Final Dividend Payment Date") with respect to the period from the next preceding Dividend Payment Date to the Final Dividend Payment Date, to shareholders of record on the record date, not exceeding sixty days preceding such Dividend Payment Date, fixed for that purpose by the Board or an Authorized Committee in advance of each particular dividend. The amount of dividends payable on the share of Series T Preference Stock for each full quarterly dividend period shall be computed by dividing by four the annual rate per share set forth in this paragraph (b). The initial dividend, payable on September 1, 1990, will be computed for the period from the date of original issue of the series through September 1, 1990 on the basis of the annual dividend multiplied by the actual number of days elapsed over 360. Dividends payable on the share of Series T Preference Stock for any other period less than a full quarter-annual period, including any period ending on a Final Dividend Payment Date which is not also a Dividend Payment Date, shall be computed on the basis of a 360-day year.

(c) Conversion. Upon (i) the expiration or earlier termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, in respect of the convertibility of the Series T Preference Stock into shares of Common Stock, and (ii) the listing subject to notice of issuance of the shares of Common Stock into which the Series T Preference Stock is convertible on the New York Stock Exchange or other national securities exchange or the quotation of prices for such shares of Common Stock in the over-the-counter market by the National Association of Security Dealers, Inc. Automated Quotation System or such other system then in use, the share of Series T Preference Stock shall automatically convert, without any action by the holder thereof, into 1,600,000 shares of fully paid and nonassessable shares of Common Stock.

---

Should the Corporation effect a recapitalization or reclassification, a stock split or reverse stock split, issue any extraordinary dividend, or take any similar action, then appropriate adjustments shall be made so that there shall be delivered, upon such conversion, the shares, securities or other assets that would have been received on the shares of Common Stock into which the share of Series T Preference Stock is convertible had such conversion taken place on the date of the issuance of such share of Series T Preference Stock.

(d) Repurchase. If the conversion of the Series T Preference Stock into Common Stock pursuant to paragraph (c) above shall not have occurred within one year from the date of issuance, the Series T Preference Stock shall be repurchased by the Company for an amount equal to the liquidation preference plus any accrued but unpaid dividends.

(e) Other Series. Subject to the provisions of these Restated Articles of Incorporation relating to all shares of Preference Stock, the preferences and relative, participating, option or other special rights, and qualifications, limitations or restrictions thereof, of any other series of Preference Stock hereafter created may be the same as or differ from the Series T Preference Stock to the extent set forth by the Board of Directors at the time any such other series of Preference Stock is authorized.

---

Section 8.5. Convertible Preference Stock, Series K. There is hereby created a series of Preference Stock of the Corporation and the designation, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, of the shares of such series of Preference Stock of the Corporation (in addition to those set forth in Section 4.4 of these Restated Articles of Incorporation which are applicable to all shares of the Preference Stock) are hereby fixed as follows:

(a) Designation. The Corporation is authorized to issue a series of Preference Stock, without par value, which is hereby designated Convertible Preference Stock, Series K (the "Series K Preference Stock"). The number of shares of Series K Preference Stock shall be limited to one. The liquidation preference of the Series K Preference Stock shall be \$49,985,000 per share.

(b) Dividends. The share of Series K Preference Stock shall be entitled to receive, when and as declared by the Board of Directors of the Corporation (the "Board") or a duly authorized committee thereof (an "Authorized Committee"), out of funds legally available for the payment of dividends, cumulative dividends at the annual rate of \$1,759,472 per full share, and no more. Dividends will be payable in cash commencing on September 1, 1990 with respect to the period commencing on the date of original issue of the series and ending on September 1, 1990, and thereafter quarterly on December 1, March 1, June 1 and September 1 (the "Dividend Payment Dates") with respect to the quarterly period ending on each such Dividend Payment Date, and finally on the date of conversion of the Series K Preference Stock into shares of Common Stock pursuant to Section 8.5(c) hereof (the "Final Dividend Payment Date") with respect to the period from the next preceding Dividend Payment Date to the Final Dividend Payment Date, to shareholders of record on the record date, not exceeding sixty days preceding such Dividend Payment Date, fixed for that purpose by the Board or an Authorized Committee in advance of each particular dividend. The amount of dividends payable on the share of Series K Preference Stock for each full quarterly dividend period shall be computed by dividing by four the annual rate per share set forth in this paragraph (b). The initial dividend, payable on September 1, 1990, will be computed for the period from the date of original issue of the series through September 1, 1990 on the basis of the annual dividend multiplied by the actual number of days elapsed over 360. Dividends payable on the share of Series K Preference Stock for any other period less than a full quarter-annual period, including any period ending on a Final Dividend Payment Date which is not also a Dividend Payment Date, shall be computed on the basis of a 360-day year.

(c) Conversion. Upon the listing subject to notice of issuance of the shares of Common Stock into which the Series K Preference Stock is convertible on the

New York Stock Exchange or other national securities exchange or the quotation of prices for such shares of Common Stock in the over-the-counter market by the National Association of Security Dealers, Inc. Automated Quotation System or such other system then in use, the share of Series K Preference Stock shall automatically convert, without any action by the holder thereof, into 799,760 shares of fully paid and nonassessable shares of Common Stock.

Should the Corporation effect a recapitalization or reclassification, a stock split or reverse stock split, issue any extraordinary dividend, or take any similar action, then appropriate adjustments shall be made so that there shall be delivered, upon such conversion, the shares, securities or

other assets that would have been received on the shares of Common Stock into which the share of Series K Preference Stock is convertible had such conversion taken place on the date of the issuance of such share of Series K Preference Stock.

(d) Repurchase. If the conversion of the Series K Preference Stock into Common Stock pursuant to paragraph (c) above shall not have occurred within one year from the date of issuance, the Series K Preference Stock shall be repurchased by the Company for an amount equal to the liquidation preference plus any accrued but unpaid dividends.

(e) Other Series. Subject to the provisions of these Restated Articles of Incorporation relating to all shares of Preference Stock, the preferences and relative, participating, option or other special rights, and qualifications, limitations or restrictions thereof, of any other series of Preference Stock hereafter created may be the same as or differ from the Series K Preference Stock to the extent set forth by the Board of Directors at the time any such other series of Preference Stock is authorized.

**ARTICLES OF MERGER/SHARE EXCHANGE**

State Form 39036 (R / 12-87)  
Provided by Evan Bayh, Secretary of State of Indiana  
Approved by State Board of Accounts, 1988

Secretary of State  
State House  
Corporations Division  
Room 155  
Indianapolis, IN 46204  
(317) 232-6576

Present Original and One Copy – Use 8 1/2"x 11" white paper for inserts.

FILING FEE: \$90.00

Indiana Code 23-1-40-1 et. seq.

**ARTICLES OF MERGER / SHARE EXCHANGE  
OF**

Onan Holdings, Inc. 198207-390

**INTO**

Cummins Engine Company, Inc. 194062-043

In accordance with the requirements of the Indiana Business Corporation Law, the undersigned corporations desiring to effect a merger or share exchange, set forth the following facts:

**ARTICLE I SURVIVING CORPORATION**

SECTION I:

The name of the corporation surviving the merger is:  
Cummins Engine Company, Inc. and such name has not been changed as a result of the merger.

SECTION 2: (Strike inapplicable section)

- (a) The surviving corporation is a domestic corporation existing pursuant to the provisions of the Act Incorporated on February 3, 1919
- (b) The surviving corporation is a foreign corporation incorporated under the laws of the State of \_\_\_\_\_ and admitted/not admitted (designate which) to do business in Indiana. If the surviving corporation is qualified to do business in Indiana, state the date of admission: (If Application for Admission is filed concurrently herewith, state "Upon approval of Application for Admission").
- (c) The surviving foreign corporation does not intend to transact business in Indiana.

**ARTICLE II MERGING CORPORATIONS(S)**

The name, state of incorporation, and date of incorporation or admission respectively, of each Indiana domestic corporation and Indiana qualified foreign corporation, other than the survivor, which is party to the merger are as follows:

Name of Corporation  
Onan Holdings, Inc.

State of Domicile  
Indiana

Date of Incorporation or qualification in Indiana  
July 15, 1982

Name of Corporation

State of Domicile

Date of Incorporation or qualification in Indiana

Name of Corporation

State of Domicile

Date of Incorporation or qualification in Indiana

ARTICLE III PLAN OF MERGER OR SHARE EXCHANGE

The Plan of Merger or Share Exchange, containing such information as required by Indiana Code 23-1-40-1(b), is set forth in "Exhibit A", attached hereto and made a part hereof.

CUMMINS ENGINE COMPANY, INC.  
DIRECTORS RESOLUTION

RESOLVED, that the Plan of Merger of Onan Holdings, Inc., into Cummins Engine Company, Inc. in the form attached hereto as Exhibit A, be and it hereby is approved.

APPROVED:

/s/ Steven L. Zeller  
\_\_\_\_\_  
Steven L. Zeller

12/8/92

EXHIBIT A

PLAN OF MERGER

THIS PLAN OF MERGER sets forth the terms and conditions of the merger of Onan Holdings, Inc., an Indiana corporation (the "Subsidiary") into Cummins Engine Company, Inc., an Indiana corporation (the "Parent") pursuant to Section 23-1-40-4 of the Indiana Business Corporation Law, as amended.

WHEREAS, the Articles of Incorporation of the Subsidiary, as amended, authorized 10,000 shares of Series A Common stock and 10,000 shares of Series B Common Stock, which is all the authorized stock of the Subsidiary:

WHEREAS, the Parent owns 1,600 shares of Series A Common Stock of the Subsidiary and 6,400 shares of Series B Common Stock of the Subsidiary (collectively referred to as the "Issued Stock"), which is all of the issued and outstanding stock of the Subsidiary: and

WHEREAS, the Parent, owning greater than 90% of the outstanding stock of the Subsidiary, wishes to merge the Subsidiary into the Parent, with the Parent being the surviving corporation:

NOW, THEREFORE, in consideration of the foregoing premises, and other good and sufficient consideration, the parties agree as possible:

1. The Parties. Cummins Engine Company, Inc. is the Parent and Onan Holdings, Inc. is the Subsidiary.
2. Manner of Conversion. All the Issued Stock shall be cancelled and no new shares of the Parent shall be issued.
3. Transfer of Rights and Obligations. All rights, assets and obligations of the Subsidiary shall be and become property and the obligation of the Parent by action of law.

IN WITNESS WHEREOF, the parties hereto have executed this instrument by their duly authorized representatives.

CUMMINS ENGINE COMPANY, INC.

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

ONAN HOLDINGS, INC.

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

194062-043

STATE OF INDIANA  
OFFICE OF THE SECRETARY OF STATE

ARTICLES OF AMENDMENT

To Whom These Presents Come, Greeting:

WHEREAS, there has been presented to me at this office, Articles of Amendment for:

CUMMINS ENGINE COMPANY INC.

and said Articles of Amendment have been prepared and signed in accordance with the provisions of the Indiana Business Corporation Law, as amended,

NOW, THEREFORE, I, JOSEPH H. HOGSETT, Secretary of State of Indiana, hereby certify that I have this day filed said articles in this office.

The effective date of these Articles of Amendment is April 06, 1994.

/s/ Joseph H. Hogsett  
JOSEPH H. HOGSETT, Secretary of State

By /s/ Peggy Runion  
Deputy

ARTICLES OF AMENDMENT OF THE  
ARTICLES OF INCORPORATION  
State Form 38333 (R5/9-91)  
State Board of Accounts Approved 1988

194062-043

Provided by: JOSEPH H. HOGSETT  
SECRETARY OF STATE OF INDIANA  
CORPORATIONS DIVISION  
302 W. Washington St., Rm. E018  
Indianapolis, IN 46204  
Telephone: (317) 232-6576

INSTRUCTIONS: Use 8 1/2" x 11" white paper for attachments. Filing requirements — Present original and one copy to address in upper right hand corner of this form.

Indiana Code 23-1-38-1 *et seq.*

Filing Fee: \$30.00

**ARTICLES OF AMENDMENT OF THE  
ARTICLES OF INCORPORATION OF**

The undersigned officers of  
Cummins Engine Company, Inc.  
(hereinafter referred to as the "Corporation") existing pursuant to the provisions of:

(indicate appropriate act)

Indiana Business Corporation Law

Indiana Professional Corporation Act of 1983

as amended (hereinafter referred to as the "Act"), desiring to give notice of corporate action effectuating amendment of certain provisions of its Articles of Incorporation, certify the following facts:

**ARTICLE I Amendment(s)**

SECTION 1 The date of Incorporation is:

February 3, 1919

SECTION 2 The name of the corporation following this amendment to the Articles of Incorporation is:

Cummins Engine Company, Inc.

SECTION 3

The exact text of Article(s) Article IV; Section 4.1 of the Articles of Incorporation is now as follows:

Section 4.1. Authorized Classes and Number of Shares. The total number of shares which the Corporation has authority to issue shall be 152,000,000 shares, consisting of 150,000,000 shares of common stock ("Common Stock"), 1,000,000 shares of preference stock ("Preference Stock") and 1,000,000 shares of preferred stock ("Preferred Stock"). The shares of Common Stock have a par value \$2.50 per share. The shares of Preference and Preferred Stock do not have any par or stated value, except that, solely for the purpose of any statute or regulation imposing any tax or fee based upon the capitalization of the Corporation, each of the Corporation's shares of Preference Stock and Preferred Stock shall be deemed to have a par value of \$1.00 per share

SECTION 4 Date of each amendment's adoption:

April 5, 1994

(Continued on the reverse side)

**ARTICLE II Manner of Adoption and Vote**

SECTION 1 Action by Directors:

The Board of Directors of the Corporation duly adopted a resolution proposing to amend the terms and provisions of Article IV, Section 4.1 of the Articles of Incorporation and directing a meeting of the Shareholders, to be held on Tuesday, April 5, 1994, allowing such Shareholders to vote on the proposed amendment.

The resolution was adopted by: (Select appropriate paragraph)

(a) Vote of the Board of Directors at a meeting held on Tuesday, February 8, 1994, at which a quorum of such Board was present.

(b) Written consent executed on \_\_\_\_\_, 19\_\_\_\_, and signed by all members of the Board of Directors.

SECTION 2 Action by Shareholders:

The shareholders of the Corporation entitled to vote in respect to the Articles of Amendment adopted the proposed amendment. The amendment was adopted by: (Select appropriate paragraph)

(a) Vote of such shareholders during the meeting called by the Board of Directors. The result of such vote is as follows:

SHARES ENTITLED TO VOTE:	4,561
SHAREHOLDERS VOTED IN FAVOR:	1,386
SHAREHOLDERS VOTED AGAINST:	180

(b) Unanimous written consent executed on \_\_\_\_\_, 19\_\_\_\_ and signed by all shareholders entitled to vote.

SECTION 3 Compliance with Legal Requirements

The manner of the adoption of the Articles of Amendment and the vote by which they were adopted constitute full legal compliance with the provisions of the Act, the Articles of Incorporation, and the By-Laws of the Corporation.

I hereby verify, subject to the penalties of perjury, that the statements contained herein are true, this 6th day of April, 1994.

Current Officer's Signature  
 /s/ Steven L. Zeller  
 \_\_\_\_\_  
 Officer's title  
 Vice President — Law and External Affairs and Secretary

Officer's Name Printed  
 Steven L. Zeller  
 \_\_\_\_\_

State of Indiana  
 Office of the Secretary of State

CERTIFICATE OF AMENDMENT  
 of  
 CUMMINS ENGINE COMPANY INC.

I, SUE ANNE GILROY, Secretary of State of Indiana, hereby certify that Articles of Amendment of the above For-Profit Domestic Corporation have been presented to me at my office, accompanied by the fees prescribed by law and that the documentation presented conforms to law as prescribed by the provisions of the Indiana Business Corporation Law.

The name following said transaction will be:  
CUMMINS INC.

NOW, THEREFORE, with this document I certify that said transaction will become effective Thursday, April 05, 2001.

SEAL OF THE STATE OF INDIANA

In Witness Whereof, I have caused to be affixed my signature and the seal of the State of Indiana, at the City of Indianapolis, April 5, 2001.

/s/ Sue Anne Gilroy  
 \_\_\_\_\_  
 SUE ANNE GILROY,  
 SECRETARY OF STATE

194062-043/2001040587065

ARTICLES OF AMENDMENT OF THE  
 ARTICLES OF INCORPORATION  
 State Form 38333 (R8/12-96)  
 Approved by State Board of Accounts 1995

SUE ANNE  
 GILROY  
 SECRETARY OF  
 STATE  
 CORPORATIONS  
 DIVISION  
 302 W.  
 Washington St.,  
 Rm. E018  
 Indianapolis, IN  
 46204  
 Telephone: (317)  
 232-6576

INSTRUCTIONS:

- Use 8 1/2" x 11" white paper for attachments.
- Present original and one copy to address in upper right hand corner of this form.
- Please TYPE or PRINT.

Indiana Code 23-  
 1-38-1 *et seq.*  
 Filing Fee: \$30.00

ARTICLES OF AMENDMENT OF THE ARTICLES OF INCORPORATION OF

Name of Corporation  
Cummins Engine Company, Inc.

Date of Incorporation  
February 3, 1919

The undersigned officers of the above referenced Corporation (*hereinafter referred to as the "Corporation"*) existing pursuant to the provisions of: *(indicate appropriate act)*

Indiana Business Corporation Law

Indiana Professional Corporation Act of 1983

as amended (hereinafter referred to as the "Act"), desiring to give notice of corporate action effectuating amendment of certain provisions of its Articles of Incorporation, certify the following facts:

**ARTICLE I Amendment(s)**

The exact text of Article(s) I of the Articles

(NOTE: If amending the name of corporation, write Article "I" in space above and write "The name of the Corporation is \_\_\_\_\_," below)

"The name of the Corporation is Cummins Inc."

**ARTICLE II**

Date of each amendment's adoption:

April 3, 2001

(Continued on the reverse side)

**ARTICLE III Manner of Adoption and Vote**

Mark applicable section: NOTE - - Only in limited situations does Indiana law permit an Amendment without shareholder approval. Because a name change requires shareholder approval, Section 2 must be marked and either A or B completed.

- SECTION 1 This amendment was adopted by the Board of Directors or incorporators and shareholder action was not required.
- SECTION 2 The shareholders of the Corporation entitled to vote in respect to the amendment adopted the proposed amendment. The amendment was adopted by: (Shareholder approval may be by either A or B.)
  - A. Vote of such shareholders during a meeting called by the Board of Directors. The result of such vote is as follows:

41,331,548	Shares entitled to vote
36,280,172	Number of shares represented at the meeting
34,636,356	Shares voted in favor
1,643,816	Shares voted against

B. Unanimous written consent executed on \_\_\_\_\_, 19\_\_\_\_ and signed by all shareholders entitled to vote.

**ARTICLE IV Compliance with Legal Requirements**

The manner of the adoption of the Articles of Amendment and the vote by which they were adopted constitute full legal compliance with the provisions of the Act, the Articles of Incorporation, and the By-Laws of the Corporation.

I hereby verify, subject to the penalties of perjury, that the statements contained herein are true, this 3rd day of April, 2001.

Signature of current officer or chairman of the board \_\_\_\_\_ Printed name of officer or chairman of the board  
 Theodore M. Solso

Signator's title \_\_\_\_\_  
 Chairman and Chief Executive Officer /s/ Theodore M. Solso \_\_\_\_\_

State of Indiana  
Office of the Secretary of State

CERTIFICATE OF AMENDMENT  
of  
CUMMINS INC.

I, TODD ROKITA, Secretary of State of Indiana, hereby certify that Articles of Amendment of the above For-Profit Domestic Corporation have been presented to me at my office, accompanied by the fees prescribed by law and that the documentation presented conforms to law as prescribed by the provisions of the Indiana Business Corporation Law.

NOW, THEREFORE, with this document I certify that said transaction will become effective Thursday, May 10, 2007.

SEAL OF THE STATE OF INDIANA In Witness Whereof, I have caused to be affixed my signature and the seal of the State of Indiana, at the City of Indianapolis, May 10, 2007.

/s/ Todd Rokita \_\_\_\_\_

TODD ROKITA,  
SECRETARY OF STATE



INSTRUCTIONS:

Use 8 1/2" x 11" white paper for attachments.

Present original and one copy to address in upper right hand corner of this form.

Please TYPE or PRINT.

Please visit our office on the web at [www.sos.in.gov](http://www.sos.in.gov)

Indiana Code 23-  
1-38-1 *et seq.*

Filing Fee: \$30.00

**ARTICLES OF AMENDMENT OF THE  
ARTICLES OF INCORPORATION OF**

Name of Corporation  
Cummins Inc.

Date of Incorporation  
February 3, 1919

The undersigned officers of the above referenced Corporation (*hereinafter referred to as the "Corporation"*) existing pursuant to the provisions of: (*indicate appropriate act*)

Indiana Business Corporation Law

Indiana Professional Corporation Act of 1983

as amended (*hereinafter referred to as the "Act"*), desiring to give notice of corporate action effectuating amendment of certain provisions of its Articles of Incorporation, certify the following facts:

**ARTICLE I Amendment(s)**

The exact text of Article(s) Article IV, Section 4.1 of the Articles of Incorporation is now as follows:

(NOTE: *If amending the name of corporation, write Article "I" in space above and write "The name of the Corporation is \_\_\_\_\_," below*)

Section 4.1. Authorized Classes and Number of Shares. The total number of shares which the Corporation has authority to issue shall be 302,000,000 shares, consisting of 300,000,000 shares of common stock ("Common Stock"), 1,000,000 shares of preference stock ("Preference Stock") and 1,000,000 shares of preferred stock ("Preferred Stock"). The shares of Common Stock have a par value of \$2.50 per share. The shares of Preference and Preferred Stock do not have any par or stated value, except that solely for the purpose of any statute or regulation imposing any tax or fee based upon the capitalization of the Corporation, each of the Corporation's shares of Preference Stock and Preferred Stock shall be deemed to have a par value of \$1.00 per share.

**ARTICLE II**

Date of each amendment's adoption:

May 8, 2007

(Continued on the reverse side)

**ARTICLE III Manner of Adoption and Vote**

Mark applicable section: NOTE - - Only in limited situations does Indiana law permit an Amendment without shareholder approval. Because a name change requires shareholder approval, Section 2 must be marked and either A or B completed.

SECTION 1 This amendment was adopted by the Board of Directors or incorporators and shareholder action was not required.

SECTION 2 The shareholders of the Corporation entitled to vote in respect to the amendment adopted the proposed amendment. The amendment was adopted by: (*Shareholder approval may be by either A or B.*)

A. Vote of such shareholders during a meeting called by the Board of Directors. The result of such vote is as follows:

52,199,659	Shares entitled to vote
46,932,478	Number of shares represented at the meeting
40,335,354	Shares voted in favor
5,993,302	Shares voted against

B. Unanimous written consent executed on \_\_\_\_\_, 20\_\_\_\_ and signed by all shareholders entitled to vote.

**ARTICLE IV Compliance with Legal Requirements**

The manner of the adoption of the Articles of Amendment and the vote by which they were adopted constitute full legal compliance with the provisions of the Act, the Articles of Incorporation, and the By-Laws of the Corporation.

I hereby verify, subject to the penalties of perjury, that the statements contained herein are true, this 9th day of May, 2007.

Signature of current officer or chairman of the board  
/s/ Richard E. Harris

Printed name of officer or chairman of the board  
Richard E. Harris

Signator's title

Vice President - Treasurer

State of Indiana  
Office of the Secretary of State

CERTIFICATE OF AMENDMENT  
of  
CUMMINS INC.

I, TODD ROKITA, Secretary of State of Indiana, hereby certify that Articles of Amendment of the above For-Profit Domestic Corporation have been presented to me at my office, accompanied by the fees prescribed by law and that the documentation presented conforms to law as prescribed by the provisions of the Indiana Business Corporation Law.

NOW, THEREFORE, with this document I certify that said transaction will become effective Thursday, May 21, 2008.

SEAL OF THE STATE OF  
INDIANA

In Witness Whereof, I have caused to be affixed my signature and the seal of the State of Indiana, at the City of Indianapolis,  
May 21, 2008.

/s/ Todd Rokita

TODD ROKITA,  
SECRETARY OF STATE

194062-043/2007051145106

ARTICLES OF AMENDMENT OF THE  
ARTICLES OF INCORPORATION  
State Form 38333 (R10/1-03)  
Approved by State Board of Accounts 1995

194062-043

TODD ROKITA  
SECRETARY OF  
STATE  
CORPORATIONS  
DIVISION  
302 W.  
Washington St.,  
Rm. E018  
Indianapolis, IN  
46204  
Telephone: (317)  
232-6576

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Use 8 1/2" x 11" white paper for attachments.

Present original and one copy to address in upper right hand corner of this form.

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Indiana Code 23-  
1-38-1 *et seq.*

Filing Fee: \$30.00

ARTICLES OF AMENDMENT OF THE  
ARTICLES OF INCORPORATION OF

Name of Corporation  
Cummins Inc.

Date of Incorporation  
February 3, 1919

The undersigned officers of the above referenced Corporation (*hereinafter referred to as the "Corporation"*) existing pursuant to the provisions of: *(indicate appropriate act)*

Indiana Business Corporation Law

Indiana Professional Corporation Act of 1983

as amended (*hereinafter referred to as the "Act"*), desiring to give notice of corporate action effectuating amendment of certain provisions of its Articles of Incorporation, certify the following facts:

ARTICLE I Amendment(s)

The exact text of Article(s) Article IV, Section 4.1 of the Articles of Incorporation is now as follows:

(NOTE: If amending the name of corporation, write Article "I" in space above and write "The name of the Corporation is \_\_\_\_\_," below)

Section 4.1. Authorized Classes and Number of Shares. The total number of shares which the Corporation has authority to issue shall be 502,000,000 shares, consisting of 500,000,000 shares of common stock ("Common Stock"), 1,000,000 shares of preference stock ("Preference Stock") and 1,000,000 shares of preferred stock ("Preferred Stock"). The shares of Common Stock have a par value of \$2.50 per share. The shares of Preference and Preferred Stock do not have any par or stated value, except that, solely for the purpose of any statute or regulation imposing any tax or fee based upon the capitalization of the Corporation, each of the Corporation's shares of Preference Stock and Preferred Stock shall be deemed to have a par value of \$1.00 per share.

ARTICLE II

Date of each amendment's adoption:

May 13, 2008

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**ARTICLE III Manner of Adoption and Vote**

Mark applicable section: NOTE - - Only in limited situations does Indiana law permit an Amendment without shareholder approval. Because a name change requires shareholder approval, Section 2 must be marked and either A or B completed.

- SECTION 1 This amendment was adopted by the Board of Directors or incorporators and shareholder action was not required.
- SECTION 2 The shareholders of the Corporation entitled to vote in respect to the amendment adopted the proposed amendment. The amendment was adopted by:  
(*Shareholder approval may be by either A or B.*)
- A. Vote of such shareholders during a meeting called by the Board of Directors. The result of such vote is as follows:

203,215,953	Shares entitled to vote
178,021,423	Number of shares represented at the meeting
146,213,199	Shares voted in favor
29,413,691	Shares voted against

B. Unanimous written consent executed on \_\_\_\_\_, 20\_\_\_\_ and signed by all shareholders entitled to vote.

**ARTICLE IV Compliance with Legal Requirements**

The manner of the adoption of the Articles of Amendment and the vote by which they were adopted constitute full legal compliance with the provisions of the Act, the Articles of Incorporation, and the By-Laws of the Corporation.

I hereby verify, subject to the penalties of perjury, that the statements contained herein are true, this 20th day of May, 2008.

Signature of current officer or chairman of the board  
/s/ Richard E. Harris

Printed name of officer or chairman of the board  
Richard E. Harris

Signator's title  
Vice President - Treasurer

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**CUMMINS INC.**  
**2003 STOCK INCENTIVE PLAN**  
**(As Amended October 14, 2003, February 20, 2007 and February 9, 2009)**

1. **Objectives.** The Cummins Inc. 2003 Stock Incentive Plan (the "Plan") is designed to retain and motivate executives and other selected employees, and to link the interests of these employees with the interests of the Company's shareholders. It is also intended to be a source of equity-based annual fees payable to non-employee directors of the Company to more closely link their financial interests with those of the Company's shareholders. These objectives are accomplished by making incentive and other awards of the Company's stock under the Plan thereby providing Participants with a proprietary interest in the growth and performance of the Company.
2. **Definitions.**
  - (a) "**Award**"—The grant of any form of stock option, stock appreciation right or stock award whether granted singly, in combination or in tandem, to a Participant pursuant to such terms, conditions and limitations as the Committee may establish in order to fulfill the objectives of the Plan.
  - (b) "**Award Agreement**"—An agreement between the Company and a Participant that sets forth the terms, conditions and limitations applicable to an Award.
  - (c) "**Board**"—The Board of Directors of the Company.
  - (d) "**Change of Control**"—The occurrence of any of the following: (i) there shall be consummated (A) any consolidation or merger of the Company in which the Company is not the continuing or surviving corporation or pursuant to which shares of Common Stock would be converted in whole or in part into cash, other securities or other property, other than a merger of the Company in which the holders of Common Stock immediately prior to the merger have substantially the same proportionate ownership of common stock of the surviving corporation immediately after the merger, or (B) any sale, lease, exchange or transfer (in one transaction or a series of related transactions) of all or substantially all the assets of the Company; or (ii) the stockholders of the Company shall approve any plan or proposal for the liquidation or dissolution of the Company; or (iii) any "person" (as such term is used in Sections 13(d)(3) and 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")), other than the Company or a subsidiary thereof or any employee benefit plan sponsored by the Company or a subsidiary thereof, shall become the beneficial owner (within the meaning of Rule 13d-3 under the Exchange Act) of securities of the Company representing 25% or more of the combined voting power of the Company's then outstanding securities ordinarily (and apart from rights accruing in special circumstances) having the right to vote in the election of directors, as a result of a tender or exchange offer, open market purchases, privately negotiated purchases or otherwise; or (iv) at any time during a period of two consecutive years, individuals who, at the beginning of such period constituted the Board, shall cease for any reason to constitute at least a majority thereof, unless the election or the nomination for election by the Company's stockholders of each new director during such two-year period was approved by a vote of at least two-thirds of the directors then still in office who were directors at the beginning of such two-year period; or (v) any other event shall occur that would be required to be reported in response to Item 6(e) (or any successor provision) of Schedule 14A of Regulation 14A promulgated under the Exchange Act.
  - (e) "**Common Stock**"—Authorized and issued or unissued Common Stock, par value \$2.50 per share, of the Company.
  - (f) "**Code**"—The Internal Revenue Code of 1986, as amended from time to time.
  - (g) "**Committee**"—The Compensation Committee of the Board, or such other committee of the Board that is designated by the Board to administer the Plan. The Committee shall be constituted so as to permit the Plan to comply with Rule 16b-3 promulgated under the Exchange Act or any successor rule and shall initially consist of not less than three members of the Board, each of whom is ineligible to receive Awards (other than automatic fee Awards to Outside Directors described in Section 6 below), shall have been so ineligible for at least one year prior to serving on the Committee and shall satisfy the requirements to be a disinterested person contained in Rule 16-b-3(1)(2)(i).
  - (h) "**Company**"—Cummins Inc. and its subsidiaries, including subsidiaries of subsidiaries.
  - (i) "**Fair Market Value**"—The average of the high and low prices of the Common Stock as reported on the composite tape for securities listed on the New York Stock Exchange for the date in question, provided that if no sales of Common Stock were made on said Exchange on that date, the average of the high and low prices of Common Stock as reported on said composite tape for the preceding day on which sales of Common Stock were made on said Exchange.
  - (j) "**Outside Director**"—A non-employee member of the Board.
  - (k) "**Participant**"—Any employee or Outside Director of the Company to whom an Award has been made under the Plan.
3. **Eligibility.** Employees of the Company eligible for an Award under the Plan are those who hold positions of responsibility and whose performance, in the judgment of the Committee or the management of the Company, can have a significant effect on the success of the Company. All Outside Directors are also eligible.
4. **Stock Available for Awards.** A total of thirteen million five hundred thousand (13,500,000) shares of the Company's Common Stock shall be available for Awards granted wholly or partly in stock under provisions of the Plan. From time to time, the Board and appropriate officers of the Company shall take whatever actions are necessary to file required documents with governmental

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authorities and stock exchanges to make shares of Common Stock available for issuance pursuant to Awards. Common Stock related to Awards under this Plan or the 1992 Stock Incentive Plan that are forfeited, terminated or expired unexercised, or related to options or stock appreciation rights settled in cash in lieu of stock, shall again become available for Awards. Any Common Stock that so becomes available shall be carried forward and be available for Awards.

5. **Administration.** The Plan shall be administered by the Committee, which shall have full and exclusive power to interpret the Plan, to grant waivers of Plan restrictions (other than restrictions related to automatic fee Awards described in Section 6 below), including waivers of restrictions on exercise of outstanding stock options and appreciation rights, waivers of vesting requirements and acceleration of Award payments, and to adopt such rules, regulations and guidelines for carrying out the Plan as it may deem necessary or proper, all of which powers shall be executed in the best interests of the Company and in keeping with the objectives of the Plan. These powers include, but are not limited to, the adoption of modifications, amendments, procedures, sub-plans and the like as are necessary to comply with provisions of the laws of other countries in which the Company may operate in order to assure the viability of Awards granted under the Plan and to enable Participants employed in such other countries to receive advantages and benefits under the Plan and such laws.
6. **Director Automatic Formula Awards.** Each Outside Director shall automatically receive, on the date of each annual meeting of Shareholders, in lieu of cash payment an annual award of Common stock, restricted as to transfer for a period of six (6) months following the date of the award. The number of shares in each such annual award shall be equal to one-half (1/2) of his or her Board retainer fee, divided by the average of closing prices of Common Stock as reported on the composite tape of the New York Stock Exchange for the twenty (20) consecutive trading days immediately preceding the date of the award.
7. **Employee Awards.** The Committee shall determine the type or types of Award(s) to be made to each employee Participant and shall set forth in the related Award Agreement the terms, conditions and limitations applicable to each Award. Awards may include but are not limited to those listed in this Section 7. Awards may be granted singly, in combination or in tandem. Awards may also be made in combination or in tandem with, in replacement of or as alternatives to grants or rights under any other

employee plan of the Company, including the plan of any acquired entity. On such terms and conditions as shall be approved by the Committee, the Company or any of its subsidiaries may directly or indirectly lend money to any Participant or other person to accomplish the purposes of the Plan, including to assist such person to acquire shares of Common Stock acquired upon the exercise of options, *provided, however*, such lending would not violate terms of the Sarbanes-Oxley Act of 2002. No more than one-half of the total shares authorized under this plan may be awarded as Stock Awards, as defined in (c) below, that are subject only to the condition of continuous service with the Company.

- (a) *Stock Option*—A grant of the right to purchase a specified number of shares of Common Stock at not less than 100% of Fair Market Value on the date of grant during a specified period as determined by the Committee. A stock option may be in the form of an incentive stock option (“ISO”) which, in addition to being subject to applicable terms, conditions and limitations established by the Committee, complies with Section 422 of the Code which, among other limitations, provides that (i) to the extent that the aggregate Fair Market Value (determined at the time the option is granted) of Common Stock exercisable for the first time by a Participant during any calendar year exceeds \$100,000 (or such other limit as may be required by the Code), such option shall not be treated as an ISO and (ii) the option shall be exercisable for a period of not more than ten years from the date of grant.
- (b) *Stock Appreciation Right*—A right to receive a payment, in cash and/or Common Stock, equal to the excess of the Fair Market Value or other specified valuation of a specified number of shares of Common Stock on the date the stock appreciation right (“SAR”) is exercised over the Fair Market Value or other specified valuation on the date of grant of the SAR as set forth in the applicable Award Agreement, except that where the SAR is granted in tandem with a stock option, the grant and exercise valuations must be not less than Fair Market Value.
- (c) *Stock Award*—An Award made in Common Stock or denominated in units of Common Stock. All or part of any Common Stock award may be subject to conditions established by the Committee and set forth in the Award Agreement, which may include, but are not limited to, continuous service with the Company, achievement of specific business objectives, increases in specified indices, attaining growth rates and other comparable measurements of Company performance. Such Awards may be based on Fair Market Value or other specified valuation.

The minimum restriction period for Performance Shares (shares requiring certain performance measures to be achieved in order to vest) will be one year from the Grant Date. The minimum restriction period for Restricted Stock (shares requiring only continued employment with the Company to vest) will be two years if vesting occurs in annual increments, and three years if cliff vesting occurs for the entire grant. The minimum restriction periods for Restricted Stock do not apply to Restricted Stock that was originally granted as Performance Shares and is converted to Restricted Stock after being earned by achieving performance measures. The minimum restriction periods do not apply to any grants made in lieu of cash compensation, as is the case for Outside Directors.

8. *Payment of Awards.* Award payments made in the form of Common Stock may include such restrictions, as the Committee shall determine, including restrictions on transfer and forfeiture provisions. When transfer of Common Stock is so restricted or subject to forfeiture provisions it is referred to as “Restricted Stock”. Further, with Committee approval, payments may be deferred, either in the form of installments or a future single payment. The Committee may permit selected Participants to elect to defer payments of some or all types of Awards in accordance with procedures established by the Committee to assure that such deferrals comply with applicable requirements of the Code including, at the choice of Participants, the capability to make further deferrals for payment after retirement. Any deferred payment, whether elected by the Participant or specified by the Award Agreement or by the Committee, may require the payment be forfeited in accordance with the provisions of Section 11. Dividends or dividend equivalent rights may be extended to and made part of any Award denominated in Common Stock or units of Common Stock,

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subject to such terms, conditions and restrictions as the Committee may establish. The Committee may also establish rules and procedures for the crediting of dividend equivalents for deferred payments denominated in Common Stock or units of Common Stock. At the discretion of the Committee, a participant may be offered an election to substitute an Award for another Award or Awards of the same or different type.

9. *Stock Option Exercise.* The price at which shares of Common Stock may be purchased under a stock option shall be paid in full at the time of the exercise in cash or, if permitted by the Committee, by means of tendering Common Stock or surrendering another Award, including Restricted Stock, valued at Fair Market Value on the date of exercise, or any combination thereof. The Committee shall determine acceptable methods for tendering Common Stock or other Awards and may impose such conditions on the use of Common Stock or other Awards to exercise a stock option as it deems appropriate. In the event shares of Restricted Stock are tendered as consideration for the exercise of a stock option, a number of the shares issued upon the exercise of the stock option, equal to the number of shares of Restricted Stock used as consideration therefor, shall be subject to the same restrictions as the Restricted Stock so submitted plus any additional restrictions that may be imposed by the Committee.
10. *Tax Withholding.* The Company shall have the right to deduct applicable taxes from any Award payment and to retain at the time of delivery or vesting of shares under the Plan, an appropriate number of shares of Common Stock in value sufficient to cover the payment of any taxes required by law to be withheld or to take such other action as may be necessary in the opinion of the Company to satisfy all obligations for withholding of such taxes; provided, however, that a Participant shall have the option to provide the Company with the funds to enable it to pay such taxes. Notwithstanding the preceding sentence, if the Participant is subject to Section 16 of the Exchange Act, the Participant must affirmatively elect whether he wishes to (i) have the Company retain shares of Common Stock, (ii) provide the Company with other funds or (iii) have the Company deduct an amount from other compensation due him in order to satisfy the tax withholding requirements arising under an Award.
11. *Termination of Employment.* If the employment of a Participant terminates, other than pursuant to paragraphs (a) through (c) of this Section 11, all unexercised, deferred and unpaid Awards shall be canceled immediately, unless the Award Agreement provides otherwise.
- (a) *Retirement Under a Company Retirement Plan.* When a Participant’s employment by the Company terminates as a result of retirement in accordance with the terms of a Company retirement plan, the Committee may permit Awards to continue in effect beyond the date of retirement in accordance with the applicable Award Agreement and the exercisability and vesting of any Award may be accelerated.
- (b) *Resignation in the Best Interests of the Company.* When a Participant resigns from the Company and, in the judgment of the Committee, the acceleration and/or continuation of outstanding Awards would be in the best interests of the Company, the Committee may (i) authorize, where appropriate, the acceleration and/or continuation of all or any part of Awards granted prior to such termination and (ii) permit the exercise, vesting and payment of such Awards for such period as may be set forth in the applicable Award Agreement, subject to earlier cancellation pursuant to Section 12 or at such time as the Committee shall deem the continuation of all or any part of the Participant’s Awards are not in the Company’s best interests.
- (c) *Death or Disability of a Participant.*
- (i) In the event of a Participant’s death, the Participant’s estate or beneficiaries shall have the period specified in the Award Agreement within which to receive or exercise any outstanding Award held by the Participant under such terms as may be specified in the applicable Award Agreement.
- (ii) In the event a Participant is deemed by the Company to be disabled and eligible for benefits pursuant to the terms of the Company’s Long-Term Disability Plan, any successor plan, or similar plan of another employer, Awards and rights to any Awards may be paid to or exercised by the Participant, if legally competent, or a committee or other legally designated guardian or representative if the Participant is legally incompetent by virtue of such disability.
- (iii) After the death or disability of a Participant, the Committee may in its sole discretion at any time (1) terminate restrictions in Award Agreements; (2) accelerate any or all installments and rights; and (3) instruct the Company to pay the total of any accelerated payments in a single sum to the Participant, the Participant’s estate, beneficiaries or representative—notwithstanding that, in the absence of such termination of restrictions or acceleration of payments, any or all of the payments due under the Awards might ultimately have become payable to other beneficiaries.

Restriction periods for grants of Restricted Stock and Performance Shares will not be accelerated except in the event of Retirement, Death, Disability, or Change of Control of the Corporation.

12. *Cancellation and Rescission of Awards.* Unless the Award Agreement specifies otherwise, the Committee may cancel any unexpired, unpaid or deferred Award at any time if the Participant is not in compliance with all other applicable provisions of the Award Agreement and the Plan and with the condition that the Participant (whether or not an employee of the Company at the time) shall not render services for any organization or engage directly or indirectly in any business which, in the judgment of the Committee, is or becomes competitive with the Company, or which organization or business, or the rendering of services to such organization or business, is or becomes otherwise prejudicial to or in conflict with the interests of the Company.

13. *Transferability.*

(a) Except pursuant to paragraph (c) of Section 11 or paragraph (b) below, no Award or any other benefit under the Plan shall be

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assignable or transferable, or payable to or exercisable by, anyone other than the Participant to whom it was granted.

(b) The Company may expressly provide in an Award Agreement (or an amendment to an Award Agreement) that a Participant may transfer a stock option Award (other than an ISO), in whole or in part, to a spouse, domestic partner, or lineal descendant (a "Family Member"), a trust for the exclusive benefit of Family Members, or a partnership or other entity in which all the beneficial owners are Family Members. Subsequent transfers of Awards shall be prohibited except in accordance with this paragraph 13(b). All terms and conditions of the Award, including provisions relating to the termination of the Participant's employment or service with the Company, shall continue to apply following a transfer made in accordance with this paragraph 13(b).

14. *Adjustments.* In the event of any change in the Common Stock by reason of a stock split, stock dividend, combination or reclassification of shares, recapitalization, split-up, spin-off, dividend other than a regular quarterly cash dividend, separation, reorganization, liquidation, merger, consolidation or similar event, the Committee may adjust proportionally (a) the number of shares of Common Stock (i) reserved under the Plan, and (ii) covered by outstanding Awards; (b) the stock prices related to outstanding Awards; and (c) the appropriate Fair Market Value and other price determinations for such Awards. In the event of any other change affecting the Common Stock or any distribution (other than normal cash dividends) to holders of Common Stock, such adjustments as may be deemed equitable by the Committee, including adjustments to avoid fractional shares, shall be made to give proper effect to such event. In the event of any of the changes described in the first sentence of this Section 14, the Committee shall be authorized to issue or assume stock options, whether or not in a transaction to which Section 424(a) of the Code applies, by means of substitution of new options for previously issued options or an assumption of previously issued options.

15. *Change of Control.* In the event of a Change of Control, any time period relating to the exercisability or realization of an outstanding Award shall be immediately accelerated so that any outstanding Award as of the date of the Change of Control may be exercised or realized in full. In addition, in order to maintain the Participant's rights in the event of a Change of Control, the Committee, in its sole discretion, may, either at the time an Award is made hereunder or at any time prior to, or coincident with or after the time of, a Change of Control:

(a) make such adjustment to the Awards then outstanding as the Committee deems appropriate to reflect such Change of Control; or

(b) cause the Awards then outstanding to be assumed, or new rights substituted therefor, by the surviving corporation in such Change of Control.

The Committee may, in its discretion, include such further provisions and limitations in any agreement documenting such Awards, as it may deem equitable and in the best interests of the Company with respect to changes in control.

16. *Amendment, Modification, Suspension or Discontinuance of the Plan.* The Board may amend, modify, suspend or terminate the Plan for the purpose of meeting or addressing any changes in legal requirements or for any other purpose permitted by law. Subject to changes in law or other legal requirements, which would permit otherwise, the Plan may not be amended without the consent of the holders of a majority of the shares of Commons Stock then outstanding to (i) increase the maximum number of shares of Common Stock that may be awarded under the Plan (except for adjustments pursuant to Section 14 of the Plan), (ii) decrease the option price, (iii) materially modify the requirements as to eligibility for participation in the Plan, (iv) withdraw administration of the Plan from the Committee or (v) extend the period during which Awards may be granted.

17. *Governing Law.* The Plan and all determinations made and actions taken pursuant hereto, to the extent not otherwise governed by the Code or the securities laws of the United States, shall be governed by the laws of the State of Indiana and construed accordingly.

18. *Effective and Termination Dates.* The Plan shall become effective on the date of its adoption by the Board and Awards may be made immediately thereafter, but no Stock Award may be paid, Restricted Stock issued (unless containing restrictions requiring cancellation of such Restricted Stock if stockholder approval is not received) or Stock Option exercised under the Plan until it is approved by the holders of a majority of the shares of common Stock then outstanding. The Plan shall terminate on December 31, 2012, subject to earlier termination by the Board pursuant to Section 16.

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## CUMMINS INC. AND SUBSIDIARIES

## COMPUTATION OF RATIO OF EARNINGS TO FIXED CHARGES

In millions	Six months ended	
	June 28, 2009	June 29, 2008
<b>Earnings</b>		
Earnings before income taxes	\$ 120	\$ 761
Add:		
Fixed charges	40	48
Amortization of capitalized interest	2	2
Distributed income of equity investees	145	61
Less:		
Equity in earnings of investees	83	125
Capitalized interest	1	3
Earnings before fixed charges	<u>\$ 223</u>	<u>\$ 744</u>
<b>Fixed charges</b>		
Interest expense	\$ 17	\$ 23
Capitalized interest	1	3
Amortization of debt discount	1	1
Interest portion of rental expense(1)	21	21
Total fixed charges	<u>\$ 40</u>	<u>\$ 48</u>
Ratio of earnings to fixed charges	5.6	15.5

(1) Amounts represent those portions of rent expense that are reasonable approximations of interest costs.

Certification

I, Theodore M. Solso, certify that:

1. I have reviewed this report on Form 10-Q of Cummins Inc.;
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 and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the 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 periods 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 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 the registrant's board of directors:
  - 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: July 30, 2009

/s/ Theodore M. Solso  
THEODORE M. SOLSO  
*Chairman and Chief Executive Officer*

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Certification

I, Patrick J. Ward, certify that:

1. I have reviewed this report on Form 10-Q of Cummins Inc.;
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 and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the 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 periods 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 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 the registrant's board of directors:
  - 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: July 30, 2009

/s/ Patrick J. Ward

PATRICK J. WARD

*Vice President and Chief Financial Officer*

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**Cummins Inc.**  
**CERTIFICATION PURSUANT TO**  
**18 U.S.C. SECTION 1350,**  
**AS ADOPTED PURSUANT TO**

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Cummins Inc. (the "Company") on Form 10-Q for the period ended June 28, 2009, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), we, Theodore M. Solso, Chairman and Chief Executive Officer of the Company, and Patrick J. Ward, Vice President and Chief Financial Officer, certify, pursuant to 18 U.S.C. ss. 1350, as adopted pursuant to ss. 906 of the Sarbanes-Oxley Act of 2002, that to the best of 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.

July 30, 2009

/s/ Theodore M. Solso  
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THEODORE M. SOLSO  
*Chairman and Chief Executive Officer*

July 30, 2009

/s/ Patrick J. Ward  
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PATRICK J. WARD  
*Vice President and Chief Financial Officer*

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