

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 29, 2008

Commission File Number 1-4949

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 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 29, 2008, there were 202,701,208 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. 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.

CUMMINS INC. AND SUBSIDIARIES
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PART I. FINANCIAL INFORMATION

ITEM 1. Condensed Financial Statements

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

	Three months ended		Six months ended	
	June 29, 2008	July 1, 2007	June 29, 2008	July 1, 2007
	in millions (except per share amounts)			
NET SALES (a)	\$ 3,887	\$ 3,343	\$ 7,361	\$ 6,160
Cost of sales	3,008	2,673	5,775	4,938
GROSS MARGIN	879	670	1,586	1,222
OPERATING EXPENSES AND INCOME				
Selling, general and administrative expenses	370	314	721	597
Research, development and engineering expenses	104	74	207	154
Equity, royalty and interest income from investees (Note 5)	69	52	136	88
Flood damage expenses (Note 11)	6	--	6	--
Other operating income (expense), net	--	7	(1)	5
OPERATING INCOME	468	341	787	564
Interest income	4	7	10	18
Interest expense	12	14	23	30
Other (expense) income, net	(3)	6	(13)	15
INCOME BEFORE INCOME TAXES AND MINORITY INTERESTS	457	340	761	567
Income tax expense	147	112	249	187
Minority interests in income of consolidated subsidiaries	17	14	29	23
NET INCOME	\$ 293	\$ 214	\$ 483	\$ 357
EARNINGS PER COMMON SHARE				
Basic	\$ 1.50	\$ 1.07	\$ 2.47	\$ 1.79
Diluted	\$ 1.49	\$ 1.06	\$ 2.46	\$ 1.77
WEIGHTED AVERAGE SHARES OUTSTANDING				
Basic	195.2	199.9	195.1	200.0
Dilutive effect of stock compensation awards	1.4	1.4	1.4	1.2
Diluted	196.6	201.3	196.5	201.2
CASH DIVIDENDS DECLARED PER SHARE	\$ 0.125	\$ 0.09	\$ 0.25	\$ 0.18

(a) Includes sales to nonconsolidated equity investees of \$570 million and \$1,082 million and \$368 million and \$822 million for the three and six months ended June 29, 2008, and July 1, 2007, respectively.

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

	June 29, 2008	December 31, 2007
in millions (except par value)		
ASSETS		
Current assets		
Cash and cash equivalents	\$ 522	\$ 577
Marketable securities	107	120
Accounts and notes receivable, net		
Trade and other	2,079	1,754
Nonconsolidated equity investees	298	244
Inventories (Note 6)	1,924	1,692
Deferred income taxes	296	276
Prepaid expenses and other current assets	186	152
Total current assets	5,412	4,815
Long-term assets		
Property, plant and equipment	4,443	4,313
Accumulated depreciation	(2,743)	(2,668)
Property, plant and equipment, net	1,700	1,645
Investments and advances related to equity method investees	629	514
Goodwill and other intangible assets, net	572	538
Deferred income taxes and other assets	642	683
Total assets	\$ 8,955	\$ 8,195
LIABILITIES		
Current liabilities		
Current portion of long-term debt and loans payable	\$ 71	\$ 119
Accounts payable (principally trade)	1,460	1,263
Current portion of accrued product warranty	372	337
Accrued compensation, benefits and retirement costs	338	441
Other accrued expenses	695	551
Total current liabilities	2,936	2,711
Long-term liabilities		
Long-term debt	586	555
Pensions and other postretirement benefits	619	633
Other liabilities and deferred revenue	673	594
Total liabilities	4,814	4,493
Commitments and contingencies (Note 8)	—	—
MINORITY INTERESTS	309	293
SHAREHOLDERS' EQUITY		
Common stock, \$2.50 par value, 500 shares authorized, 221.5 and 220.4 shares issued	1,734	1,719
Retained earnings	3,087	2,660
Treasury stock, at cost, 18.8 and 18.2 shares	(634)	(593)
Common stock held by employee benefits trust, at cost, 6.5 and 6.5 shares	(79)	(79)
Unearned compensation	(7)	(11)
Accumulated other comprehensive loss		
Defined benefit postretirement plans	(368)	(378)
Other	99	91
Total accumulated other comprehensive loss	(269)	(287)
Total shareholders' equity	3,832	3,409
Total liabilities, minority interests and shareholders' equity	\$ 8,955	\$ 8,195

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

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

	Six months ended	
	June 29, 2008	July 1, 2007
in millions		
CASH FLOWS FROM OPERATING ACTIVITIES		
Net income	\$ 483	\$ 357
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	158	142
Net gain on disposal of property, plant and equipment	(2)	(4)
Deferred income taxes	14	47
Equity in earnings of investees, net of dividends	(62)	(22)
Minority interest in income of consolidated subsidiaries	29	23
Pension expense (Note 4)	36	49
Pension contributions	(39)	(102)
Other post-retirement benefits expense, net of cash payments	(5)	(16)
Stock-based compensation expense	17	12
Excess tax benefits on stock-based awards	(12)	(10)
Translation and hedging activities	8	(8)
Changes in current assets and liabilities, net of acquisitions and dispositions:		
Accounts and notes receivable	(316)	(287)
Inventories	(202)	(236)
Other current assets	(16)	(10)
Accounts payable	172	215
Accrued expenses	102	(39)
Changes in long-term liabilities	47	37

Other, net	(6)	8
Net cash provided by operating activities	406	156
CASH FLOWS FROM INVESTING ACTIVITIES		
Capital expenditures	(201)	(108)
Investments in internal use software	(36)	(28)
Proceeds from disposals of property, plant and equipment	10	19
Investments in and advances to equity investees	(41)	(28)
Acquisition of businesses, net of cash acquired	(76)	(20)
Investments in marketable securities—acquisitions	(158)	(194)
Investments in marketable securities—liquidations	159	191
Other, net	(13)	(8)
Net cash used in investing activities	(356)	(176)
CASH FLOWS FROM FINANCING ACTIVITIES		
Proceeds from borrowings	77	4
Payments on borrowings and capital lease obligations	(101)	(115)
Net borrowings under short-term credit agreements	1	(8)
Distributions to minority shareholders	(6)	(10)
Dividend payments on common stock	(51)	(38)
Repurchases of common stock	(45)	(36)
Excess tax benefits on stock-based awards	12	10
Other, net	2	(6)
Net cash used in financing activities	(111)	(199)
EFFECT OF EXCHANGE RATE CHANGES ON CASH AND CASH EQUIVALENTS		
	6	5
Net decrease in cash and cash equivalents	(55)	(214)
Cash and cash equivalents at beginning of year	577	840
CASH AND CASH EQUIVALENTS AT END OF PERIOD	<u>\$ 522</u>	<u>\$ 626</u>

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

CUMMINS INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY
(Unaudited)

	Common Stock	Additional paid-in Capital	Retained Earnings	Accumulated Other Comprehensive Loss	Treasury Stock	Common Stock Held in Trust	Unearned Compensation	Total Shareholders' Equity
in millions								
BALANCE AT DECEMBER 31, 2006	\$ 137	\$ 1,500	\$ 2,009	\$ (526)	\$ (212)	\$ (92)	\$ (14)	\$ 2,802
Comprehensive income:								
Net income			357					357
Other comprehensive income (loss):								
Unrealized gain on derivatives				4				4
Foreign currency translation adjustments				74				74
Change in pensions and other postretirement defined benefit plans				(25)				(25)
Total comprehensive income								410
Issuance of shares	1	6			3			10
Stock splits	138	(138)						
Acquisition of shares					(36)			(36)
Cash dividends on common stock			(38)					(38)
Stock option exercises		1						1
Other shareholder transactions		8	1				1	10
BALANCE AT JULY 1, 2007	\$ 276	\$ 1,377	\$ 2,329	\$ (473)	\$ (245)	\$ (92)	\$ (13)	\$ 3,159
BALANCE AT DECEMBER 31, 2007	\$ 551	\$ 1,168	\$ 2,660	\$ (287)	\$ (593)	\$ (79)	\$ (11)	\$ 3,409
Comprehensive income:								
Net income			483					483
Other comprehensive income (loss):								
Unrealized loss on marketable securities				(4)				(4)
Unrealized gain on derivatives				18				18
Foreign currency translation adjustments				(6)				(6)

Change in pensions and other postretirement defined benefit plans															12						12
Total comprehensive income																					503
Effect of changing pension plan measurement date pursuant to SFAS No. 158																					(7)
Issuance of shares	3	(1)																			2
Acquisition of shares																					(45)
Cash dividends on common stock																					(51)
Stock option exercises																					3
Other shareholder transactions																					14
BALANCE AT JUNE 29, 2008	\$	554	\$	1,180	\$	3,087	\$	(269)	(1)	\$	(634)	\$	(79)	\$	(7)	\$					3,832

(1) Comprised of defined benefit postretirement plans of \$(368) million, foreign currency translation adjustments of \$76 million, unrealized gain on marketable securities of \$2 million and unrealized gain on derivatives of \$21 million.

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

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 global power leader 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, 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 quarter of 2008 and 2007 ended on June 29, and July 1, respectively. The interim periods for both 2008 and 2007 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.

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 for the three and six months ended June 29, 2008, was \$272 million and \$503 million, respectively. Total comprehensive income for the three and six months ended July 1, 2007, was \$254 million and \$410 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, 2007. 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 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 September 2006, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standard (SFAS) No. 157, "Fair Value Measurements" (SFAS 157), which defines fair value, establishes a framework for measuring fair value and expands disclosures about fair value measurements. The adoption of SFAS 157, effective January 1, 2008, did not have a material impact on our *Condensed Consolidated Financial Statements*. See Note 9 for further information regarding the adoption of this standard.

Accounting Pronouncements Issued But Not Yet Effective

In December 2007, the FASB issued SFAS No. 141 (revised 2007), "Business Combinations" (SFAS 141R), which is effective for fiscal years beginning after December 15, 2008. SFAS 141R makes significant changes to both the accounting and disclosures related to the acquisition of a business and could materially impact how we account for future business combination transactions. Because the standard will only impact transactions entered into after January 1, 2009, SFAS 141R will not impact our *Condensed Consolidated Financial Statements* upon adoption.

In December 2007, the FASB issued SFAS No. 160, "Noncontrolling Interests in Consolidated Financial Statements" (SFAS 160), which is effective for fiscal years beginning after December 15, 2008. SFAS 160 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. For Cummins, the most significant impact of the standard, at adoption, will be to reclass our minority interests (\$309 million at June 29, 2008) to be included as a part of equity, which may affect certain performance and equity ratios. We are currently evaluating the potential additional impact that SFAS 160 may have on our *Condensed Consolidated Financial Statements*.

In March 2008, the FASB issued SFAS No. 161, "Disclosures about Derivative Instruments and Hedging Activities" (SFAS 161), which is effective for fiscal years beginning after November 15, 2008. SFAS 161 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 do not expect the adoption of SFAS 161 to have a material impact on our *Condensed Consolidated Financial Statements*, but are still evaluating the additional disclosure requirements.

NOTE 4. PENSION AND OTHER POSTRETIREMENT BENEFITS

We sponsor both funded and unfunded domestic and foreign defined benefit pension and postretirement plans. Contributions to these plans for the three and six month periods ended June 29, 2008 and July 1, 2007, respectively were as follows:

	Three months ended		Six months ended	
	June 29, 2008	July 1, 2007	June 29, 2008	July 1, 2007
	in millions			
Defined benefit plans:				
Voluntary	\$ 12	\$ 20	24	60
Mandatory	14	41	30	68
Total defined benefit plans	\$ 26	\$ 61	54	128
Defined contribution plans	\$ 8	\$ 4	18	15

We presently anticipate contributing \$90 million to \$100 million to our defined benefit pension plans in 2008 and paying approximately \$60 million in claims and premiums for other postretirement benefits. The \$90 million to \$100 million of contributions for the full year includes voluntary contributions of \$70 million to \$75 million. These contributions and payments include payments from Company funds to either increase pension assets or to make direct payments to plan participants.

In September 2006, the FASB issued SFAS No. 158, "Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans – an amendment of FASB Statements No. 87, 88, 106 and 132(R)" (SFAS 158). This statement requires balance sheet recognition of the overfunded or underfunded status of pension and postretirement benefit plans. In addition, the measurement date (the date at which plan assets and the benefit obligation are measured) is required to be the company's fiscal year end. Except for the measurement date provisions, which are not effective until fiscal years ending after December 15, 2008, the provisions of SFAS 158 were effective for fiscal years ending after December 15, 2006 and as such, were adopted during 2006.

We have adopted the measurement date provisions of SFAS 158 effective January 1, 2008. The majority of our pension and postretirement plans previously used a November 30 measurement date. All plans are now measured at December 31, consistent with the company's fiscal year end. The non-cash effect of the adoption of the measurement date provisions of SFAS 158 decreased shareholders' equity by approximately \$7 million (\$5 million after-tax) and increased long-term liabilities by approximately \$10 million. There was no effect on our results of operations.

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

	Pension				Postretirement Benefits	
	U.S. Plans		Non-U.S. Plans			
	June 29, 2008	July 1, 2007	June 29, 2008	July 1, 2007	June 29, 2008	July 1, 2007
	Three months ended					
	in millions					
Service cost	\$ 12	\$ 12	\$ 7	\$ 8	\$ —	\$ —
Interest cost	29	27	16	16	8	7
Expected return on plan assets	(38)	(35)	(19)	(18)	—	—
Amortization of prior service cost (credit)	—	(1)	1	1	(2)	(2)
Recognized net actuarial loss (gain)	5	8	5	7	(1)	—
Net periodic benefit cost	<u>\$ 8</u>	<u>\$ 11</u>	<u>\$ 10</u>	<u>\$ 14</u>	<u>\$ 5</u>	<u>\$ 5</u>

	Pension				Postretirement Benefits	
	U.S. Plans		Non-U.S. Plans			
	June 29, 2008	July 1, 2007	June 29, 2008	July 1, 2007	June 29, 2008	July 1, 2007
	Six months ended					
	in millions					
Service cost	\$ 24	\$ 23	\$ 14	\$ 16	\$ —	\$ —
Interest cost	58	54	32	31	16	15
Expected return on plan assets	(76)	(70)	(38)	(35)	—	—
Amortization of prior service cost (credit)	—	(1)	2	2	(5)	(5)
Recognized net actuarial loss (gain)	10	16	10	13	(1)	—
Net periodic benefit cost	<u>\$ 16</u>	<u>\$ 22</u>	<u>\$ 20</u>	<u>\$ 27</u>	<u>\$ 10</u>	<u>\$ 10</u>

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:

	Three months ended		Six months ended	
	June 29, 2008	July 1, 2007	June 29, 2008	July 1, 2007
	in millions			
North American distributors	\$ 24	\$ 22	\$ 46	\$ 37
Dongfeng Cummins Engine Company, Ltd	20	11	34	17
Chongqing Cummins Engine Company, Ltd	7	5	14	10
Tata Cummins Ltd.	2	4	7	6
Cummins MerCruiser Diesel Marine LLC.	2	4	6	7
Shanghai Fleetguard Filter Co. Ltd.	2	2	5	3
All others	<u>6</u>	<u>2</u>	<u>13</u>	<u>3</u>

Cummins share of net earnings	63	50	125	83
Royalty and interest income	6	2	11	5
Equity, royalty and interest income from investees	\$ 69	\$ 52	\$ 136	\$ 88

NOTE 6. INVENTORIES

Inventories included the following:

	June 29, 2008	December 31, 2007
in millions		
Finished products	\$ 945	\$ 770
Work-in-process and raw materials	1,075	1,007
Inventories at FIFO cost	2,020	1,777
Excess of FIFO over LIFO	(96)	(85)
Total inventories	\$ 1,924	\$ 1,692

NOTE 7. 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:

	Six months ended	
	June 29, 2008	July 1, 2007
in millions		
Balance, beginning of period	\$ 749	\$ 652
Provision for warranties issued	218	182
Deferred revenue on extended warranty contracts sold	43	32
Payments	(175)	(150)
Amortization of deferred revenue on extended warranty contracts	(31)	(24)
Changes in estimates for pre-existing warranties	50	(13)
Foreign currency translation	—	3
Balance, end of period	\$ 854	\$ 682

The amount of deferred revenue related to extended coverage programs at June 29, 2008, was \$200 million. At June 29, 2008, we had \$16 million of receivables related to estimated supplier recoveries of which \$7 million was included in "Trade and other" receivables and \$9 million was included in "Deferred income taxes and other assets" on our *Condensed Consolidated Balance Sheets*.

NOTE 8. COMMITMENTS AND CONTINGENCIES

We are defendants in a number of pending legal actions, including actions related to the use and performance of our products. We carry product liability insurance covering significant claims for damages involving personal injury and property damage. We also establish reserves for these and other matters in which losses are probable and can be reasonably estimated. In the event we are determined to be liable for damages in connection with actions and proceedings, the unaccrued portion of such liability is not expected to be material. We also have been identified as a potentially responsible party at several waste disposal sites under U.S. 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. We deny liability with respect to many of these legal actions and environmental proceedings and are vigorously defending such actions or proceedings. We have established reserves that we believe are adequate for our expected future liability in such actions and proceedings where the nature and extent of such liability can be reasonably estimated based upon presently available information.

U.S. Distributor Guarantees

Since 1997 we have had an operating agreement with a financial institution that requires us to guarantee revolving loans, equipment term loans and leases, real property loans and letters of credit made by the financial institution to certain independent Cummins distributors in the United States, and to certain distributors in which we own an equity interest. In the first quarter of 2006, we amended, restated and simplified the terms of the operating agreement and removed the Cummins guarantee of distributor borrowings.

If any distributor defaults under its financing arrangement with the financial institution, and the maturity of amounts owed under the agreement is accelerated, then we are 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 operating agreement will continue to be in effect until February 7, 2009.

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 29, 2008, was \$8 million.

Other Guarantees

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. The maximum potential loss related to these other guarantees is \$4 million at June 29, 2008.

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. At June 29, 2008, if we were to stop purchasing from each of these suppliers, the amount of the penalty would be approximately \$111 million, of which \$93 million relates to a new contract executed in the second quarter of 2008. We entered into this contract with an engine parts supplier that would require a maximum penalty of \$93 million from 2008 to 2013, if we did not meet our minimum purchase requirements for all six years. However, based on current forecasts, we do not anticipate paying any penalties under these contracts. This arrangement enables us to secure critical components important to our growth.

In July 2008, Beijing Foton Cummins Engine Company (BFCEC), a 50% owned entity accounted for under the equity method, entered into a line of credit agreement for borrowing capacity of up to \$175 million (at current exchange rates). The line will be used primarily to fund equipment purchases for the new manufacturing plant. As a part of this transaction, we guaranteed 50% of any outstanding borrowings up to a maximum guarantee of \$88 million (at current exchange rates). As BFCEC borrows funds under this line, we will record a liability for the fair value of this guarantee in accordance with FASB Interpretation No. 45. The liability will be adjusted quarterly as the

balance in the line of credit changes. The offset to this liability will be an increase in our investment in the joint venture.

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 29, 2008, we have committed to invest \$3 million into existing joint ventures. It is expected that \$1 million will be funded in 2008, while \$2 million will be funded in 2009.

NOTE 9. FAIR VALUE OF FINANCIAL INSTRUMENTS

In September 2006, the FASB issued SFAS 157, which defines fair value, establishes a market-based framework for measuring fair value and expands disclosures about fair value measurements. SFAS 157 is applicable whenever another accounting pronouncement requires or permits assets and liabilities to be measured at fair value. SFAS 157 does not expand or require any new fair value measures. SFAS 157 is effective for financial assets and financial liabilities for fiscal years beginning after November 15, 2007. FASB Staff Position (FSP) 157-2 "Partial Deferral of the Effective Date of Statement No. 157" (FSP 157-2), deferred the effective date of SFAS 157 for most non-financial assets and non-financial liabilities to fiscal years beginning after November 15, 2008. We adopted this statement prospectively for our fiscal year beginning January 1, 2008, except for non-financial assets and non-financial liabilities as deferred until January 1, 2009, by FSP 157-2. SFAS 157 does not require retroactive restatement of prior periods. The adoption of SFAS 157 did not materially impact our consolidated financial statements.

As defined in SFAS 157, fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (exit price). We utilize market data or assumptions that market participants would use in pricing the asset or liability, including assumptions about risk and the risks inherent in the inputs to the valuation technique. These inputs can be readily observable, market corroborated, or generally unobservable. We primarily apply the market approach for recurring fair value measurements and utilize the best available information. Accordingly, we utilize valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs. The company is able to classify fair value balances based on the observability of those inputs. SFAS 157 establishes a fair value hierarchy that prioritizes the inputs used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (level 1 measurement) and the lowest priority to unobservable inputs (level 3 measurement). The three levels of the fair value hierarchy defined by SFAS 157 are as follows:

Level 1 – Quoted prices are available in active markets for identical assets or liabilities as of the reporting date. Active markets are those in which transactions for the asset or liability occur in sufficient frequency and volume to provide pricing information on an ongoing basis. Level 1 primarily consists of financial instruments such as exchange-traded derivatives, listed equities and publicly traded bonds.

Level 2 – Pricing inputs are other than quoted prices in active markets included in level 1, which are either directly or indirectly observable as of the reported date. Level 2 includes those financial instruments that are valued using models or other valuation methodologies. These models are primarily industry-standard models that consider various assumptions, including quoted forward prices for commodities, time value, volatility factors, and current market and contractual prices for the underlying instruments, as well as other relevant economic measures. Substantially all of these assumptions are observable in the marketplace throughout the full term of the instrument, can be derived from observable data or are supported by observable levels at which transactions are executed in the marketplace. Instruments in this category include non-exchange-traded derivatives such as over-the-counter forwards and options.

Level 3 – Pricing inputs include significant inputs that are generally less observable from objective sources. These inputs may be used with internally developed methodologies that result in management's best estimate of fair value. At each balance sheet date, the company performs an analysis of all instruments subject to SFAS 157 and includes in level 3 all of those whose fair value is based on significant unobservable inputs. At June 29, 2008, we did not have any level 3 financial assets or liabilities.

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.

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. We enter into hedging transactions with banking institutions that have strong credit ratings, and thus the credit risk associated with these contracts is not considered significant. For more discussion regarding our derivative instruments, see Note 18 to the *Consolidated Financial Statements* in our Annual Report on Form 10-K for the year ended December 31, 2007.

The following table summarizes the fair value of our financial instruments at June 29, 2008:

	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)	
	in millions			
Available-for-sale securities	\$ 53	\$ 54	\$ —	\$ 107
Net derivative asset ⁽¹⁾	—	38	—	38
Total	\$ 53	\$ 92	\$ —	\$ 145

(1)Includes approximately \$2 million of Level 2 derivative liabilities, which are netted against derivative assets.

NOTE 10. ACQUISITION OF BUSINESSES

During the first six months of 2008, we purchased a majority interest in two previously independent North American distributors in order to increase our ownership interests

in key portions of the distribution channel. The acquisitions were accounted for under the purchase method of accounting and resulted in an aggregate purchase price of \$76 million which we funded with \$54 million of borrowings and \$22 million of cash. The assets of the acquired businesses were primarily accounts receivable, inventory and fixed assets. No goodwill was generated from either transaction. During the first three months of 2007, we purchased the remaining interest in a manufacturing joint venture and acquired ownership of an international independent distributor for approximately \$20 million. We recorded goodwill of \$13 million for these two transactions.

NOTE 11. FLOOD DAMAGE

In June 2008, Columbus, Indiana experienced significant flooding which impacted some of our facilities. One manufacturing facility was partially flooded. Our technical center, which houses engineering staff and contains dynamometer test cells and labs, was more severely impacted by the event which caused temporary displacement of the engineering workforce and suspension of testing for approximately five weeks. Critical testing was transferred to other Cummins facilities and external suppliers to minimize the interruption.

We have insurance, subject to a deductible, which covers the physical damage to the facilities, costs of clean up and repair and business interruption that will limit the economic impact of this event to the company. In the second quarter of 2008, we recorded a charge of \$6 million representing the insurance deductible for this event and we anticipate that all other costs will be reimbursed through our insurance coverage. The clean up costs are estimated to range from \$45 million to \$50 million and will be spent over the remainder of 2008. We estimate the replacement value of assets impacted was approximately \$90 million and we anticipate that asset replacements will be reflected in capital spending over the next six quarters. Most of these assets were fully depreciated at the time of the flood. Although this claim is significant we believe we have sufficient insurance coverage after this claim for any future events.

We are using our research and engineering facilities in other regions not impacted by the flood to continue our engineering and development activities. We have already resumed operations in our test cells and will secure additional testing capacity outside our facility at additional cost.

We are confident that our insurance coverage will limit the impact of this event.

NOTE 12. 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 before interest expense, income taxes and minority interests) as the primary basis for the chief operating decision-maker to evaluate the performance of each operating segment.

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

	Engine	Power Generation	Components	Distribution	Non-segment items(1)	Total
	in millions					
Three months ended June 29, 2008						
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
Three months ended July 1, 2007						
External sales	\$ 1,855	\$ 605	\$ 516	\$ 367	\$ —	\$ 3,343
Intersegment sales	254	164	241	1	(660)	—
Total sales	2,109	769	757	368	(660)	3,343
Depreciation and amortization(2)	46	10	15	3	—	74
Research, development and engineering expense	51	9	14	—	—	74
Equity, royalty and interest income from investees	25	4	(1)	24	—	52
Interest income	6	1	—	—	—	7
Segment EBIT	186	88	48	46	(14)	354
Six months ended June 29, 2008						
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
Six months ended July 1, 2007						
External sales	\$ 3,377	\$ 1,136	\$ 971	\$ 676	\$ —	\$ 6,160
Intersegment sales	497	308	443	1	(1,249)	—
Total sales	3,874	1,444	1,414	677	(1,249)	6,160
Depreciation and amortization(2)	87	20	29	5	—	141
Research, development and engineering expense	103	17	34	—	—	154
Equity, royalty and interest income from investees	42	7	(2)	41	—	88
Interest income	14	3	1	—	—	18
Segment EBIT	314	165	72	85	(39)	597

(1) Includes intersegment sales and profit in inventory eliminations and unallocated corporate expenses including flood related expenses.

(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.

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

	Three months ended		Six months ended	
	June 29, 2008	July 1, 2007	June 29, 2008	July 1, 2007
	in millions			
Segment EBIT	\$ 469	\$ 354	\$ 784	\$ 597
Less:				
Interest expense	12	14	23	30
Income before income taxes and minority interests	\$ 457	\$ 340	\$ 761	\$ 567

NOTE 13. SUBSEQUENT EVENTS

New Revolving Credit Agreement

On June 30, 2008, we entered into a Three-Year Revolving Credit Agreement, (the "Credit Agreement"), with a syndicate of lenders and issuers named therein. The Credit Agreement provides a \$1.1 billion senior unsecured revolving credit facility (the "Credit Facility"), the proceeds of which are to be used to provide working capital or for other general corporate purposes of Cummins.

The Credit Facility matures on June 30, 2011. The Credit Facility is unsecured and amounts payable under it will rank pro rata with all other unsecured, unsubordinated indebtedness of Cummins. Borrowings under the Credit Facility will primarily be denominated in U.S. dollars. A portion of the Credit Facility, up to \$200 million, is available for Letters of Credit denominated in U.S. dollars or Alternate Currencies. In addition, up to \$200 million of the Revolving Credit Facility will be available in Pounds Sterling or Euros. A portion of the Credit Facility, up to \$100 million, is available for swingline loans denominated in U.S. dollars. Loans will bear interest at (i) a base rate or (ii) a rate equal to LIBOR plus an applicable margin based on the credit ratings of Cummins outstanding senior unsecured long-term debt. Based on our current long-term debt ratings, the applicable margin on LIBOR loans will be 0.75% per annum. Loans may be prepaid without premium or penalty, subject to customary breakage costs.

The Credit Facility replaces a \$650 million in aggregate principal amount of revolving credit facility (Former Credit Agreement) maintained by Cummins which was terminated effective June 30, 2008.

The Credit Agreement includes covenants substantially similar to those in the Former Credit Agreement, including, among others, (a) a leverage ratio, (b) fixed charge coverage ratio, (c) limitations on priority indebtedness, (d) limitations on our ability to consummate a merger, consolidation or sale of all or substantially all of our assets and (e) limitations on our ability to change the nature of our business.

The obligation of Cummins to pay amounts outstanding under the Credit Facility may be accelerated upon the occurrence of an "Event of Default" as defined in the Credit Agreement. Such Events of Default include, among others, (a) Cummins failure to pay the principal of, or interest on, borrowings under the Credit Facility, (b) any representation or warranty of Cummins in the Credit Agreement proving to be materially false or misleading, (c) Cummins breach of any of its covenants contained in the Credit Agreement, and (d) the bankruptcy or insolvency of Cummins.

Joint Venture Transaction

In July 2008, we entered into a transaction with two Fiat group companies to (1) sell our one-third interest in the European Engine Alliance (EEA) joint venture and simultaneously (2) purchase the remaining 50% interest in Consolidated Diesel Corporation (CDC). As a result, we now own 100% of CDC and no longer have an ownership interest in EEA. On a net basis, Cummins received approximately \$4 million from the two transactions, subject to post-closing adjustments.

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 basis;
- 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; and
- other risk factors described in Part II of this report under the caption "Risk Factors."

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 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 2007 Annual Report on Form 10-K. Our MD&A is presented in the following sections:

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

EXECUTIVE SUMMARY

We are a global power leader 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, 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 Chrysler LLC, Daimler AG, Volvo AB, PACCAR Inc., International Truck and Engine Corporation (Navistar International Corporation), CNH Global N.V., Komatsu, Scania AB, Ford Motor Company 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 and rents power equipment for both standby and prime power uses. 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. 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 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. However, 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 upon our consolidated results. In the first six months of 2008, softness in the pick-up truck, recreational vehicle, and recreational marine markets worsened and evidence of a downturn in the United States economy became more evident in the second quarter. Despite these unfavorable conditions, we reported increased net sales and net income for the three and six month periods over the same periods in 2007 which represented the highest reported quarterly net sales and net income in our history. Approximately 54 percent of our 2007 sales came from countries other than the United States and that trend grew to 59 percent in the first six months of 2008, including 61 percent in the second quarter. The diversity of our business portfolio has contributed to the significant organic growth we have experienced over the past several years and is continuing into 2008.

RESULTS OF OPERATIONS

	Three Months Ended		Favorable/ (Unfavorable)		Six Months Ended		Favorable/ (Unfavorable)	
	June 29, 2008	July 1, 2007	Amount	Percent	June 29, 2008	July 1, 2007	Amount	Percent
	\$ in millions				\$ in millions			
Net sales	\$ 3,887	\$ 3,343	\$ 544	16%	\$ 7,361	\$ 6,160	\$ 1,201	19%
Cost of sales	3,008	2,673	(335)	(13)%	5,775	4,938	(837)	(17)%
Gross margin	879	670	209	31%	1,586	1,222	364	30%
Operating expenses and income								
Selling, general and administrative expenses	370	314	(56)	(18)%	721	597	(124)	(21)%
Research, development and engineering expenses	104	74	(30)	(41)%	207	154	(53)	(34)%
Equity, royalty and interest income from investees	69	52	17	33%	136	88	48	55%
Flood damage expenses	6	—	(6)	NM	6	—	(6)	NM
Other operating income (expense), net	—	7	(7)	(100)%	(1)	5	(6)	NM
Operating income	468	341	127	37%	787	564	223	40%
Interest income	4	7	(3)	(43)%	10	18	(8)	(44)%
Interest expense	12	14	2	14%	23	30	7	23%
Other (expense) income, net	(3)	6	(9)	NM	(13)	15	(28)	NM
Income before income taxes and minority interests	457	340	117	34%	761	567	194	34%
Income tax expense	147	112	(35)	(31)%	249	187	(62)	(33)%

Minority interest in income of consolidated subsidiaries	17	14	(3)	(21)%	29	23	(6)	(26)%
Net income	\$ 293	\$ 214	\$ 79	37%	\$ 483	\$ 357	\$ 126	35%

Net Sales

Net sales for the three and six months ended June 29, 2008, increased in all segments over the same periods in 2007, with record quarterly sales in all four business segments. The Engine segment led the increase in net sales for both the three and six month periods. Total sales in this segment increased \$277 million, or 13 percent, and \$721 million, or 19 percent, for the three and six month periods, respectively. The Engine segment benefited from an increase in our market share in the North American (includes the United States and Canada and excludes Mexico) heavy-duty truck, medium-duty truck and bus markets, strong demand in Latin American medium-duty truck, Mexican heavy-duty truck and international industrial markets. Engine segment sales were partially offset by a significant reduction in demand in light-duty automotive sales in North America. Power Generation segment sales increased \$169 million, or 22 percent, and \$281 million, or 19 percent, for the three and six months ended June 29, 2008, respectively, led by increased sales in our commercial and alternator businesses. Components segment sales increased \$98 million, or 13 percent, and \$261 million, or 18 percent, for the three and six months ended June 29, 2008, respectively, due to stronger sales in our turbocharger, fuel systems and emission solutions businesses. Similar demand drivers caused an increase in Distribution segment sales of \$213 million, or 58 percent, and \$349 million, or 52 percent, for the three and six months ended June 29, 2008, respectively. In addition, the acquisition of a majority ownership interest in two previously independent North American distributors during the first half of 2008 added approximately \$63 million and \$100 million of net sales to the Distribution segment for the three and six month periods, respectively. Intersegment sales increased \$213 million, or 32 percent, and \$411 million, or 33 percent, for the three and six months ended June 29, 2008, respectively, compared to the same periods in 2007.

Gross Margin

Gross margins for the three and six months ended June 29, 2008, improved primarily due to increased volumes and higher price realization which were partially offset by increased costs for new products and increased warranty expenses. The following table presents the significant drivers impacting gross margins for the three and six months ended June 29, 2008, to the comparable periods of 2007:

	Three months ended		Six months ended	
	2008 vs. 2007 change in millions			
Volume	\$	67	\$	180
Price		97		180
Product mix		42		76
Production costs		5		(10)
Currency		19		35
Warranty expense		(24)		(100)
Other		3		3
Total	\$	209	\$	364

Gross margin as a percentage of sales for the three and six month periods increased by 2.6 percentage points and 1.7 percentage points, respectively, as margin percentages increased in all four business segments. Engine segment margins increased for the three months ended June 29, 2008, primarily due to more favorable sales mix in the on-highway markets and improved engine and parts pricing which was partially offset by an increase in warranty expense. Engine segment margins increased in the first six months of 2008, compared to the same period in 2007, primarily due to higher engine volumes across most on-highway markets, the accompanying gross margin impact of higher absorption of fixed manufacturing costs, improved engine and parts pricing and more favorable sales mix in the on-highway markets. This was partially offset by an increase in warranty expense. Power Generation segment margins improved, for both the three and six month periods, primarily due to significant price realization, net of increased material costs, increased volumes and a more favorable product mix. The Components segment margins improved significantly, for both the three and six month periods, through price realization, manufacturing efficiencies and increased volumes in most of our businesses. The Distribution segment experienced improved margins, for both the three and six month periods, due to increased organic and acquisition related sales growth.

The provision for warranties issued for the three and six months ended June 29, 2008, were 2.9 percent and 3.0 percent of consolidated sales, compared to 3.1 percent and 3.0 percent for the same periods in 2007, respectively.

Selling, General and Administrative Expenses

Selling, general and administrative expenses for the three and six months ended June 29, 2008, increased compared to the same periods in 2007, primarily due to increased compensation and related expenses of \$13 million and \$38 million, increased consulting expenses of \$9 million and \$27 million and the acquisition of a majority ownership interest in two previously independent North American distributors during the first six months of 2008. Increased compensation and related expenses included salaries, variable compensation, and fringe benefits across the businesses in support of higher volumes and our growing business. Overall, selling, general and administrative expenses increased slightly as a percent of sales to 9.5 percent in 2008 compared to 9.4 percent in 2007 and 9.8 percent in 2008 compared to 9.7 percent in 2007 for the three and six month periods, respectively.

Research, Development and Engineering Expenses

Research, development and engineering expenses for the three and six months ended June 29, 2008, increased compared to the same periods in 2007 primarily due to higher spending on development programs for future products as well as increased compensation expense and related expenses. The increase in research, development and engineering expenses in the Engine segment relates to new product development for 2010 as well as research, development and engineering expenses for growth platforms across geographies. Increased compensation and related expenses include salaries, variable compensation, and fringe benefits, partially due to an increased number of employees to provide for our growing business. The Engine and Components segments accounted for \$19 million and \$10 million of the increase for the three month period and \$37 million and \$13 million of the increase for the six month period, respectively. Fluctuations in other miscellaneous research, development and engineering expenses were not significant individually or in the aggregate.

Equity, Royalty and Interest Income From Investees

Equity, royalty and interest income from investees for the three and six months ended June 29, 2008, increased compared to the same periods in 2007, primarily due to a \$9 million and \$17 million increase in earnings from Dongfeng Cummins Engine Company, Ltd., a \$2 million and \$9 million increase from our North American distributors and a \$2 million and \$4 million increase from Chongqing Cummins Engine Company Limited for the three and six month periods, respectively. Other joint ventures with increases for the six months ended June 29, 2008, compared to the same period in the prior year included Shanghai Fleetguard Filter Co., Ltd. and Tata Cummins Ltd.

Other Operating Income (Expense), Net

Other operating income (expense) for the three months ended June 29, 2008, decreased from income in 2007 to zero in 2008 while other operating income (expense) for the six months ended June 29, 2008, decreased from income in 2007 to expense in 2008. The major components of other operating income (expense) are royalty income, amortization of intangible assets and gains and losses on sale of fixed assets. The decrease in other operating income for the three and six months ended June 29, 2008, compared to the same periods for 2007, was primarily due to a \$5 million decrease in gains on the sale of assets for both periods in 2008 and an increase in the amortization of other intangibles of \$3 million and \$5 million for the three and six month periods of 2008, respectively. The decrease in other income for the six month period of 2008 was partially offset by an increase in royalty income of \$3 million during the first quarter of 2008. Other fluctuations in other operating income (expense) were not significant individually or in the aggregate.

Interest Expense

Interest expense for the three and six months ended June 29, 2008, decreased compared to the same periods in 2007 due to lower average debt balances.

Flood Damage Expenses

In June 2008, Columbus, Indiana experienced significant flooding which impacted some of our facilities. One manufacturing facility was partially flooded. Our technical center, which houses engineering staff and contains dynamometer test cells and labs, was more severely impacted by the event which caused temporary displacement of the engineering workforce and suspension of testing for approximately five weeks. Critical testing was transferred to other Cummins facilities and external suppliers to minimize the interruption.

We have insurance, subject to a deductible, which covers the physical damage to the facilities, costs of clean up and repair and business interruption that will limit the economic impact of this event to the company. In the second quarter of 2008, we recorded a charge of \$6 million representing the insurance deductible for this event and we anticipate that all other costs will be reimbursed through our insurance coverage. The clean up costs are estimated to range from \$45 million to \$50 million and will be spent over the remainder of 2008. We estimate the replacement value of assets impacted was approximately \$90 million and we anticipate that asset replacements will be reflected in capital spending over the next six quarters. Most of these assets were fully depreciated at the time of the flood. We will record an involuntary conversion gain for the difference between the insurance recovery of actual costs to replace the assets and the book value, which was approximately \$8 million at the time of the flood. This gain will be recognized as the assets are replaced over the next six quarters, with the majority recognized in the next four quarters. Although this claim is significant we believe we have sufficient insurance coverage after this claim for any future events.

We are using our research and engineering facilities in other regions not impacted by the flood to continue our engineering and development activities. We already resumed operations in our test cells and will secure additional testing capacity outside our facility at additional cost.

We are confident that our insurance coverage will limit the impact of this event.

Other (Expense) Income, Net

Other (expense) income for the three and six months ended June 29, 2008, decreased from income in 2007 to expense in 2008. The major components of other (expense) income include foreign currency exchange gains and losses, bank charges and other miscellaneous income and expenses. The fluctuation in other (expense) income was due to foreign currency exchange losses of approximately \$6 million and \$17 million for the three and six months ended June 29, 2008, compared to foreign currency exchange gains of \$1 million and \$10 million for the same periods in 2007. The unfavorable impact was primarily due to a weaker U.S. dollar, particularly compared to the Euro. There were no individual fluctuations in the components of miscellaneous income and expenses that were significant.

Income Tax Expense

Our effective tax rate for the three and six months ended June 29, 2008, was 32 percent and 33 percent, respectively. The current quarter includes a favorable adjustment to reduce our previously estimated annual tax rate from 34 to 33 percent, which is less than the 35 percent U.S. income tax rate primarily due to lower tax rates on increased foreign earnings. Our effective tax rate for both the three and six months ended July 1, 2007, was 33 percent. This rate was less than the 35 percent U.S. income tax rate primarily due to research tax credits and lower taxes on foreign earnings. The effective tax rate for the remainder of the year is expected to approximate 33 percent absent any discrete period activity.

OPERATING SEGMENT RESULTS

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 before interest expense, income taxes and minority 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

Financial data for the Engine segment was as follows:

	Three Months Ended		Favorable/ (Unfavorable)		Six Months Ended		Favorable/ (Unfavorable)	
	June 29, 2008	July 1, 2007	Amount	Percent	June 29, 2008	July 1, 2007	Amount	Percent
	\$ in millions				\$ in millions			
External sales	\$ 2,030	\$ 1,855	\$ 175	9%	\$ 3,915	\$ 3,377	\$ 538	16%
Intersegment sales	356	254	102	40%	680	497	183	37%
Total sales	2,386	2,109	277	13%	4,595	3,874	721	19%
Depreciation and amortization	46	46	—	NM	90	87	(3)	(3)%
Research, development and engineering expenses	70	51	(19)	(37)%	140	103	(37)	(36)%
Equity, royalty and interest income from investees	32	25	7	28%	65	42	23	55%
Interest income	2	6	(4)	(67)%	5	14	(9)	(64)%
Segment EBIT	221	186	35	19%	415	314	101	32%
Segment EBIT as a percentage of net sales	9.3%	8.8%	0.5 percentage points		9.0%	8.1%	0.9 percentage points	

Sales

Engine segment sales increased for the three and six months ended June 29, 2008, over the same periods in 2007, primarily due to an increase in our market share in the North American (includes the United States and Canada and excludes Mexico) heavy-duty truck and medium-duty truck and bus markets, as well as strong demand in Latin American medium-duty truck, Mexican heavy-duty truck and international industrial markets. Segment sales were partially offset by a significant reduction in demand in light-duty automotive sales in North America. The increase in the North American heavy-duty and medium-duty truck markets was primarily due to weaker demand in the first six months of 2007 resulting from the 2006 pre-buy to replace trucks ahead of the 2007 emissions regulations change. The increase in Mexican heavy-duty sales was the result of pre-buy activity ahead of Mexico's new July 1, 2008, emissions requirements. The medium-duty truck increase was mainly driven by strong economic conditions in Brazil while the increase in bus sales was driven by market share gains in the North American bus market. Total on-highway-related sales were 54 percent and 55 percent in 2008, compared to 57 percent and 55 percent in 2007 for the three and six month periods, respectively. Industrial markets were positive compared to the same period in 2007, with increased volumes in most markets, led by the international construction, mining and commercial marine markets. The light-duty automotive decline was primarily due to the 64 percent and 45 percent decline in units sold to Chrysler during the three and six months ended June 29, 2008, over the same period in 2007, due to the deteriorating demand for light duty trucks in North America as the result of the softening U.S. economy and concerns over fuel prices. We do not expect a recovery in demand for light-duty trucks in North America in 2008.

Segment EBIT

Engine segment EBIT increased for the three months ended June 29, 2008, primarily due to a more favorable sales mix in the on-highway markets and improved engine and parts pricing which was partially offset by an increase in warranty expense. Engine segment EBIT increased in the first six months of 2008, compared to the same period in 2007, primarily due to higher engine volumes across most on-highway markets, the accompanying gross margin impact of higher absorption of fixed manufacturing costs,

improved engine and parts pricing and more favorable sales mix in the on-highway markets. This was partially offset by an increase in warranty expense. Gross margin increased \$65 million, or 19 percent, and \$165 million, or 26 percent, and gross margin percentage improved by almost one percentage point for the three and six months ended June 29, 2008, as compared to the same periods in 2007, respectively. Selling, general and administrative expenses increased \$12 million, or 9 percent, and \$33 million, or 12 percent; however, selling, general and administrative expenses improved as a percentage of sales by 0.3 percentage points and 0.4 percentage points for the three and six months ended June 29, 2008, as compared to the same periods in 2007, respectively. Research, development and engineering expenses increased \$19 million, or 37 percent, and \$37 million, or 36 percent, and increased 0.5 percentage points and 0.4 percentage points as a percentage of sales for the three and six months ended June 29, 2008, respectively, as compared to the same periods in 2007, as a result of increased spending on emissions related programs.

A summary of Engine sales by market follows:

	Three Months Ended		Favorable/ (Unfavorable)		Six Months Ended		Favorable/ (Unfavorable)	
	June 29, 2008	July 1, 2007	Amount	Percent	June 29, 2008	July 1, 2007	Amount	Percent
	\$ in millions				\$ in millions			
Heavy-duty truck	\$ 672	\$ 473	\$ 199	42%	\$ 1,208	\$ 897	\$ 311	35%
Medium-duty truck and bus	422	320	102	32%	819	526	293	56%
Light-duty automotive and RV	205	418	(213)	(51)%	479	706	(227)	(32)%
Total on-highway	1,299	1,211	88	7%	2,506	2,129	377	18%
Industrial	804	665	139	21%	1,537	1,282	255	20%
Stationary power	283	233	50	21%	552	463	89	19%
Total sales	\$ 2,386	\$ 2,109	\$ 277	13%	\$ 4,595	\$ 3,874	\$ 721	19%

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

	Three Months Ended		Favorable/ (Unfavorable)		Six Months Ended		Favorable/ (Unfavorable)	
	June 29, 2008	July 1, 2007	Amount	Percent	June 29, 2008	July 1, 2007	Amount	Percent
Midrange	114,800	133,500	(18,700)	(14)%	229,000	240,700	(11,700)	(5)%
Heavy-duty	31,700	23,800	7,900	33%	56,400	42,800	13,600	32%
High-horsepower	5,500	4,700	800	17%	10,100	9,000	1,100	12%
Total unit shipments	152,000	162,000	(10,000)	(6)%	295,500	292,500	3,000	1%

Power Generation

Financial data for the Power Generation segment was as follows:

	Three Months Ended		Favorable/ (Unfavorable)		Six Months Ended		Favorable/ (Unfavorable)	
	June 29, 2008	July 1, 2007	Amount	Percent	June 29, 2008	July 1, 2007	Amount	Percent
	\$ in millions				\$ in millions			
External sales	\$ 692	\$ 605	\$ 87	14%	\$ 1,273	\$ 1,136	\$ 137	12%
Intersegment sales	246	164	82	50%	452	308	144	47%
Total sales	938	769	169	22%	1,725	1,444	281	19%
Depreciation and amortization	11	10	(1)	(10)%	22	20	(2)	(10)%
Research, development and engineering expenses	10	9	(1)	(11)%	20	17	(3)	(18)%
Equity, royalty and interest income from investees	6	4	2	50%	11	7	4	57%
Interest income	1	1	—	NM	2	3	(1)	(33)%
Segment EBIT	115	88	27	31%	193	165	28	17%
Segment EBIT as a percentage of net sales	12.3%	11.4%	0.9 percentage points		11.2%	11.4%	(0.2) percentage points	

Sales

Power Generation segment sales increased for the three and six months ended, June 29, 2008, compared to the same periods in 2007, primarily due to increased sales of 35 percent and 29 percent in our commercial business and 14 percent and 16 percent in our alternator business, as well as improved price realization for the three and six month periods, respectively. Our commercial business, the largest line of business in this segment, increased as the result of strong demand across all regions, especially in the Middle East, Latin America, the U.K. and India for the three and six month periods while the three month period also had strong demand in China. The alternator business also experienced strong international growth, especially in the U.K. and China for the three and six months ended June 29, 2008, as compared to the same periods in 2007.

Segment EBIT

Power Generation segment EBIT increased for the three and six months ended, June 29, 2008, over the same periods in 2007, as significant price realization, net of increased material costs, increased volume and a more favorable product mix improved segment earnings. Gross margin improved \$36 million, or 25 percent, and \$61 million, or 22 percent, and the gross margin percentage improved by 0.4 percentage points and 0.5 percentage points for the three and six month periods over the same periods in 2007. These increases to gross margin were offset by increases in materials costs and increased commodity prices. Selling, general and administrative expenses increased by \$5 million, or 8 percent, and \$23 million, or 20 percent, for the three and six months ended June 29, 2008, compared to the same periods in 2007, respectively; however, selling, general and administrative expenses improved as a percentage of sales by 0.9 percentage points for the three month period and remained flat for the six month period as compared to the same periods in 2007. Selling, general and administrative expenses increased over the same periods in 2007 due to an increased work force to support growth in the power generation market globally. Research, development, and engineering expenses increased \$1 million, or 1 percent, and \$3 million, or 18 percent, and remained flat as a percentage of sales for the three and six month periods compared to the same periods in 2007, respectively.

A summary of Power Generation engine shipments (including engines sold in power generation units) during the quarter by engine category follows:

	Three Months Ended		Favorable/ (Unfavorable)		Six Months Ended		Favorable/ (Unfavorable)	
	June 29, 2008	July 1, 2007	Amount	Percent	July 29, 2008	July 1, 2007	Amount	Percent
Midrange	8,500	7,400	1,100	15%	16,200	15,400	800	5%
Heavy-duty	2,200	2,000	200	10%	4,000	3,600	400	11%

High-horsepower	3,100	2,600	500	19%	5,800	5,100	700	14%
Total unit shipments	13,800	12,000	1,800	15%	26,000	24,100	1,900	8%

Components

Financial data for the Components segment was as follows:

	Three Months Ended		Favorable/ (Unfavorable)		Six Months Ended		Favorable/ (Unfavorable)	
	June 29, 2008	July 1, 2007	Amount	Percent	June 29, 2008	July 1, 2007	Amount	Percent
	\$ in millions				\$ in millions			
External sales	\$ 584	\$ 516	\$ 68	13%	\$ 1,151	\$ 971	\$ 180	19%
Intersegment sales	271	241	30	12%	524	443	81	18%
Total sales	855	757	98	13%	1,675	1,414	261	18%
Depreciation and amortization	18	15	(3)	(20)%	33	29	(4)	(14)%
Research, development and engineering expenses	24	14	(10)	(71)%	47	34	(13)	(38)%
Equity, royalty and interest income from investees	3	(1)	4	NM	7	(2)	9	NM
Interest income	1	—	1	NM	2	1	1	100%
Segment EBIT	77	48	29	60%	114	72	42	58%
Segment EBIT as a percentage of net sales	9.0%	6.3%	2.7 percentage points		6.8%	5.1%	1.7 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:

	Three months ended		Favorable/ (Unfavorable)		Six months ended		Favorable/ (Unfavorable)	
	June 29, 2008	July 1, 2007	Amount	Percent	June 29, 2008	July 1, 2007	Amount	Percent
	\$ in millions				\$ in millions			
Filtration	\$ 315	\$ 313	\$ 2	1%	\$ 617	\$ 609	\$ 8	1%
Turbochargers	270	217	53	24%	540	398	142	36%
Emission solutions	143	122	21	17%	282	207	75	36%
Fuel systems	127	105	22	21%	236	200	36	18%
Total sales	\$ 855	\$ 757	\$ 98	13%	\$ 1,675	\$ 1,414	\$ 261	18%

Sales

Components segment sales increased for the three and six months ended, June 29, 2008, compared to the same periods in 2007, primarily due to increased sales of \$53 million and \$142 million in our turbocharger business, \$22 million and \$36 million in our fuel systems business and \$21 million and \$75 million in our emission solutions business, respectively. The turbocharger business experienced strong growth in North America, Europe and Asia for the three and six month periods, partially due to pre-buy activity in advance of new Euro III emissions standards, which fueled domestic sales in China. The turbocharger business also had an \$11 million benefit for the first six months of 2008 from the consolidation of a joint venture that we purchased in the first quarter of 2007. Our fuel systems business experienced higher sales in North America and China. Our emission solutions business experienced strong sales in North America and Europe as the result of North American share gains and expanding markets in both regions. Our filtration business experienced slight sales growth despite the sale of Universal Silencer and the discontinuance of a product line in 2007 which contributed a combined \$23 million and \$47 million in sales in the three and six months ended July 1, 2007, respectively.

Segment EBIT

Components segment EBIT increased for the three and six months ended, June 29, 2008, compared to the same periods in 2007, primarily due to price realization, manufacturing efficiencies, and increased volumes in most of our businesses. Gross margin increased \$49 million, or 45 percent, and \$74 million, or 36 percent, and gross margin percentage increased over four percentage points and two percentage points for the three and six month periods, respectively. Gross margins increased as the result of price realization, manufacturing efficiencies, improved product coverage and increased volumes in most of our businesses. Selling, general and administrative expenses increased \$8 million, or 16 percent, and \$19 million, or 20 percent, for the three and six months ended June 29, 2008, compared to the same periods in 2007, respectively, and remained flat as a percentage of sales for both periods. Research, development and engineering expenses increased \$10 million, or 71 percent, and \$13 million, or 38 percent, for the three and six months ended June 29, 2008, compared to the same periods in 2007 and increased one percentage point as a percentage of sales for the three month period and increased slightly for the six month period. Most of the increase was incurred in our turbo technologies and emission solutions businesses, which are the fastest growing businesses within the Components segment. The increased spending is focused on developing new products for Cummins and other OEMs to meet future emissions standards for developed and emerging markets. Engineering expenses in the same periods in 2007 were lower due to an unusually high level of customer funding during that quarter.

Distribution

Financial data for the Distribution segment was as follows:

	Three Months Ended		Favorable/ (Unfavorable)		Six Months Ended		Favorable/ (Unfavorable)	
	June 29, 2008	July 1, 2007	Amount	Percent	June 29, 2008	July 1, 2007	Amount	Percent
	\$ in millions				\$ in millions			
External sales	\$ 581	\$ 367	\$ 214	58%	\$ 1,022	\$ 676	\$ 346	51%
Intersegment sales	—	1	(1)	NM	4	1	3	NM
Total sales	581	368	213	58%	1,026	677	349	52%
Depreciation and amortization	7	3	(4)	NM	11	5	(6)	NM
Equity, royalty and interest income from investees	28	24	4	17%	53	41	12	29%
Interest income	—	—	—	—	1	—	1	NM
Segment EBIT	68	46	22	48%	117	85	32	38%
Segment EBIT as a percentage of net sales	11.7%	12.5%	(0.8) percentage points		11.4%	12.6%	(1.2) percentage points	

Sales

Distribution segment sales increased for the three and six months ended, June 29, 2008, as a result of organic growth in Europe, the South Pacific, and the Middle East, higher

sales from the acquisition of a majority ownership interest in two previously independent distributors, and gains from foreign currency translation. Activity from the acquired companies accounted for increases in sales of \$63 million and \$100 million for the three and six month periods as compared to the same periods in 2007, respectively. Favorable impacts from foreign currency translation were \$28 million and \$53 million for the three and six month periods, as compared to the same periods of 2007, respectively. The higher sales were led by increases in power generation volumes, followed by parts and service and engine volumes.

Segment EBIT

Distribution segment EBIT improved for the three and six months ended, June 29, 2008, over the same periods in 2007, primarily due to increased sales volumes for power generation, parts and service, and engines, however, EBIT decreased as a percentage of sales due to the accelerated amortization of certain assets associated with the businesses acquired in 2007 and 2008. Excluding the impact of two new distributors consolidated during the year and one new North American joint venture, EBIT was 12.4 percent and 12.3 percent for the three and six month periods, respectively, and EBIT as a percentage of sales remained relatively flat for both periods. Gross margin increased by \$51 million, or 65 percent, and \$77 million, or 52 percent, for the three and six month periods, as compared to the same periods in 2007, respectively, and increased as a percentage of sales for the three month period by 0.9 percentage points and remained flat for the six month period as compared to the same periods in 2007. The increase in gross margins was primarily due to the increase in sales volumes. Selling, general and administrative expenses increased \$31 million, or 53 percent, and \$49 million, or 44 percent for the three and six months ended June 29, 2008, compared to the same periods in 2007, respectively. However, selling, general and administrative expenses improved by 0.5 percent and 0.9 percent as a percentage of sales for the three and six month periods, as compared to the same periods in 2007, respectively.

Reconciliation of Segment EBIT to Income Before Income Taxes and Minority Interests

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

	Three months ended		Six months ended	
	June 29, 2008	July 1, 2007	June 29, 2008	July 1, 2007
	in millions			
Total segment EBIT	\$ 481	\$ 368	\$ 839	\$ 636
Non-segment EBIT (1)	(12)	(14)	(55)	(39)
Total EBIT	\$ 469	\$ 354	\$ 784	\$ 597
Less:				
Interest expense	12	14	23	30
Income before income taxes and minority interests	\$ 457	\$ 340	\$ 761	\$ 567

(1) Includes intersegment sales and profit in inventory eliminations and unallocated corporate expenses including flood related expenses.

Geographic Markets

Sales to international markets for the three and six months ended June 29, 2008, were 61 percent and 59 percent of total net sales, compared with 51 percent and 53 percent of total net sales for the same periods in 2007.

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

	Three Months Ended		Six Months Ended					
	June 29, 2008	July 1, 2007	June 29, 2008	July 1, 2007				
	\$ in millions							
United States	\$ 1,532	39%	\$ 1,626	49%	\$ 3,024	41%	\$ 2,921	47%
Asia/Australia	824	21%	590	18%	1,540	21%	1,106	18%
Europe/CIS	745	19%	553	16%	1,391	19%	1,053	17%
Mexico/Latin America	420	11%	279	8%	755	10%	535	9%
Canada	143	4%	99	3%	260	4%	184	3%
Africa/Middle East	223	6%	196	6%	391	5%	361	6%
Total international	2,355	61%	1,717	51%	4,337	59%	3,239	53%
Total consolidated net sales	\$ 3,887	100%	\$ 3,343	100%	\$ 7,361	100%	\$ 6,160	100%

LIQUIDITY AND CAPITAL RESOURCES

Management's Assessment of Liquidity

We believe our financial condition and liquidity remain strong despite the downturn in the U.S. economy over the past quarter. Our strong balance sheet and improved credit ratings enabled us to secure a new Three-Year Revolving Credit Facility at favorable terms.

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. A significant portion of our cash flows is generated outside the U.S. More than half of our cash and marketable securities at June 29, 2008, 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 of our 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 those subsidiaries to us and to other international subsidiaries when it is cost effective to do so.

We believe our liquidity with cash and cash equivalents of \$522 million, marketable securities of \$107 million, \$1.1 billion available under our revolving credit facility, \$312 million, based on eligible receivables, available under our accounts receivable program and \$108 million available under international credit facilities together with our operating cash flows and borrowing capacity provide us with the financial flexibility needed to fund working capital, debt service obligations, capital expenditures, projected pension obligations, common stock repurchases, dividend payments and expansion in emerging markets. While we cannot forecast what global or U.S. markets will do, we do not anticipate that the current distress in these markets will significantly impact our results of operations, financial position or cash flows in the foreseeable future. Approximately 92 percent of our pension plan assets are invested in highly liquid investments such as equity and fixed income securities. The remaining 8 percent of our plan assets are invested in less liquid but market-valued investments, including real estate and private equity.

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.

	June 29, 2008	December 31, 2007	July 1, 2007
	in millions		
Current assets	\$ 5,412	\$ 4,815	\$ 4,852
Current liabilities	2,936	2,711	2,543

Working capital	\$ 2,476	\$ 2,104	\$ 2,309
Current ratio	1.84	1.78	1.91
Days' sales in receivables	54	53	54
Inventory turnover	6.1	6.5	6.4

Current assets increased \$597 million, primarily due to a \$379 million increase in receivables driven by the increase in net sales and a \$232 million increase in inventories as the businesses prepare to meet increasing demand. These increases were partially offset by a \$55 million decline in cash and cash equivalents (see Cash Flows below).

Current liabilities increased \$225 million, primarily due to an increase in accounts payable of \$197 million and increases in other accrued expenses of \$144 million due to business expansions. These increases were partially offset by a decline in accrued compensation, benefits and retirement costs of \$103 million and a decrease in the current portion of long-term debt and loans payable of \$48 million.

Cash Flows

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

	<u>June 29, 2008</u>	<u>July 1, 2007</u>
	in millions	
Net cash provided by operating activities	\$ 406	\$ 156
Net cash used in investing activities	(356)	(176)
Net cash used in financing activities	(111)	(199)
Effect of exchange rate changes on cash	6	5
Net decrease in cash and cash equivalents	\$ (55)	\$ (214)

Operating Activities

Net cash provided by operating activities increased \$250 million in the first six months of 2008, compared to the same period in 2007. The improvement was primarily due to higher net income of \$126 million, a \$97 million positive change associated with working capital and a \$63 million decrease in pension contributions, partially offset by a \$33 million decrease in the deferred income tax provision. The major components of the change in working capital are as follows: a \$141 million net increase in accrued expenses driven by increased warranty accruals and timing of various other expenses, a \$34 million decrease in inventory, partially offset by a \$29 million increase in receivables primarily as a result of higher net sales.

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. Better than expected investment returns in recent years and additional voluntary contributions have improved the funded status of all plans, helping to minimize future required funding. We continued making additional pension contributions by contributing \$39 million to our pension plans in the first six months of 2008. We anticipate making contributions of \$90 million to \$100 million to our pension plans in 2008 and paying approximately \$60 million in claims and premiums for other postretirement benefits. The \$39 million of pension contributions in the first six months of 2008 included voluntary contributions of \$24 million. These contributions and payments include payments from Company funds to either increase pension plan assets or to make direct payments to plan participants.

Investing Activities

Net cash used in investing activities increased \$180 million in the first six months of 2008, compared to the first six months of 2007. The increase was primarily due to a \$93 million increase in capital expenditures, higher investments in businesses of \$56 million and higher investments in and advances to equity investees of \$13 million.

Capital expenditures for the first six months of 2008 increased 86 percent over the same period in 2007 to support our growth, and included investments to increase capacity and to fund development of our new products. Our investments in capacity improvements and development of new products are accelerating across all of our businesses. We continue to invest at least half of our capital in low-cost regions of the world to further leverage our opportunities for cost reduction and future growth opportunities. Capital expenditures for the first six months of 2008 were \$201 million. In 2008, we expect capital expenditures to total approximately \$550 million to \$600 million. This spending excludes any assets that may need to be purchased as a result of the flood. We anticipate these expenditures will range from \$50 million to \$60 million.

Financing Activities

Net cash used in financing activities decreased \$88 million in the first six months of 2008, compared to the first six months of 2007. The majority of the decrease in cash outflows was due to the \$73 million increase in proceeds from borrowings and a \$14 million decrease in outflows related to borrowings and capital leases, primarily related to the payment of approximately \$62 million of our \$120 million 6.75% debentures on February 15, 2007 and the \$25 million term loan at Consolidated Diesel Company in the first quarter of 2008.

In December 2007, the Board of Directors authorized the acquisition of up to \$500 million of Cummins common stock. We began making purchases under the plan in March 2008 and have purchased \$45 million of stock as of June 29, 2008. The share repurchase program, along with investments in our growth, are expected to be a significant use of our cash flows in 2008 and future years, however, total repurchases may vary quarter to quarter depending on other investing and financing activities, market conditions, or restrictions.

Our total debt was \$657 million as of June 29, 2008, compared with \$666 million at July 1, 2007. Total debt as a percent of our total capital, including total long-term debt, was 14.6 percent at June 29, 2008, compared to 17.4 percent at July 1, 2007.

On July 8, 2008, the Board of Directors approved an increase in the quarterly cash dividend on our common stock from \$0.125 per share to \$0.175 per share. The dividend is payable on September 2, 2008, to shareholders of record on August 22, 2008.

On June 30, 2008, we entered into a Three-Year Revolving Credit Agreement, dated as of June 30, 2008 (the "Credit Agreement"), with a syndicate of lenders and issuers named therein. The Credit Agreement provides a \$1.1 billion senior unsecured revolving credit facility (the "Credit Facility"), the proceeds of which are to be used to provide working capital or for other general corporate purposes of Cummins.

The Credit Facility matures on June 30, 2011. The Credit Facility is unsecured and amounts payable under it will rank pro rata with all other unsecured, unsubordinated indebtedness of Cummins. Borrowings under the Credit Facility will primarily be denominated in U.S. dollars. A portion of the Credit Facility, up to \$200 million, is available for Letters of Credit denominated in U.S. dollars or Alternate Currencies. In addition, up to \$200 million of the Revolving Credit Facility will be available in Pounds Sterling or Euros. A portion of the Credit Facility, up to \$100 million, is available for swingline loans denominated in U.S. dollars. Loans will bear interest at (i) a base rate or (ii) a rate equal to LIBOR plus an applicable margin based on the credit ratings of Cummins outstanding senior unsecured long-term debt. Based on our current long-term debt ratings, the applicable margin on LIBOR loans will be 0.75% per annum. Loans may be prepaid without premium or penalty, subject to customary breakage costs.

The Credit Facility replaces a \$650 million in aggregate principal amount of revolving credit facility (Former Credit Agreement) maintained by Cummins which was terminated effective June 30, 2008.

The Credit Agreement includes covenants substantially similar to those in the Former Credit Agreement, including, among others, (a) a leverage ratio, (b) fixed charge coverage ratio, (c) limitations on priority indebtedness, (d) limitations on our ability to consummate a merger, consolidation or sale of all or substantially all of our assets and (e) limitations on our ability to change the nature of our business.

The obligation of Cummins to pay amounts outstanding under the Credit Facility may be accelerated upon the occurrence of an "Event of Default" as defined in the Credit Agreement. Such Events of Default include, among others, (a) Cummins failure to pay the principal of, or interest on, borrowings under the Credit Facility, (b) any representation or warranty of Cummins in the Credit Agreement proving to be materially false or misleading, (c) Cummins breach of any of its covenants contained in the Credit Agreement, and (d) the bankruptcy or insolvency of Cummins.

There are no material relationships between Cummins or its affiliates and any of the Lenders, other than as described above.

On June 17, 2008, Fitch upgraded our senior unsecured debt ratings from "BBB" to "BBB+" citing Cummins' recent market share gains and improving credit profile, including improvement in Cummins' geographic and business diversification.

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

At the May 13, 2008, annual meeting, shareholders voted to increase our total authorized common shares by 200 million shares to a total of 500 million shares.

OFF BALANCE SHEET FINANCING

A discussion of our off balance sheet financing arrangements may be found in Item 7 of our 2007 Annual Report on Form 10-K. There have been no material changes in this information since the filing of our 2007 Annual Report on 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 2007 Annual Report on 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. Our 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 estimates require management to make assumptions about matters that were highly uncertain at the time the estimates were made; different estimates reasonably could have been used; or if changes in the estimates 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 the 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 these critical accounting estimates may be found in the "Management's Discussion and Analysis" section of our 2007 Annual Report on 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 2008.

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 2007 Annual Report on Form 10-K. There have been no material changes in this information since the filing of our 2007 Annual Report on Form 10-K.

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.

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 29, 2008, that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. Legal Proceedings

We are at any one time party to a number of lawsuits or subject to claims arising out of the ordinary course of our business, including actions related to product liability, patent, trademark or other intellectual property infringement, contractual liability, workplace safety and environmental claims and cases, some of which involve claims for substantial damages. We and our subsidiaries are currently defendants in a number of pending legal actions, including actions related to use and performance of our products. While we carry product liability insurance covering significant claims for damages involving personal injury and property damage, we cannot assure you that such insurance would be adequate to cover the costs associated with a judgment against us with respect to these claims. We also establish reserves for matters in which losses are probable and can be reasonably estimated. We have also been identified as a potentially responsible party at several waste disposal sites under federal and state environmental statutes, as more fully described in Item 1 of our 2007 Annual Report on Form 10-K under "Environmental Compliance-Other Environmental Statutes and Regulations." We deny liability with respect to many of these legal actions and environmental proceedings and are vigorously defending such actions or proceedings. While we believe we have established adequate accruals for our expected future liability with respect to our pending legal actions and proceedings, we cannot assure you that our liability with respect to any such action or proceeding would not exceed our established accruals. Further, we cannot assure that litigation having a material adverse affect on our financial condition will not arise in the future. 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 2007 Annual Report on Form 10-K. There has been no material change in this information since the filing of our 2007 Annual Report on Form 10-K.

ITEM 1A. Risk Factors

In addition to other information set forth in this report, you should consider other risk factors discussed in Part I, "Item 1A. Risk Factors Relating to our Business" in our

Annual Report on Form 10-K for the year ended December 31, 2007, which could materially affect our business, financial condition or future results. The risks described in our Annual Report on Form 10-K or the Disclosure Regarding Forward-Looking Statements in this Quarterly Report are not the only risks we face. Additional risks and uncertainties not currently known to us or that we currently judge to be immaterial also may materially adversely affect our business, financial condition or operating results.

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 31 – May 4, 2008	—	\$ —	—	65,190
May 5 – June 1, 2008	145,710	69.31	140,000	61,763
June 2 – June 29, 2008	357,100	67.62	355,000	62,234
Total	502,810	\$ 68.11	495,000	

(1) Shares purchased represent shares under the 2007 Board 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 shares held in loan status for 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 the acquisition of up to \$500 million worth of Cummins common stock in addition to what had been acquired under previous authorizations.

During the second quarter of 2008, we repurchased 7,810 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 second quarter of 2008, we issued 3,348 shares of restricted stock as compensation to our 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 13, 2008. There were 203,215,953 shares of common stock entitled to vote at the meeting and a total of 178,021,423, or 87.6 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. Darnall	168,368,736	6,947,381	2,705,306
Robert K. Herdman	174,553,158	841,923	2,626,342
Alexis M. Herman	172,551,746	2,786,464	2,683,213
F. Joseph Loughrey	169,133,314	6,509,863	2,378,246
William I. Miller	166,795,875	8,692,254	2,533,294
Georgia R. Nelson	173,447,152	1,981,663	2,592,608
Theodore M. Solso	167,020,797	8,546,750	2,453,876
Carl Ware	174,405,993	974,326	2,641,104
J. Lawrence Wilson	168,988,761	6,337,585	2,695,077

With regard to the election of directors, votes were cast in favor of or withheld from each nominee; votes that were withheld were excluded entirely from the vote and did not affect the election. Under the rules of the New York Stock Exchange, brokers who held shares in street names had the authority to vote on certain items when they did not receive instructions from beneficial owners. Brokers who did not receive instructions were entitled to vote on the election of directors. Under applicable Indiana law, a broker non-vote had no effect on the outcome of the election of directors.

Proposal 2: Proposal to ratify the appointment of PricewaterhouseCoopers LLP as independent certified public accountants for the year 2008.

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

For	Against	Abstain	Broker Non-Votes
175,182,277	685,439	2,153,707	—

Proposal 3: Proposal to amend the Restated Articles of Incorporation to increase authorized shares.

Results of the voting to amend the Restated Articles of Incorporation were as follows:

For	Against	Abstain	Broker Non-Votes
146,213,199	29,413,691	2,394,533	—

Proposal 4: Proposal to adopt International Labor Organization standards.

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

For	Against	Abstain	Broker Non-Votes
20,939,870	106,586,180	36,987,321	—

ITEM 6. Exhibits

\$1,100,000,000

CREDIT AGREEMENT

dated as of

June 30, 2008

among

CUMMINS INC.,
CUMMINS LTD.,
CUMMINS POWER GENERATION LTD.,
CUMMINS GENERATOR TECHNOLOGIES LIMITED,

THE ELIGIBLE SUBSIDIARIES REFERRED TO HEREIN

The LENDERS Party Hereto,

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent, Issuing Bank and Swingline Lender,

BANK OF AMERICA, N.A.,
as Syndication Agent and Swingline Lender,

and

ING BANK N.V., DUBLIN BRANCH and
THE ROYAL BANK OF SCOTLAND plc,
as Co-Documentation Agents

J.P. MORGAN SECURITIES INC.

and

BANC OF AMERICA SECURITIES LLC,
as Joint Bookrunners and Lead Arrangers

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CREDIT AGREEMENT dated as of June 30, 2008 among CUMMINS INC., CUMMINS LTD., CUMMINS POWER GENERATION LTD., CUMMINS GENERATOR TECHNOLOGIES LIMITED, the ELIGIBLE SUBSIDIARIES referred to herein, the LENDERS party hereto, JPMORGAN CHASE BANK, N.A., as Administrative Agent, Issuing Bank and Swingline Lender, BANK OF AMERICA, N.A., as Syndication Agent and Swingline Lender, and ING BANK N.V., DUBLIN BRANCH and THE ROYAL BANK OF SCOTLAND plc, as Co-Documentation Agents.

The parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

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

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

"**ABR Margin**" has the meaning assigned to such term in Section 2.21.

"**Additional Letter of Credit**" means a letter of credit issued hereunder by the Issuing Bank on or after the Effective Date.

"**Adjusted LIBO Rate**" means (a) with respect to any Euro-Currency Borrowing denominated in Dollars for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to (i) the LIBO Rate for such Interest Period multiplied by (ii) the Statutory Reserve Rate and (b) with respect to Euro-Currency Borrowing denominated in an Alternative Currency for any Interest Period, an interest rate per annum equal to (i) the LIBO Rate for such Interest Period plus (ii) in the case of a Euro-Currency Loan of a Lender which is lent from a branch or office in England or a Participating Member State, the Mandatory Costs.

"**Administrative Agent**" means JPMCB and its Affiliates in their capacity as administrative agent for the Lenders hereunder.

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

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

"**Agents**" means the Administrative Agent, the Syndication Agent and each Co-Documentation Agent.

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

"**Alternative Currency**" means Euro or Pound Sterling.

"**Alternative Currency Loan**" means a Loan that is made in an Alternative Currency pursuant to the applicable Borrowing Request (or request pursuant to Section 2.04). Any Loan made in the currency of a Participating Member State before the date on which such Participating Member State adopts the Euro as its currency (the "**Entry Date**") and still outstanding on the Entry Date shall be prepaid on the last day of the Interest Period applicable thereto on the Entry Date.

"**Alternative Currency Exposure**" means the sum of (a) the aggregate Dollar Amount of outstanding Alternative Currency Loans plus (b) the aggregate Dollar Amount of LC Exposure with respect to Letters of Credit which are denominated in an Alternative Currency.

"**Alternative Currency Sublimit**" means \$200,000,000.

"**Applicable Lending Office**" means, with respect to any Lender, (a) in the case of its ABR Loans, its Domestic Lending Office, (b) in the case of its Euro-Currency Loans, its Euro-Currency Lending Office and (c) in the case of its Swingline Loans, its Swingline Lending Office.

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

"**Applicable Rate**" means, for any day, with respect to any ABR Loan or Euro-Currency Loan, or with respect to the commitment fees payable hereunder, as the case may be, the applicable ABR Margin or Euro-Currency Margin or the Commitment Fee Rate, respectively, in each case as determined for such day in accordance with Section 2.21.

"**Approved Fund**" has the meaning assigned to such term in Section 12.04.

"**Approved Jurisdiction**" means (i) the United States, (ii) England and Wales in the United Kingdom and (iii) any other jurisdiction approved for this purpose by each of the Lenders.

"**Assignment and Assumption**" means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 12.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form approved by the Administrative Agent and the Company.

"**Attributable Value**" of any Sale and Lease-Back Transaction means, at any time, an amount equal to the product of (a) the greater of (i) the net proceeds of the sale of the property subject thereto and (ii) the fair market value of such property at the time of such sale (as determined by the board of directors of the Company or by an independent appraiser) and (b) a fraction the numerator of which equals the number of full years in the term of the relevant lease remaining at such time and the denominator of which equals the number of full years in the term of such lease at such time, in each case computed without regard to any renewal or extension options (other than those at the option of the lessor) contained in such lease.

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

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

"**BofA**" means Bank of America, N.A., a national banking association.

"**Borrower**" means the Company, any Original Subsidiary Borrower or any Eligible Subsidiary, as the context may require, and their respective successors, and "**Borrowers**" means all of the foregoing. When used in relation to any Loan or Letter of Credit, references to "the Borrower" are to the particular Borrower to which such Loan is or is to be made or at whose request such Letter of Credit is or is to be issued.

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

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

"**Calendar Quarter**" means a three-month period consisting of (i) each January, February and March, (ii) each April, May and June, (iii) each July, August and September or (iv) each October, November and December.

"Capital Expenditures" means, for any period, without duplication, (a) the additions to property, plant and equipment and other capital expenditures of the Company and its Subsidiaries that are (or would be) set forth in a Consolidated statement of cash flows of the Company and its Subsidiaries for such period prepared in accordance with GAAP, less the amount thereof made with the proceeds of Indebtedness incurred to finance such additions or expenditures and (b) principal payments made by the Company and its Consolidated Subsidiaries during such period on Capital Lease Obligations and on Indebtedness referred to in clause (a).

"Capital Lease Obligations" of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"Change in Control" means that (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 of the Company or (b) individuals who constitute the Continuing Directors cease for any reason to constitute at least a majority of the board of directors of the Company (which, for the purpose of this definition, shall be deemed not to mean any committee of the board of directors of the Company).

"Change in Law" means (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender or the Issuing Bank (or, for purposes of Section 2.14(b), by any Applicable Lending Office of such Lender or by such Lender's or the Issuing Bank's holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement.

"Class", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans or Swingline Loans.

"CLO" has the meaning assigned to such term in Section 12.04.

"Co-Documentation Agents" means ING Bank N.V., Dublin Branch and The Royal Bank of Scotland plc, in their capacity as co-documentation agents in respect of this Agreement.

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Collections" has the meaning specified in Annex X to the RPA.

"Commitment" means, with respect to each Lender, the commitment of such Lender to make Revolving Loans and to acquire participations in Letters of Credit and Swingline Loans hereunder, expressed as an amount representing the maximum aggregate Dollar Amount of such Lender's Revolving Credit Exposure hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.08 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 12.04. The initial amount of each Lender's Commitment is set forth on Schedule 2.01, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Commitment, as applicable. The initial aggregate amount of the Lenders' Commitments is \$1,100,000,000.

"Commitment Fee Rate" has the meaning assigned to such term in Section 2.21.

"Company" means Cummins Inc., an Indiana corporation.

"Consolidated" means, as applied to any financial or accounting term with respect to any Person, such term determined on a consolidated basis in accordance with GAAP for such Person and all consolidated subsidiaries thereof.

"Consolidated EBITDA" means, for any period, Consolidated Net Income for such period plus (a) without duplication and to the extent deducted in determining such Consolidated Net Income, the sum of (i) consolidated interest expense for such period, (ii) consolidated income tax expense for such period, (iii) all amounts attributable to depreciation and amortization for such period, (iv) any extraordinary or non-recurring non-cash charges for such period and (v) any loss for such period of any joint venture accounted for on the equity method (except to the extent the Company or a Subsidiary actually made an investment in such joint venture during such period to offset such loss) and minus (b) without duplication and to the extent included in determining such Consolidated Net Income, (i) any extraordinary gains for such period and (ii) any income of any such joint venture for such period, except to the extent that dividends or other distributions were actually paid by such joint venture to the Company or a Subsidiary during such period, all determined on a Consolidated basis in accordance with GAAP.

"Consolidated Interest Expense" means, for any period, the interest expense (including imputed interest expense in respect of Capital Lease Obligations) of the Company and its Subsidiaries for such period, determined on a Consolidated basis in accordance with GAAP.

"Consolidated Net Income" means, for any period, the net earnings (loss) of the Company and its Subsidiaries for such period, computed and Consolidated in accordance with GAAP.

"Consolidated Subsidiary" means, at any date, any Subsidiary or other entity the accounts of which would be Consolidated with those of the Company in its Consolidated financial statements if such statements were prepared as of such date.

"Continuing Director" means any member of the board of directors of the Company who is (i) a director of the Company on the date of this Agreement, (ii) nominated by the board of directors of the Company or (iii) appointed by directors referred to in clauses (i) and (ii).

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

"**Credit Party**" means the Company and each other Borrower.

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

"**Designated User**" means a Person designated as such by a Lender or the Administrative Agent.

"**Dollars**" or "\$" refers to lawful money of the United States of America.

"**Dollar Amount**" means, at any time:

(a) with respect to any Dollar-Denominated Loan, the principal amount thereof then outstanding;

(b) with respect to any Alternative Currency Loan, the principal amount thereof then outstanding in the relevant Alternative Currency, converted to Dollars in accordance with Section 2.20(a); and

(c) with respect to any Letter of Credit or LC Disbursement, (A) if denominated in Dollars, the amount thereof and (B) if denominated in an Alternative Currency, the amount thereof converted to Dollars in accordance with Section 2.20(b).

"**Dollar-Denominated Loan**" means a Loan that is made in Dollars.

"**Dollar-Denominated Revolving Borrowing**" means a Revolving Borrowing denominated in Dollars.

"**Domestic Business Day**" means any day except a Saturday, Sunday or other day on which commercial banks in New York City are authorized by law to close.

"**Domestic Lending Office**" means, as to each Lender, its office located at its address set forth in its Administrative Questionnaire (or identified in its Administrative Questionnaire as its Domestic Lending Office) or such other office as such Lender may hereafter designate as its Domestic Lending Office by notice to the Company and the Administrative Agent.

"**Effective Date**" means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 12.02).

"**Election to Participate**" means an Election to Participate substantially in the form of Exhibit D.

"**Election to Terminate**" means an Election to Terminate substantially in the form of Exhibit E.

"**Eligible Subsidiary**" means any Wholly-Owned Consolidated Subsidiary organized under the laws of an Approved Jurisdiction (i) as to which an Election to Participate shall have been delivered to the Administrative Agent and (ii) as to which an Election to Terminate with respect to such Election to Participate shall not have been delivered to the Administrative Agent. Each such Election to Participate and Election to Terminate shall be duly executed on behalf of such Wholly-Owned Consolidated Subsidiary and the Company in such number of copies as the Administrative Agent may request. If at any time a Subsidiary theretofore designated as an Eligible Subsidiary no longer qualifies as a Wholly-Owned Consolidated Subsidiary, the Company shall cause to be delivered to the Administrative Agent an Election to Terminate terminating the status of such Subsidiary as an Eligible Subsidiary. The delivery of an Election to Terminate shall not affect any obligation of an Eligible Subsidiary theretofore incurred or the Company's guarantee thereof. The Administrative Agent shall promptly give notice to the Lenders of the receipt of any Election to Participate or Election to Terminate.

"**Environmental Laws**" means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, release or threatened release of any Hazardous Material or to health and safety matters.

"**Environmental Liability**" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Company or any Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"**Equity Interests**" means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

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

"**ERISA Affiliate**" means any trade or business (whether or not incorporated) that, together with the Company, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a

single employer under Section 414 of the Code.

"ERISA Event" means (a) any "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived), (b) the existence with respect to any Plan of an "accumulated funding deficiency" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived, (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan, (d) the incurrence by the Company or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan, (e) the receipt by the Company or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan, (f) the incurrence by the Company or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan, or (g) the receipt by the Company or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Company or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

"Euro" means the single currency of the Participating Member States.

"Euro-Currency Business Day" means a Euro-Dollar Business Day; *provided* that (a) when used in connection with an Alternative Currency Loan or LC Exposure denominated in an Alternative Currency, the term "Euro-Currency Business Day" shall exclude any day on which banks are not open for dealings in deposits in the applicable currency in the London interbank market and (b) when used in connection with any Loan or LC Exposure denominated in Euro, the term "Euro-Currency Business Day" shall exclude any day on which the TARGET2 payment system is not open for the settlement of payment in Euro.

"Euro-Currency Lending Office" means, as to each Lender, its office, branch or affiliate located at its address set forth in its Administrative Questionnaire (or identified in its Administrative Questionnaire as its Euro-Currency Lending Office) or such other office, branch or affiliate of such Lender as it may hereafter designate as its Euro-Currency Lending Office by notice to the Company and the Administrative Agent; *provided* that any Lender may from time to time by notice to the Borrower and the Administrative Agent designate separate Euro-Currency Lending Offices for its Loans in different currencies, in which case all references herein to the Euro-Currency Lending Office of such Lender shall be deemed to refer to any or all of such offices, as the context may require.

"Euro-Currency Loan" means either a Euro-Dollar Loan or an Alternative Currency Loan.

"Euro-Currency Margin" means the applicable rate determined in accordance with Section 2.21.

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

"Euro-Dollar Business Day" means any Domestic Business Day on which commercial banks are open for international business (including dealings in Dollar deposits) in London.

"Event of Default" has the meaning assigned to such term in Article 8.

"Evergreen Letter of Credit" means a Letter of Credit that is automatically extended unless the Issuing Bank gives notice to the beneficiary thereof stating that such Letter of Credit will not be extended.

"Excluded Taxes" means, with respect to the Administrative Agent, any Lender, the Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of any Borrower under any Loan Document, (a) income or franchise taxes imposed on (or measured by) its net income by the United States of America, or by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its Applicable Lending Office is located, (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction described in clause (a) above and (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Company under Section 2.19(b)), any withholding tax that (i) is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement (or designates a new Applicable Lending Office), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Applicable Lending Office (or assignment), to receive additional amounts from any Borrower with respect to such withholding tax pursuant to Section 2.16(a) or (ii) is attributable to such Foreign Lender's failure to comply with Section 2.16(e).

"Existing Credit Agreement" means the Credit Agreement dated as of December 1, 2004, as amended, among the Company, and the Subsidiaries, lenders and agents party thereto.

"Existing Letters of Credit" means the letters of credit issued by the Issuing Bank before the Effective Date and listed in Schedule 2.05.

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

"Financial Officer" means the chief financial officer, principal accounting officer, treasurer or assistant treasurer.

"Fitch" means Fitch Ratings, Ltd.

"Foreign Lender" means any Lender that is organized under the laws of a jurisdiction other than that in which the Company is located. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"GAAP" means generally accepted accounting principles in the United States as described in Section 1.04.

"Governmental Authority" means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Guarantee" of or by any Person means any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness of any other Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness, (b) to purchase property, securities or services for the purpose of assuring the owner of such Indebtedness of the payment of such Indebtedness or (c) to maintain working capital, equity capital or other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness; *provided*, however, that, the term "Guarantee" shall not include endorsements for collection or deposit in the ordinary course of business.

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Indebtedness" of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person, (e) all obligations of such Person issued or assumed as the deferred purchase price of property or services, (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations of such Person as an account party in respect of letters of credit and bankers' acceptances and (j) net obligations under Swap Agreements. The Indebtedness of any Person shall also include the Indebtedness of any partnership in which such Person is a general partner, except to the extent that recourse against such general partner (as a general partner) has been contractually waived or limited. Notwithstanding the foregoing, the term "Indebtedness", in respect of the Company and its Subsidiaries, shall not include (i) deferred compensation for officers and employees of the Company or any of its Subsidiaries and (ii) trade payables incurred in the ordinary course of business.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Information Memorandum" means the Confidential Information Memorandum dated June 2008 relating to the Company and the Transactions.

"Interest Election Request" means a request by the Borrower to convert or continue a Revolving Borrowing in accordance with Section 2.07.

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

"Interest Period" means, with respect to any Euro-Currency Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three, or six months, or (subject to the availability to each Lender of matching deposits for such periods in the London interbank market) nine or twelve months thereafter, as the Borrower may elect; *provided* that: (a) if any Interest Period would end on a day other than a Euro-Currency Business Day, such Interest Period shall be extended to the next succeeding Euro-Currency Business Day unless such next succeeding Euro-Currency Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Euro-Currency Business Day; and (b) any Interest Period pertaining to a Euro-Currency Borrowing that commences on the last Euro-Currency Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Euro-Currency Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

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

"JPMCB" means JPMorgan Chase Bank, N.A., a national banking association.

"LC Disbursement" means a payment made by the Issuing Bank pursuant to a Letter of Credit.

"LC Exposure" means, at any time, the sum of (a) the aggregate Dollar Amount of the undrawn amount of all outstanding Letters of Credit at such time plus (b) the aggregate Dollar Amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time. The LC Exposure of any Lender at any time shall be its Applicable Percentage of the total LC Exposure at such time.

"Lenders" means the Persons listed on Schedule 2.01 and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption. Unless the context otherwise requires, the term **"Lenders"** includes the Swingline Lenders.

"Letter of Credit" means any Existing Letter of Credit or Additional Letter of Credit.

"LIBO Rate" means, with respect to any Euro-Currency Borrowing for any Interest Period, the rate appearing on the Screen at approximately 11:00 a.m., London time, two Euro-Currency Business Days prior to the commencement of such Interest Period (or, in the case of a Swingline Borrowing, on the date of commencement of such Interest Period), as the rate for deposits in Dollars or the relevant Alternative Currency with a maturity comparable to such Interest Period. In the event that such rate is not available for such currency at such time for any reason, then the **"LIBO Rate"** with respect to such Euro-Currency Borrowing for such Interest Period shall be the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the respective rates at which deposits of the relevant currency with a maturity comparable to such Interest Period are offered by the Reference Banks in immediately available funds in the London interbank market at the applicable time specified above.

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in or on such asset and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset.

"Loan Documents" means this Agreement, each Election to Participate and any promissory notes issued to any Lender hereunder.

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

"Mandatory Cost" means an amount determined in accordance with Schedule 1.01 hereto.

"Markit" means Markit Group, Ltd. or any successor thereto.

"Material Adverse Effect" means a material adverse effect on (a) the business, assets, operations, prospects or condition, financial or otherwise, of the Company and the Subsidiaries taken as a whole, (b) the ability of the Company to perform any of its material obligations under the Loan Documents or (c) the validity or enforceability of, or the rights of or remedies available to the Lenders under, the Loan Documents.

"Maturity Date" means June 30, 2011, or, if such day is not a Euro-Currency Business Day, the next preceding Euro-Currency Business Day.

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

"Multiemployer Plan" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"Original Subsidiary Borrower" means each of Cummins Ltd., a company incorporated under the laws of England and Wales in the United Kingdom, Cummins Power Generation Ltd., a company incorporated under the laws of England and Wales in the United Kingdom, and Cummins Generator Technologies Limited, a company incorporated under the laws of England and Wales in the United Kingdom.

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

"Participant" has the meaning set forth in Section 12.04.

"Participating Member States" means those members of the European Union from time to time which adopt a single, shared currency.

"PBGC" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"Permitted Power Generation Lease Obligations" has the meaning set forth in Section 6.04(b).

"Permitted Receivables Financing" means the receivables financing to be provided pursuant to the RPA and the RSA.

"Permitted Receivables Financing Indebtedness" has the meaning set forth in Section 6.04(a).

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

"Plan" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Company or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Pound Sterling" means the lawful currency of the United Kingdom.

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

"Priority Indebtedness" shall mean, at any time, without duplication, (i) the aggregate principal amount of all Indebtedness of the Company then outstanding which Indebtedness is secured by Liens on property and assets of the Company or any Subsidiary (other than Indebtedness secured by Liens described in paragraphs (a) through (k) of Section 6.01), (ii) the Attributable Value at such time of all Sale and Lease-Back Transactions which are restricted by Section 6.02 and (iii) the aggregate principal amount of all outstanding Indebtedness of all Subsidiaries (other than (x) Indebtedness hereunder, (y) Indebtedness of Subsidiaries payable to the Company or any Wholly-Owned Consolidated Subsidiary and (z) any unsecured Guarantee of Indebtedness under notes or bonds issued by the Company; *provided* that such Subsidiary shall also have guaranteed the obligations hereunder on or prior to the date on which such Guarantee is given); *provided* that Priority Indebtedness shall not include (a) the Permitted Receivables Financing Indebtedness or (b) the Permitted Power Generation Lease Obligations.

"Priority Indebtedness Limit" means, at any time, an amount equal to 8.50% of the Consolidated assets of the Company and its Consolidated Subsidiaries as reflected in the annual or quarterly report then most recently filed by the Company with the Securities and Exchange Commission.

"Purchasers" has the meaning specified in the RPA.

"Receivables Agent" means General Electric Capital Corporation, as administrative agent under the RPA.

"Receivables Seller" means, collectively, (i) Cummins Trade Receivables, LLC, a special purpose limited liability company formed under the laws of Delaware that is wholly-owned by the Company, (ii) Cummins Filtration Inc., (iii) Cummins Power Generation Inc. and (iv) Cummins LLC Member, Inc., a Delaware corporation that is a wholly-owned subsidiary of the Company.

"Reference Banks" means the principal London offices of JPMCB, BofA and The Royal Bank of Scotland plc.

"Register" has the meaning set forth in Section 12.04.

"Regulation D" shall mean Regulation D of the Board, as the same is from time to time in effect, and all official rulings and interpretations thereunder or thereof.

"Regulation U" shall mean Regulation U of the Board, as from time to time in effect, and all official rulings and interpretations thereunder or thereof.

"Regulation X" shall mean Regulation X of the Board, as from time to time in effect, and all official rulings and interpretations thereunder or thereof.

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

"Related Security" has the meaning specified in Annex X to the RPA.

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

"Revolving Credit Exposure" means, with respect to any Lender at any time, the sum of the outstanding Dollar Amount of such Lender's Revolving Loans and the aggregate Dollar Amount of its LC Exposure and Swingline Exposure at such time.

"Revolving Loan" means a Loan made pursuant to Section 2.03.

"RPA" means that certain Receivables Purchase and Servicing Agreement dated as of January 15, 2004 among the Receivables Seller, the Company, as Servicer, the Receivables Agent, Cummins LLC Member, Inc. and the Purchasers, as such Receivables Purchase and Servicing Agreement may be amended, extended, renewed, restated, replaced, supplemented or otherwise modified from time to time with the approval of the Administrative Agent.

"RSA" means that certain Receivables Sale and Contribution Agreement dated as of January 15, 2004 among the Company, the Transferring Subsidiary and the Receivables Seller, as such Receivables Sale and Contribution Agreement may be amended, extended, renewed, restated, replaced, supplemented or otherwise modified from time to time with the approval of the Administrative Agent.

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

"Sale and Lease-Back Transaction" has the meaning set forth in Section 6.02.

"Screen" means (a) with respect to Dollar-Denominated Loans, the Reuters "LIBOR01" screen displaying British Bankers' Association Interest Settlement Rates and (b) with respect to Alternative Currency Loans, the Reuters screen selected by the Administrative Agent that displays rates for interbank deposits in the appropriate Alternative Currency or, in the case of either (a) or (b), any successor or substitute

screen provided by Reuters, or any successor to or substitute for such service, providing rate quotations comparable to those currently provided on such screen, as determined by the Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to deposits in the London interbank market.

"Securitization Financing" means, at any date, the aggregate amount of financing raised through securitization transactions by the Company and its Consolidated Subsidiaries and outstanding at such date to the extent the same do not give rise to Indebtedness of the Company or a Consolidated Subsidiary.

"Significant Subsidiary" means (a) each of Cummins Engine IP, Inc., Cummins Filtration IP, Inc., Cummins Intellectual Property, Inc., Cummins PowerGen IP, Inc., Cummins Filtration Inc. and Cummins Power Generation Inc. and (b) any Subsidiary (which term, as used in this definition, includes such Subsidiary's subsidiaries) which meets any of the following conditions:

- (i) the Company's and the other Subsidiaries' investments in and advances to such Subsidiary exceed 10% of the Consolidated total assets of the Company as of the end of the most recently completed fiscal year of the Company for which financial statements have been delivered pursuant to Section 5.04(a);
- (ii) the total assets (after intercompany eliminations) of such Subsidiary exceed 10% of the Consolidated total assets of the Company as of the end of the most recently completed fiscal year of the Company for which financial statements have been delivered pursuant to Section 5.04(a);
- (iii) the net sales of such Subsidiary exceed 10% of the Consolidated net sales of the Company for the most recently completed fiscal year of the Company for which financial statements have been delivered pursuant to Section 5.04(a); or
- (iv) any Subsidiary with or into which a Significant Subsidiary is merged or which has acquired all or substantially all the assets of a Significant Subsidiary in either case pursuant to a transaction permitted by Section 6.03; *provided, however*, that such Subsidiary shall cease to be a Significant Subsidiary at the time of delivery pursuant to Section 5.04(a) of financial statements covering the fiscal year in which such transaction occurred unless one of the conditions set forth in clauses (i), (ii) or (iii) above is satisfied with respect to such Subsidiary.

"Spot Rate" means, for any Alternative Currency on any day, the average of the Administrative Agent's spot buying and selling rates for the exchange of such Alternative Currency and Dollars as of approximately 11:00 A.M. (London time) on such day.

"Statutory Reserve Rate" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D). Such reserve percentages shall include those imposed pursuant to Regulation D. Euro-Currency Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"subsidiary" means, with respect to any Person (herein referred to as the **"parent"**), any corporation, association or other business entity (a) of which securities or other ownership interests representing more than 50% of the ordinary voting power are, at the time any determination is being made, owned, controlled or held by the parent or one or more subsidiaries of the parent or (b) which is, at the time any determination is made, otherwise controlled (by contract or agreement or otherwise) by the parent or one or more subsidiaries of the parent.

"Subsidiary" means any subsidiary of the Company.

"Swap Agreement" means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; *provided* that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Company or the Subsidiaries shall be a Swap Agreement.

"Swingline Exposure" means, at any time, the aggregate Dollar Amount of all Swingline Loans outstanding at such time. The Swingline Exposure of any Lender at any time shall be its Applicable Percentage of the total Swingline Exposure at such time.

"Swingline Lender" means each of BofA and JPMCB in its capacity as lender of Swingline Loans hereunder.

"Swingline Lending Office" means, as to either Swingline Lender, its office located at its address set forth in its Administrative Questionnaire (or identified in its Administrative Questionnaire as its Swingline Lending Office) or such other office as such Swingline Lender may hereafter designate as its Swingline Lending Office by notice to the Company and the Administrative Agent.

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

"Syndication Agent" means BofA, in its capacity as syndication agent in respect of this Agreement.

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

"Total Debt" means the Indebtedness of the Company and its Subsidiaries, Consolidated in accordance with GAAP; *provided* that the term "Total Debt" shall in any event exclude (i) contingent obligations of the Company or any Subsidiary in respect of letters of credit, unless such letter of credit supports other Indebtedness of any Person other than the Company and its Subsidiaries and (ii) net obligations under Swap Agreements.

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

"Transferred Receivables" has the meaning specified in Annex X to the RPA.

"Transferring Subsidiary" means, collectively, Cummins Power Generation Inc. and Cummins Filtration Inc.

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

"United States" or **"U.S."** means the United States of America, including the States thereof and the District of Columbia, but excluding its territories and possessions.

"Wholly-Owned Consolidated Subsidiary" means any Consolidated Subsidiary all of the shares of capital stock or other ownership interests of which (except directors' qualifying shares) are at the time owned by the Company or one or more Wholly-Owned Consolidated Subsidiaries.

"Withdrawal Liability" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

SECTION 1.02. *Classification of Loans and Borrowings.* For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a **"Revolving Loan"**) or by Type (e.g., an **"ABR Loan"**) or by Class and Type (e.g., an **"ABR Revolving Loan"**). Borrowings also may be classified and referred to by Class (e.g., a **"Revolving Borrowing"**) or by Type (e.g., an **"ABR Borrowing"**) or by Class and Type (e.g., an **"ABR Revolving Borrowing"**).

SECTION 1.03. *Terms Generally.* The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall" and the word "permit" shall be construed to have the same meaning and effect as the word "suffer". Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, amended and restated, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

SECTION 1.04. *Accounting Terms; GAAP.* Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared in accordance with GAAP; *provided* that, if the Company notifies the Administrative Agent that the Company wishes to amend any provision hereof to eliminate the effect of any change in GAAP (or if the Administrative Agent notifies the Company that the Required Lenders wish to amend any provision hereof for such purpose), then such provision shall be applied on the basis of GAAP in effect immediately before the relevant change in GAAP became effective, until either such notice is withdrawn or such provision is amended in a manner satisfactory to the Company and the Required Lenders.

ARTICLE 2 THE CREDITS

SECTION 2.01. *Commitments.* Subject to the terms and conditions set forth herein, each Lender agrees to make Revolving Loans denominated in Dollars or in an Alternative Currency as the Borrower elects pursuant to Section 2.03 to the Borrower from time to time during the Availability Period; *provided* that, immediately after each such Loan is made, (x) the amount of each Lender's Revolving Credit Exposure shall not exceed such Lender's Commitment and (y) the Alternative Currency Exposure shall not exceed the Alternative Currency Sublimit. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Revolving Loans.

SECTION 2.02. *Loans and Borrowings.* (a) Each Revolving Loan shall be made as part of a Borrowing consisting of Revolving Loans made by the Lenders ratably in accordance with their respective Commitments. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; *provided* that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.

(b) Subject to Section 2.13, each Revolving Borrowing shall be comprised entirely of ABR Loans or Euro-Currency Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any Euro-Currency Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; *provided* that any exercise of such option shall not affect the obligation of the

Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) At the time that any Revolving Borrowing is made, such Borrowing shall be (i) in the case of a Dollar-Denominated Borrowing, in an aggregate Dollar Amount that is not less than \$10,000,000 and an integral multiple of \$1,000,000 and (ii) in the case of a Borrowing denominated in an Alternative Currency, in an aggregate amount in such Alternative Currency that is not less than 10,000,000 units of such Alternative Currency and an integral multiple of 1,000,000 units of such Alternative Currency; *provided* that an ABR Revolving Borrowing may be in an aggregate amount that is equal to the entire unused balance of the total Commitments or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.05(f). Each Swingline Loan shall be in a Dollar Amount that is an integral multiple of \$100,000 and not less than \$500,000, or, in the case of a Swingline Loan denominated in an Alternative Currency, in an amount in such Alternative Currency that is an integral multiple of 100,000 units of such Alternative Currency and not less than 500,000 units of such Alternative Currency. Borrowings of more than one Type and Class may be outstanding at the same time; *provided* that there shall not at any time be more than a total of ten Euro-Currency Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

SECTION 2.03. *Requests for Revolving Borrowings.* To request a Revolving Borrowing, the Borrower shall notify the Administrative Agent of such request (a) in the case of a Euro-Dollar Borrowing, by telephone not later than 11:00 a.m., New York City time, three Euro-Dollar Business Days before the date of the proposed Borrowing, (b) in the case of an Alternative Currency Borrowing, in writing at its London office not later than 11:00 a.m. London time, three Euro-Currency Business Days before the date of the proposed Borrowing or (c) in the case of an ABR Borrowing, by telephone not later than 11:00 a.m., New York City time, one Domestic Business Day before the date of the proposed Borrowing; *provided* that any such notice of an ABR Revolving Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.05(f) may be given not later than 10:00 a.m., New York City time, on the date of the proposed Borrowing. Each such Borrowing Request shall be irrevocable and each such telephonic Borrowing Request shall be confirmed promptly by hand delivery or facsimile to the Administrative Agent of a written Borrowing Request in a form approved by the Administrative Agent and signed by the Borrower. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.02:

(i) the currency and the aggregate amount (in such currency) of the requested Borrowing;

(ii) the date of such Borrowing, which shall be a Domestic Business Day in the case of an ABR Revolving Borrowing and a Euro-Currency Business Day in the case of a Euro-Currency Borrowing;

(iii) in the case of a Revolving Borrowing in Dollars, whether such Borrowing is to be an ABR Borrowing or a Euro-Dollar Borrowing;

(iv) in the case of a Euro-Currency Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and

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

If no election as to the Type of Revolving Borrowing denominated in Dollars is specified, then the requested Revolving Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Euro-Currency Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

SECTION 2.04. *Swingline Loans.* (a) Subject to the terms and conditions set forth herein, each Swingline Lender agrees to make Swingline Loans to any Borrower in Dollars or (solely in the case of Swingline Loans made by JPMCB) in an Alternative Currency, as the Borrower elects, from time to time during the Availability Period, in an aggregate principal amount at any time outstanding that will not result in (i) the aggregate principal amount of outstanding Swingline Loans exceeding a Dollar Amount equal to \$100,000,000, (ii) the aggregate principal amount of outstanding Swingline Loans made by either Swingline Lender exceeding a Dollar Amount equal to \$50,000,000, (iii) the total Revolving Credit Exposures of all Lenders exceeding the total Commitments or (iv) the Alternative Currency Exposure exceeding the Alternative Currency Sublimit; *provided* that (x) no Swingline Lender shall be required to make a Swingline Loan to refinance an outstanding Swingline Loan and (y) the Borrowers shall use commercially reasonable efforts to allocate usage equally between the two Swingline Lenders. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrowers may borrow, prepay and reborrow Swingline Loans.

(b) To request a Swingline Loan, the Borrower shall notify the applicable Swingline Lender (with a copy to the Administrative Agent) of such request by telephone (confirmed by facsimile), (i) in the case of an Alternative Currency Borrowing or a Euro-Dollar Borrowing, at its London office no later than 12:00 p.m. London time on the date of the proposed Swingline Loan, and (ii) in the case of an ABR Borrowing, not later than 2:00 p.m., New York City time, on the day of a proposed Swingline Loan. Each such notice shall be irrevocable and shall specify the requested date (which shall be a Domestic Business Day in the case of Dollar-Denominated Loans or a Euro-Currency Business Day in the case of an Alternative Currency Loan), currency and amount of the requested Swingline Loan and the location and number of the Borrower's account to which the funds are to be disbursed. Each Swingline Lender shall make each Swingline Loan to be made by it available to the Borrower by means of a credit to the account designated by the Borrower for such purpose (or, in the case of a Swingline Loan made to finance the reimbursement of an LC Disbursement as provided in Section 2.05(f), by remittance to the Issuing Bank) by (i) 4:00

p.m. London time, in the case of Alternative Currency Loans and (ii) 4:00 p.m., New York City time, in the case of Dollar-Denominated Loans, on the requested date of such Swingline Loan.

(c) Either Swingline Lender may by written notice given to the Administrative Agent not later than (i) 10:00 a.m., London time, on any Euro-Currency Business Day, in the case of Alternative Currency Loans or (ii) 10:00 a.m., New York City time, on any Domestic Business Day, in the case of Dollar-Denominated Loans, require the Lenders to acquire participations on such Euro-Currency Business Day or Domestic Business Day (as applicable) in all or a portion of its Swingline Loans outstanding. Such notice shall specify the aggregate amount of Swingline Loans in which Lenders will participate. Promptly upon receipt of such notice, the Administrative Agent will give notice thereof to each Lender, specifying in such notice such Lender's Applicable Percentage of such Swingline Loan or Swingline Loans. Each Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of such Swingline Lender, such Lender's Applicable Percentage of such Swingline Loan or Swingline Loans. Each Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.06 with respect to Loans made by such Lender (and Section 2.06 shall apply, *mutatis mutandis*, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to such Swingline Lender the amounts so received by it from the Lenders. The Administrative Agent shall notify the Borrower of any participations in any Swingline Loan acquired pursuant to this paragraph, and thereafter payments in respect of such Swingline Loan shall be made to the Administrative Agent and not to such Swingline Lender. Any amounts received by such Swingline Lender from the Borrower (or other party on behalf of the Borrower) in respect of a Swingline Loan after receipt by such Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Administrative Agent; any such amounts received by the Administrative Agent shall be promptly remitted by the Administrative Agent to the Lenders that shall have made their payments pursuant to this paragraph and to such Swingline Lender, as their interests may appear; *provided* that any such payment so remitted shall be repaid to such Swingline Lender or to the Administrative Agent, as applicable, if and to the extent such payment is required to be refunded to the Borrower for any reason. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve the Borrower of any default in the payment thereof.

SECTION 2.05. *Letters of Credit.* (a) Existing Letters of Credit. On the Effective Date, without further action by any party hereto, the Issuing Bank shall be deemed to have granted to each Lender, and each Lender shall be deemed to have acquired from the Issuing Bank, a participation in each Existing Letter of Credit equal to such Lender's Applicable Percentage of (i) the aggregate amount available to be drawn thereunder and (ii) the aggregate unpaid amount of any outstanding reimbursement obligations in respect thereof. Such participations shall be on all the same terms and conditions as participations granted in Additional Letters of Credit under Section 2.05(e).

(b) General. Subject to the terms and conditions set forth herein, any Borrower may request the issuance of Additional Letters of Credit denominated in Dollars or in an Alternative Currency for its own account in a form acceptable to the Administrative Agent and the Issuing Bank, at any time and from time to time during the Availability Period. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, the Issuing Bank relating to any Additional Letter of Credit, the terms and conditions of this Agreement shall control.

(c) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of an Additional Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall hand deliver or facsimile (or transmit by electronic communication, if arrangements for doing so have been approved by the Issuing Bank) to the Issuing Bank and the Administrative Agent (reasonably in advance of the requested date of issuance, amendment, renewal or extension) a notice requesting the issuance of an Additional Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Euro-Currency Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (d) of this Section), the currency and amount in such currency of such Additional Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the Issuing Bank, the Borrower also shall submit a letter of credit application on the Issuing Bank's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension (i) the LC Exposure shall not exceed \$200,000,000, (ii) the Alternative Currency Exposure shall not exceed the Alternative Currency Sublimit and (iii) the total Revolving Credit Exposures of all Lenders shall not exceed the total Commitments.

(d) Expiration Date. Each Letter of Credit shall expire at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Additional Letter of Credit or, in the case of any renewal or extension thereof, one year after such renewal or extension (or, if any such day is not a Euro-Currency Business Day, the next preceding Euro-Currency Business Day) and (ii) the date that is five Euro-Currency Business Days prior to the Maturity Date. The expiry date of any Letter of Credit may be extended from time to time (i) at the Borrower's request in accordance with (c) above or (ii) in the case of an Evergreen Letter of Credit, automatically, in each case so long as such extension is for a period not exceeding one year, does not extend beyond the date referred to in clause (ii) of the immediately preceding sentence and is granted (or the last day on which notice can be given to prevent such extension occurs) no earlier than three months before the then existing expiry date thereof.

(e) Participations. By the issuance of an Additional Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Bank or the Lenders, the Issuing Bank hereby grants to each Lender, and each Lender hereby acquires from the Issuing Bank, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Lender

hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Bank in the applicable currency, such Lender's Applicable Percentage of each LC Disbursement made by the Issuing Bank and not reimbursed by the Borrower on the date due as provided in paragraph (f) of this Section, or of any reimbursement payment required to be refunded to the Borrower for any reason. Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(f) Reimbursement. If the Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement in the currency of such LC Disbursement (i) if such LC Disbursement shall have been denominated in Dollars, not later than 2:00 p.m., New York City time, on the date that such LC Disbursement is made, if the Borrower shall have received notice of such LC Disbursement prior to 9:00 a.m., New York City time, on such date, or, if such notice has not been received by the Borrower prior to such time on such date, then not later than 2:00 p.m., New York City time, on (x) the Domestic Business Day that the Borrower receives such notice, if such notice is received prior to 9:00 a.m., New York City time, on the day of receipt or (y) the Domestic Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time on the day of receipt and (ii) if such LC Disbursement shall have been denominated in an Alternative Currency, not later than 12:00 noon, London time, on the Euro-Currency Business Day following the date that such LC Disbursement is made, if the Borrower shall have received notice of such LC Disbursement prior to 4:00 p.m., London time, on the date such LC Disbursement is made, or, if such notice has not been received by the Borrower prior to such time on such date, then not later than 12:00 noon, London time, on (x) the Euro-Currency Business Day following the date that the Borrower receives such notice, if such notice is received prior to 4:00 p.m., London time, on the day of receipt or (y) the second Euro-Currency Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; *provided* that the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 or 2.04 that such payment be financed with (A) in the case of LC Disbursements denominated in Dollars, an ABR Revolving Borrowing (of not less than \$10,000,000) or a Swingline Loan (of not less than \$500,000) in an equal amount and (B) in the case of LC Disbursements denominated in an Alternative Currency, a Euro-Currency Borrowing for an equivalent amount in such currency and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting ABR Revolving Borrowing or Swingline Loan or Euro-Currency Borrowing. If the Borrower fails to make such payment when due, the Administrative Agent shall notify each Lender of the applicable LC Disbursement, the payment then due from the Borrower in respect thereof and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Lender shall pay to the Administrative Agent its Applicable Percentage of the payment then due from the Borrower, in the same manner as provided in Section 2.06 with respect to Loans made by such Lender (and Section 2.06 shall apply, *mutatis mutandis*, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to the Issuing Bank the amounts so received by it from the Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to this paragraph, the Administrative Agent shall distribute such payment to the Issuing Bank or, to the extent that Lenders have made payments pursuant to this paragraph to reimburse the Issuing Bank, then to such Lenders and the Issuing Bank as their interests may appear. Any payment made by a Lender pursuant to this paragraph to reimburse the Issuing Bank for any LC Disbursement (other than the funding of ABR Revolving Loans or a Swingline Loan as contemplated above) shall not constitute a Loan and shall not relieve the Borrower of its obligation to reimburse such LC Disbursement.

(g) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in paragraph (f) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. Neither the Administrative Agent, the Lenders nor the Issuing Bank, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuing Bank; *provided* that the foregoing shall not be construed to excuse the Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by the Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Issuing Bank (as finally determined by a court of competent jurisdiction), the Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

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

reimburse the Issuing Bank and the Lenders with respect to any such LC Disbursement.

(i) Interim Interest. If the Issuing Bank shall make any LC Disbursement, then, unless the Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrower reimburses such LC Disbursement, (i) if such amount is denominated in Dollars, at the rate per annum then applicable to ABR Revolving Loans, (ii) if such amount is denominated in an Alternative Currency, at the rate per annum equal to the sum of the Applicable Rate with respect to Euro-Currency Loans plus the rate per annum at which one-day deposits in relevant currency in an amount approximately equal to such unpaid amount are offered by the principal London office of the Administrative Agent in the London interbank market for such day; *provided* that, if the Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (f) of this Section, then 2% shall be added to the applicable rate specified above. Interest accrued pursuant to this paragraph shall be for the account of the Issuing Bank, except that interest accrued on and after the date of payment by any Lender pursuant to paragraph (f) of this Section to reimburse the Issuing Bank shall be for the account of such Lender to the extent of such payment.

(j) Replacement of the Issuing Bank. The Issuing Bank may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Lenders of any such replacement of the Issuing Bank. At the time any such replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.11(b). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(k) Cash Collateralization. If any Event of Default shall occur and be continuing (but, except in the case of an Event of Default under clause (b), (c), (g) or (h) of Article 8, only if the maturity of any then outstanding Loans shall have been accelerated and the Commitments terminated pursuant to Article 8), on the Domestic Business Day that the Company receives notice from the Administrative Agent given upon request of the Required Lenders (or, if the maturity of the Loans has been accelerated, Lenders with LC Exposure representing greater than 50% of the total LC Exposure) demanding the deposit of cash collateral pursuant to this paragraph, the Company shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Lenders, an amount in cash in each relevant currency equal to the LC Exposure in such currency as of such date plus any accrued and unpaid interest thereon; *provided* that the obligation to deposit such cash collateral will become effective immediately, and such deposit will become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to any Borrower described in clause (g) or (h) of Article 8. Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrower under this Agreement. The Company hereby grants a lien and security interest in, and sole and exclusive dominion and control, including the exclusive right of withdrawal, over such account to the Administrative Agent. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrowers' risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrowers for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Lenders with LC Exposure representing greater than 50% of the total LC Exposure), be applied to satisfy other obligations of the Borrowers under this Agreement. If the Company is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Company within three Business Days after all Events of Default have been cured or waived.

SECTION 2.06. *Funding of Borrowings.* (a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof:

(i) if such Borrowing is to be made in Dollars, not later than 12:00 noon (New York City time), in funds immediately available in New York City, to the account of the Administrative Agent most recently designated for such purpose by notice to the Lenders; *provided* that Swingline Loans shall be made as provided in Section 2.04; or

(ii) if such Borrowing is to be made in an Alternative Currency, not later than 12:00 noon (London time), in such Alternative Currency (in such funds as may then be customary for the settlement of international transactions in such Alternative Currency) to the account of the Administrative Agent as shall have most recently been designated by the Administrative Agent for such purpose by notice to the Lenders.

The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to an account of the Borrower designated by the Borrower in the applicable Borrowing Request; *provided* that Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.05(f) shall be remitted by the Administrative Agent to the Issuing Bank.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at the Federal Funds Effective

Rate (if such amount was distributed in Dollars) or the rate per annum at which one-day deposits in the relevant currency are offered by the principal London office of the Administrative Agent in the London interbank market (if such amount was distributed in an Alternative Currency).

SECTION 2.07. *Interest Elections.* (a) Each Dollar-Denominated Revolving Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Euro-Dollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Euro-Dollar Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. This Section shall not apply to Swingline Borrowings, which may not be converted or continued.

(b) To make an election pursuant to Section 2.07(a), the Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Dollar-Denominated Loan of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or facsimile to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by the Borrower.

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

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

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Domestic Business Day in the case of an ABR Borrowing and a Euro-Dollar Business Day in the case of a Euro-Dollar Borrowing;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Euro-Dollar Borrowing; and

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

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

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a Euro-Dollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Revolving Borrowing may be converted to or continued as a Euro-Dollar Borrowing and (ii) unless repaid, each Euro-Dollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

(f) Each Revolving Loan that is an Alternative Currency Loan shall have an initial Interest Period as specified in the applicable Borrowing Request. Thereafter, the Borrower may elect to continue such Borrowing and may elect Interest Periods therefor, by notifying the Administrative Agent of such election by telephone by the time and at the office that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting an Alternative Currency Loan to be made on the effective date of such election. The Borrower may elect different options with respect to different portions of the affected Borrowing (each in a minimum Dollar Amount of \$10,000,000), in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. Promptly following receipt of such Interest Election Request the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing. If the Borrower fails to deliver a timely Interest Election Request with respect to an Alternative Currency Borrowing prior to the end of the Interest Period applicable thereto, or any Interest Election Request fails to specify an Interest Period, then unless such Borrowing is repaid as provided herein, the Borrower shall be deemed to have elected a subsequent Interest Period of one month's duration.

SECTION 2.08. *Termination and Reduction of Commitments.* (a) Unless previously terminated, the Commitments shall terminate on the Maturity Date.

(b) The Company may at any time terminate, or from time to time reduce, the Commitments; *provided that* (i) each reduction of the Commitments shall be in an amount that is an integral multiple of \$1,000,000 and not less than \$10,000,000 and (ii) the Company shall not terminate or reduce the Commitments if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 2.10, the total Revolving Credit Exposures of all Lenders would exceed the total Commitments.

(c) The Company shall notify the Administrative Agent of any election to terminate or reduce the Commitments under paragraph (b) of this Section at least five Domestic Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Company pursuant to this Section shall be irrevocable; *provided that* a notice of termination of the Commitments

delivered by the Company may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Company (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitments shall be permanent. Each reduction of the Commitments shall be made ratably among the Lenders in accordance with their respective Commitments.

SECTION 2.09. *Repayment of Loans; Evidence of Debt.* (a) The Borrower hereby unconditionally promises to pay (i) to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Revolving Loan on the Maturity Date, and (ii) to each Swingline Lender the then unpaid principal amount of each of its Swingline Loans on the earlier of the Maturity Date and the date which is 15 Domestic Business Days after such Swingline Loan is made.

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

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the currency and amount of each Loan made hereunder, the Class and Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

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

(e) Any Lender may request that Loans made by it to any Borrower be evidenced by a promissory note. In such event, such Borrower shall prepare, execute and deliver to such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent and the Borrower. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 12.04) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

SECTION 2.10. *Prepayment of Loans.* (a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with paragraph (b) of this Section.

(b) The Borrower shall notify the Administrative Agent (and, in the case of prepayment of a Swingline Loan, the applicable Swingline Lender) by telephone (confirmed by facsimile) of any prepayment hereunder (i) in the case of prepayment of a Euro-Dollar Borrowing, not later than 11:00 a.m., New York City time, three Euro-Dollar Business Days before the date of prepayment, (ii) in the case of prepayment of an Alternative Currency Borrowing, to its London office not later than 11:00 a.m. London time three Euro-Currency Business Days before the date of prepayment, (iii) in the case of prepayment of an ABR Revolving Borrowing, not later than 11:00 a.m., New York City time, one Domestic Business Day before the date of prepayment or (iv) in the case of prepayment of a Swingline Loan, not later than 12:00 noon, New York City time (London time if such Swingline Loan is denominated in Alternative Currencies or made to a Borrower other than the Company), on the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; *provided* that, if a notice of prepayment is given in connection with a conditional notice of termination of the Commitments as contemplated by Section 2.08, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.08. Promptly following receipt of any such notice relating to a Revolving Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Revolving Borrowing shall be in an amount that would be permitted in the case of an advance of a Revolving Borrowing of the same Type as provided in Section 2.02. Each prepayment shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.12.

SECTION 2.11. *Fees.* (a) The Company agrees to pay to the Administrative Agent for the account of each Lender a commitment fee in Dollars, which shall accrue at the Applicable Rate on the daily unused amount of the Commitment of such Lender (disregarding, solely for purposes of computation of such fee, outstanding Swingline Loans) during the period from and including the Effective Date to but excluding the date on which such Commitment terminates. Accrued commitment fees shall be payable in arrears on the last day of March, June, September and December of each year and on the date on which the Commitments terminate, commencing on the first such date to occur after the date hereof. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) The Borrower agrees to pay (i) to the Administrative Agent for the account of each Lender a participation fee in Dollars with respect to its participations in Letters of Credit, which shall accrue during each Calendar Quarter (or shorter period commencing on the Effective Date and ending on the last day of the Calendar Quarter in which the Effective Date occurs) at a rate per annum equal to the Euro-Currency Margin (determined for this purpose on the first Domestic Business Day of such Calendar Quarter or shorter period) on such Lender's daily LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date on which such Lender's Commitment terminates and the date on which such Lender ceases to have any LC Exposure and (ii) to the Issuing Bank a fronting fee in Dollars, which shall accrue at the rate of 0.125% per annum on the average daily LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date of termination of the Commitments and the date on which there ceases to be any LC Exposure, as well as the Issuing Bank's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of

Credit or processing of drawings thereunder. Participation fees and fronting fees accrued through and including the last day of March, June, September and December of each year shall be payable on the third Domestic Business Day following such last day, commencing on the first such date to occur after the Effective Date; *provided* that all such fees shall be payable on the date on which the Commitments terminate and any such fees accruing after the date on which the Commitments terminate shall be payable on demand. Any other fees payable to the Issuing Bank pursuant to this paragraph shall be payable within 10 days after demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(c) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent (or to the Issuing Bank, in the case of fees payable to it) for distribution, in the case of commitment fees and participation fees, to the Lenders. Fees paid shall not be refundable under any circumstances.

SECTION 2.12. *Interest.* (a) The Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Rate

(b) The Loans comprising each Euro-Currency Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) The Loans comprising each Swingline Borrowing shall bear interest, at the election of the applicable Borrower, at (x) solely in the case of Swingline Loans denominated in Dollars, the Alternative Base Rate plus the Applicable Rate, (y) the Adjusted LIBO Rate that would be applicable to Euro-Currency Loans in the applicable currency with a one-month Interest Period commencing on the date such loan is made, plus the Applicable Rate, or (z) prior to any funding by the Lenders of their participations therein pursuant to Section 2.04(c), at such other rate as shall from time to time be agreed between the applicable Swingline Lender and the applicable Borrower.

(d) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of or interest on any Loan, 2% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount, 2% plus the rate applicable to ABR Loans as provided in paragraph (a) of this Section.

(e) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and, in the case of Revolving Loans, upon termination of the Commitments; *provided* that (i) interest accrued pursuant to paragraph (d) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Revolving Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Euro-Currency Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(f) All interest hereunder shall be computed on the basis of a year of 360 days, except that (i) interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year) and (ii) interest computed with respect to Loans denominated in Pound Sterling shall be computed on the basis of a year of 365 days, and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate or Adjusted LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

SECTION 2.13. *Alternate Rate of Interest.* If prior to the commencement of any Interest Period for a Euro-Currency Borrowing:

(a) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate for deposits in the relevant currency for such Interest Period; or

(b) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate applicable to Euro-Currency Borrowings in the relevant currency for such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Company and the Lenders by telephone or facsimile as promptly as practicable thereafter and, until the Administrative Agent notifies the Company and the Lenders that the circumstances giving rise to such notice no longer exist (which the Administrative Agent shall do promptly after becoming aware thereof), (i) any Interest Election Request that requests the conversion of any Revolving Borrowing to, or continuation of any Revolving Borrowing as, a Euro-Currency Borrowing of the affected currency shall be ineffective and (ii) if any Borrowing Request requests a Euro-Currency Borrowing in the affected currency, such Borrowing shall be made as an ABR Borrowing in an equal Dollar Amount.

SECTION 2.14. *Increased Costs.* (a) If any Change in Law shall

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender or its Applicable Lending Office (except any such reserve requirement reflected in the Adjusted LIBO Rate) or the Issuing Bank; or

(ii) impose on any Lender (or its Applicable Lending Office) or the Issuing Bank or the London interbank market any other condition affecting this Agreement or Euro-Currency Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender (or its Applicable Lending Office) of making or maintaining any Euro-Currency Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender (or its Applicable Lending Office) or the Issuing Bank of participating in, issuing or maintaining any Letter of Credit or Swingline Loan or to reduce the amount of any sum received or receivable by such Lender (or its Applicable Lending Office) or the Issuing Bank hereunder (whether of principal, interest or otherwise), then the Company will pay (or will cause the relevant Borrower to pay) to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or the Issuing Bank determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Bank's capital or on the capital of such Lender's or the Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding company with respect to capital adequacy), then from time to time the Company will pay (or will cause the relevant Borrower to pay) to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or the Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or the Issuing Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section and the calculation of such amount or amounts in reasonable detail shall be delivered to the Company and shall be conclusive absent manifest error. The Company or the relevant Borrower, as the case may be, shall pay such Lender or the Issuing Bank, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation, as the case may be; *provided* that the Borrower shall not be required to compensate a Lender or the Issuing Bank pursuant to this Section 2.14 for any increased costs or reductions incurred more than 120 days prior to the date that such Lender or the Issuing Bank, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Issuing Bank's intention to claim compensation therefor; *provided further* that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 120-day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 2.15. *Break Funding Payments.* In the event of (a) the payment of any principal of any Euro-Currency Loan (or Swingline Loan that is not an ABR Loan) other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Euro-Currency Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Euro-Currency Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.10(b) and is revoked in accordance therewith) or (d) the assignment of any Euro-Currency Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.19, then, in any such event, the relevant Borrower shall compensate each Lender for the loss (excluding loss of margin), cost and expense attributable to such event. Such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for deposits in Dollars or other applicable currency of a comparable amount and period from other banks in the London interbank market; *provided*, however, that such Borrower shall not be required to compensate any Lender for any costs of terminating or liquidating any hedge or trading position (including any rate swap, basis swap, forward rate transaction, interest rate option, cap, collar or floor transaction, or any similar transaction). A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

SECTION 2.16. *Taxes.* (a) Any and all payments by or on account of any obligation of any Borrower under the Loan Documents shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; *provided* that if any Borrower shall be required to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent, Lender or Issuing Bank (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) such Borrower shall make such deductions and (iii) such Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) In addition, each Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) The relevant Borrower shall indemnify the Administrative Agent, each Lender and the Issuing Bank, within 10 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent, such Lender or the Issuing Bank, as the case may be, on or with respect to any payment by or on account of any obligation of such Borrower under the Loan Documents (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority; *provided* that the relevant Borrower shall not be obligated to

indemnify the Administrative Agent, such Lender or the Issuing Bank, as the case may be, pursuant to this Section in respect of penalties, interest or similar liabilities arising therefrom or with respect thereto to the extent such penalties, interest or similar liabilities are attributable to the gross negligence or willful misconduct by the Administrative Agent, such Lender or the Issuing Bank, as the case may be. A certificate as to the amount of such payment or liability delivered to the relevant Borrower by a Lender or the Issuing Bank, or by the Administrative Agent on its own behalf or on behalf of a Lender or the Issuing Bank, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by any Borrower to a Governmental Authority, such Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which a Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under any Loan Document shall promptly upon request therefor deliver to the Company (with a copy to the Administrative Agent), at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law or reasonably requested by the Company as will permit such payments to be made without withholding or at a reduced rate.

(f) If the Administrative Agent or a Lender determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by any Borrower or with respect to which any Borrower has paid additional amounts pursuant to this Section 2.16, it shall pay over such refund to such Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by such Borrower under this Section 2.16 with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses with respect to such refund of the Administrative Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided* that such Borrower, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This Section shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the Borrower or any other Person.

SECTION 2.17. *Foreign Subsidiary Costs.* If the cost to any Lender of making or maintaining any Loan to or of issuing or maintaining any Letter of Credit for the account of an Eligible Subsidiary is increased, or (except as permitted by Section 2.16) the amount of any sum received or receivable by any Lender (or its Applicable Lending Office) is reduced in each case by an amount deemed by such Lender to be material, by reason of the fact that such Eligible Subsidiary is incorporated in, or conducts business in, a jurisdiction outside the United States, the Company shall indemnify such Lender for such increased cost or reduction within 10 days after demand by such Lender (with a copy to the Administrative Agent). A certificate of such Lender claiming compensation under this Section 2.17 and setting forth the additional amount or amounts to be paid to it hereunder shall be conclusive in the absence of manifest error.

SECTION 2.18. *Payments Generally; Pro Rata Treatment; Sharing of Set-offs.* (a) The Borrower shall make each payment of principal of, and interest on, the Dollar-Denominated Loans, of LC Exposures denominated in Dollars and of fees hereunder, not later than 12:00 noon (New York City time) on the date when due, in Dollars in funds immediately available in New York City. The Borrower shall make each payment of principal of, and interest on, the Alternative Currency Loans and of LC Exposures denominated in an Alternative Currency in the relevant Alternative Currency in such funds as may then be customary for the settlement of international transactions in such Alternative Currency. Each such payment shall be made without reduction by reason of any set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Domestic Business Day (in the case of amounts denominated in Dollars) or Euro-Currency Business Day (in the case of amounts denominated in an Alternative Currency) for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at 270 Park Avenue, New York, New York, except payments to be made directly to the Issuing Bank or a Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.14, 2.15, 2.16, 2.17 and 12.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Domestic Business Day (in the case of ABR Loans and LC Exposures denominated in Dollars) or a Euro-Currency Business Day (in the case of Euro-Currency Loans and LC Exposures denominated in an Alternative Currency), the date for payment shall be extended to the next succeeding Domestic Business Day (in the case of ABR Loans and LC Exposures denominated in Dollars) or Euro-Currency Business Day (in the case of Euro-Currency Loans and LC Exposures denominated in an Alternative Currency), and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal and unreimbursed LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements then due to such parties.

(c) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Revolving Loans or participations in LC Disbursements or Swingline Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Revolving Loans and participations in LC Disbursements and Swingline Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Revolving Loans and participations in LC Disbursements and Swingline Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Loans and participations in LC Disbursements and Swingline

Loans; *provided* that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by any Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to the Company or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). Each Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the Company or the applicable Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Bank hereunder that a Borrower will not make such payment, the Administrative Agent may assume that such Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Bank, as the case may be, the amount due. In such event, if such Borrower has not in fact made such payment, then each of the Lenders or the Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at (i) the Federal Funds Effective Rate (if such distribution was made in Dollars) or (ii) the rate per annum at which one-day deposits in the relevant currency are offered by the principal London office of the Administrative Agent in the London interbank market (if such distribution was made in an Alternative Currency).

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.04(c), 2.05(e), 2.05(f), 2.06(b) or 2.18(d), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

SECTION 2.19. *Mitigation Obligations; Replacement of Lenders.* (a) If any Lender requests compensation under Section 2.14 or 2.17, or if any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.16, then such Lender shall use reasonable efforts to designate a different Applicable Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.14, 2.16 or 2.17, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Company hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requests compensation under Section 2.14 or 2.17, or if any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.16, or if any Lender defaults in its obligation to fund Loans hereunder, then the Company may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 12.04), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided* that (i) the Company shall have received the prior written consent of the Administrative Agent, which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and funded participations in LC Disbursements and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Company or the relevant Borrower (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.14 or 2.17 or payments required to be made pursuant to Section 2.16, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Company to require such assignment and delegation cease to apply.

SECTION 2.20. *Currency Equivalents.* (a) The Administrative Agent shall determine the Dollar Amount of each Alternative Currency Loan as of the first day of each Interest Period applicable thereto (or, in the case of a Swingline Loan, the date of borrowing) and, in the case of any such Interest Period of more than three months, at three-month intervals after the first day thereof, and shall promptly notify the Borrower and the Lenders of each Dollar Amount so determined by it. Each such determination shall be based on the Spot Rate (i) on the date of the related Borrowing Request (or request pursuant to Section 2.04) for purposes of the initial such determination for any Alternative Currency Loan and (ii) on the fourth Euro-Currency Business Day prior to the date as of which such Dollar Amount is to be determined, for purposes of any subsequent determination.

(b) The Administrative Agent shall determine the LC Exposure related to each Letter of Credit as of the date of issuance thereof and at three-month intervals after the date of issuance thereof. Each such determination shall be based on the Spot Rate (i) on the date of the related notice of issuance, in the case of the initial determination in respect of any Letter of Credit and (ii) on the fourth Euro-Currency Business Day prior to the date as of which such Dollar Amount is to be determined, in the case of any subsequent determination with respect to an outstanding Letter of Credit.

(c) If after giving effect to any such determination of a Dollar Amount, the total Revolving Credit Exposures of all Lenders exceed the aggregate amount of the Commitments or the aggregate Dollar Amount of Alternative Currency Loans and LC Exposures denominated in an Alternative Currency exceeds 105% of the Alternative Currency Sublimit, the Borrowers shall within five Euro-Currency Business Days prepay outstanding Loans (as selected by the Company and notified to the Lenders through the Administrative Agent not less than three

Euro-Currency Business Days prior to the date of prepayment) or take other action to the extent necessary to eliminate any such excess.

SECTION 2.21. *Margin Determinations.* The Administrative Agent shall determine the Applicable Rate from time to time in accordance with the provisions set forth below:

The "**Euro-Currency Margin**" is a rate per annum equal to the Credit Default Swap Spread at the applicable date of determination specified below, subject to the then applicable minimum and maximum rates which are set forth in the "Pricing Grid" below under the respective columns headed "Margin Floor" and "Margin Ceiling". The Euro-Currency Margin applicable to any Euro-Currency Borrowing for any Interest Period will be determined based on the Credit Default Swap Spread in effect on, (a) in the case of such a Euro-Currency Revolving Borrowing denominated in Dollars, two Euro-Currency Business Days prior to the commencement of such Interest Period, (b) in the case of such a Euro-Currency Revolving Borrowing denominated in an Alternative Currency, three Euro-Currency Business Days prior to the commencement of such Interest Period, and (c) in the case of such a Euro-Currency Swingline Borrowing, the Euro-Currency Business Day preceding the date of such Euro-Currency Swingline Borrowing; *provided* that if such Interest Period is a period greater than three months, the applicable Euro-Currency Margin shall be redetermined at the end of each successive three-month period during such Interest Period.

The "**ABR Margin**" applicable at all times during any Calendar Quarter (or shorter period commencing on the Effective Date and ending on the last day of the Calendar Quarter in which the Effective Date occurs) is a rate per annum equal to the excess, if any, of the Euro-Currency Margin determined on the first Domestic Business Day of such Calendar Quarter (or shorter period) over 1.00% per annum.

The "**Commitment Fee Rate**" applicable at all times during any Calendar Quarter (or shorter period commencing on the Effective Date and ending on the last day of the Calendar Quarter in which the Effective Date occurs) is a rate per annum equal to 20% of the Euro-Currency Margin determined on the first Domestic Business Day of such Calendar Quarter (or shorter period).

The "**Credit Default Swap Spread**" at any determination date is the credit default swap spread applicable to senior debt of the Borrower with a maturity of June 30, 2011, as of the close of business on the Domestic Business Day immediately preceding such determination date, as interpolated and reported by Markit.

Pricing Grid

Pricing Level	Margin Floor	Margin Ceiling
I	0.50%	0.75%
II	0.75%	2.00%
III	1.00%	2.75%

For purposes of the foregoing table, the following terms have the following meanings, subject to the further provisions of this Section:

"**Level I Pricing**" applies at any date if, at such date, the Company's senior unsecured long-term debt is assigned at least two of the following three ratings: A- or higher by S&P, A3 or higher by Moody's, and A- or higher by Fitch.

"**Level II Pricing**" applies at any date if, at such date, (i) Level I Pricing does not apply and (ii) the Company's senior unsecured long-term debt is assigned at least two of the following three ratings: BBB- or higher by S&P, Baa3 or higher by Moody's, and BBB- or higher by Fitch.

"**Level III Pricing**" applies at any date if, at such date, no other Pricing Level applies.

"**Pricing Level**" refers to the determination of which of Level I, Level II or Level III Pricing applies at any date.

"**Rating Agency**" means S&P, Moody's or Fitch (and their successors).

In the event that ratings are not available from all three Rating Agencies, (a) if ratings are available from two Rating Agencies but are not equivalent, then (i) if the ratings differential is one ratings level, the Pricing Level shall be that applicable to the higher of the two ratings and (ii) if the ratings differential is two rating levels or more, the Pricing Level shall be that which would be applicable to a rating which is one rating level below the higher of the two ratings, (b) if a rating from only one Rating Agency is available, then the Pricing Level shall be that applicable to such rating and (c) if ratings are not available from any of the three Rating Agencies, then Level III Pricing shall apply.

The credit ratings to be utilized for purposes of this Section are those assigned by S&P, Fitch or Moody's to the senior unsecured long-term debt securities of the Company without third-party credit enhancement, and any rating assigned to any other debt security of the Company shall be disregarded. The rating in effect at any date is that in effect at the close of business on such date. Notwithstanding the definition of Level III Pricing above, if the rating system of any Rating Agency shall change, or if any Rating Agency shall cease to be in the business of rating corporate debt obligations, the Company and the Administrative Agent shall negotiate in good faith to amend this Section to reflect such changed rating system or the nonavailability of ratings from such Rating Agency and, pending the effectiveness of any such amendment, the Pricing Level shall be determined by reference to the rating most recently in effect prior to such change or cessation.

If at any time the Credit Default Swap Spread is unavailable, the Company and the Lenders shall negotiate in good faith (for a period of up to thirty days after the Credit Default Swap Spread becomes unavailable (such thirty-day period, the "Negotiation Period")) to agree on an alternative method for establishing the Euro-Currency Margin. The Euro-Currency Margin at any date of determination thereof in accordance with the preceding provisions of this Section which falls during the Negotiation Period shall be based upon the then most recently available quote of the Credit Default Swap Spread. If no such alternative method is agreed upon during the Negotiation Period, the Euro-

Currency Margin at any date of determination subsequent to the end of the Negotiation Period shall be a rate per annum equal to 75% of the rate set forth in the "Pricing Grid" above under the column headed "Margin Ceiling" corresponding to the Pricing Level in effect on such date of determination.

SECTION 2.22. *Markit Data.* (a) JPMCB, in any capacity, whether in an individual capacity or as Administrative Agent or Lender or otherwise, shall receive data from Markit with respect to the Credit Default Swap Spread and agrees in such capacity to provide to Designated Users identified by each Lender (and, if JPMCB is not the Administrative Agent, the Administrative Agent) such data, including any accompanying written notice or supporting information from Markit (together, the "**Markit Data**"), via email, log-in or other means of communication at the discretion of JPMCB. JPMCB shall have all of the rights, benefits and protections of the Administrative Agent provided for in Article 9 when acting in such capacity with respect to the provision of any Markit Data.

For the avoidance of doubt, any Designated User shall only access and use the Markit Data for the purposes as specified in this Agreement on behalf of the respective Lender or, if applicable, the Administrative Agent and shall be required by such Lender, and if applicable, the Administrative Agent, to comply with the terms of this Section 2.22. Each Lender, and if applicable, the Administrative Agent, hereby agrees, without limiting Markit's or JPMCB's other rights and remedies, that it is responsible for and liable for any breach of any of the provisions of this Section 2.22 by its respective Designated Users.

(b) Each Lender acknowledges that all copyright, database rights, trade marks, patents, rights of privacy or publicity and other proprietary or intellectual property rights (including all models, software, data and any materials) comprised in all or any of the Markit Data, or their provision, and all enhancements, modifications or additional services thereto, are and will be the exclusive property of Markit. Except as provided for under this Agreement, each Lender agrees that it will not use the same (including copying, reverse engineering or, except as otherwise required by law or regulation, disclosing it to any person, for any purpose whatsoever) and will not remove or deface any trademarks associated with the Markit Data. Each Lender acknowledges that the Markit Data was developed, compiled, prepared, revised, selected and arranged by Markit and others (including certain information sources (each a "**Data Provider**")) through the application of methods and standards of judgment developed and applied through the expenditure of substantial time, effort and money, and constitute valuable intellectual property and trade secrets of Markit. Each Lender shall make reasonable efforts to comply, at Markit's expense, with all reasonable written requests made by JPMCB (upon Markit's written requests to JPMCB) to protect any contractual, statutory and common law rights in the Markit Data.

(c) Each Lender acknowledges that none of Markit, JPMCB, their respective affiliates or any Data Provider makes any warranty, express or implied, as to the accuracy or completeness of the Markit Data or as to the results to be attained by any Lender or others from the use of the Markit Data. Each Lender hereby acknowledges that there are no express or implied warranties of title, merchantability or fitness for a particular purpose or use, and that it has not relied upon any warranty, guaranty or representation made by Markit, JPMCB, their respective affiliates or any Data Provider.

(d) Neither Markit and its affiliates (except in the event of fraud, gross negligence or willful misconduct on part of Markit or its affiliates) nor any Data Provider nor JPMCB and its affiliates shall in any way be liable to any Lender or any client of any Lender for any inaccuracies, errors or omissions, regardless of cause, in the Markit Data provided hereunder or for any damages (whether direct or indirect) resulting therefrom. Without limiting the foregoing, Markit and JPMCB shall have no liability whatsoever to any Lender or client of a Lender, whether in contract (including under an indemnity), in tort (including negligence), under a warranty, under statute or otherwise, in respect of any loss or damage suffered by such Lender or client as a result of or in connection with any opinions, recommendations, forecasts, judgments, or any other conclusions, or any course of action determined, by such Lender or any client of such Lender, based on the Markit Data. To the extent permitted by law, neither Markit nor JPMCB nor their respective affiliates shall be liable for any loss of profits or revenue or any indirect or consequential losses or damages whatsoever incurred, whether or not it has been advised in advance of the possibility of any such loss.

(e) Each Lender acknowledges that it or its employees may, in the course of performing such Lender's responsibilities under this Agreement, be exposed to or acquire information which is proprietary or confidential to Markit or to third parties to whom Markit owes a duty of confidentiality. Markit's and such third parties' confidential information means the Markit Data and any related materials provided by Markit through JPMCB to each Lender and the Administrative Agent under this Agreement. Each Lender agrees to hold Markit's and such third parties' confidential information in confidence to the same extent and in the same manner as such Lender is required to hold Borrower's information confidential pursuant to Section 12.13 hereof and agrees that it will follow procedures which are intended to put any transferee of such confidential information on notice that such confidential information may not be used for any other purposes except as contemplated herein. It is understood and agreed that in the event of a breach of confidentiality, damages may not be an adequate remedy and that JPMCB shall be entitled to injunctive relief to restrain any such breach, threatened or actual. Notwithstanding anything herein to the contrary, the Lenders and the Administrative Agent are entitled to disclose and use the Markit Data in the normal course of their business as it relates to the Agreement, including but not limited to disclosing such information to ratings agencies, league table providers and prospective assignees and participants.

(f) The Borrower acknowledges that each of JPMCB and the other Lenders from time to time may conduct business with and may be a shareholder of Markit and that each of JPMCB or the other Lenders may have from the time to time the right to appoint one or more directors to the Board of Directors of Markit.

SECTION 2.23. *Illegality.* (a) If, after the Effective Date, the adoption of any applicable law, rule or regulation, or any change in any applicable law, rule or regulation, or any change in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender (or its Euro-Currency Lending Office) with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency shall make it unlawful or impossible for any Lender (or its Euro-Currency Lending Office) to make, maintain or fund its Euro-Currency Loans to

any Borrower and such Lender shall so notify the Administrative Agent, the Administrative Agent shall forthwith give notice thereof to the other Lenders and the Company, whereupon until such Lender notifies the Company and the Administrative Agent that the circumstances giving rise to such suspension no longer exist, the obligation of such Lender to make Euro-Currency Loans to such Borrower, or to convert outstanding Loans to such Borrower into Euro-Dollar Loans, shall be suspended. If such notice is given with respect to Euro-Dollar Loans, each Euro-Dollar Loan of such Lender then outstanding shall be converted to an ABR Loan either (i) on the last day of the then current Interest Period applicable to such Euro-Dollar Loan if such Lender may lawfully continue to maintain and fund such Euro-Dollar Loan to such day or (ii) immediately if such Lender shall determine that it may not lawfully continue to maintain and fund such Euro-Dollar Loan to such day. If such notice is given with respect to Alternative Currency Loans, the relevant Borrower shall prepay such Alternative Currency Loans either (i) on the last day of the then current Interest Period applicable to such Alternative Currency Loan if such Lender may lawfully continue to maintain and fund such Alternative Currency Loan to such day or (ii) immediately if such Lender shall determine that it may not lawfully continue to maintain and fund such Alternative Currency Loan to such day.

(b) If it is unlawful for any Lender (or its Applicable Lending Office) to make or maintain Loans to any Eligible Subsidiary and such Lender shall so notify the Administrative Agent, the Administrative Agent shall forthwith give notice thereof to the other Lenders and the Company, whereupon until such Lender notifies the Company and the Administrative Agent that the circumstances giving rise to such suspension no longer exist, the obligation of such Lender to make or maintain Loans to such Eligible Subsidiary shall be suspended. If such notice is given, each Loan of such Lender then outstanding to such Eligible Subsidiary shall be prepaid either (i) in the case of a Euro-Currency Loan, on the last day of the then current Interest Period applicable thereto if such Lender may lawfully continue to maintain such Loan to such day or (ii) immediately if clause (i) does not apply.

(c) If so requested by the Administrative Agent and the Company, and provided that it may lawfully do so, any Lender whose Alternative Currency Loans have been prepaid pursuant to clause (a) of this Section or whose Loans to an Eligible Subsidiary have been prepaid pursuant to clause (b) of this Section shall purchase participations in the related Loans of the other Lenders, and such other adjustments shall be made, including without limitation Loans to the Company in an equivalent Dollar Amount in the event that participations in such related Loans may not lawfully be purchased by such Lenders, as may be required so that the credit exposure of the Lenders with respect to the Loans is shared on a basis proportionate to the Commitments of the Lenders.

(d) Before giving any notice to the Administrative Agent pursuant to this Section, such Lender shall designate a different Applicable Lending Office if such designation will avoid the need for giving such notice and will not, in the judgment of such Lender, be otherwise disadvantageous to such Lender.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

The Company and each Original Subsidiary Borrower represents and warrants to the Administrative Agent and the Lenders that:

SECTION 3.01. *Organization; Powers.* The Company and each Subsidiary (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has all requisite power and authority to own its property and assets and to carry on its business as now conducted and as proposed to be conducted, (c) is qualified to do business in every jurisdiction where such qualification is required, except where the failure so to qualify could not reasonably be expected to result in a Material Adverse Effect, and (d) has the power and authority to execute, deliver and perform its obligations under each Loan Document to which it is a party and under each other agreement or instrument contemplated thereby to which it is or will be a party and, in the case of any Borrower, to borrow hereunder.

SECTION 3.02. *Authorization.* The Transactions (a) have been duly authorized by all requisite corporate, partnership, limited liability company or analogous and, if required, stockholder, partner, member or analogous action and (b) will not (i) materially violate any provision of law, statute, rule or regulation, or of the certificate or articles of incorporation or other constitutive documents or by-laws of the Company or any Subsidiary, (ii) materially violate any order of any Governmental Authority or (iii) materially violate any provision of any material indenture, agreement or other instrument to which the Company or any Subsidiary is a party or by which any of them or any of their property is or may be bound, (iv) be in material conflict with, result in a material breach of or constitute (alone or with notice or lapse of time or both) a material default under any such indenture, agreement or other instrument or (v) result in the creation or imposition of any Lien upon any property or assets of the Company or any Subsidiary.

SECTION 3.03. *Enforceability.* This Agreement has been duly executed and delivered by the Company and each Original Subsidiary Borrower and constitutes, and each other Loan Document to which any Credit Party is party, when executed and delivered by such Credit Party, will constitute, a legal, valid and binding obligation of each such Credit Party enforceable against each such Credit Party in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law. The Loans and all other obligations or liabilities of the Company and each other Borrower hereunder shall not be subordinated in right of payment to any other Indebtedness of the Company or such Borrower, respectively.

SECTION 3.04. *Governmental Approvals.* No action, consent or approval of, registration or filing with or other action by any Governmental Authority is or will be required in connection with the Transactions, except such as will have been made or obtained on or before the Effective Date and thereafter will be in full force and effect.

SECTION 3.05. *Financial Statements.* (a) The Company has heretofore furnished to the Lenders (i) its Consolidated balance sheet and related Consolidated statements of earnings, cash flows and shareholders' equity as of and for the fiscal year ended December 31, 2007, audited by and accompanied by the opinion of Pricewaterhouse Coopers LLP, independent public accountants and (ii) its Consolidated balance sheet and related Consolidated statements of earnings and cash flows as of and for the fiscal quarter ended March 30, 2008, certified

by its chief financial officer. Such financial statements present fairly in all material respects the financial position of the Company and its Consolidated Subsidiaries as of such dates and their results of operations and cash flows for such periods. Such statements of financial position and the notes thereto disclose all material liabilities, direct or contingent, of the Company and its Consolidated Subsidiaries as of the dates thereof. Such financial statements were prepared in accordance with GAAP applied on a consistent basis.

(b) Since December 31, 2007, there has been no material adverse change in the business, assets, property, condition (financial or otherwise) or prospects of the Company and its Subsidiaries taken as whole.

SECTION 3.06. *Title to Properties; Possession Under Leases.* (a) The Company and each of the Subsidiaries has good and marketable title to, or valid leasehold interests in, all its material properties and assets, except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties and assets for their intended purposes. All such material properties and assets are free and clear of Liens, other than Liens expressly permitted by Section 6.01.

(b) the Company and each of the Subsidiaries has complied with all material obligations under all material leases to which it is a party and all such leases are in full force and effect. The Company and each of the Subsidiaries enjoys peaceful and undisturbed possession under all such material leases.

SECTION 3.07. *Subsidiaries.* Schedule 3.07 sets forth as of the Effective Date a list of each Subsidiary of the Company that is a Significant Subsidiary and identifies them as such, and sets forth the percentage ownership interest of the Company and any intermediate Subsidiary therein.

SECTION 3.08. *Litigation; Compliance with Laws.* (a) There are not any actions, suits, proceedings, inquiries or investigations at law or in equity or by or before any Governmental Authority now pending or, to the knowledge of the Company or Original Subsidiary Borrower, threatened against or affecting the Company or any Subsidiary or any business, property or rights of any such Person (i) which involve the Loan Documents or the Transactions or (ii) as to which there is a reasonable possibility of an adverse determination and which, if adversely determined, could, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(b) Neither the Company nor any of the Subsidiaries is in violation of any law, rule or regulation, or in default with respect to any judgment, writ, injunction or decree of any Governmental Authority, where such violation or default could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.09. *Non-existence of Certain Types of Agreements or Obligations.* (a) As of the Effective Date, neither the Company nor any of the Subsidiaries is a party to any agreement or instrument or subject to any corporate restriction that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(b) Neither the Company nor any of the Subsidiaries is in default in any manner under any provision of any material agreement or instrument (excluding any indenture or other agreement or instrument evidencing Indebtedness) to which it is a party or by which it or any of its properties or assets are or may be bound, where such default could reasonably be expected to result in a Material Adverse Effect.

(c) Except as set forth in Schedule 3.09(c), as of the Effective Date neither the Company nor any Subsidiary is a party to or is bound by the terms of (i) any indenture or other agreement or instrument evidencing Indebtedness or (ii) any certificate of designation or other certificate, agreement or instrument relating to any capital stock, in either case which contains a provision granting the holders thereof the right to require the Company or any Subsidiary to buy all or any part of such Indebtedness or capital stock (or any other provision having substantially the same effect) other than sinking fund and conversion provisions and provisions requiring repayment upon default or in connection with a "change of control" or similar event.

(d) Schedule 3.09(d) sets forth the total amount of each category of Priority Indebtedness (as set forth in the definition thereof) of the Company and its Subsidiaries existing as of the Effective Date.

(e) Schedule 3.09(e) sets forth the total amount of all Guarantees by the Company and its Subsidiaries of Indebtedness (other than Indebtedness under the Loan Documents and Indebtedness of the Company or any Subsidiary owing to the Company or any Subsidiary) existing as of the Effective Date.

SECTION 3.10. *Federal Reserve Regulations.* The making of the Loans hereunder and the use of the proceeds thereof as contemplated hereby will not violate or be inconsistent with Regulation U or Regulation X.

SECTION 3.11. *No Regulatory Restrictions on Borrowing.* Neither the Company nor any other Borrower is (a) an "**investment company**" as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended, or (b) subject to any other applicable regulatory scheme which restricts its ability to incur the indebtedness to be incurred hereunder.

SECTION 3.12. *Tax Returns.* The Company and each Subsidiary has filed or caused to be filed all Federal, state and local tax returns required to have been filed by it and has paid or caused to be paid all taxes shown to be due and payable on such returns or on any assessments received by it, except (a) taxes that are being contested in accordance with Section 5.03 or (b) to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.13. *Environmental Matters.* Except with respect to any other matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, neither the Company nor any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received written notice of any claim with respect to any Environmental

Liability or (iv) knows of any basis for any Environmental Liability.

SECTION 3.14. *ERISA*. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. The excess, if any, of the present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) over the fair market value of the assets of such Plan, as of the date of the most recent financial statements reflecting such amounts, could not reasonably be expected to have a Material Adverse Effect.

SECTION 3.15. *No Material Misstatements*. As of the Effective Date, the Information Memorandum does not contain any material misstatement of fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they are made, not materially misleading, and no other information, report, financial statement, exhibit or schedule furnished by or on behalf of the Company or any Subsidiary to the Administrative Agent or any Lender in connection with the negotiation of the Loan Documents, when taken together with all other such information, reports, financial statements, exhibits or schedules, contained any material misstatement of fact or omitted to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading.

SECTION 3.16. *Solvency*. Immediately following the making of each Borrowing and after giving effect to the application of the proceeds of such Borrowing, the Company and its Subsidiaries on a Consolidated basis will be Solvent. The Company and its Subsidiaries on a Consolidated basis do not intend to, and do not believe that the Company and its Subsidiaries on a Consolidated basis will, incur debts beyond their ability to pay such debts as they mature, taking into account the timing of and amounts of cash anticipated to be received by the Company and its Subsidiaries on a Consolidated basis and the timing of the amounts of cash anticipated to be payable on or in respect of the Indebtedness of the Company and its Subsidiaries on a Consolidated basis. For the purpose of this Section, "**Solvent**" means, with respect to any Person on a particular date, that on such date (a) the fair value of the property owned by such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of such Person, (b) such Person is able to meet its obligations as those obligations mature and (c) such Person is not engaged in business or a transaction for which such Person's property would constitute an unreasonably small capital. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

ARTICLE 4 CONDITIONS

SECTION 4.01. *Effective Date*. The obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 12.02):

(a) The Administrative Agent (or its counsel) shall have received from each party hereto either (i) a counterpart of this Agreement signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which may include facsimile transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement.

(b) The Administrative Agent shall have received a favorable written opinion (addressed to the Administrative Agent and the Lenders and dated the Effective Date) of Cravath, Swaine & Moore LLP, special New York counsel for the Company, substantially in the form of Exhibit B-1, Marya M. Rose, internal counsel to the Company, substantially in the form of Exhibit B-2 and Raymond J. Eyres, internal counsel to the Original Subsidiary Borrowers, substantially in the form of Exhibit B-3, in each case covering such other matters relating to the Credit Parties, the Loan Documents or the Transactions as the Administrative Agent shall reasonably request. The Company and each Original Subsidiary Borrower hereby requests such counsel to deliver such opinions.

(c) The Administrative Agent shall have received an opinion of Davis Polk & Wardwell, special counsel for the Administrative Agent, substantially in the form of Exhibit C and covering such additional matters relating to the transactions contemplated by the Loan Documents as the Administrative Agent may reasonably require.

(d) The Administrative Agent shall have received such documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence and good standing of the Borrowers, the authorization of the Transactions and any other legal matters relating to the Borrowers, the Loan Documents or the Transactions, all in form and substance reasonably satisfactory to the Administrative Agent and its counsel.

(e) The Administrative Agent shall have received a certificate, dated the Effective Date and signed by the President, a Vice President or a Financial Officer of the Company, confirming compliance with the conditions set forth in paragraphs (a) and (b) of Section 4.02.

(f) The Administrative Agent shall have received all fees and other amounts due and payable on or prior to the Effective Date, including, to the extent invoiced, reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by the Borrowers under the Loan Documents.

(g) The Administrative Agent shall have received evidence reasonably satisfactory to it of the payment of all principal of and interest on any loans outstanding under, and all accrued commitment fees under the Existing Credit Agreement.

The Administrative Agent shall notify the Company and the Lenders of the Effective Date, and such notice shall be conclusive and binding. The Company and the Lenders party to the Existing Credit Agreement hereby agree that upon the Effective Date: (i) the commitments of the banks under the Existing Credit Agreement shall terminate in their entirety immediately and automatically on the Effective Date, and such Existing Credit Agreement shall be terminated, without further action by any party to the Existing Credit Agreement, (ii) all participations

created thereunder in the Existing Letters of Credit shall terminate and (iii) subject to Section 2.15 of the Existing Credit Agreement, the Company may prepay any and all loans outstanding thereunder on the Effective Date and any requirement for notice of such prepayment shall be waived.

SECTION 4.02. *Each Credit Event.* The obligation of each Lender to make a Loan on the occasion of any Borrowing, and of the Issuing Bank to issue, amend, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) The representations and warranties of each Credit Party set forth in each Loan Document to which it is party (other than, solely in the case of a Borrowing to be made to repay maturing commercial paper of the Company, that set forth in Section 3.05(b)) shall be true and correct in all material respects on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable, except to the extent such representations and warranties expressly relate to an earlier date in which case such representations and warranties shall be true and correct in all material respects as of such earlier date.

(b) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default shall have occurred and be continuing.

Each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in paragraphs (a) and (b) of this Section.

SECTION 4.03. *First Borrowing by Each Eligible Subsidiary.* The obligation of each Lender to make a Loan, and the obligation of the Issuing Bank to issue a Letter of Credit, on the occasion of the first Borrowing by or issuance of a Letter of Credit for the account of each Eligible Subsidiary is subject to the satisfaction of the following further conditions:

(a) Receipt by the Administrative Agent of an opinion of counsel for such Eligible Subsidiary reasonably acceptable to the Administrative Agent, substantially to the effect of Exhibit F hereto and covering such other matters relating to the transactions contemplated hereby as the Required Lenders may reasonably require.

(b) Receipt by the Administrative Agent of all documents which it may reasonably request relating to the existence of such Eligible Subsidiary, the corporate authority for and the validity of the Election to Participate of such Eligible Subsidiary and this Agreement of such Eligible Subsidiary, and any other matters relevant thereto, all in form and substance reasonably satisfactory to the Administrative Agent.

(c) Receipt by each Lender not less than five Euro-Currency Business Days prior to the date of such Borrowing or issuance of all documentation and other information reasonably requested in writing by such Lender in order to allow it to comply with applicable "know your customer" and anti-money laundering rules and regulations with respect to such Eligible Subsidiary.

ARTICLE 5 AFFIRMATIVE COVENANTS

Until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated and all LC Disbursements shall have been reimbursed, the Company covenants and agrees with the Lenders that it will, and will cause each of its Subsidiaries to:

SECTION 5.01. *Existence; Businesses and Properties.* (a) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence, except (i) in the case of each Subsidiary that is not a Borrower to the extent that the failure to take any such action could not reasonably be expected to have a Material Adverse Effect or (ii) as otherwise expressly permitted under Section 6.03.

(b) Do or cause to be done all things necessary to (i) obtain, preserve, renew, extend and keep in full force and effect the rights, licenses, permits, franchises, authorizations, patents, copyrights, trademarks and trade names material to the conduct of its business, (ii) comply in all material respects with all applicable laws, rules, regulations and orders of any Governmental Authority, whether now in effect or hereafter enacted, and (iii) at all times maintain and preserve all property material to the conduct of such business and keep such property in good repair, working order and condition (ordinary wear and tear excepted) and from time to time make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto necessary in order that the business carried on in connection therewith may be properly conducted at all times, except in the case of clauses (i), (ii) and (iii) above, to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.02. *Insurance.* Keep its insurable properties insured at all times by financially sound and reputable insurers in such amounts (with no greater risk retention) and against such risks as are customarily maintained by companies of established repute engaged in the same or similar businesses operating in the same or similar locations (including without limitation by the maintenance of self-insurance to the extent consistent with industry practice); maintain such other insurance, to such extent and against such risks, including fire and other risks insured against by extended coverage, as is customary with companies in the same or similar businesses, including public liability insurance against claims for personal injury or death or property damage occurring upon, in, about or in connection with the use of any properties owned, occupied or controlled by it; and maintain such other insurance as may be required by law.

SECTION 5.03. *Obligations and Taxes.* Pay its obligations (other than Indebtedness) promptly and in accordance with their terms and pay and discharge promptly all taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property, before the same shall become delinquent or in default, as well as all lawful claims for labor, materials and supplies or otherwise which, if unpaid, might give rise to a Lien upon such properties or any part thereof; *provided* that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy or claim so long as the validity or amount thereof shall be contested in good faith by appropriate proceedings and the Company or such Subsidiary shall, to the extent required by GAAP applied on a consistent

basis, set aside on its books adequate reserves with respect thereto.

SECTION 5.04. *Financial Statements, Reports, Etc.* In the case of the Company, furnish to the Administrative Agent and each Lender:

(a) within 90 days after the end of each fiscal year, its Consolidated balance sheet and related Consolidated statements of earnings, cash flows and shareholders' equity, showing the financial position of the Company and its Consolidated Subsidiaries as of the close of such fiscal year and their results of operations and cash flows for such year, all audited by PricewaterhouseCoopers LLP or other independent public accountants of recognized national standing and accompanied by an opinion of such accountants (which shall not be qualified in any material respect except with the consent of the Required Lenders) to the effect that such Consolidated financial statements fairly present in all material respects the financial position, results of operations and cash flows of the Company on a Consolidated basis in accordance with GAAP consistently applied;

(b) within 45 days after the end of each of the first three fiscal quarters of each fiscal year, its Consolidated balance sheet and related Consolidated statements of earnings and cash flows showing the financial position of the Company and its Consolidated Subsidiaries as of the close of such fiscal quarter and their results of operations for such fiscal quarter and the then elapsed portion of the fiscal year and their cash flows for the then elapsed portion of the fiscal year, all certified by one of its Financial Officers as fairly presenting the financial position, results of operations and cash flows of the Company on a Consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments;

(c) concurrently with any delivery of financial statements under paragraph (a) or (b) above, a certificate, substantially in the form of Exhibit G hereto, of a Financial Officer (i) certifying that no Default has occurred or, if such Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto and (ii) setting forth computations in reasonable detail reasonably satisfactory to the Administrative Agent demonstrating compliance with the covenants contained in Sections 7.01 and 7.02;

(d) promptly after the occurrence of any event or condition which makes the information thereon inaccurate, incomplete or untrue, an update to Schedule 3.07;

(e) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by it with the Securities and Exchange Commission, or any Governmental Authority succeeding to any of or all the functions of such Commission, or with any national securities exchange, or distributed to its shareholders, as the case may be; and

(f) promptly, from time to time, such other information regarding the operations, business affairs and financial condition of the Company or any Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent may reasonably request.

Information required to be delivered pursuant to paragraphs 5.04(a), 5.04(b) or 5.04(e) above shall be deemed to have been delivered on the date on which the Company provides notice to the Lenders that such information has been posted on the Company's website on the Internet at www.cummins.com, at sec.gov/edaux/searches.htm or at another website identified in such notice and accessible by the Lenders without charge; *provided* that (i) such notice may be included in a certificate delivered pursuant to paragraph 5.04(c) and (ii) the Borrower shall deliver paper copies of the information referred to in paragraphs 5.04(a) or 5.04(b) to any Lender which requests such delivery.

SECTION 5.05. *Litigation and Other Notices.* Furnish to the Administrative Agent and each Lender prompt written notice of the following:

(a) any Default, specifying the nature and extent thereof and the corrective action (if any) proposed to be taken with respect thereto;

(b) the filing or commencement of, or any written threat or notice of intention of any Person to file or commence, any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority, against the Company or any Affiliate thereof as to which there is a reasonable possibility of an adverse determination and which, if adversely determined, could reasonably be expected to result in a Material Adverse Effect;

(c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events which have occurred, could reasonably be expected to result in a Material Adverse Effect;

(d) any development that has resulted in, or could reasonably be expected to result in, a Material Adverse Effect; and

(e) any change in the Company's senior unsecured debt rating from S&P, Fitch or Moody's or in its corporate credit rating from S&P.

SECTION 5.06. *Maintaining Records; Access to Properties and Inspections.* Maintain all financial records in accordance with GAAP and permit any representatives designated by the Administrative Agent or any Lender, upon reasonable prior notice, to visit and inspect the financial records and the properties of the Company or any Subsidiary at reasonable times and as often as reasonably requested and to make extracts from and copies of such financial records, and permit any representatives designated by any Administrative Agent or any Lender to discuss the affairs, finances and condition of the Company or any Subsidiary with the officers thereof and independent accountants therefor; *provided* that (i) the Company or such Subsidiary may require that a representative appointed by it be present at such inspections or discussions and (ii) the obligations of the Company and its Subsidiaries under this Section are subject to, and the Administrative Agent and any such Lender shall comply with, all applicable confidentiality restrictions.

SECTION 5.07. *Use of Proceeds and Letters of Credit.* Use the proceeds of the Loans and request the issuance of Letters of Credit only for the general corporate purposes of the Company and its Subsidiaries. No part of the proceeds of any Loan will be used, whether directly or indirectly, (a) for any purpose that entails a violation of any of the Regulations of the Board, including Regulation T, Regulation U and

Regulation X, or (b) in any hostile acquisition of another Person.

SECTION 5.08. *Compliance with Laws.* Comply with all applicable laws, statutes, rules and regulations (including all applicable Environmental Laws) and obtain, maintain and comply with, in each case in all material respects, any and all licenses, approvals, notifications, registrations or permits required by applicable laws, statutes, rules and regulations (including all applicable Environmental Laws) except to the extent that, in any such case, failure to do so could not be reasonably expected to have a Material Adverse Effect.

ARTICLE 6 NEGATIVE COVENANTS

Until the Commitments have expired or terminated and the principal of and interest on each Loan and all fees payable hereunder have been paid in full and all Letters of Credit have expired or terminated and all LC Disbursements shall have been reimbursed, the Company covenants and agrees with the Lenders that it will not, and will not cause or permit any of its Subsidiaries to:

SECTION 6.01. *Negative Pledge.* Create, incur, assume or permit to exist any Lien on any property or assets (including stock or other securities of Subsidiaries) now owned or hereafter acquired by it or on any income or rights in respect of any thereof, except:

- (a) Liens imposed by law for taxes that are not yet due or are being contested in compliance with Section 5.03;
- (b) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 30 days or are being contested in compliance with Section 5.03;
- (c) pledges and deposits and other Liens made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations;
- (d) Liens (including deposits) to secure the performance of bids, tenders, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of like nature, in each case in the ordinary course of business;
- (e) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere materially with the ordinary conduct of business of the Company or any Subsidiary;
- (f) any Lien existing on any property or asset prior to the acquisition thereof by the Company or any Subsidiary; *provided* that (i) such Lien is not created in contemplation of or in connection with such acquisition and (ii) such Lien does not apply to any other property or assets of the Company or any Subsidiary;
- (g) Liens (including deposits) in connection with self-insurance;
- (h) judgment or other similar Liens in connection with legal proceedings in an aggregate principal amount (net of amounts for which relevant insurance providers have delivered written acknowledgements of coverage) not to exceed \$250,000,000; *provided* that the execution or other enforcement of such Liens is effectively stayed and the claims secured thereby are being actively contested in good faith by appropriate proceedings;
- (i) Liens arising in connection with advances or progress payments under government contracts;
- (j) Liens on assets of Subsidiaries securing Indebtedness payable to the Company or any Wholly-Owned Consolidated Subsidiary;
- (k) Liens on Transferred Receivables, Related Security and Collections securing the Permitted Receivables Financing Indebtedness;
- (l) Liens on the equipment identified in Schedule 6.01 securing the Permitted Power Generation Lease Obligations; and
- (m) Liens securing Indebtedness other than Indebtedness described in paragraphs (a) through (l) above, to the extent and only to the extent that the aggregate amount of Priority Indebtedness shall not exceed the Priority Indebtedness Limit at any time.

SECTION 6.02. *Sale and Lease-Back Transactions.* Enter into any arrangement, directly or indirectly, with any Person whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property which it intends to use for substantially the same purpose or purposes as the property being sold or transferred (a "**Sale and Lease-Back Transaction**"), unless, after giving effect to such Sale and Lease-Back Transaction, the aggregate amount of Priority Indebtedness shall not exceed the Priority Indebtedness Limit; *provided* that the Company or any Subsidiary may enter into Sale and Lease-Back Transactions without restriction if the property subject to such Sale and Lease-Back Transaction was purchased by the Company or any Subsidiary within six months of the date of such Sale and Lease-Back Transaction.

SECTION 6.03. *Mergers, Consolidations, and Sales of Assets.* (a) In the case of the Company and any Significant Subsidiary, merge with or into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or substantially all of its assets, or all or substantially all of the stock of any of the Significant Subsidiaries (in each case, whether now owned or hereafter acquired), or liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Default shall have occurred and be continuing, (i) any Subsidiary or other Person may merge into or consolidate with the Company in a transaction in which the Company is the surviving corporation, (ii) any Subsidiary may merge into or consolidate with any other Subsidiary in a transaction in which the surviving entity is a Wholly-Owned Consolidated

Subsidiary; *provided* that if either such Subsidiary is a Borrower, then the surviving corporation shall be a Borrower organized under the laws of an Approved Jurisdiction, (iii) any Subsidiary may sell, transfer, lease or otherwise dispose of its assets to the Company or to a Wholly-Owned Consolidated Subsidiary, (iv) any Subsidiary other than a Credit Party may liquidate or dissolve if the Company determines in good faith that such liquidation or dissolution is in the best interests of the Company and is not materially disadvantageous to the Lenders, (v) any Subsidiary may merge into or consolidate with any other Person if the surviving Person is or becomes by virtue of such transaction a Wholly-Owned Consolidated Subsidiary and the Company determines in good faith that such merger or consolidation is in the best interests of the Company and would not materially adversely affect the Lenders, (vi) the Company or any Significant Subsidiary may effect sales of assets or of capital stock of any Subsidiary and enter into leases permitted under Section 6.03(b), and (vii) any Subsidiary other than a Credit Party may merge with or into any other Person in a transaction in which the surviving entity is not a Subsidiary; *provided* that such transaction shall be deemed a sale or transfer of the assets of such Subsidiary for purposes of, and such transaction shall be permitted by, Section 6.03(b).

(b) In the case of the Company and any Significant Subsidiary, sell, transfer, lease or otherwise dispose of any asset, including any Equity Interest of a Subsidiary owned by it, except: |

(i) sales of cash equivalents and other temporary investments and sales or leases of inventory, receivables, and used, surplus or obsolete equipment, in each case and the ordinary course of business;

(ii) sales, transfers, leases, and dispositions to the Company or a Subsidiary;

(iii) leases or subleases of equipment or other assets in the ordinary course of business;

(iv) sales or transfers of accounts receivable and related assets in connection with securitization transactions (including the Permitted Receivables Financings) not otherwise prohibited hereunder; and

(v) sales, transfers and other dispositions of assets or capital stock of Subsidiaries other than Credit Parties (including pursuant to mergers or consolidations of Subsidiaries in which the surviving entity is not a Subsidiary) that are not permitted by any other clause of this Section 6.03(b); *provided* that the aggregate cumulative fair market value of all assets sold, transferred or otherwise disposed of after the Effective Date in reliance upon this clause (v) shall not exceed 20% of Consolidated total assets of the Company and its Consolidated Subsidiaries as of December 31, 2007 or, if greater, 20% of Consolidated total assets of the Company and its Consolidated Subsidiaries as of the most recent fiscal quarter end for which financial statements of the Company are delivered pursuant to Section 5.04(a) or (b) hereof.

SECTION 6.04. *Priority Indebtedness.* In the case of the Subsidiaries, incur, create, assume or permit to exist any Indebtedness except:

(a) Indebtedness, if any, arising under the Permitted Receivables Financing in an aggregate principal amount (or an investment amount or purchase amount equivalent to a principal amount) not to exceed \$500,000,000 (the "**Permitted Receivables Financing Indebtedness**");

(b) Capital Lease Obligations, if any, arising under any of the leases identified on Schedule 6.01 (as amended, modified or replaced from time to time), in an aggregate amount not greater than \$150,000,000 (the "**Permitted Power Generation Lease Obligations**"); and

(c) other Indebtedness if, immediately after giving effect to the incurrence thereof, Priority Indebtedness did not exceed the Priority Indebtedness Limit then in effect.

SECTION 6.05. *Amendments of Certain Agreements.* In any respect material and adverse to the Lenders, amend, modify, supplement or waive any of the provisions of any instrument evidencing or relating to any subordinated Indebtedness unless such amendment, modification, supplement or waiver is approved in writing by the Required Lenders.

SECTION 6.06. *Swap Agreements.* Enter into any Swap Agreement, except (a) Swap Agreements entered into to hedge or mitigate risks to which the Company or any Subsidiary has actual exposure (other than those in respect of Equity Interests of the Company or any of its Subsidiaries), and (b) Swap Agreements entered into in order to effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of the Company or any Subsidiary.

SECTION 6.07. *Restrictive Agreements.* Directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of the Company or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets or (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any shares of its capital stock or to make or repay loans or advances to the Company or any other Subsidiary or to Guarantee Indebtedness of the Company or any other Subsidiary; *provided* that (i) the foregoing shall not apply to restrictions and conditions imposed by law or by the Loan Documents, (ii) the foregoing shall not apply to restrictions and conditions existing on the date hereof identified on Schedule 6.07 (or any extension or renewal of, or any amendment or modification to, or any other restriction or condition contained in the agreements governing future Indebtedness of the Company that is substantially identical in substance to, such restriction or condition that does not significantly expand the scope of such restriction or condition), (iii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary or other asset pending such sale, *provided* such restrictions and conditions apply only to the Subsidiary or other asset that is to be sold and such sale is permitted hereunder, (iv) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to assets securing any Indebtedness, (v) clause (a) of the foregoing shall not apply to customary provisions in leases and other contracts restricting the assignment thereof, (vi) clauses (a) and (b) of the foregoing shall not apply to customary restrictions, including *pari passu* lien covenants, contained in senior unsecured notes or bonds issued by the Company and (vii) the foregoing shall not apply to restrictions and conditions set forth in the Permitted Receivables Financings, but shall apply to any amendment or modification expanding the scope of any such restriction or condition.

SECTION 6.08. *Ownership of Significant Subsidiaries.* Cease to maintain at any time direct or indirect ownership of securities or other ownership interests representing not less than the greater of (a) a majority of the ordinary voting power of each Significant Subsidiary and (b) such voting power as provides effective control of the policy and direction of each Significant Subsidiary, except as permitted by Section 6.03.

SECTION 6.09. *Fundamental Changes.* Engage to any material extent in any business except businesses of the types conducted by the Borrowers and their Subsidiaries on the date of this Agreement and businesses reasonably related thereto.

ARTICLE 7 FINANCIAL COVENANTS

SECTION 7.01. *Leverage.* The Company will not permit the ratio, on any date, of (a) the sum of Total Debt plus Securitization Financing, in each case on such date to (b) Consolidated EBITDA for the four fiscal quarters most recently ended on or prior to such date to be greater than 3.0:1.

Section 7.02. *Coverage Ratio.* The Company will not permit the ratio of (a) Consolidated EBITDA minus Capital Expenditures to (b) Consolidated Interest Expense, in each case for any period of four consecutive fiscal quarters ending on any date on or after the Effective Date, to be less than 1.50:1.

ARTICLE 8 EVENTS OF DEFAULT

If any of the following events ("**Events of Default**") shall occur:

(a) any representation or warranty made, or deemed made, in or in connection with the Loan Documents or the Borrowings hereunder, or any representation, warranty, statement or information contained in any report, certificate, financial statement or other instrument furnished in connection with or pursuant to the Loan Documents, shall prove to have been false or misleading in any material respect when so made, deemed made or furnished;

(b) default shall be made in the payment of any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or pursuant to any provision of the Loan Documents or otherwise;

(c) default shall be made in the payment of any interest on any Loan or any fee or any other amount (other than an amount referred to in (b) above) due under the Loan Documents, when and as the same shall become due and payable, and such default shall continue unremedied for a period of five Domestic Business Days;

(d) default shall be made in the due observance or performance by the Company or any Subsidiary of any covenant, condition or agreement contained in Section 5.05(a), Section 5.07, Article 6 or Article 7 and such default shall continue unremedied for a period of five Domestic Business Days after the earlier of (i) a Financial Officer of the Company becoming aware thereof and (ii) notice thereof from the Administrative Agent or any Lender to the Company;

(e) default shall be made in the due observance or performance by the Company or any Subsidiary of any covenant, condition or agreement contained in the Loan Documents (other than those specified in (b), (c) or (d) above) and such default shall continue unremedied for a period of ten Domestic Business Days after notice thereof from the Administrative Agent or any Lender to the Company;

(f) the Company or any Subsidiary shall (i) fail to pay any of its Indebtedness in excess of \$50,000,000 in the aggregate when due and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Indebtedness or (ii) fail to observe or perform any term, covenant or condition on its part to be observed or performed under any agreement or instrument relating to any such Indebtedness, when required to be observed or performed, and such failure shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such failure is to accelerate, or permit the acceleration of, the maturity of such Indebtedness or such Indebtedness has been accelerated and such acceleration has not been rescinded; or any amount of Indebtedness in excess of \$50,000,000 shall be required to be prepaid, defeased, purchased or otherwise acquired by the Company or any Subsidiary (other than by a regularly scheduled required prepayment and other than secured Indebtedness that becomes due as a result of the voluntary transfer of assets securing such Indebtedness), prior to the stated maturity thereof;

(g) an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of the Company or any Significant Subsidiary, or of a substantial part of the property or assets of the Company or any Significant Subsidiary, under Title 11 of the United States Code, as now constituted or hereafter amended, or any other Federal, state or foreign bankruptcy, insolvency, receivership or similar law, (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Company or any Significant Subsidiary, or for a substantial part of the property or assets of the Company or any Significant Subsidiary, or (iii) the winding-up or liquidation of the Company or any Significant Subsidiary; and such proceeding or petition shall continue undismissed for 60 days, or an order or decree approving or ordering any of the foregoing shall be entered;

(h) the Company or any Significant Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking relief under Title 11 of the United States Code, as now constituted or hereafter amended, or any other Federal, state or foreign bankruptcy, insolvency, receivership or similar law, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in (g) above, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Company or any Significant Subsidiary, or for a substantial part of the property or assets of the Company or any

Significant Subsidiary, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors, (vi) admit in writing its inability or fail generally to pay its debts as they become due or (vii) take any action for the purpose of effecting any of the foregoing;

(i) one or more judgments for the payment of money in an aggregate amount in excess of \$50,000,000 shall be rendered against the Company, any Significant Subsidiary or any combination thereof and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed;

(j) a Change in Control shall occur;

(k) the provisions of Article 11 shall cease to constitute valid, binding and enforceable obligations of the Company for any reason, or any Credit Party shall have so asserted in writing; or

(l) an ERISA Event shall have occurred that, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect;

then, and in every such event (other than an event with respect to any Borrower described in paragraph (g) or (h) above), and at any time thereafter during the continuance of such event, the Administrative Agent shall, at the request of the Required Lenders, by notice to the Company, take either or both of the following actions at the same or different times: (i) terminate forthwith the Commitments and (ii) declare the Loans then outstanding to be forthwith due and payable, whereupon the principal of the Loans, together with accrued interest thereon and any unpaid accrued fees and all other liabilities of any Borrower accrued hereunder, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by each Borrower, anything contained herein to the contrary notwithstanding; and upon the occurrence of any event described in paragraph (g) or (h) above with respect to any Borrower, the Commitments shall automatically terminate and the principal of all Loans then outstanding, together with accrued interest thereon and any unpaid accrued fees and all other liabilities of the Borrowers accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by each Borrower, anything contained herein to the contrary notwithstanding.

ARTICLE 9 THE AGENTS

SECTION 9.01. *Appointment and Authorization of Administrative Agent.* Each of the Lenders and the Issuing Bank hereby irrevocably appoints the Administrative Agent as its agent and authorizes it to take such actions on its behalf and to exercise such powers as are delegated to it by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto.

SECTION 9.02. *Rights and Powers of Administrative Agent as a Lender.* The bank serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Company or any Subsidiary or other Affiliate thereof as if it were not the Administrative Agent hereunder.

SECTION 9.03. *Limited Duties and Responsibilities of Administrative Agent.* The Administrative Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby that the Administrative Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 12.02) and (c) except as expressly set forth in any Loan Document, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Company or any of its Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 12.02) or in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent by the Company or a Lender, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered under any Loan Document or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article 4 or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

SECTION 9.04. *Authority of Administrative Agent to Rely on Certain Writings, Statements and Advice.* The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. The Administrative Agent may consult with legal counsel (who may be counsel for the Company), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

SECTION 9.05. *Sub-Agents and Related Parties.* The Administrative Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

SECTION 9.06. *Resignation; Successor Administrative Agent.* Subject to the appointment and acceptance of a successor Administrative Agent as provided in this paragraph, the Administrative Agent may resign at any time by notifying the Lenders, the Issuing Bank and the Company. Upon any such resignation, the Required Lenders shall have the right, in consultation with the Company, to appoint a successor. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders and the Issuing Bank, appoint a successor Administrative Agent which shall be a bank with an office in New York, New York, or an Affiliate of any such bank. Upon the acceptance of its appointment as a successor Administrative Agent hereunder, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. The fees payable by the Company to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Company and such successor. After the Administrative Agent's resignation hereunder, the provisions of this Article and Section 12.03 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Administrative Agent.

SECTION 9.07. *Credit Decisions by Lenders.* Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon the Loan Documents, any related agreement or any document furnished hereunder or thereunder.

SECTION 9.08. *Administrative Agent's Fee.* The Company agrees to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Company and the Administrative Agent.

SECTION 9.09. *Other Agents.* Nothing in the Loan Documents shall impose on any Agent other than the Administrative Agent, in its capacity as an Agent, any obligation or liability whatsoever.

ARTICLE 10 REPRESENTATIONS AND WARRANTIES OF ELIGIBLE SUBSIDIARIES

Each Eligible Subsidiary shall be deemed by the execution and delivery of its Election to Participate to have represented and warranted as of the date thereof that:

SECTION 10.01. *Organization; Powers.* Such Eligible Subsidiary (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has the power and authority to execute, deliver and perform its obligations hereunder and under each other agreement or instrument contemplated thereby to which it is or will be a party and to borrow hereunder and (c) is a Wholly-Owned Consolidated Subsidiary.

SECTION 10.02. *Authorization.* The Transactions and the execution and delivery by such Eligible Subsidiary of its Election to Participate and the performance by such Eligible Subsidiary of this Agreement, (a) have been duly authorized by all requisite corporate, partnership, limited liability company or analogous and, if required, stockholder, partner, member or analogous action and (b) will not (i) materially violate any provision of law, statute, rule or regulation, or of the certificate or articles of incorporation or other constitutive documents or by-laws of the Company or any Subsidiary, (ii) materially violate any order of any Governmental Authority or (iii) materially violate any provision of any material indenture, agreement or other instrument to which the Company or any Subsidiary is a party or by which any of them or any of their property is or may be bound, (iv) be in material conflict with, result in a breach of or constitute (alone or with notice or lapse of time or both) a material default under any such indenture, agreement or other instrument or (v) result in the creation or imposition of any Lien upon any property or assets of the Company or any Subsidiary.

SECTION 10.03. *Enforceability.* Its Election to Participate has been duly executed and delivered by such Eligible Subsidiary, and this Agreement constitutes a legal, valid and binding obligation of such Eligible Subsidiary enforceable against such Eligible Subsidiary in accordance with its terms.

SECTION 10.04. *Taxes.* Except as disclosed in such Election to Participate, there is no income, stamp or other tax of any country, or any taxing authority thereof or therein, imposed by or in the nature of withholding or otherwise, which is imposed on any payment to be made by such Eligible Subsidiary pursuant hereto, or is imposed on or by virtue of the execution, delivery or enforcement of its Election to Participate.

ARTICLE 11 GUARANTY

SECTION 11.01. *The Guaranty.* The Company hereby unconditionally and absolutely guarantees the full and punctual payment (whether at stated maturity, upon acceleration or otherwise) of the principal of and interest on each Loan made to and each obligation to reimburse any LC Disbursement incurred by each other Borrower pursuant to this Agreement, and the full and punctual payment of all other amounts

payable by each other Borrower under this Agreement. Upon failure by any other Borrower to pay punctually any such amount, the Company agrees that it shall forthwith on demand pay the amount not so paid at the place and in the manner specified in this Agreement.

SECTION 11.02. *Guaranty Unconditional.* The obligations of the Company hereunder shall be unconditional and absolute and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by:

- (a) any extension, renewal, settlement, compromise, waiver or release in respect of any obligation of any Borrower or any other Person under any Loan Document or by operation of law or otherwise;
- (b) any modification or amendment of or supplement to any Loan Document;
- (c) any release, impairment, non-perfection or invalidity of any direct or indirect security for any obligation of any Borrower or any other Person under any Loan Document;
- (d) any change in the corporate existence, structure or ownership of any Borrower or any other Person or any insolvency, bankruptcy, reorganization or other similar proceeding affecting any Borrower or any other Person or its assets or any resulting release or discharge of any obligation of any Borrower or any other Person contained in any Loan Document;
- (e) the existence of any claim, set-off or other rights which the Company may have at any time against any other Borrower, the Administrative Agent, any Lender or any other Person, whether in connection herewith or with any unrelated transactions; *provided* that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim;
- (f) any invalidity or unenforceability relating to or against any Borrower or any other Person for any reason of any Loan Document, or any provision of applicable law or regulation purporting to prohibit the payment by any Borrower of the principal of or interest on any Loan or any other amount payable by it under any Loan Document; or
- (g) any other act or omission to act or delay of any kind by any Borrower, the Administrative Agent, any Lender or any other Person or any other circumstance whatsoever which might, but for the provisions of this paragraph, constitute a legal or equitable discharge of the Company's obligations hereunder (in each case other than payment in full of the obligations guaranteed hereunder).

SECTION 11.03. *Discharge Only Upon Payment in Full; Reinstatement in Certain Circumstances.* Each of the Company's obligations hereunder shall remain in full force and effect until the Commitments shall have terminated and the principal of and interest on the Loans and all other amounts payable hereunder by the Company and each other Borrower under this Agreement shall have been paid in full in cash and all LC Disbursements shall have been reimbursed. If at any time any payment of the principal of or interest on any Loan or any other amount payable by any other Borrower under this Agreement is rescinded or must be otherwise restored or returned upon the insolvency, bankruptcy or reorganization of such Borrower or otherwise, the Company's obligations hereunder with respect to such payment shall be reinstated at such time as though such payment had been due but not made at such time.

SECTION 11.04. *Waiver by the Company.* The Company irrevocably waives acceptance hereof, presentment, demand, protest and any notice not provided for herein, as well as any requirement that at any time any action be taken by any Person against any Borrower or any other Person.

SECTION 11.05. *Subrogation.* Upon making any payment with respect to any Borrower hereunder, the Company shall be subrogated to the rights of the payee against such Borrower with respect to such payment; *provided* that the Company shall not enforce any payment by way of subrogation unless all amounts of principal of and interest on the Loans to such Borrower and all other amounts payable by such Borrower under this Agreement have been paid in full in cash.

SECTION 11.06. *Stay of Acceleration.* If acceleration of the time for payment of any amount payable by any Borrower under this Agreement is stayed upon insolvency, bankruptcy or reorganization of such Borrower, all such amounts otherwise subject to acceleration under the terms of this Agreement shall nonetheless be payable by the Company hereunder forthwith on demand by the Administrative Agent made at the request of the Required Lenders.

SECTION 11.07. *Continuing Guaranty.* The Company's guaranty hereunder is a continuing guaranty, shall be binding on the Company and its successors and assigns, and shall be enforceable by the Lenders. If all or part of any Lender's interest in any obligation guaranteed by the Company is assigned or otherwise transferred, the transferor's rights under the Company's guaranty, to the extent applicable to the obligation so transferred, shall automatically be transferred with such obligation.

ARTICLE 12 MISCELLANEOUS

SECTION 12.01. *Notices.* (a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile, as follows:

- (i) if to the Company, to it at Cummins Inc., 500 Jackson Street, Box 3005, Columbus, Indiana 47202-3005, Attention of Vice President-Treasurer (Facsimile No. (812) 377-3347);
- (ii) if to any other Borrower or Eligible Subsidiary, to it care of the Company;

(iii) if to the Administrative Agent:

(A) if such notice is required by the terms hereof to be given to the Administrative Agent at its London office, to J.P. Morgan Europe Limited, 125 London Wall, Floor 9, London EC24 5AJ, Attention of Ching Loh, (Facsimile No. 44 207 777 2360), with a copy to JPMorgan Chase Bank, N.A., 1111 Fannin St, Floor 10, Houston, Texas 77002, Attention of Daniel Blazei (Facsimile No. 713-750-2938);

(B) otherwise to JPMorgan Chase Bank, N.A., 1111 Fannin St, Floor 10, Houston, Texas 77002, Attention of Daniel Blazei (Facsimile No. 713-750-2938);

(iv) if to the Issuing Bank, to it at JPMorgan Chase Bank, N.A., 10420 Highland Manor Drive, Floor 4, Tampa, Florida 33610, Attention of Standby LC Dept. James Alonzo/Ralph Davis (Facsimile No. 813-432-5161);

(v) if to JPMCB as Swingline Lender, to it at JPMorgan Chase Bank, N.A., 1111 Fannin St, Floor 10, Houston, Texas 77002, Attention of Daniel Blazei (Facsimile No. 713-750-2938);

(vi) if to BofA as Swingline Lender, to it at Bank of America, N.A., 901 Main St. 14th Floor, TX1-492-14-05, Dallas, TX 75202.3714, Attention of Eldred Sholars (Facsimile No. 214-290-9429); and

(vii) if to any other Lender, to it at its address (or facsimile number) set forth in its Administrative Questionnaire.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent; *provided* that the foregoing shall not apply to notices pursuant to Article 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Company may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; *provided* that approval of such procedures may be limited to particular notices or communications.

(c) Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if received during the recipient's normal business hours.

SECTION 12.02. *Waivers; Amendments.* (a) No failure or delay by the Administrative Agent, the Issuing Bank or any Lender in exercising any right or power under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing Bank and the Lenders under the Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender or the Issuing Bank may have had notice or knowledge of such Default at the time.

(b) No Loan Document nor any provision thereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Company and the Required Lenders; *provided* that no such agreement shall

(i) (A) increase the Commitment of any Lender without the written consent of such Lender, (B) reduce the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender affected thereby, (C) postpone the scheduled date of payment of the principal amount of any Loan or LC Disbursement, or any interest thereon, or any fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender affected thereby, (D) change Section 2.18(b) or Section 2.18(c) in a manner that would alter the pro rata sharing of payments required thereby, or change any provision requiring that funding of amounts by the Lenders be on a ratable basis, without the written consent of each Lender, (E) change any of the provisions of this Section or the definition of "Required Lenders" or any other provision of any Loan Document specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender, or (F) release the Company from its guaranty under Article 11 hereof, or limit its liability in respect of such guaranty, without the written consent of each Lender;

(ii) amend, modify or otherwise affect the rights or duties of the Administrative Agent, the Issuing Bank or either Swingline Lender under any Loan Document without the prior written consent of the Administrative Agent, the Issuing Bank or such Swingline Lender, as the case may be; or

(iii) (A) subject any Eligible Subsidiary or Original Subsidiary Borrower to any additional obligation without the written consent of such Borrower, (B) increase the principal of or rate of interest on any outstanding Loan of any Eligible Subsidiary or Original Subsidiary Borrower without the written consent of such Borrower, (C) accelerate the stated maturity of any outstanding Loan of any Eligible Subsidiary or Original Subsidiary Borrower without the written consent of such Borrower or (D) change this *proviso* (iii) without the prior written consent of each Eligible Subsidiary and each Original Subsidiary Borrower.

SECTION 12.03. *Expenses; Indemnity; Damage Waiver.* (a) The Company shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent, and its Affiliates, including the reasonable fees, charges and disbursements of one counsel for the Administrative Agent, in connection with the syndication of the credit facilities provided for herein, the preparation and administration of the Loan

Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by the Administrative Agent, the Issuing Bank or any Lender, including the fees, charges and disbursements of any counsel for the Administrative Agent, the Issuing Bank or any Lender, in connection with the enforcement or protection of its rights in connection with the Loan Documents, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) The Company shall indemnify the Administrative Agent, the Issuing Bank and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the reasonable fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of any actual or prospective claim, litigation, investigation or proceeding, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto, relating to (i) the execution or delivery of the Loan Documents or any agreement or instrument contemplated thereby, the performance by the parties thereto of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated thereby, (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by the Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit) or (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Company or any of its Subsidiaries, or any Environmental Liability related in any way to the Company or any of its Subsidiaries; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or from the breach by such Indemnitee of its material obligations under the Loan Documents.

(c) To the extent that the Company fails to pay any amount required to be paid by it to the Administrative Agent, the Issuing Bank or either Swingline Lender under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Administrative Agent, the Issuing Bank or such Swingline Lender, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent, the Issuing Bank or such Swingline Lender in its capacity as such.

(d) To the extent permitted by applicable law, each Credit Party shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, the Loan Documents or any agreement or instrument contemplated thereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof.

(e) All amounts due under this Section shall be payable promptly after written demand therefor.

SECTION 12.04. *Successors and Assigns.* (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), except that (i) no Credit Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by any Credit Party without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(A) the Company; *provided* that no consent of the Company shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund (as defined below) or, if an Event of Default under paragraph (b), (c), (g) or (h) of Article 8 has occurred and is continuing, any other assignee; and

(B) the Administrative Agent, the Issuing Bank and each Swingline Lender; *provided* that no consent of the Administrative Agent, the Issuing Bank or either Swingline Lender, shall be required for an assignment to an assignee that is a Lender immediately prior to giving effect to such assignment.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Commitment, the amount of the Commitment of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$1,000,000 unless each of the Company and the Administrative Agent otherwise consent; *provided* that no such consent of the Company shall be required if an Event of Default under paragraph (b), (c), (g) or (h) of Article 8 has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500;

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire; and

(E) in the case of an assignment to a CLO (as defined below), the assigning Lender shall retain the sole right to approve any amendment, modification or waiver of any provision of this Agreement, *provided* that the Assignment and Assumption between such Lender and such CLO may provide that such Lender will not, without the consent of such CLO, agree to any amendment, modification or waiver described in paragraph (i) of the first proviso to Section 12.02(b) that affects such CLO.

For the purposes of this Section 12.04(b), the terms "**Approved Fund**" and "**CLO**" have the following meanings:

"**Approved Fund**" means (a) a CLO and (b) with respect to any Lender that is a fund which invests in bank loans and similar extensions of credit, any other fund that invests in bank loans and similar extensions of credit and is managed by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"**CLO**" means any entity (whether a corporation, partnership, trust or otherwise) that is engaged in making, purchasing, holding or otherwise investing in bank loans and similar extensions of credit in the ordinary course of its business and is administered or managed by a Lender or an Affiliate of such Lender.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.14, 2.15, 2.16, 2.17 and 12.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 12.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) The Administrative Agent, acting for this purpose as an agent of the Borrowers, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and each Borrower, the Administrative Agent, the Issuing Bank and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Company, the Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) (i) Any Lender may, without the consent of any Borrower, the Administrative Agent, the Issuing Bank or either Swingline Lender, sell participations to one or more banks or other entities (a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); *provided* that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) each Borrower, the Administrative Agent, the Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in paragraph (i) of the first proviso to Section 12.02(b) that affects such Participant. Subject to paragraph (c)(ii) of this Section, each Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.14, 2.15, 2.16 and Section 2.17 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 12.08 as though it were a Lender, *provided* such Participant agrees to be subject to Section 2.18(c) as though it were a Lender.

(ii) A Participant shall not be entitled to receive any greater payment under Section 2.14, 2.16 or 2.17 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.16 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 2.16(e) as though it were a Lender.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure

obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; *provided* that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

SECTION 12.05. *Survival.* All covenants, agreements, representations and warranties made by the Company and any other Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, the Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.14, 2.15, 2.16, 2.17 and 12.03 and Article 9 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

SECTION 12.06. *Counterparts; Integration; Effectiveness.* This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by facsimile shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 12.07. *Severability.* Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 12.08. *Right of Set-off.* If an Event of Default shall have occurred and be continuing and the maturity of the Loans has been accelerated under Article 8, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set-off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of any Credit Party against any of and all the obligations of such Credit Party now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmatured. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of set-off) which such Lender may have.

SECTION 12.09. *Governing Law; Jurisdiction; Consent to Service of Process.* (a) This Agreement shall be construed in accordance with and governed by the law of the State of New York.

(b) Each Credit Party hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Document, or for recognition or enforcement of any judgment arising out of or relating to any Loan Document, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in any Loan Document shall affect any right that the Administrative Agent, the Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to any Loan Document against any Credit Party or its properties in the courts of any jurisdiction.

(c) Each Credit Party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to any Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 12.01. Nothing in any Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 12.10. *WAIVER OF JURY TRIAL.* EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED

TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 12.11. *Judgment Currency.* If, under any applicable law and whether pursuant to a judgment being made or registered against any Borrower or for any other reason, any payment under or in connection with any Loan Document is made or satisfied in a currency (the "**Other Currency**") other than that in which the relevant payment is due (the "**Required Currency**") then, to the extent that the payment (when converted into the Required Currency at the rate of exchange on the date of payment or, if it is not practicable for the party entitled thereto (the "Payee") to purchase the Required Currency with the Other Currency on the date of payment, at the rate of exchange as soon thereafter as it is practicable for it to do so) actually received by the Payee falls short of the amount due under the terms of any Loan Document, such Borrower shall, to the extent permitted by law, as a separate and independent obligation, indemnify and hold harmless the Payee against the amount of such short-fall. For the purpose of this Section, "**rate of exchange**" means the rate at which the Payee is able on the relevant date to purchase the Required Currency with the Other Currency and shall take into account any premium and other costs of exchange.

SECTION 12.12. *Headings.* Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 12.13. *Confidentiality.* Each of the Administrative Agent, the Issuing Bank and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and will agree to keep such Information confidential), (b) to the extent requested by any regulatory authority having jurisdiction over it, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to any Loan Document or the enforcement of rights hereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to a Borrower and its obligations under this Agreement, (g) with the consent of the Company or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, the Issuing Bank or any Lender on a nonconfidential basis from a source other than the Company. For the purposes of this Section, "**Information**" means all information received from the Company relating to the Company or its business, other than any such information that is available to the Administrative Agent, the Issuing Bank or any Lender on a nonconfidential basis prior to disclosure by the Company; *provided* that, in the case of information received from the Company after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

SECTION 12.14. *USA Patriot Act Notification.* Each Lender hereby notifies the Borrowers that, pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**Act**"), it is required to obtain, verify and record information that identifies the Borrowers, which information includes the name and address of the Borrowers and other information that will allow such Lender to identify the Borrowers in accordance with the Act. The Borrowers agree to cooperate with each Lender and provide true, accurate and complete information to such Lender in response to any such request.

SECTION 12.15. *No Fiduciary Duty.* Each Agent, each Lender and their Affiliates (collectively, the "Lender Parties"), may have economic interests that conflict with those of the Borrowers. Each Borrower agrees that nothing in the Loan Documents will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between the Lender Parties and the Borrowers, its stockholders or its affiliates in connection with the transactions contemplated hereby. The Credit Parties acknowledge and agree that (i) the transactions contemplated by the Loan Documents are arm's-length commercial transactions between the Lender Parties, on the one hand, and the Borrowers, on the other, (ii) in connection therewith and with the process leading to such transactions contemplated by the Loan Documents each of the Lender Parties is acting solely as a principal and not the fiduciary of each of the Borrower, its management, stockholders, creditors or any other person, (iii) no Lender Party has assumed an advisory or fiduciary responsibility in favor of any Borrower with respect to the transactions contemplated hereby or the process leading thereto (irrespective of whether any Lender Party or any of its affiliates has advised or is currently advising any Borrower on other matters) and (iv) each Borrower has consulted its own legal and financial advisors to the extent it deemed appropriate. Each Borrower further acknowledges and agrees that it is responsible for making its own independent judgment with respect to the transactions contemplated hereby and the process leading thereto. Each Borrower agrees that it will not claim that any Lender Party has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to such Borrower, in connection with the transactions contemplated hereby or the process leading thereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

BORROWERS:

CUMMINS INC.

By: _____

Name: _____
Title:
CUMMINS LTD.

By: _____
Name:
Title:
CUMMINS POWER GENERATION LTD.

By: _____
Name:
Title:
CUMMINS GENERATOR
TECHNOLOGIES LIMITED

By: _____
Name:
Title:

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent, Swingline Lender,
Issuing Bank and Lender

By: _____
Name:
Title:

BANK OF AMERICA, N.A.
as Syndication Agent, Swingline
Lender and Lender

By: _____
Name:
Title:

ING BANK N.V., DUBLIN BRANCH
as Co-Documentation Agent and
Lender

By: _____
Name:
Title:

THE ROYAL BANK OF SCOTLAND
plc.
as Co-Documentation Agent and
Lender

By: _____
Name:
Title:

EXPORT DEVELOPMENT CANADA
as Lender

By: _____
Name:
Title:

HSBC BANK USA, N.A.
as Lender

By: _____
Name:
Title:

DEUTSCHE BANK AG NEW YORK
BRANCH
as Lender

By: _____
Name:
Title:

FORTIS BANK S.A./N.V., NEW YORK
BRANCH
as Lender

By: _____
Name:
Title:

NATIONAL CITY BANK
as Lender

By: _____
Name:
Title:

STANDARD CHARTERED
as Lender

By: _____
Name:
Title:

THE BANK OF TOKYO-MITSUBISHI
UFJ, LTD.
as Lender

By: _____
Name:
Title:

THE NORTHERN TRUST COMPANY
as Lender

By: _____
Name:
Title:

UBS LOAN FINANCE LLC
as Lender

By: _____
Name:
Title:

BANCO BILBAO VIZCAYA
ARGENTARIA, NEW YORK
BRANCH
as Lender

By: _____
Name:
Title:

BANCO BRADESCO S.A. - NEW
YORK BRANCH
as Lender

By: _____
Name:
Title:

BARCLAYS BANK PLC
as Lender

By: _____
Name:
Title:

CITIBANK, N.A.
as Lender

By: _____
Name:
Title:

NATIONAL AUSTRALIA BANK
LIMITED
as Lender

By: _____
Name:
Title:

THE BANK OF NOVA SCOTIA
as Lender

By: _____
Name:
Title:

US BANK
as Lender

By: _____
Name:
Title:

WILLIAM STREET LLC
as Lender

By: _____
Name:
Title:

CUMMINS INC. AND CONSOLIDATED SUBSIDIARIES
COMPUTATION OF RATIO OF EARNINGS TO FIXED CHARGES

	<u>Six months ended</u>	
	<u>June 29,</u>	<u>July 1,</u>
	<u>2008</u>	<u>2007</u>
	Millions	
Earnings		
Earnings before income taxes and minority interests	\$ 761	\$ 567
Add:		
Fixed charges	48	52
Amortization of capitalized interest	2	3
Distributed income of equity investees	61	55
Less:		
Equity in earnings of investees	125	83
Capitalized interest	3	3
Earnings before fixed charges	<u>\$ 744</u>	<u>\$ 591</u>
Fixed charges		
Interest expense	\$ 23	\$ 30
Capitalized interest	3	3
Amortization of debt discount	1	1
Interest portion of rental expense(1)	21	18
Total fixed charges	<u>\$ 48</u>	<u>\$ 52</u>
Ratio of earnings to fixed charges	15.5	11.4

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

Certification

I, Theodore M. Solso, Chairman and Chief Executive Officer of Cummins Inc. (Cummins), certify that:

1. I have reviewed this quarterly report on Form 10-Q of Cummins;
2. Based on my knowledge, the quarterly 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 periods covered by the quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of Cummins as of, and for, the periods presented in this quarterly report;
4. Cummins 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 Cummins 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 Cummins, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the periods in which the quarterly 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 Cummins disclosure controls and procedures and presented in the quarterly report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this quarterly report based on such evaluation; and
 - d) disclosed in this quarterly report any change in Cummins internal control over financial reporting that occurred during the most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, Cummins internal control over financial reporting; and
5. Cummins other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to Cummins auditors and the Audit Committee of Cummins 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 Cummins 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 Cummins internal controls over financial reporting.

Date: August 1, 2008

/s/ Theodore M. Solso

THEODORE M. SOLSO

Chairman and Chief Executive Officer

Certification

I, Patrick J. Ward, Vice President and Chief Financial Officer of Cummins Inc. (Cummins), certify that:

1. I have reviewed this quarterly report on Form 10-Q of Cummins;
2. Based on my knowledge, the quarterly 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 periods covered by the quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of Cummins as of, and for, the periods presented in this quarterly report;
4. Cummins 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 Cummins 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 Cummins, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the periods in which the quarterly 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 Cummins disclosure controls and procedures and presented in the quarterly report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this quarterly report based on such evaluation; and
 - d) disclosed in this quarterly report any change in Cummins internal control over financial reporting that occurred during the most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, Cummins internal control over financial reporting; and
5. Cummins other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to Cummins auditors and the Audit Committee of Cummins 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 Cummins 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 Cummins internal controls over financial reporting.

Date: August 1, 2008

/s/ Patrick J. Ward

PATRICK J. WARD

Vice President and Chief Financial Officer

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 29, 2008 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:

- (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.

August 1, 2008

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

August 1, 2008

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